INSTITUTE OF DIRECTORS (KENYA)

Leadership for Posterity

REPORT OF THE TASKFORCE ON WOMEN REPRESENTATION ON BOARDS

July, 2015

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The Taskforce on the Enhancement of Women Representation on Boards in Kenya benefited immensely from contributions of many people. While it is not possible to list by name all who gave their time, thoughts and commitment to this noble task, the following deserve special mention:

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To all, we say thank you.

Foreword by the Chairman of the Institute of Directors (Kenya)

A review of studies done in the recent past in different parts of the world on the issue of gender diversity and its impact on governance reveals important lessons for Kenya. In the changing global economy there is need for diversity in order to gain a competitive edge and ensure future economic sustainability.

In Kenya, women represent 52% of the total population and therefore have a significant role to play in the Kenyan quest for global competitiveness. Indeed it is evident that a diversity of talent is associated with diversity in thought. In countries like Canada and Australia, financial indicators like Return on Equity, Share Performance and Stock Price Growth have consistently shown a strong correlation with board diversity, specifically with women representation on the boards of organisations. There are also strong indicators that show that innovation in organisations is linked with the diversity that is brought about by having more women on boards. Due to women's ingenuity, creativity and natural flair for finding solutions to communal challenges, organisations stand to benefit immensely from having equity in gender diversity. Indeed research has shown that Fortune 500 companies with women directors are better in capitalising on innovative opportunities.

The case for greater women representation in leadership positions is specifically recognised by the Constitution of Kenya 2010. Women have played and continue to play a significant role in the development of the country. However, the challenge is in the implementation of the constitutional requirement of gender inclusiveness. This requires a decisive and radical shift in the manner in which directors in public and private sector corporations are appointed. In turn, this ensures that the Government realises a systematic and sustained realisation of its gender priorities. The Taskforce on Women Representation on Boards that was appointed by the Board of the Institute of Directors (Kenya) had the responsibility to recommend a framework for increasing women representation on boards in both public and private sectors in line with the constitutional requirement. In addition, the Taskforce was expected to make recommendations for ensuring that women members of the Institute of Directors (Kenya), **being trained and certified as members in good standing of a professional association, get priority placement in public and private sector boards and commissions**. Another key requirement was the fast-tracking of training initiatives targeting women in readiness for service in all types of boards. In execution of its mandate over a period of ten (10) weeks, the Taskforce benefitted from studies done in Kenya, South Africa, Canada, Australia, Singapore, USA and the United Kingdom. After reviewing the report of the Taskforce, the Institute makes six (6) recommendations for achieving equity in appointments to humbly and effectively support the National Government's agenda for women participation in development, namely:

1) That Government needs to consider formulating a policy to ensure compliance with the Constitutional requirements of Article 27(8) that no more than two-thirds of the members of any elective and appointive body shall be from one gender.
2) That the Institute offers to facilitate the process by sharing with the Government its database of qualified women members of the Institute trained in corporate governance to be considered for appointment to various boards and commissions.
3) That in support of national values, all publicly listed companies be required to comply with constitutional requirement on gender equality and equity.
4) That the Directorate of Gender collect and share with the public data on the number of men and women appointed to positions in public boards and commissions and that annual reports of State-Owned Enterprises should include a breakdown of board members by gender.
5) That all directors of publicly listed companies and the private sector should be required to undergo training in corporate governance and be members in good standing of a professional association of directors.
6) That in recognition of the Government's effort to manage expenditure in the public sector, the Institute offers to support these efforts by being willing and ready to undertake In-house Training of all directors of public corporations and commissions, if so requested by the Government.

This report, therefore, makes these recommendations which are aimed at transforming the appointment of directors in boards with the aim of ensuring equity and to enhance diversity in the decision-making framework of both public and private sector corporations and commissions.

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Mr. John. P. Luusa
Chairman

About the Institute of Directors (Kenya)

The Institute of Directors (Kenya) [IOD (K)] was established on April 29, 2005 to represent Kenyan directors and to advocate their interests. Foremost among its goals is to professionalize the career of directors in all sectors of the economy. IOD (K) supports business leaders in their stewardship roles and promotes responsible, accountable, fair and transparent business practice by both public and private sector companies, for the common good of Kenya. IOD K) currently enjoys a membership of 850 comprising executive, non-executive and independent directors, CEOs, board chairmen and business leaders from across the entire spectrum of public and private sectors. As a membership association, IOD (K) is committed to the holistic development of its members through training, networking, mentorship and ensuring its members have both the technical and practical soft skills necessary to be effective and successful directors and business leaders.

