Interest Group Participation in Government Groups in Kenya

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Introduction

Interest groups are usually classified as “cause groups” because the “cause” that the members support is the driving force behind their engagement in public policy. Interest group members seek to improve society by furthering their causes (examples of cause groups include Transparency International, FIDA Kenya, or the Greenbelt Movement). Other interest groups include ‘sectional’ groups—that is, groups representing a section of society, such as business, and which aim to defend their members’ interests. Interest groups are usually membership-based and non-political. Often, they offer selective benefits to their members, but they mostly aim to represent their members’ interests in government.

The objective of interest groups and business associations is to influence public policy. These organizations accomplish this by engaging in dialogue and advocacy with policymakers, both elected and unelected. A potentially effective, though largely under-researched, approach to gaining influence is to secure appointments to the boards of government agencies, committees and taskforces – many of which have a role in reviewing, proposing or implementing regulations. Unless countries try to maintain registers, it is difficult to even assess the extent of interest group involvement in government committees, let alone to assess the impact achieved through the active participation of the interest group representatives.

This paper summarizes the results of research conducted with business associations in Kenya. The research addresses the question of whether interest groups participating in government committees are effective at influencing public policy. Business associations in Kenya seek to reform public policy by encouraging policies that improve the environment for business, make it easier to engage in business transactions, promote a vibrant private sector, and create jobs. Some of the associations in Kenya have been remarkably successful. Between 2006 and 2020, for example, the DANIDA-funded Business Advocacy Fund (BAF) supported more than 800 business membership organizations (BMOs) to engage in more than 2,500 dialogues and consultations with the government and secure 426 policy reforms.

In another instance, the African Cotton and Textile Industries Federation (ACTIF) lobbied both the Government of Kenya and the US Congress in relation to the US African Growth Opportunity Act (AGOA). AGOA was created to facilitate market access by enabling imports on a tariff-free, quota-free basis to the United States for qualifying sub-Saharan African countries. The Kenyan apparel sector was included in the original legislation, but its inclusion was due to expire in 2012 – even though the AGOA

1 Stewart, J.D (1958) British pressure groups: their role in relation to the House of Commons, Oxford: Clarendon Press
legislation had been extended to 2015. Through successful lobbying, ACTIF was able to convince the US trade authorities to extend the inclusion of the apparel sector in the AGOA until 2025. The net benefit to the Kenyan economy over the 13 years has been estimated at about $1.9 billion and 41,000 jobs².

The Kenya Society of Physiotherapists (KSP) wanted the practice of physiotherapy to be regulated, particularly because all the other medical professionals were already regulated. The KSP framed its proposal as an issue of safety: too many untrained physiotherapists were injuring their patients. KSP found a Member of Parliament (MP) willing to sponsor a private member’s bill (an arrangement whereby an MP can introduce a proposal for legislation rather than relying on the government) and was eventually successful with the enactment of the Physiotherapists Act in 2014³.

Until the end of 2013, government policy on mining relied on a Mining Act passed in 1940. In March 2014, the government published a bill for a proposed new Mining Act. The Kenya Chamber of Mines (KCM), among others, made considerable effort to seek amendments to the Bill and secured around 80 percent of its proposals for amendments with the Mining Act being gazetted in May 2016⁴.

In 2019, the Committee of Blood Donation and Transfusion Stakeholders (an alliance of health associations) started to lobby Kenya’s Ministry of Health. The Ministry of Health was working on a Bill that would put the Kenya National Blood Transfusion Service (KNBTS) on statutory footing that is recognized and funded by the government. USAID had been largely funded the KNBTS since its establishment in 2001 but was cutting its support in recent years. As a result, the KNBTS felt pressure to do something quickly, since otherwise there would be no mandate for the government to provide funding. The Government proposed, however, to merge the regulation of organ and tissue donation with the regulation of blood transfusion services even though international best practices keep the two separate. This would have taken longer to implement and made the legislation unnecessarily complicated. The stakeholder committee’s efforts secured considerable media coverage, support from the National Assembly’s budget committee, and the tabling of the National Assembly of the Kenya National Blood Transfusion Service Bill 2020⁵.

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Most of the time, business associations (known in Kenya as business membership organizations, or BMOs) seek to influence policymakers through meetings, the provision of written proposals and memoranda, and, occasionally, through the media. However, in a small number of cases, BMOs supported by BAF attempted to place people onto government committees or task forces and several were successful. The Kenya Fish Processors' & Exporters' Association, for example, secured board membership of the Fish Marketing Authority Board and the Fish Levy Trust Fund. Representatives of the Agricultural Industry Network were appointed to the Kenya Agricultural and Livestock Research Organisation implementation task force and the Agriculture and Food Authority implementation task force. Until this research, it was neither clear whether this was a widespread practice nor whether this strategy has assisted BMOs to influence government policy.

