Board Governance and Service Delivery of Constitutional Commissions in Kenya

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Abstract— **Constitutional commissions are currently a widely celebrated phenomenon in public governance. Many democracies all over the world, including Kenya have adopted independent constitutional commissions as a system of governance to improve service delivery. Researchers have generally supported the position that board governance influences service delivery. The purpose of the study was to establish the influence of board governance on service delivery in constitutional commissions in Kenya. The specific objectives that this research proposal sought to achieve were to: To analyze the influence of board structure on service delivery in constitutional commissions in Kenya; To assess the influence of board independence on service delivery in constitutional commissions in Kenya; To assess the moderating effect of board e-governance on the relationship between board governance and service delivery in constitutional commissions in Kenya. The theories on which the study was hinged were Contingency Theory of Leadership, Stewardship Theory and Transformational Leadership Theory. The study adopted both descriptive survey and exploratory research designs, and used both qualitative and quantitative approaches. The units of analysis were constitutional commissions of Kenya created by the chapter 15 of the Constitution of Kenya and Act of Parliament, while the unit of observation was 80 board members and 10 Chief Executive Officers of the Constitutional Commissions in Kenya. The respondents were sought through census. Structured questionnaires were the main tool to collect primary data from the targeted respondents. A pilot study was carried to test the reliability and validity of the questionnaire. The data was analyzed using both descriptive and inferential statistics. Results revealed that all the board governance practices had a positive and significant relationship with service delivery in the constitutional commissions in Kenya. Further, the results showed that e-governance had a significant moderating effect on the relationship between board governance practices and service delivery in the constitutional commissions in Kenya. The study concluded that board governance practices had the potential of positively influencing service delivery in the constitutional commissions in Kenya in terms of timeliness, accessibility and customer satisfaction.**

Index Terms— **Board Governance, Board Structure, Board Independence, E-governance, Service delivery.**

I. Introduction

Background Information

Many democracies all over the world, including Kenya have adopted independent constitutional commissions as a system of governance to improve service delivery. Researchers have generally supported the position that board governance influences service delivery. Empirical evidence supports existence of a relationship between board governance and service delivery (Conforth, 2020; Solomon, 2020). However, existing research mostly focuses on developed or developing countries of Asia and Latin America (Namuhisa, 2020; Moursli, 2020; Hodginkson, *et al.,* 2017; Nyagilo & Njeru, 2020; Schalka & Sarfati, 2014; Kosec & Wantchenkon, 2020). The link between board governance and service delivery in the constitutional commissions' context of Sub-Saharan Africa is scarcely explored.

1. Board governance is deeply rooted in the political economy argument that it leads to better service delivery (Oslo, 2018). However, despite these theoretical underpinnings advocating for board governance, findings on the impact of board governance on service delivery in the public sector is mixed and inconclusive. One strand of the literature revealed that board governance leads to improved service delivery (Park, 2020; Solomon, 2020). In contrast, other studies found that corporate governance negatively influenced service delivery (Moursli, 2020; Schalka & Sarfati, 2014; Kosec & Wantchenkon, 2020). These mixed conclusions created the need to carry out a study from a Kenyan context to establish the effect of board governance on service delivery in constitutional commissions of Kenya

II. Statement of the Problem

The constitution of Kenya (2010) established Constitutional commissions to improve efficiency in service delivery. The transition from a central to independent commissions in Kenya has not been smooth as several challenges related to service delivery, turf wars among leaders, corruption and strikes among others have threatened service delivery. Statistics from the 2017 Kenya Institute for Public Policy Research and Analysis (KIPPRA) report highlights constitutional commissions facing serious challenges in service delivery whereas a survey by Transparency international (TI) (2018) reported that 41% of Kenyans were dissatisfied with the constitutional commissions service delivery. An exploratory survey by Amnesty International (2018) on Kenyan constitutional commissions public service delivery performance, service delivery and constitutional commissions interaction indicates that 45 % of the respondents have negative comments, citing complaints in relation to efficient service delivery and customer care. An ACAL (2017) Citizens Satisfaction Survey commissioned by the GOK's Ministry of Devolution and Planning-Performance Contracting Division (PCD) to assess