The Institute therefore has in its database a list of qualified and competent leaders, well trained in corporate governance, from which organizations in the private and public sectors seek directors to place on their boards. In furtherance of the implementation of the Constitution of Kenya 2010, IOD (K) has taken upon itself the task of supporting the achievement of the constitutional requirement of gender equity in all elective and appointive positions.

Executive summary

The Institute of Directors (Kenya) is a membership association of directors and business leaders. It is dedicated to the development of good corporate governance and the continuous development of its members through training, mentorship and networking for the benefit of organizations, stakeholders and the prosperity of Kenya. In pursuit of this vision, and at the request of women members, the IOD (K) commissioned a Taskforce to examine how to increase the number of women on public and private sector boards in Kenya.

The Taskforce analysed information collected from various sources including published annual reports, Government publications, key regulators and professional associations.

Studies have shown that there are benefits that accrue from inclusion of women on boards such as better financial performance, better monitoring and risk management, greater innovativeness, among others. However, despite all these benefits, women are still underrepresented on boards in Kenya. A number of reasons were identified as contributing to this trend including personal, socio-political and the process of appointment. A key contributing factor to this is the historical preference for men in leadership positions. Despite the requirement of the Constitution which defines equality as a national value in Article 10 and provides for affirmative action, concerted effort is required from all stakeholders to realize gender equity.

This report provides various recommendations to the Executive which, if adopted, will complement the current government initiatives and facilitate an increased number of women on public and private sector boards.

The Institute of Directors (Kenya) applauds the leadership that His Excellency the President has demonstrated in ensuring that cabinet appointments comply with Article 27(8) of the Constitution.

A commitment on the part of the Government to ensure the implementation of this Article in all appointive positions would fast-track the enhancement of women representation. The IOD (K) is prepared to facilitate this process by sharing with the Government its database of qualified women trained in corporate governance to be considered for appointment to various boards, commissions and public offices.

One of the key challenges faced by the Taskforce when preparing this report was the lack of readily available data analysed by gender. In an effort to ensure better monitoring of progress on this issue, it would be important that the Directorate of Gender collect and share with the public data on the number of men and women appointed to positions in public boards and commissions. It would also be appropriate that all annual reports of State-Owned Entreprises (SOEs) indicate the breakdown of board members by gender. In addition, all regulatory authorities and the Registrar of Companies need to collect and share with the public the gender composition of the boards of the organisations that they regulate.

IOD (K) recommends that all directors of public and private sector boards and commissions as well as county public service boards and executive are trained in corporate governance and be required to be members in good standing of a professional association of directors.

The recommendations contained in this Report will not only ensure enhanced professionalism but also the much needed inclusiveness and diversity in boards in Kenya. This will undoubtedly have a positive impact on the performance, service delivery and sustainability of corporate boards in Kenya. It is noted that the Presidential Taskforce on Parastatal Reforms recommended that one of the requirements to qualify for directorship in the Government Investment Corporation and State Agencies is mandatory membership of the Institute of Directors (Kenya).

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List of Acronyms

IOD (K)	Institute of Directors (Kenya)
The Institute	Institute of Directors (Kenya)
IT	Information Technology
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CEO	Chief Executive Officer
CFO	Chief Finance Officer
COO	Chief Operations Officer
C-Suite	Corporations Most Important Senior Executives
MDGs	Millennium Development Goals
SOEs	State-Owned Enterprises
ICPAK	Institute of Certified Public Accountants of Kenya
ICPSK	Institute of Certified Public Secretaries of Kenya
LSK	Law Society of Kenya
KIM	Kenya Institute of Management
KAWBO	Kenya Association of Women Business Owners
FEWA	Federation of Women Entrepreneurs Associations
CMA	Capital Markets Authority
IRA	Insurance Regulatory Authority
RBA	Retirement Benefits Authority
NGEC	National Gender Equality Commission
KBA	Kenya Bankers Association

KAM	Kenya Association of Manufacturers
KEPSA	Kenya Private Sector Alliance
AMFI	Association of Micro Finance Institutions
APSEA	Association of Professional Associations of East Africa
SCAC	State Corporations Advisory Committee
GIC	Government Investment Corporation

PART 1: INTRODUCTION

CHAPTER 1:
BACKGROUND AND TERMS OF REFERENCE OF TASKFORCE

The Institute of Directors (Kenya [IOD (K)] was established to represent Kenyan directors and business leaders to advocate their interests. Foremost among its goals is to professionalize the career of directors in all sectors of the economy. IOD (K), being aware that the Constitution of Kenya 2010, makes it imperative that membership of elective and appointive bodies should have at least one third from either gender, has endeavored to address the issue of having more qualified women directors on boards.