Moreover, despite a general perception that securing the appointment of representatives onto boards of agencies, committees and task forces established by government may be an effective strategy, it is an area that has been almost completely overlooked by academic researchers. This is a serious omission since many of those task forces are concerned with drafting policy, legislation and regulation. Securing government committee appointments requires a long-term and proactive strategy but could lead to considerable influence.

This research is thus built on preliminary studies that assessed the extent to which interest groups are represented on government committees and explored the process by which interest group representatives were appointed, perceptions of how well those committees function, and the extent of interest group influence that results from such placements.

The research identified many government task forces and policy advisory committees in addition to boards of the state corporations and a high level of BMO involvement. Additionally, the research has resulted in suggestions that might be of use to both the government and business associations, leading to a more transparent and accountable system of representation.

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6 Irwin D & Kyande M (2022) Interest group representation on government committees in Kenya, Interest Groups and Advocacy
Background

To make their case for the reform of public policy, interest groups need access to policymakers. In many countries, Kenya included, there are formal consultation arrangements: an important opportunity for public consultation is enshrined in the constitution and occurs when the parliament considers proposals for legislation. In addition, BMOs meet with Ministries and Agencies one-on-one, or via Ministerial Round Tables organized by the Kenya Private Sector Association. In many cases, the meetings are deliberately set up so that each party can pose questions and come to understand the position – and reasons for the position – of the other. Officials or politicians may then make proposals to reform policy in some way. But governments also delegate at least some regulatory responsibility to government-appointed bodies. These include government-owned corporations and agency boards, government committees, advisory bodies, and task forces. In some cases, those bodies have the freedom, within defined limits, to create regulation and to implement regulation, though the extent of their freedom to formulate policy without referring back to the government is not always clear. And, even if there is referral back to government, it is not always clear how much further scrutiny is applied by the ‘parent’ Ministry given the source of the policy proposal. In other words, are the committees truly “advisory”? Or are they policymakers in their own right? And, if the committees can make policy, how can interest groups use them effectively?

There is little doubt that governments and public policy can benefit from the inclusion of interest groups in the policy formulation process. The Council of Europe, which brings together 47 member states, describes itself as the continent’s leading human rights organization. Inter alia, it encourages governments to involve interest groups in the process of policy formulation and has published a code of good practice on interest group participation within policy and regulatory formulation and reform. (Figure 1).

The Organisation for Economic Cooperation and Development (OECD) also recognizes the importance of this kind of collaboration. Its description of approaches to advocacy includes “the influence of special interests through participation in established institutional arrangements, such as government advisory and expert groups or parliamentary inter-groups”.

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8 Council of Europe (undated) ‘Civil participation in the decision-making process: the code of good practice’, Strasbourg: Council of Europe, available online at https://iga.fyi/coeccp
People in Kenya refer to parastatal organisations, or just parastatals, when they talk about government-owned entities. The government refers to organisations that are owned by the state as ‘state corporations’, rather than parastatal corporations, though the task force charged in 2013 to undertake a review of the governance of state corporations under what was known as the Presidential Taskforce on Parastatal Reforms. The task force reported towards the end of 2013 and the President then constituted an implementation committee chaired by the country’s most senior civil servant, the Head of the Public Service. In 2014, the implementation committee submitted proposals for a Government Owned Entities Act, to replace the State Corporations Act, 1986, and for a code of governance for Government-Owned Entities, known as Mwongozo10 (Swahili for guidelines), prepared in partnership with the State Corporations Advisory Committee and the Institute of Certified Public Secretaries of Kenya and in accordance with the OECD principles of corporate governance. A Bill was drafted but not submitted to the National Assembly. Mwongozo, however, was implemented by a Presidential executive order in 2015.

Mwongozo, in its preface, notes that “a high level of political affiliation and insufficient competence in Boards of State Corporations is a result of an opaque appointment process” and that “the most important tool for improving corporate governance is to appoint professional boards […] and require regular performance reports”. It further notes that a “reduction in the size of boards and increase in the number of independent board members is therefore a game changer”. While some elements of Mwongozo clearly refer to the governance of state corporations, which we take to mean all parastatals, other parts appear to refer only to the governance of state-owned enterprises, which are simply businesses that are owned by the state.

