



Gender Quota in the boardroom: Are we [really] better off without it?

In December 2003, Norway became the first jurisdiction to impose a gender quota in the boardroom of publicly-traded companies and state-owned enterprises. This was followed shortly by Finland in 2005, the Province of Quebec in Canada in 2006, and Israel and Spain in 2007. Other European countries like France, Belgium, Italy, the Netherlands, and Germany followed suit and so did India.¹ Should the Philippines endeavor to be included in this select group of countries that guarantee women's seats in the highest decision-making bodies of powerful public and private corporations? This is a highly controversial matter that had split the world for over a decade but is rather unpopular in the Philippines where there is often a quick and easy negative answer.

Most quarters proudly say that we have no need for a gender quota because we are already a world leader when it comes to bridging the gender gap. After all, we have had two women Presidents while many other countries currently have none. Many believe that in the Philippines, the glass ceiling had long been shattered to pieces and they have some statistics to back their position.

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According to the 2014 special country report by Grant Thornton International, released by its member firm in the Philippines, Punongbayan & Araullo, "board of directors are on average composed of 6.53 people, with 2 of those being women. That puts the proportion of women directors at 31 percent, compared to the global average of just 17 percent".² This is a very impressive figure which indicates that Philippine corporations have already achieved the so-called "critical mass" of 30% in their boardrooms believed to be the crucial cut-off point necessary for a minority group to be able to influence decision making.³ However, other international reports do not echo the same happy note.

According to the Deloitte Global Center for Corporate Governance, women only hold 7.4% of board seats in the Philippines.⁴ According to the Credit Suisse Research Institute, the percentage of women in boards is 10.9%.⁵ A local study conducted by the Angelo King Institute for Economic and Business Studies, on the other hand, found that around 15.5% percent of board members in Philippine firms are women.⁶

In light of these varying statistical figures, I did my own research and picked the prime cut for purposes of validation - the 30 largest publicly-listed corporations in the Philippines that compose the Philippine Stock Exchange Composite Index. The following percentages of female directors were gathered from their 2016 General Information Sheets and/or corporate profiles provided in their official websites:

30 Largest Publicly-Listed Corporations in the Philippines	Male Directors	Female Directors	% age of Female Directors
Aboitiz Equity Ventures, Inc.	9	0	0.0
Aboitiz Power Corporation	9	0	0.0
Alliance Global Group, Inc.	6	1	14.3
Ayala Corporation	7	0	0.0
Ayala Land, Inc.	8	1	11.1
Bank of the Philippine Islands	10	5	33.3
BDO Unibank Inc.	9	2	18.2
Bloomberry Resorts Corporation	7	0	0.0
DMCI Holdings, Inc.	7	2	22.2
Emperador, Inc.	6	1	14.3

Energy Development Corporation	10	0	0.0
First Gen Corporation	9	0	0.0
Globe Telecom, Inc.	10	1	9.1
GT Capital Holdings, Inc.	11	0	0.0
International Container Terminal Services, Inc.	7	0	0.0
JG Summit Holdings, Inc.	9	2	18.2
Jollibee Foods Corporation	9	0	0.0
LT Group, Inc.	10	3	23.1
Manila Electric Company	10	1	9.1
Megaworld Corporation	6	1	14.3
Metro Pacific Investments Corporation	14	1	6.7
Metropolitan Bank & Trust Company	12	0	0.0
Petron Corporation	12	3	20.0
Philippine Long Distance Telephone Company	11	2	15.4
Robinsons Land Corporation	10	1	9.1
San Miguel Corporation	14	1	6.7
SM Investments Corporation	6	2	25.0
SM Prime Holdings, Inc.	9	0	0.0
Semirara Mining and Power Corporation	7	3	30.0
Universal Robina Corporation	9	0	0.0

Of these 30 corporations, 12 do not have a single woman in the board. In another 12, women comprise less than 20% of the board. These add up to 80%. The remaining 20% of the corporations have a slightly higher percentage of women but no more than 33% which occurs in only one corporation. Of the 306 total directorship positions, only 33 are held by women equivalent to 10.8%. It is not exactly a rosy picture after all.