As part of its mandate to train directors, the IOD (K) in September 2013 conducted a Women Directors Development Program. During the training and the networking the women participants discussed the need for additional forums and events for women directors. The women present at the training thereafter proposed to the Institute to consider holding additional forums targeted specifically at addressing the needs of women directors in Kenya. In November 2013 IOD (K) held a networking event for women members and among the proposals from that event was that a Taskforce be constituted to explore how to increase gender diversity on public and private sector boards in Kenya. In December 2013 the IOD (K) Board constituted the Taskforce.

The purpose of the Taskforce was to recommend a framework for increasing women representation on public and private sector boards and commissions in line with the constitutional requirement. The Taskforce held its first meeting on 8th January 2014.

The terms of reference were:

i. To make recommendations on initiatives to be undertaken by the Institute within the next 5 years for enhancing women representation in governance issues at both the National and County levels.
ii. To recommend to the Institute a framework for engagement with various stakeholders and in particular with the government and private sector, on issues relating to women representation in the Boardroom with the aim of ensuring at least 1/3 representation of either gender by the year 2019.
iii. To recommend to the Institute a framework for ensuring that women members of the Institute of Directors (Kenya) having been trained and fully qualified in corporate governance get priority placement in public and private sector boards and commissions.
iv. To make recommendations on communication policies and strategies for women director activities, to enhance their role in the boardroom.
v. To make recommendations on training initiatives targeting women, in readiness for service in all types of boards.
vi. To develop a Position Paper [at the end of the term of the Taskforce] for presentation by the Institute in a public forum/event to be graced by the media, all members of the Institute and stakeholders on **"The Status of Women Representation on Boards in Kenya''** by April 2014 and to make recommendations for consideration by the various regulators on the enhancement of women representation on boards.
vii. To seek guidance of the IOD (K) Board on any aspect of the Terms of Reference.

CHAPTER 2:
METHODOLOGY

The Taskforce was constituted by the IOD (K) board and it was inaugurated on 8th January 2014. It immediately proceeded to constitute itself into two committees namely:

a) The research committee whose role was to ascertain the gender composition of boards in state-owned enterprises, publicly listed companies, insurance companies, bank, deposit taking microfinance institutions and professional associations; and examine the reasons why women are underrepresented on boards and review the business case for gender diversity; and

b) The editorial committee whose role was to review and edit the draft report of the Taskforce.

Information on the gender composition of various boards was obtained from, among others, the Capital Markets Authority, the Central Bank of Kenya and the State Corporations Advisory Committee. Additional information was obtained from publicly available sources such as annual reports, business journals, company and organisation websites as well as from women's organizations that champion gender representation on boards.

2.1 Challenges

The main challenge faced was the difficulty in obtaining current data on board representation from the relevant authorities. Thus the Taskforce had to rely on published material including financial statements and the websites of the target institutions. Another significant challenge was lack of data on the gender of directors and in some cases insufficient information to identify a director's gender from the data provided.

CHAPTER 3:
HISTORICAL ISSUES, CURRENT STATUS AND REASONS FOR LOW REPRESENTATION OF WOMEN ON BOARDS IN KENYA

3.1 Historical issues of women on boards

The underrepresentation of women on boards is not a uniquely Kenyan challenge. Many countries around the world are struggling to ensure greater representation of women on their private and public sector boards. Varied initiatives implemented around the world are driven by an understanding of the value of diversity, especially gender diversity, on boards.

Women's participation in decision-making and political leadership is an obligation mandated by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Kenya is a signatory. Additionally, the Constitution of Kenya 2010 in Article 27 (1) enshrines the equality of all persons: "Every person is equal before the law and has the right to equal protection and equal benefit of the law". The Constitution further provides for affirmative action to ensure the realization of equality, specifically Article 27 (8): "In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.[1]" Thus the Constitution prescribes at least one way in which the government can ensure greater representation of women.

The developments in the role of women and the supportive Constitutional provisions have led to a discernible increase in the number of women in boards in Kenya. There is, however, an urgent need for more action to ensure the realization of the Constitutional requirement.