Appointments to state corporation boards are very newsworthy in Kenya at present. In 2021, the High Court declared the appointment of 128 heads of parastatals as unconstitutional, which it claimed had been made in an opaque manner and stated that “the people of Kenya desired that parastatal appointment must be competitive, fair and transparent”11. In October 2021, the Standard newspaper reported that the President had appointed new chairs to the boards of 30 state corporations.

Kenya’s Public Service Performance Management and Monitoring Unit lists 227 state corporations and classifies them by function into eight categories. It records 46 as having a primarily regulatory function, though others described as “financial” or “service” may also advise on regulation. Countries with high levels of disclosure make it relatively easy to see which interest groups are involved on which

11 Walter, D (2021), Court declares President Kenyatta’s 2018 parastatal appointment unconstitutional, The Citizen, 27 May
committees. The European Commission, for example, lists 37,000 people on more than 700 expert groups created to provide it with policy advice (see iga.fyi/eureg1); the USA lists more than 1,000 federal advisory committees on its Federal Advisory Committee Act (FACA) database (see iga.fyi/faca). It is harder in Kenya, without any form of a register, to find information about which committees exist and who their members are.

Preliminary research, undertaken prior to the start of this CIPE-funded research project, identified more than 220 parastatal and other corporate boards of which around 64 either had a primary purpose to review, propose or implement policy and regulation or appeared to be able to advise government on policy and regulation\textsuperscript{12}. That research identified the members of 42 boards of the 64 with a role in relation to regulation and the members of a further 20 boards.

The process by which members of committees and boards are appointed is not uniform. In some cases, the membership is defined in the enabling legislation either by naming specific organisations or by listing a representative of a specified sector. In other cases, the legislation simply requires representatives to be appointed from the private sector or even just to participate as independent members. This leaves considerable variation between appointment processes, ranging from competitive application at one extreme to patronage at the other.

Overall, it appears that BMOs are well-represented on parastatal boards. This gives them an opportunity to gather intelligence about likely future policy reforms, provides them with a voice on those boards, and offers them some opportunity to influence policy outcomes. The boards of the 42 regulatory bodies have a total of 415 members. Ten of the boards have 23 members drawn from BMOs mandated by legislation and a further 12 boards have 23 BMO representatives achieved through competitive selection. There are a further 23 boards with 55 private sector members, although they appear to have been appointed as individuals rather than as representatives of BMOs. There are just 19 members from other interest groups, including the trade unions, on 14 boards. There are just seven boards with no interest group representation.

The preliminary research demonstrated that many interest groups are not only represented on the boards of parastatals but are also represented on a range of government advisory committees and task forces. None of these have a corporate structure and, indeed, many are created for a specific and usually short-term purpose. Without any form of register, it is impossible to say how many such committees exist. Given that the Kenya Bureau of Standards, defined as a regulatory state corporation,

\textsuperscript{12} Irwin D & Kyande M op. cit
has over 120 technical sub-committees and that the preliminary research uncovered over 100 committees with interest group representation, there are several hundreds. In some cases, committees are created by legislation and the means of appointment is defined. However, in most cases appointment to these committees is entirely at the will of the relevant Ministry.

Having established that there is a high level of BMO representation on government committees, in this research we aim to assess a few key areas: the effectiveness of business association representatives, whether the position they espouse reflects that of their association, whether they can influence the reports and recommendations of the board, and the extent to which they can use their membership of the committee to reform public policy.
Approach to Research

This research, therefore, focused on interest group representatives who sit on the boards of parastatals and on other government committees and task forces. Since we are seeking insights and evidence that business associations can be influential rather than statistics, we adopted a purposive sampling technique. Interviewees were identified through talking to BMOs that were known to be represented on committees and through directly contacting members of boards identified in earlier research.

Table 1 summarizes the respondents. Professional associations (such as the Architectural Association or the Kenya Medical Association) are generally classified as business membership organizations even though they represent individuals rather than businesses. They are, however, shown separately in the table. In two cases, members sat on two committees and were interviewed about each committee to provide comparative data. In one case, two members from the same committee were interviewed. Two of the independent members are CEOs of BMOs (and while not technically representing the BMO nevertheless bring their sector knowledge); the third originally represented a BMO and was then appointed by government to a different but related board as an independent member.