There is nothing in Philippine statute books that explicitly require gender equality in the membership of corporate boards. There are, nonetheless, some hints that point to the possibility of its debut in the near future.

The Fourth World Conference on Women conducted in China in 1995 produced the Beijing Declaration and Platform for Action, the most comprehensive global policy framework and blueprint for women empowerment in the past two decades. The Philippines was one of the 189 countries that signified solemn commitment to such ideals.

The Platform for Action covered 12 critical areas of concern, one of which is gender inequality in decision-making power at all levels. As a state-party, we pledged to take measures to ensure women's equal access to and full participation in power structures and decision-making.⁷

The duty to work towards the achievement of such strategic objective is not confined to the government alone but includes trade unions, employers' organizations, research and academic institutions, non-governmental organizations, and, of course, the private sector. More specifically, we have committed to undertake the following actions, among others:

1. Take positive action to build a critical mass of women leaders, executives and managers in strategic decision-making positions;
2. Create or strengthen, as appropriate, mechanisms to monitor women's access to senior levels of decision-making;

3. Review the criteria for recruitment and appointment to advisory and decision-making bodies and promotion to senior positions to ensure that such criteria are relevant and do not discriminate against women;
4. Encourage efforts by non-governmental organizations, trade unions and the private sector to achieve equality between women and men in their ranks, including equal participation in their decision-making bodies and in negotiations in all areas and at all levels;
5. Develop communications strategies to promote public debate on the new roles of men and women in society and in the family;
6. Restructure recruitment and career-development programmes to ensure that all women, especially young women, have equal access to managerial, entrepreneurial, technical and leadership training, including on-the-job-training; and
7. Develop career advancement programmes for women of all ages that include career planning, tracking, mentoring, coaching, training and retraining.

It took more than a decade before the Philippines could translate this international commitment into domestic law. The opening wedge came in 2009 through the passage of the Magna Carta of Women that imposed a concrete duty upon the State to undertake "temporary special measures to accelerate the participation and equitable representation of women in all spheres of society particularly in the decision-making and policy-making processes in [both] government and private entities to fully realize their role as agents and beneficiaries of development". One such affirmative action mechanism required a gradual increase of women in top management positions in the civil service to achieve a fifty-fifty gender balance within the next five years. The statute took a conservative turn, however, when it came to the private sector, where the mandate of the State was limited

to encouragement of women leadership in the form of incentives.⁸

Fortunately, some form of reinforcement can be found through the well-established policy of closely regulating publicly-listed corporations. The Securities Regulation Code requires that the board of directors of publicly-listed corporations shall reserve 20%, or at least 2 seats, whichever is less, for independent directors defined as persons other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having a relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.⁹

The government agency tasked to implement the statute, the Securities and Exchange Commission (SEC), through a Memorandum Circular issued in 2002, provided guidelines on the nomination and election of independent directors and set forth the following qualifications: an independent director must own at least one share of stock of the corporation, must be a holder of a college degree, must be engaged or exposed to the business of the corporation for at least five (5) years; must possess integrity and probity, and must be assiduous.¹⁰

It is worthy to point out that the SEC deemed it necessary to impose qualifications based on the intellectual, emotional and moral preparedness of independent directors with the obvious purpose of protecting the best interest of the various stakeholders in publicly-listed corporations. Along the same line, the SEC could easily justify a gender diversity requirement for a similar purpose of protecting the best interest of the public with which the said corporations have dealings.