[1] Constitution of Kenya 2010, Laws of Kenya Article 27

3.2 Current status of women representation on boards

In 2012 The Kenya Institute of Management conducted a study entitled "**Bringing the other half to the boardroom: Case Study of State Corporations and Listed Companies in Kenya.**[2]"The study revealed that public sector or state corporation boards had greater gender diversity than boards of publicly listed companies (companies listed on the Nairobi Securities Exchange). Specifically, the study found that state corporation boards were 20% women and 80% men, whereas in publicly listed companies, only 12% of the board members were women. Interestingly among the publicly listed companies only one company had a woman chairperson. (See Table II)

Table I: Data on Directors of State corporations and Listed Organizations

Measures	**State Corporations**	**Listed Companies**
Number of state corporations	98	51
Number of directors	1091	449
Number of men directors	872	389
Number of women directors	221	54
Percent (%) of men directors	80	88
Percent (%) of women directors	20	12
Number of men chairpersons	85	50
Number of women chairpersons	13	1
Percent (%) men chair persons	87	98

[2] Bringing the other half to the Board Room: Case Study of State Corporations and Listed Companies in Kenya: Kenya Institute of Management ,2012

Measures	**State Corporations**	**Listed Companies**
Percent (%) women chair person	13	2

Source: *Survey Data, 2012* ***Kenya Institute of Management***

In February 2014 IOD (K) undertook a similar survey which showed a marginal improvement compared to the findings of the KIM study. The IOD (K) study found that boards of professional associations had 26% women, while in insurance companies it was 15%, deposit taking micro finance institutions 26%, and banks had the lowest women representation on their boards with just 12%. Publicly listed companies performed slightly better than banks with women representation at 18% while the state-owned enterprises continued to outperform the private sector and had women representation at 26%.

In terms of women chairpersons: professional associations had 6%, insurance companies had none; deposit taking micro finance institutions had 11%; banks had 2%; publicly listed companies had 8% and state-owned enterprises had 15%. (See Table II)

Table II: Board Representation as at February 23, 2014

Measures	Professional Associations	Insurance Companies	Deposit Taking Micro Finance Institutions	Banks	Publicly Listed Companies	State Owned Enterprises
Number of organizations sampled	16	19	9	44	59	87
Total number of Board Members	168	153	70	347	471	874
Number of men directors	124	130	52	307	387	644
Number of women directors	44	23	18	40	84	230
Percent (%) of men directors	74%	85%	74%	88%	72%	74%
Percent (%) of women directors	26%	15%	26%	12%	18%	26%
Number of men chairpersons	15	19	8	43	54	74
Number of women chairpersons	1	0	1	1	5	13
Percent (%) of men chairpersons	94%	100%	89%	98%	92%	85%
Percent (%) of women chairpersons	6%	0%	11%	2%	8%	15%

Source: Survey Data February 2014, IOD (Kenya)

3.3 Reasons for the low representation of women on boards

Various studies have examined the issue of gender diversity and its impact on corporate governance. The various studies cite the following reasons as the main contributory factors to the low number of women on boards.

1. Board Nomination Process; In SOEs, appointments are left to the Cabinet Secretary in charge of the SOE. In publicly listed companies the appointment of directors is done through a nomination process with voting by shareholders as the final step. The studies found that despite qualified women being available, women were rarely nominated which is the crucial first step to getting onto a board.
2. History and tradition; The African tradition has been largely patriarchal in nature and has not encouraged women to take up positions of leadership.
3. Gender differences; guidance in career selection and advancement has resulted in gender disparities that have tended to place women only in certain professions.
4. Tradeoff between work and family; Women have traditionally borne the bulk of the responsibilities for the family, from child bearing and rearing, taking care of the nuclear family, to caring for elderly and ailing parents or extended family members. This unequal care burden means that women may have difficulty juggling the demands of work and family, and may be reluctant to take on roles that demand long hours.
5. Women on boards are a minority; As women are already a minority, recruiting them for boards is perceived as riskier, with greater scrutiny of their qualifications and competencies. Recruiting standards may therefore be stricter even though women's competencies and skills are equivalent to those of their men counterparts. Hiring and recruitment are also fairly

subjective processes and gender biases and/or stereotyping influences result in different hiring standards for men and women. The greater the lack of transparency in the recruitment, hiring and appointive processes the more likely the gender bias and stereotypes are at play and the fewer women that make it through the process. Even when there isn't overt discrimination, there is a preference to deal with what is familiar and since women are a minority organizations, boards, customers and colleagues may prefer to deal with the majority.

6. Tokenism; To silence the clamour on an organisation for increased representation of women, there has been a tendency for organisations to respond by creating a token position for a woman on the board. The belief is that if there is one woman on the board, the diversity requirement is met.
7. For executive directors, the number of women in the C-Suite is lower than that of men, meaning there is a smaller pool to recruit from.
8. Size of the company and board; Smaller companies and smaller boards tend to have fewer women. Public Organizations and those with more robust corporate governance practices tend to have more women on their boards.
9. There is a tendency to recycle women on boards, resulting in one woman being recruited to serve on multiple boards as an independent director at the exclusion of other qualified.
10. Extension of retirement age means that the same board members are retained longer leading to less vacancies being available on the boards. The longer serving board members tend to be men fewer board positions are available for women.