Table 1: Interviews

<table>
<thead>
<tr>
<th>Members Representing Business Membership Organizations</th>
<th>18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members Representing Professional Member Organizations</td>
<td>3</td>
</tr>
<tr>
<td>Members Representing Civil Society Organizations</td>
<td>5</td>
</tr>
<tr>
<td>Independent Members</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
</tr>
</tbody>
</table>

Table 2 shows the complete list of boards and committees from which a participant was interviewed, as well as the affiliation of the interviewee. A further interview was undertaken with a member of a board, but it transpired that the board had not met for four years, and the respondent had forgotten that he was a member. This information is not included in the summary but raises questions about how well some BMOs track their involvement and measure their results.
Representatives were interviewed using a semi-structured questionnaire. Each interview lasted about an hour, though some were considerably longer. Detailed notes of each interview were taken. The notes were then subject to thematic content analysis.

Table 2

<table>
<thead>
<tr>
<th>COMMITTEE</th>
<th>PARTICIPANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Counterfeit Authority</td>
<td>Kenya Association of Manufacturers</td>
</tr>
<tr>
<td>Anti-Illlicit Trade Multi-Agency Team</td>
<td>Kenya Association of Manufacturers</td>
</tr>
<tr>
<td>Bus Rapid Transit Project Implementation Team</td>
<td>Kenya Private Sector Association</td>
</tr>
<tr>
<td>Eastern Africa Shippers’ Council</td>
<td>National Standards Council</td>
</tr>
<tr>
<td>Export Processing Zones Authority</td>
<td>Kenya Association of Manufacturers</td>
</tr>
<tr>
<td>Inter-Agency Committee on the Development of a National Wages and Remuneration Policy</td>
<td>Federation of Kenya Employers</td>
</tr>
<tr>
<td>Kenya Bureau of Standards: Food and Nutrition Technical Committee</td>
<td>Consumer Downtown Association</td>
</tr>
<tr>
<td>Kenya Bureau of Standards: Road Vehicles Technical Committee</td>
<td>Kenya Motor Repairers’ Association</td>
</tr>
<tr>
<td>Kenya Bureau of Standards: Road Vehicles Technical Committee</td>
<td>Kenya Motor Repairers’ Association</td>
</tr>
<tr>
<td>Kenya Bureau of Standards: Standards Development Technical Committee</td>
<td>Consumer Downtown Association</td>
</tr>
<tr>
<td>Kenya Industrial Property Institute</td>
<td>Kenya Association of Manufacturers</td>
</tr>
<tr>
<td>Maseno University Council</td>
<td>Independent</td>
</tr>
<tr>
<td>Micro and Small Enterprises Authority</td>
<td>Kenya National Federation of Jua Kali Associations</td>
</tr>
<tr>
<td>COMMITTEE</td>
<td>PARTICIPANT</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>National Accelerated Agricultural Input Access Program Committee</td>
<td>Agricultural Council of Kenya</td>
</tr>
<tr>
<td>Ministry of Agriculture: National Performance Trials Committee</td>
<td>Seed Traders Association of Kenya</td>
</tr>
<tr>
<td>Ministry of Agriculture: Seed Regulation Committee</td>
<td>Seed Traders Association of Kenya</td>
</tr>
<tr>
<td>Ministry of Education: Competence Based Curriculum Taskforce</td>
<td>Inter-Religious Council of Kenya</td>
</tr>
<tr>
<td>Ministry of Health: COVID Taskforce</td>
<td>Kenya Medical Association</td>
</tr>
<tr>
<td>Ministry of Health: COVID Prevention – Education sub-committee</td>
<td>Evangelical Alliance of Kenya</td>
</tr>
<tr>
<td>Ministry of Health: Family Planning Training Coordination Committee</td>
<td>Pharmaceutical Society of Kenya</td>
</tr>
<tr>
<td>National Construction Authority</td>
<td>Architectural Association of Kenya</td>
</tr>
<tr>
<td>National Hospital Insurance Fund</td>
<td>Kenya Faith-Based Health Services Consortium</td>
</tr>
<tr>
<td>National Standards Council</td>
<td>Independent</td>
</tr>
<tr>
<td>National Tourism and Hospitality Protocols Taskforce</td>
<td>Retail Traders’ Association of Kenya</td>
</tr>
<tr>
<td>National Trade Facilitation Committee</td>
<td>East African Tea Trade Association</td>
</tr>
<tr>
<td>Retail Trade Committee</td>
<td>Association of Kenya Suppliers</td>
</tr>
<tr>
<td>Retail Trade Dispute Settlement Committee</td>
<td>Association of Kenya Suppliers</td>
</tr>
<tr>
<td>Tourism Fund</td>
<td>Independent</td>
</tr>
</tbody>
</table>
Results and Discussion

Each respondent was asked a series of questions. These questions were grouped into the following categories: purpose; governance; structure and participation; facilitation; outputs; communications; self-evaluation; credibility of participants; preparation by participants; use of evidence; engagement; expression; and performance.