The SEC took the first step towards this direction in 2015 when it issued an advisory to all publicly-listed corporations recommending that at least one female independent director should be elected based on the best corporate governance practices under the Asean Corporate Governance Scorecard.¹¹

However, the SEC decided to stay on the gentle route instead of progressing into a strict gender quota. The very recent Code of Corporate Governance for Publicly-Listed Companies that took effect last January 1, 2017, states the following premier principle:

The company should be headed by a competent, working board to foster the long term success of the corporation, and to sustain its competitiveness and profitability in a manner consistent with its corporate objectives and the long-term best interests of its shareholders and other stakeholders.¹²

Among the recommendations given to achieve this principle is for the board to have a policy on diversity. This was explained in the following manner:

Having a board diversity policy is a move to avoid groupthink and ensure that optimal decision-making is achieved. A board diversity policy is not limited to gender diversity. It also includes diversity in age, ethnicity, culture, skills, competence and knowledge. On gender diversity policy, a good example is to increase the number of female directors, including female independent directors.¹³

The Code adopts a “comply or explain” approach which means voluntary compliance with mandatory disclosure. Companies do not have to comply with the above recommendation but they must disclose and describe the areas of non-compliance as well as explain the reasons therefor in their annual corporate governance reports. Companies may use alternatives to a recommendation if the overall principle of good governance can still be achieved thereby. Such descriptions and explanations should be written in clear, complete, objective and precise manner so that shareholders and other stakeholders can assess the company’s governance framework.¹⁴

Should the Legislature step in and impose an even stronger statutory imposition such as a mandatory gender quota instead of the persuasive approach adopted by the SEC?

After all, no less than the 1987 Constitution guaranteed the right of the people to effective and reasonable participation at all levels of social, political, and economic decision-making.¹⁵ The answer lies in the framework within which such right exists - the equal protection clause.

The equal protection clause of the 1987 Constitution was closely patterned after that of the Fourteenth Amendment of the United States Constitution premised on the formal model of equality that guarantees equality of opportunity but not equality of results. The latter is the hallmark of the substantive model of equality. At this juncture, it is imperative to discuss the differences between the two.

Under the formal model of equality, the goal of society is to create a level playing field free from obstacles to equal competition. It springs from the assumption that individuals are rational beings who are in the best position to make the right choices for themselves and must thus be given as much liberty as possible to achieve their fullest potential without stepping on others' liberties.¹⁶

The fundamental appeal of the formal model of equality lies in the value that society attaches to the individuality of every human being and in the compelling proposition that every person desires to be treated according to his or her own merit. By fostering responsibility and rewarding hard work, it can drive the human spirit towards excellence.

Nevertheless, the formal model of equality ignores the underlying power struggle between the sexes. While it lays down equal opportunities for the sexes, it fails to take into consideration the interplay of various forces that enable or disable women from claiming these opportunities and using them for their full benefit. These forces take the form of norms, institutions and traditions created by men according to their needs and designed for their convenience. Indeed, equal opportunities may be up for grabs, available but unreachable, or accessible but practically unusable, for women whose peculiar needs based on their unique reproductive ability, had barely been considered. The prospective stance that equality can be achieved by simply giving equal opportunity at present, without first recognizing and resolving the grossly unequal treatment of

the sexes that had long prevailed in the past, is a vital flaw of the formal model of equality.

Advocates of the substantive model of equality argue that equal treatment alone can still lead to unequal outcomes. Equal opportunities for the sexes often do not result in enjoyment of equal benefits because their starting points have not been the same. The glaring truth is that our established societal institutions have long been designed around the needs of men, not of women, leading to the latter's systemic subordination and exploitation. The vision of creating a level playing field is not immediately feasible because a drastic imposition of strict formal equality principles will simply assimilate women into a world where rules have been designed around masculine norms and thereby perpetuate their subordination.

To correct this unjust situation, the substantive model of equality acknowledges the need for temporary special measures to restructure our existing institutions taking into consideration the needs of both women and men.