11. Lack of strong networks and exposure: Women lack strong networks and exposure to existing board members and visibility to placement firms, thus making it less likely they will be identified for board positions due to the “old boy network” syndrome.

12. Differences in mentorship and sponsorship for women versus men (right sponsors, right culture, and the role models of success).

13. There is a general inclination for boards to appoint men to board positions.

14. There is inadequate number of qualified and trained women in corporate governance to fill all available positions hence the need to fast-track training of women.

PART 2: ENHANCEMENT OF WOMEN REPRESENTATION ON BOARDS IN KENYA

CHAPTER 4: THE BUSINESS CASE FOR WOMEN ON BOARDS

In an increasingly fast-paced and ever-changing global market, organizations need a competitive edge to sustain their success. A range of talent, experience and skills in the boardroom helps drive performance and generate better results. Boards are looking to attract the best. Diversity of talent is associated with diversity of thought. A Canadian study of private sector and not for profit boards (Brown, Brown and Anastasopoulos, 2002) revealed that boards with three or more women are significantly different from all men boards. The following benefits accrue from having women in the boardroom:[3]

1) Strong Financial Performance

Having women on boards is good for business. Research has shown that organizations with more women on their boards tend to outperform their competitors on a number of financial measures including:

- Return on equity;
- Return on sales;
- Return on capital;
- Share performance; and
- Stock price growth.

[3] The Business Case for Women on Boards: The Conference Board of Canada Ministers Responsible for Status of Women

A 2012 study by Credit Suisee found that the financial benefits linked to having women on boards were more pronounced in post 2008 period than in the three years leading up to the stock market crash. The researchers concluded that gender diversity on the board brings greater stability throughout the market cycle.

2) Top Talent

Recruiting qualified directors of both genders ensures that boards draw from the largest, brightest talent pool. Women make up a significant portion of key candidate pools. Organisations with women on their boards are better able to attract and retain excellent employees. Women are more drawn to organisations that already have women on their boards, because they have opportunities to advance. Having women in the boardroom sends a strong message that a company is progressive and recognizes merit. These organisations become employers of choice for the best candidates.

3) Heightened Innovation.

The presence of women directors on boards has been found to foster creativity and innovation. Research shows that Fortune 500 companies with women directors are better than those companies with men only boards at identifying and capitalizing on innovative opportunities. Having both genders represented on boards brings varied perspectives and experiences to the boardroom. Diversity of thought counteracts "groupthink" and encourages board members to consider a broad range of ideas and possibilities. Better corporate governance is achievable through sharing a different range of experiences and opinions (Fondas and Sassalos, 2000). A homogenous board tends not to recognize how similarly members think because these values are the norm for them. Women have different experiences of the workplace, marketplace, public service and community, and therefore women directors bring a different voice to debates and decision making (Zekechowski and Bilimoria, 2004).

Organizations with women on their boards tend to be highly innovative. They:

- Introduce more new concepts and practices to their industries;
- Establish organizational structures that facilitate innovation;
- Adopt more progressive management practices;
- Provide more training and development for employees; and
- Invest more in research and development.

4) Enhanced Client Insight.

Boards that reflect the diversity of the society can better understand the needs and preferences of their clients.

This leads to:

- Improved product development;
- More effective product marketing; and
- Better customer service.

A board of directors that includes women tends to communicate more effectively with clients and shareholders. This helps organisations improve their stakeholder insight and understanding, and build stronger relationships.

5) Strong Performance on Non-Financial Indicators.

Corporate Social Responsibility (CSR) is a core element of a company's reputation. Stakeholders judge a company not simply on its profitability, but also on its contribution to local and global communities. A positive reputation increases a company's ability to retain its market value. Organisations with both women and men on their boards tend to have a positive CSR profile, characterized by:

- Better employee relations;
- More ethical product sourcing;
- Strong environmental and human rights records; and
- Greater support for local communities.

6) Board effectiveness.

Boards with both men and women directors tend to be more active in overseeing the strategic direction of the company and in reinforcing accountability through audits and risk management. They also tend to make decisions more objectively. [4]According to Brown et al. (2002), 94% of boards with three or more women monitor the implementation of corporate strategy, compared to only two thirds of men only boards. Additionally, boards with two or more women directors place more importance on the use of search consultants than other boards which is likely to reduce the influence of the "old boy network" syndrome. Gender diverse boards are also likely to have higher levels of board accountability, with formal limits to authority and formal director orientation programs.