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the extent to which citizens are satisfied with performance of the National Government and Constitutional commissions estimated that the overall Citizen Satisfaction Index (CSI) calculated through Principal Component Analysis (CPA) reveals a dissatisfaction level of with equity and dignity displayed by constitutional commissions in service delivery (66%), especially in their respective reception and offices (63%), and staff courtesy, professionalism, knowledge and competence (61%) in service delivery. In addition, it was reported that citizens indicated they were dissatisfied with the use of innovation and technology (53%) in delivery of public services, complaints handling and redress (57%) accessibility, location and convenience of service delivery stations or points, and state of public facilities (57%) in service delivery. A number of voids exist in the immature board e-governance literature, regarding its adoption strategy and implementation process to enhance service delivery exposing a wide gap that needs to be filled with research in this field

A few studies have been carried out on constitutional commissions of Kenya. Drawing on empirical research conducted by Maina, Namusonge and Kabare (2016) on the role of Intrapersonal Traits in Service Delivery by Devolved Governments and the challenges of strategic plan implementation among Kenyan Constitutional Commissions. Koitie (2015) study focused on the effect of strategic change management practices and performance of Constitutional Commissions in Kenya. The findings of the study were that the constitutional commissions were undertaking strategic changes in order to align their strategies to the demands of the stakeholders and thereby matching the resources and activities of the organization to that environment. Further, Mwinzi and Kagiri (2018) study examined effect of performance appraisal methods on employee performance in Constitutional Commissions in Kenya, a case of Commission on Revenue Allocation of Kenya. Moreover, Wagana (2017) and Amuti (2017) studies are narrow and suffered from conceptual gaps since they only addressed merits and demerits of board governance and service delivery in the public sector in Kenya. The afore mentioned empirical studies have yielded both conceptual, methodological and contextual gaps this study seeks to fill as it will focus on contribution of board governance on service delivery in constitutional commissions in Kenya. The trend informed the need to examine the relationship between board governance and service delivery in constitutional commissions in Kenya.

III. Research Objectives

1. To establish the influence of board structure on service delivery in constitutional commissions in Kenya.
2. To determine the influence of board independence on service delivery in constitutional commissions in Kenya
3. To assess the moderating effect of board E-governance on the relationship between board governance and service delivery in constitutional commissions in Kenya

IV. Literature Review

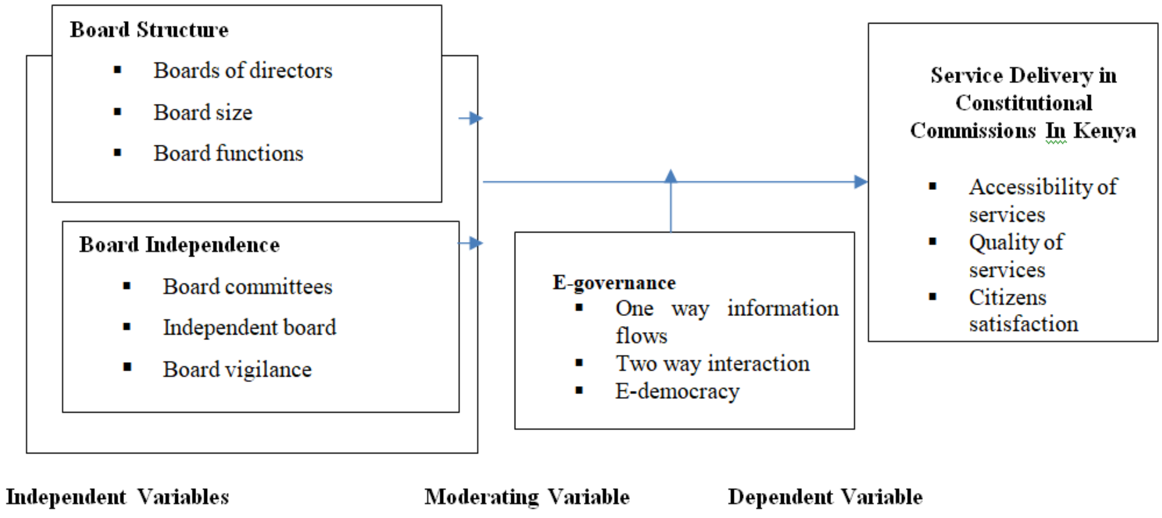
The study was guided by the stewardship theory has its origin in the field of Sociology and Psychology as a development from the works of the earlier researchers. Contrary to the Agency theory, Stewardship theory holds that managers are stewards for the organization (Kabiru, Theuri, & Misiko, 2018). Further, it views the manager as one who protects the owner's wealth by maximizing it through performance, in which the steward (manager) simultaneously serving his or her own interests as well (Makori & Kinyua, 2019). This double – fold target is actualized through maximized profits since the management is part of the business and therefore they feel motivated with the success of the organization (Mabati, Onserio, Mutai, & Bii, 2020).