Gender quotas are examples of temporary special measures aimed at accelerating de facto equality between women and men. Objections to gender quotas are often based on the formal model of equality, particularly, that of reverse discrimination against men. Quotas are mainly criticized for apparently disregarding merit and awarding positions to women without competition. Chances are, less qualified women will end up replacing more qualified men to the detriment of the corporation. In the end, women elected through a quota system are treated as lacking the legitimacy of their male counterparts and perceived as mere tokens for purposes of compliance. Because of this misconception, quotas become an instrument for establishing a ceiling rather than a floor for women's participation in corporate boards.

The substantive model of equality provides a beautiful answer. When the underlying structures are unfair to women, any facially neutral rule of access to leadership positions merely perpetuate the effects of that unfairness. Quotas are simply an effort to correct the preexisting

imbalance. It is not unfair to men to reduce their advantage in business if that advantage is itself unfair.¹⁷

The corporate world had long been designed with men in mind and shaped by the patterns and expectations of men. For instance, the training ground for corporate leadership requires extended hours of work, weekend conferences and out-of-town assignments that often overlook family responsibilities. On this basis alone, the lived experiences of women as primary caregivers of both the young and the elderly are obviously no longer taken into consideration.

Moreover, the traditional qualities of effective leaders - focus, confidence, drive, and decisiveness - are usually perceived as natural qualities of men and not of women. Women are discouraged to develop such fine qualities lest they be called arrogant and abrasive. Many women consciously or unconsciously limit themselves to acting as passive supporters although they have the potential of becoming active leaders and thus end up in a double bind. Neither woman nor man enough for the position.

When quotas are imposed, corporations will be constrained to re-design the training ground to produce the women leaders that they need. Corporations will now be on the look-out for the female talents they have long ignored and, at times, even belittled. Once identified and hired, they must be trained and prepared for leadership roles. To allow this, their family responsibilities must be taken into consideration and provided appropriate support such as flexible work arrangements, daycare facilities, and paid parental leaves for both spouses to share in childcare responsibilities. Equally important are incentives to avoid turnover such as a competitive salary and benefits package that includes stock options; the entry point to directorship.

Ideally, the foregoing scenario will lead to healthy competition among corporations to find the best women for the job. Indeed, countless women are diamonds in the rough. Valuable but unrecognized and unpolished. When a high quota is imposed, corporations cannot afford not to invest in finding, training and retaining them because it is

contrary to sound business sense to appoint mere tokens to a significant number of directorship positions. It is in this regard that I recommend a “40-60 formula”, wherein neither sex should comprise less than 40% nor more than 60% of the board directors. I do not subscribe to imposing a nominal percentage because it is here where the danger of tokenism is at its peak. I likewise do not recommend a mere persuasive recommendation like what the SEC recently did; lest we are willing to wait for the next one hundred years.

Another common objection to gender quotas are the conflicting reports on whether having women in the boardroom bring tangible economic benefits to the corporation. Supporters from both sides present their respective empirical evidence on situations where quotas have resulted in some gains and on situations where quotas seemed not to have any effect at all.¹⁸

The issue on whether or not women in the boardroom actually lead to economic advantage for the specific corporation where they are serving has little significance when we are confronted with the greater economic advantage that will eventually uplift the country in general.

According to most recent available statistics, the labor force participation rate of Filipino men is 77.5% while that of Filipino women is 49.1% thereby generating a gap of 28.3%. This is interesting considering that women perform better than men in educational attainment. For instance, holders of baccalaureate degrees in the Philippines are 56.1% women and 43.9% men. The gap is even wider for holders of post-baccalaureate degrees with 58% women and 42% men.¹⁹ Moreover, women consistently outnumber men in functional literacy rates across all age groups.²⁰

We know too well the reason behind these “missing women” - out of job in the workplace because on the job at home. A great majority of them are not happy with this arrangement. Most of them are openly suffering from lost income while a good number are silently grieving a lost career. Silently because tradition has imposed upon them the duty to sacrifice their professional advancement for the

sake of the family. To defy this tradition can often result in unbearable social stigma.