Key practices of boards with women directors include:

- Identifying clear criteria for measuring corporate strategy;
- Monitoring implementation of corporate strategy;

[4] Women Directors on Corporate Boards: A review and Research Agenda: Siri Terjesen, Ruth Sealy and Val Singh: Corporate Governance : An International Review, 2009 17(3) 320-337

- Using outside search firms to identify and recruit new board members;
- Providing board orientation programs for new directors;
- Conducting formal board performance evaluations; and
- Adopting written policies to limit the authority of board members.

CHAPTER 5:
LEGAL FRAMEWORK, CURRENT POLICY AND PRACTICE

5.1 Legal Framework

The case for greater women representation on boards has a legal foundation in the constitution of Kenya and supporting statutes. The Constitution of Kenya 2010 requires that not more than two thirds of any elective and appointive bodies shall be of the same gender. The respective articles provide as follows:

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

5.2 Current Policy and Practice

Kenya has adopted a quota system of constitutional implementation where it has indicated that a third of all elective and appointive positions must have the other gender.

"The Devolution and Planning Ministry in Kenya was formally mandated by the Executive to carry out functions of gender mainstreaming and gender policy management. This provision was formalized and the Directorate of Gender oversees the placement of women in role the constitution assigns to them. Inclusion of gender mainstreaming targets in all ministries, departments and agencies performance contracts will ensure systematic and sustained realization of the government's gender priorities.

Kenya's Vision 2030 recognizes the importance of involving women in achieving our national goals. The Vision's Medium Term Plan II (2013-2017) has flagships that root for women's socio-economic empowerment, elimination of sexual and gender based violence, increase of women representation in all appointive and elective positions and improvement of women's reproductive health."[5]

National Gender Equality Commission (NGEC) is a constitutional Commission established by an Act of Parliament in August 2011, as a successor commission to the Kenya National Human Rights and Equality Commission pursuant to Article 59 of the Constitution. NGEC derives its mandate

[5] Speech by Cabinet Secretary Devolution and Planning during Women's Day on March 8, 2014

from Articles 27, 43, and Chapter Fifteen of the Constitution; and section 8 of NGEC Act (Cap. 15) of 2011, with the objectives of promoting gender equality and freedom from discrimination. The over-arching goal for NGEC is to contribute to the reduction of gender inequalities and the discrimination against all: women, men, persons with disabilities, the youth, children, the elderly, minorities and marginalized communities.

The functions of the Commission are as provided in Section 8 of the NGEC Act 2011, which among others states as follows:-

- To promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution;
- Monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;
- Act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- Co-ordinate and facilitate mainstreaming of issues of gender, persons with disabilities and other marginalised groups in national development and to advise the Government on all aspects thereof;
- Monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;

- Co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination;
- Conduct and co-ordinate research activities on matters relating to equality and freedom from discrimination as contemplated under Article 27 of the Constitution;
- Receive and evaluate annual reports on progress made by public institutions and other sectors on compliance with constitutional and statutory requirements on the implementation of the principles of equality and freedom from discrimination;
- Prepare and submit annual reports to Parliament on the status of implementation of its obligations under this Act;
- Conduct audits on the status of special interest groups including minorities, marginalized groups, persons with disabilities, women, youth and children;
- Establish, consistent with data protection legislation, databases on issues relating to equality and freedom from discrimination for different affected interest groups and produce periodic reports for national, regional and international reporting on progress in the realization of equality and freedom from discrimination for these interest groups;

The appointment process to boards depends on the kind of organisation that one is dealing with. For state-owned enterprises, the appointment to the boards is currently done by the Cabinet Secretaries and the Chairmen are appointed by the President. For publicly listed Companies the shareholders appoint the directors on the strength of shareholding. This puts women at a disadvantage as most of the time the major shareholders would tend to support a man.

The Taskforce on parastatal reforms appointed by His Excellency the President in 2013 presented its final report in October 2013. Out of 98 boards of state corporations sampled by the Taskforce, women comprise only 14.3%, and 27% of the board chairs and board members, respectively. The Taskforce recommended that in future appointments to Boards, priority be given to women, without compromising the need for skills to bring these in compliance with the constitutional requirements.[6]

Additionally, the Taskforce also recommended that as a requirement for appointment, all directors of the Government Investment Corporation (GIC) as well as directors of state agencies be members of the Institute of Directors (Kenya). This will inevitably have a positive impact on both corporate governance of these entities as well as the professionalism and discipline emanating from membership of a profession body that champions good corporate governance.