The stewardship theory holds that the agency costs such as monitoring and control are no longer necessary and that gives high value to the firm (Solomon, 2020). Unlike the Agency theory, Stewardship theory is anchored on the value of trust and not suspicions. Trust cultivates a healthy and worthy decision-making environment, sufficient in stimulating the achievement of organizational goals than conflict (Mok., Chan, & Wen, 2020). Stewardship theory hence supports the role of insider directors who possess crucial knowledge that ensures that managers make quality decisions that necessary in enhancing organization performance and progress.
Stewardship theory proposes that management rights among different parties who own the firm collectively (Minjire & Ogollah, 2017). The relationship between board independence to oversight management of constitutional commissions can enhance service delivery

depends on the management of stewardship issues arising from the separation of power (Nyagilo & Njeru, 2020). The linkage between board independence and the service delivery of the constitutional commissions if any can be well explained by the stewardship theory (Maroa & Namusonge, 2019). Similarly, Muchai, Makokha and Namusonge(2018) explains that board independence provides incentives to monitor, but it also reduces the manager's initiative or incentive to acquire information. When discussing the effect of board independence on service delivery, (Kande, Namusonge and Mugambi (2017) argues that center of power may be more capable of monitoring and controlling the management, and thereby contributing to a better service delivery. Therefore, the current study adopted stewardship theory to expound on the association existing between the board governance and service delivery in the constitutional commissions of Kenya.

V. Conceptual Model and Hypothesis

Conceptual framework can be defined as a set of broad ideas and principles taken from relevant fields of inquiry and used to structure a subsequent presentation (Myers, 2013). The current study hypothesizes that board governance linearly and directly influences service delivery of constitutional commissions in Kenya. The independent variables are Board Structure, Board Independence. Dependent variable is service delivery in the constitutional commissions of Kenya. Board E-governance is conceptualized as one-way information flows, two-way interaction and e-democracy. Service delivery is conceptualized as accessibility of services, efficiency of services, quality of services and citizen satisfaction (complements and complaints) in to the services in the constitutional commissions.



Empirical Review

The board structure distinguishes between those directors who hold management positions in the company and those who do not (Mwangi, Gakure, Arasa, & Waititu, 2017). Board of directors play an important role in maintaining effective board governance, particularly in publicly held corporations in which agency problems may arise from the separation of ownership and control (Masetu, Mbebe, & Nzioki, 2021). The management body in a firm is responsible for suggesting and implementing major policies; however, shareholders do not always agree with these policies, which can lead to an agency problem between management and shareholders. Kinyeki, Amuhaya, Mwimali and Orwa (2016) investigated the effect of board governance on health service delivery in Kenya. The study findings revealed that board have a positive and significant relationship with service delivery and that there was a linear positive relationship between board size and service delivery which means that an increase in board size would leave to a linear increase in service delivery. The study recommends that all counties in Kenya adopt County Health Management Committees to improve health service delivery in Kenya.

Lawal (2016) investigates the composition of boards of directors in Nigerian firms and analyses whether board structure has an impact on financial performance, as measured by return on equity (ROE) and return on capital employed (ROCE). Findings from the study show that there is strong positive association between board size and board financial performance. Evidence also exists that there is a positive association between outside directors sitting on the board and board financial performance. However, a negative association was observed between directors' stockholding and firm financial performance measures. The study suggests that large board size should be encouraged and the composition of outside directors as members of the board should be sustained and improved upon to enhance board financial performance.

The board of directors is only one of several mechanisms that can mitigate agency conflicts within the public organizations (Lim & Kim, 2018) Adeabah, Gyeke-Dako and Andoh, (2019) study focused on the composition of board of directors and its effects on service delivery and firm performance in the Ghanaian banking industry. The cross-sectional panel survey purposively draws a sample of fourteen banking firms over the 2008 and 2013 year period. From four aims, four study hypotheses were formulated and examined. Using the GMM, fixed and random effect econometric models, board size and the presence of independent non-executive directors were observed to have significant positive effects.