So what can gender quotas in the boardroom do for these women? As earlier pointed out, requiring a substantial number of women in the boardroom will require corporations to develop more women leaders. Logically, a wider selection pool from which to source these women leaders is desirable. To create such pool, the workplace must not only hire more women, it must also make a considerable investment in nurturing their careers.

Developing women means developing half of the population. According to experts, this will naturally increase the country's gross domestic product by leaps and bounds.²¹ The economic upliftment that will result from a gender quota far transcends the myopic apprehension of individual corporations.

On the other hand, what can gender quotas in the boardroom do for men aside from dislodging them from their traditional stranglehold? A workplace that has been properly restructured to accommodate the needs of women is a friendlier workplace not only for them but for their men as well. Lest we forget, these women are often married to husbands who missed too many of their children's soccer games and piano recitals because they have been expected to be fiercely devoted to their jobs. Gender quotas help normalize the workplace by removing the distinction between men as the model workers and women as mere auxiliary workers burdened by a primary duty at home. We stop looking at them as fathers and mothers and start treating them as parents. Parents with the same duties and responsibilities to take care of the physical, emotional, spiritual and other needs of their children. We start respecting evenings and weekends as family time and not opportunities for overtime. We start encouraging work-life balance for both women and men.

Recommendations

We can start by transforming the SEC Advisory into an outright requirement. The independent directors elected in compliance with the Securities Regulation Act should

compose of men and women in equal number. The SEC had been imposing various qualifications of independent directors without opposition. It would not be too difficult to impose yet another qualification, for the purpose of advancing the interests of half of the Filipino nation.

We can follow suit with a gradually escalating quota for regular directors, i.e., 10% after the first year, 20% after the second year, and so on until we reach 40% after the fourth year and stabilize by the fifth year and beyond. By the tenth year, we can re-evaluate our success and decide whether or not we can already sustain the momentum. Temporary special measures are meant to be discontinued once their objectives have been achieved.

Conclusion

Back in 1980, the Philippines was one of the earliest signatories to the Convention on the Elimination of all Kinds of Discrimination Against Women (CEDAW). We were the eleventh country out of the 187 that signed this Convention. The CEDAW provides that:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, **all appropriate measures**, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.²²

Sadly, Filipino women continue to be at the receiving end of systemic subordination while men yielded power and domination in the corporate world. Formal equality will only perpetuate this oppressive situation because equal treatment, when the starting points are critically far apart, will not lead to equal results. Gender quotas will pave the way for substantive equality in Philippine corporations.

It's about time for us to be true to our word.

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End Notes

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⁷ Beijing Declaration and Platform For Action, Strategic Objective No. 6.

⁸ Section 11, Republic Act No. 9710.

⁹ Section 38, Republic Act No. 8799.

¹⁰ SEC Memorandum Circular No. 16 Series of 2002.

¹¹ SEC Advisory, March 30, 2015.

¹² SEC Memorandum Circular No. 19, Series of 2016, Principle 1.

¹³ Id., Explanation to Recommendation 1.4.

¹⁴ Id., pars 2 and 4.

¹⁵ Article XIII, Section 16, 1987 Philippine Constitution.

¹⁶ Cynthia Grant Bowman, et al. (2011). Feminist Jurisprudence, 115.

¹⁷ See Susan H. Williams, "Equality, Representation, and Challenge to Hierarchy: Justifying Electoral Quotas for Women" in Constituting Equality: Gender Equality and Comparative Constitutional Law, S.H. Williams, ed. (New York: Cambridge, 2009) 58-59.

¹⁸ See various studies surveyed in supra, note 6.

¹⁹ Philippine Statistics Authority, The Educational Attainment of the Household Population, (January 2013) available at <https://psa.gov.ph/content/educational-attainment-household-population-results-2010-census>

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²² Article 3, Convention on the Elimination of all Kinds of Discrimination Against Women (emphasis added).

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