[6] Report of the Presidential Taskforce on Parastatals Reforms, October 2013

CHAPTER 6:
CRITERIA FOR APPOINTMENT OF DIRECTORS

This chapter examines the qualities of a good director as well as the criteria for sourcing of women directors.

6.1 Qualities of a good director:

While seeking to increase women representation on boards, regard must be made to key qualifications and competencies. The following are some of the qualities of candidates for directorship:

- Integrity: Demonstrating a zero tolerance for unethical behavior, both for themselves and their colleagues.
- Independence: Having no unique business, financial or personal relationships — or hoped-for-relationships — that create even the perception of a conflict of interest.
- Directors should always act in the best interests of the company and stakeholders and avoid conflict of interest.
- Moral Courage and Confidence: Speaking out and actively participating in board and committee deliberations. Willingness to do the right thing/make the right decision even if it is difficult or unpopular (i.e., no fence sitting).
- Personal Conduct: Recognizing the difference between productively participating in discussions and counter-productively dominating deliberations through the volume or length of comments. Must be able to work with other members to create workable compromises.
- A Sense of Context: Making relevant, informed comments focused on the specific aspect of the issues being considered. Must be able to stay on topic.

- Commitment: Understanding that being an effective board member requires the time, the heart, and the standards to make the enterprise successful.
- Competence: A director should have the knowledge and skills necessary to govern the organization effectively

6.2 Criteria for sourcing of women directors

1. Ensure leadership commitment: Board Chair should be committed to increasing representation of women on boards as an essential element to sustainable and meaningful change.
2. Adoption of formal board procedures: Diversity should be a criterion of board composition. This is a good way to embed women's representation in the boardroom into the structure and culture of the organization. Organisations should set goals for the representation of women, and regularly evaluate their performance against these targets and:
    - Establish and enforce term limits- staggered retirements of longer serving directors ensures institutional memory while also providing opportunities to recruit women;
    - Commit to reserving future openings for women- for example one in every three open seats;
    - Seek out qualified women- with a goal of identifying at least three women on the short list for every vacant position, and ensure that women candidates are interviewed for vacancies.
3. Recruiting outside the "C- Suite". CEOs and former CEOs are often seen as the best candidates for board positions. Companies and organisations should consider women from outside the "C-Suite" with skills that are essential to effective board performance:
    - Many boards require market expertise, industry knowledge, or functional capabilities such as audit and compensation

- Consider executive directors of non- profit organisations, academics or senior managers in public and private sector.
- Entrepreneurs, including social entrepreneurs, are also viable candidates for independent board positions and can bring experience in areas such as innovation, new or emerging technology, new services etc.

4. Recruit beyond traditional networks. To gain diversity of talent, seek board candidates from outside the business and social networks of existing board and company members:
   - Engage a professional placement firm and insist that it provides a diverse slate of candidates, of both genders, who meet the board criteria.
   - Use the lists of 'board ready' women across the country developed by organizations like the Institute of Directors (Kenya).
5. Increase the number of women in the C-Suite: Ensuring that more women can reach the top levels of the company will make it easier to find qualified women for board positions:
   - Remove barriers that prevent women from rising to leadership positions.
   - Mentor high-potential women.
6. Sponsor High-potential women: Being visible to the "right" people is key to becoming a director. Sponsorship is one way to enhance visibility for women:
   - Introduce women to networks, nominate them for board openings, and champion their inclusion on boards.
   - Provide high-performing women with opportunities to develop the skills necessary to becoming directors.

- Focus on competencies: Organisations need industry knowledge, human resources, audit, compliance, risk management, information technology and management expertise on their boards of directors. Boards should periodically assess the types of expertise and skills they need, and then target both women and men with these skills. They should create or update skills matrices to determine required competencies and evaluate gaps within the current board.

7. Ensure nominating committee impartiality: Organisations should include women on nominating committees, and adopt nomination policies and practices that promote diversity and impartiality. For example:

   - Ensure nominating committees recruit from a broad talent pool.
   - Ask committee members to initially review CVs without looking at names, to prevent members from unconsciously filtering out women.
   - Ensure committees focus on skills not gender[7].

[7] Cracking the Code: Getting more women into senior executive roles: A blue Print for practitioners: MWM Consulting

CHAPTER 7:
RECOMMENDATIONS

From the information gathered by the IOD (K) Taskforce it is evident that women add significant value to the boards in which they serve. It is therefore in the interests of leaders, shareholders and all stakeholders to ensure the inclusion of women for the greater success and profitability of organisations and companies. This means providing qualified women with the opportunities to grow within their organisations and advocating their promotion to higher levels of responsibility. Various strategies can be used by organizations to increase representation of women on their boards.