Board size is considered to be a crucial characteristic of the board structure (Waweru, Mangena, & Riro, 2019). Large boards could provide the diversity that would help companies to secure critical resources and reduce environmental uncertainties (Sharhan & Bora, 2020). But, as Wanyama, Nambuswa and Namusonge (2016) said, coordination, communication and decision-making problems increasingly impede company performance when the number of directors increases. Thus, as an extra member is included in the board, a potential trade-off exists between diversity and coordination. Mandala, Kaijage, Aduda and Iraya (2019) recommend a number of board members between seven and eight. However, board size recommendations tend to be industry-specific, since Lim and Kim (2018) indicate that bank holding companies have board size significantly larger than those of manufacturing firms.

Board ownership is also an important characteristic of board structure (Tarus, Komen, & Tenai, 2019). It reduces manager–shareholder conflicts in stock ownership by board members (both executive and non-executive) (Waweru, Mangena, & Riro, 2019). To the extent that executive board members own part of the firm, they develop shareholder-like interests and are less likely to engage in behaviour that is detrimental to shareholders (Koech, Namusonge, & Mugambi, 2016). The board governance function is intended to develop ownership structures and board governance structures for an organization to ensure managers to behave ethically and make decisions that benefit shareholders

(Barako & Brown, 2016). Salem, Usman and Ezeani, (2021) study concluded that yet there remains no general consensus on the question of whether board structure positively or negatively affects firm performance. Salum, Gakure and Othiambo, (2017) study on the structure of boards of directors: composition and effects on the performance of the firm established that not only the gender of board members, but also their age and nationality, since these are factors that can influence the knowledge, experience and skills of the directors.

Midin, Joseph and Mohamed (2017) study investigated the impact of board governance practices on service delivery. The study concludes that greater transparency in disclosures is essential for effective service delivery. By adopting board size greater organization transparency, county Governments provide the system to allow the provision of information that can help in effective service delivery. The study thus highlights the importance of organizations to create a culture of transparency and accountability fundamental step in effective service delivery. Ranasinghe, Mather, & Young (2020) study on the board structure and earnings persistence: The mediation effect of board processes, examined direct links between board structure and monitoring financial reporting with mixed results. The study results supported the assertion by showing the mediating effect of board processes and the impact on managerial behavior in relation to monitoring financial reporting. The study contributed to the accounting and finance literature by demonstrating the importance of examining alternative theoretical models and board-process variables, along with structure.

The board independence refers to the degree to which board members are dependent on the current CEO or organization. Independent nonexclusive directors are outside directors as opposed to either insider, who are managers or employees of the firm directors or dependent non-executive directors, who have personal and/or professional relationships with the firm other than board membership is the proportion of independent non-executive directors on the board is viewed as a major factor influencing service delivery in particular Independent non-executive directors (Moursli, 2020). Board independence is measured by the percentage of the independent directors to the total number of directors on the board. The board of directors' generally consists of dependent and independent members (Bansal & Thenmozhi, 2020). Dependent members either have direct responsibility for business management. On the other hand, independent members basically represent the interests of minor shareholders since they are not directly involved in firm activities and their only affiliation with the firm is their directorship (Janenova & Kim, 2016).

Ofuani, Sulaimani and Adebisi (2018) examined the issue of independence as an important factor in ensuring board effectiveness through the monitoring and strategic roles of the directors. The ultimate factor for the board independence is by acquiring enough numbers of the independent directors on board. They stated that the director's ability, willingness and board environment might lead to the independent attitude of each director. The board of directors is a collective body that should act in the best interest of shareholders (Uribe-Bohorquez, Martínez-Ferrero, & García-Sánchez, 2018). Vagliasindi (2018) study sought to establish the effectiveness of board committees of the Boards of Directors of state owned enterprises with a focus on infrastructure sectors. In the case of developing countries, empirical studies have found evidence of positive links between the composition of the Board of Directors and financial performance. Yet the lack of solid theoretical foundations, and in some cases poor data availability, makes the conclusions of most studies weak. The study established that empowering them to exercise effective monitoring of management, however, may prove to be a formidable challenge for of state owned enterprises. More attention to board procedures, particularly related to the Board selection and evaluation process, is essential, to produce the necessary insulation of Boards from government interference. Ensuring sufficient continuity of services to directors is particularly crucial to improve board governance. In addition, other factors that may reduce directors' ability to monitor corporate activities, such as the age profile and the number of Boards on which they sit, need to be handled more carefully.

The board requires the combination of executive and non-executive directors to pursue the shareholders' interest. The non-executive directors on the board will not be able to exercise their duties effectively, unless they are independence from management and ensure they provides unbiased business judgment. Independent directors are the person entrusted by shareholders to represent them and will help to reduce agency problems. To uncover the relationship between the existence and independence of board independence and the likelihood of service delivery in public organizations, the study at hand formulated the following hypotheses to be tested: Al Azeez, Sukoharsono and Andayani (2019) study focused on the impact of board characteristics on earnings management in the international oil and gas corporations. The study examined whether the Board Characteristics have any impact on Earnings Management among the international Oil and Gas Corporation in the world. The Board Characteristics such as (board independence, board size, board diversity, and CEO duality).This study applied a quantitative research approach, secondary data, a sample of 71 corporations were selected from Top 250 corporations for one year (2016). The findings of this study indicated that the board independence has a significant impact on the reduction of earnings management.

Kuria (2015) study sought to examine the meaning, understanding and application of board governance in a public sector agency that is the National Council For Law Reporting (Kenya Law). The study adopted simple random sampling technique for the respondents. Data was collected using a structured questionnaire. Analysis was carried out using the Statistical Package for Social Sciences (SPSS) version 22. A total of nineteen (19) questionnaires were distributed, and nineteen questionnaires were returned constituting a response rate of 100%. Descriptive data was analyzed using the mean, percentages, and frequencies. The data was analyzed and presented and organized form of figures and tables, according to the research questions. The results showed that the most outstanding element of good board governance implemented was laying solid foundations for management oversight (board committees).

Bello (2013) sought to examine whether the public sector in Albania needs to establish the Audit Committees as a demand for enhanced quality of services and accountability over the use of public funds is increasing. This paper analyzes the role of public sector Audit Committees in common law practices established to advise management on the adequacy of structures and processes that ensure the integrity of the accounting, auditing, risk management internal controls, and financial reporting. This paper founds out that Audit Committees are not best practices established in every country considering the fact that this practice is appropriate to the private sector board governance. However, it reveals that lack of such committees put into question the achievement of good governance objectives.

Research Methodology

The target population for the study was all the constitutional commissions in Kenya as established in Constitution of Kenya (2010). The target population was the 202(CEOs, Head of departments and Board members) in the constitutional commissions. The study adopted a census with respect of unit of observation and therefore ruled out application of any specific sampling technique. The study used a census since the population of 202 is small which less than 250 and the study aimed to reach all the respondents. The census approach is justified since according to Kinai and Were (2017) data gathered using census contributes towards gathering of unbiased data representing all individuals' opinions on a study problem (Kihara, Bwisa, & Kihoro, 2016). The study collected views from the respondents because they are involved in implementation of all aspects of board governance in the constitutional commissions and are seen to be information rich for the purpose of this study. From the piloted responses, using Statistical Package for Social Scientists (SPSS) version 21, Cronbach Alpha coefficient was calculated on the study variables to determine construct reliability. Mathematically, if there are ***p*** sub-items used, Cronbach Alpha coefficient (α) is calculated thus:

$$\alpha = \frac{p}{p-1}\left(\frac{S_t^2-\Sigma S_i^2}{S_t^2}\right)$$

, where S_t^2 is the variance of the scores for the summation of the individual sub-items and $\sum S_i^2$ is the sum of the variance of individual items. The Alpha coefficient can take any value from zero (shows that no internal consistency) to one (complete internal consistency) and in this case, as Larsson (2015) advice, the Cronbach Alpha coefficient of the sub – items was expected to yield an acceptable minimum coefficient value of 0.7. Items failing to satisfy this condition were dropped from the scale. This helped check the suitability and clarity of the questions of the instrument designed, relevance and comprehension of the information being sought, the language being used, logic and content validity of the instruments from the responses given.