7.1 Recommendations to the National Government

1. To ensure compliance with the Constitutional requirements of Article 27(8) that no more than two-thirds of the members of any elective and appointive body shall be from one gender.
2. In support of the Governments effort to comply with the constitution, the Institute being the premier body for training and professional development of directors and business leaders, is prepared to facilitate the training and identification of qualified women for appointment to various boards and commissions.

   The Institute has a growing database of qualified women trained in corporate governance and who are members of good standing, professional integrity and competence. To this end the Institute will ensure that the persons it recommends are of high professional standards and discipline as would be expected of a member of a professional body.

3. In recognition of the need to promote and support national values of equity and equality as enshrined in the Constitution, the Institute recommends that Government considers ways and means of ensuring that publicly-listed companies (i.e. companies in which the public has a stake) comply with the constitutional requirement on gender equity.

4. In an effort to ensure better monitoring of progress on compliance with the Constitution, it would be important that the Directorate of Gender collect and share with the public, data on the number of men and women appointed to positions in public boards and commissions. It would also be appropriate that all annual reports of State-Owned Entreprises (SOEs) be required to indicate the breakdown of board members by gender. In addition, all Regulatory Authorities and the Registrar of Companies should be required to collect and share with the public the gender composition of the boards of the organisations that they regulate.

5. That all directors of public corporations, publicly listed and private sector companies should be required to undergo training in corporate governance and be members in good standing with the Institute of Directors. This will ensure good corporate governance and application of best practice which is good for the economy and prosperity of Kenya.

6. In recognition of the Government's effort to manage expenditure in the public sector, the Institute is ready, willing and able to undertake in-house training in corporate governance for boards of public corporations and commissions. The Institute has an adequate number of qualified and competent trainers and the capacity to respond to all the training needs.

7.2 Recommendation to the County Public Service Boards and Executive

1. That County public service boards and executive consider using the services of the Institute in identifying trained, qualified and competent women to serve in the county.
2. That County public service boards and executive consider inviting the Institute to conduct in-house training in corporate governance.

CHAPTER 8:
CONCLUSION

While there has been notable progress in the representation of women on boards especially in the public sector, there remains gender disparity in public and private sector boards and urgent interventions are necessary to reduce this disparity. Internationally there is general acceptance of the importance of representation of both genders on boards. The Constitution of Kenya 2010 requires that not more than two thirds of any gender be in elective or appointive positions. There is therefore consensus on the importance of ensuring women are represented on boards.

The recommendations contained in this Report will not only ensure enhanced professionalism but also the much needed inclusiveness and diversity in boards in Kenya. This will undoubtedly have a positive impact on the performance, service delivery and sustainability of corporate boards in Kenya. It is noted that the Presidential Taskforce on Parastatal Reforms recommended that one of the requirements to qualify for directorship in the Government Investment Corporation and State Agencies is mandatory membership of the Institute of Directors (Kenya).

REFERENCES:

1) *The Constitution of Kenya 2010*, Laws of Kenya

2) Bringing the other half to the boardroom: *Case Study of State Corporations and Listed Organizations in Kenya*; Kenya Institute of Management; 2012)

3) The Business Case for Women on Boards: *The Conference Board of Canada Ministers Responsible for the Status of Women; 2012*

4) Women Directors on Corporate Boards: A Review and Research Agenda; Siri Terjesen, Ruth Sealy and Val Singh; *Corporate Governance: An international Review*, 2009 17(3) : 320-337

5) Speech by Cabinet Secretary Devolution and Planning, during *Women's Day on March 8, 2014*

6) Report of the *Presidential Taskforce on Parastatals Reforms*, October 2013

7) Cracking the code: Getting more women into senior executive roles: *a blue print for practitioners: MWM Consulting, 2012*

8) Fulfilling the Promise: How more women on corporate boards would make America and American Organizations more competitive: *Statement by the Policy and Impact Committee of The Committee for Economic Development 2012*

9) Focus: *Women on Boards: A conversation with Male Directors*, complied and edited by Marie-Laurence Guy, Carmen Niethammer, and Ann Moline, International Finance Corporation, 2011

10) Catalyst, The Bottom Line: *Corporate Performance and Women's Representation on Boards (2004-2008)* (New York: Catalyst, 2011)

11) Credit Suisse Research Institute, Gender Diversity and Corporate Performance (Zurich, Switzerland: 2012)

12) *Beijing Declaration of Action* September 15, 1995

13) *Convention on the Elimination of All forms of Discrimination against Women*, UN General Assembly, 1979

14) Lean In- Women, Work and the Will to Lead, Sheryl Sandberg, 2013