Results and Discussion

The study findings indicated that the joint relationship between board governance and service delivery in constitutional commissions in Kenya with board E-governance as a predictor, $R^2 = 0.811$, the results indicate that the percentage of variation accounted for by the model increased from 80.60% to 81.10% (see Table 1). This means that when the moderator (board E-governance) was introduced as a predictor in the joint model, the model gained 0.5% of its predictive power. In addition, the results in Table 1 indicates that the inclusion of the interaction term resulted [$F(2,183= 65.509$, p-value < 0.001)]. The model was also significant ($p <0.001$) showing the presence of moderating effect. Using the results in Table 1, the null hypothesis (H_{035}): Board e-governance has no significant moderating influence on the relationship between board governance and service delivery in constitutional commissions in Kenya or (H_0: $\beta_1 = 0$) is therefore rejected [F (3,182= 260.765, p-value < 0.001)] and concluded that E-governance has significant moderating influence on the relationship between board governance and service delivery in constitutional commissions in Kenya. The study findings are in tandem with the findings by Tola (2020) it is the use of E-governance with the aim of improving information and service delivery, encouraging board members in the decision-making process and making organizations more accountable, transparent and effective

Table 1: Joint Moderation Influence of Board E-Governance on the Relationship Between Board Governance and Service Delivery

Model Summary Joint Moderated

					Change Statistics				
Model	**R**	**R Square**	**Adjusted R Square**	**Std. Error of the Estimate**	**R Square Change**	**F Change**	**df1**	**df2**	**Sig. F Change**
1	.898	.806	.787	.32876	.806	187.957	2	183	.000
2	.901	.811	.803	.10765	.003	83.950	3	182	.000

ANOVA for Joint Moderated Model

Model		Sum of Squares	Df	Mean Square	F	Sig.
1	Regression	1208.188	2	104.094	65.509	.000
	Residual	290.805	183	1.589		

	Total	1498.993	185			
2	Regression	1215.683	3	405.227	260.765	.000
	Residual	283.280	182	1.554		
	Total	1498.993	185			

Regression Coefficients for Joint Moderated Model

Model		Unstandardized Coefficients		Standardized Coefficients	T	Sig.
		B	Std. Error	Beta		
	Constant	.387	.099.	.367	3.099	.019
	B.Structure* E-governance	.356	.098	.346	3.633	.041
	B.Indepedence E-governance	.387	.099.	.367	3.099	.029
	Board CEO.* E-governance	.356	.098	.346	3.633	.034

Conclusion and Recommendations

The study concluded that there was a positive statistically significant relationship that exists between board structure and service delivery in the constitutional commissions in Kenya. The study found out that reforming board structure is critical to the service delivery in the constitutional commissions. The board structures have a fundamental role in driving the service delivery strategy agenda in the constitutional commissions. Board independence was found to be significant and positively associated with service delivery in the constitutional commissions in Kenya. The independent boards influence a service delivery in such matters as monitoring the operational processes encouraging managers to focus on long term service delivery rather than routine activities, and authorizing the decisions of management based on whether they benefit public. The study found that independent board members do not have inherent self- self-interests parse and are instead guided by the interests of the stakeholders who appointed them. The study recommends that constitutional commissions should put in place a set of deliberate structures that supports improvement of service delivery. There is need to review the existing board structures with a view of improving board functions. Additionally, the study recommends that the constitutional commissions should come up with strategic interventions to promote board governance to enhance service delivery in the constitutional commissions in Kenya. Additionally, the study confirmed that board independence influences service delivery in the constitutional commissions in Kenya. It has been established that there exists a positive significant relationship between board independence and service delivery in the constitutional commissions. The study thus recommends that constitutional commissions should put in place measures to improve board committees for oversight, independent boards and improve board vigilance play a critical role on service delivery in the constitutional commissions. Thus the study contributes to the board governance and service delivery discourse in a developing country context focusing on the constitutional commissions. The study similarly contributes to the theoretical literature by providing the basis upon which the theoretical propositions used in the formulation of the research hypotheses can be empirically tested. The study supports the proposition of the Agency Theory and Stewardship theory that provides a useful framework for the analysis of board governance in regard to the current study. The study provides information that enables the constitutional commissions to come up with policy measures that will foster proper functioning towards improving service delivery. Since the study addresses most of the board governance emerging issues affecting constitutional commissions with a view to improving the adoption of board governance practices and to enhance service delivery. The study findings guide policy makers to align their respective policies to the constitutional commissions by consolidating board governance practices applicable in the public sector, clarifying and strengthening roles and responsibilities of the constitutional commissions.

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