4.1 PURPOSE

In some cases, the purpose of the organization, and thus the board or committee, is defined by law. This is true for the Micro and Small Enterprises Authority, the Seeds National Performance Trials Committee and the Export Processing Zones Authority, for example. In other cases, the committee has developed its own terms of reference. Overall, some 93 percent of respondents thought that the committee on which they sit has a clear purpose.

4.2 GOVERNANCE

Some four-fifths of respondents thought that their committee was transparent, open, and fair. Comments ranged from ”It is excellent; members are required to declare any interest” and ”we are guided by clear requirements of SCAC and Mwongozo” to ”there are many instances where members [...] try to influence positions for various personal interests” and ”sometimes management lobbies the members individually [...] and this causes tension”. A similar proportion thought that the rules or guidelines for the committee were clear.

KAM, when discussing the Export Processing Zones Authority, stated that ”members all appear to trust each other with high levels of openness and transparency. There is a sense of teamwork as a result.” The respondent noted, too, that decisions depend on consensus. At the Anti-Counterfeit Authority, it often puts issues on the agenda.

The Covid Taskforce is perceived to be government-driven and to take a top-down approach. The Kenya Medical Association notes that ”the voice of the healthcare professionals is not taken on board” as much as they would like and there is a perception that ”political and business interests take priority”.

One respondent suggested that the board was not always transparent and commented that ”there are instances where members (from both the private and public sectors) attempt to influence positions to serve their personal interests” and, perhaps as a result, ”trust levels are low.” About three-quarters of respondents, however, thought that committee members trusted each other.
Encouragingly, the Federation of Kenyan Employers (in committees with trade unions and government) explained that “each party usually has its own position [...] but we remain objective in our discussions so as to make the best decision for the country.”

Many of our respondents explained that the boards on which they sat followed Mwangozo but not all do. The Mwangozo requirements are generally very helpful, though references to state-owned enterprises rather than to state corporations or parastatals mean that it is not clear whether they apply to all government entity boards. Furthermore, most of the principles could be applied to any other task force or committee convened by the government. This universal application would have the advantage that all government committees were then governed by the same principles and requirements.

Mwangozo states (p11) that “board members nominated by stakeholders should recognize that they owe their duties to the organization and not their nominating authority”. There is thus a perception among some association representatives that this principle prevents members from engaging in proper debate. There is also a concern that, as some boards remunerate their board members, the government effectively captures the members, co-opting them into supporting government positions and thus neutralizing them. This does not align with the President’s foreword to Mwangozo. Moreover, a member’s duties to a board include a willingness to raise difficult issues, share contradictory evidence, introduce alternative policy solutions, and ensure that there is full and open debate. Without that debate, there can be no certainty that the optimal solution, balancing the interests of all stakeholders and making the best decision for the country, has been attained. Once a solution has been agreed upon, the members of the board have a collective duty to promote that solution and the reasons for it. If the member feels that the solution is unacceptable, the member can easily resign from the board and lobby for change from outside.

4.3 STRUCTURE AND PARTICIPATION

Members of government committees and parastatals were appointed in different ways. In 13 cases (45%) the BMO has an enshrined right to nominate a member to the committee (and in one case, the BMO has both its CEO and chair appointed to the committee); in eight cases (28%) the Cabinet Secretary made the appointment (though this might have followed a closed competition); in two cases the parastatal invited nominations and then made the appointment; and just four positions (14%) were subject to a competitive selection (typically with a press advertisement calling for nominations).

One organization, the National Standards Council, is in the midst of controversy regarding the appointment of its chair. The rules for participation are outlined in the enabling legislation. However, there is a contradiction between the Standards Act, 2012, which states that the chairman shall be appointed by the Minister (now the Cabinet Secretary) and Mwangozo, which states that the chair of
every state corporation shall be appointed by the President. However, the organization that is overseen by the National Standards Council, the Kenya Bureau of Standards, utilizes advertisement and competitive appointments to its 124 technical committees responsible for preparing and maintaining standards, many of which have the force of law.

Some three-quarters of respondents thought that there was a balance between private and public representation with comments such as “we have seven private sector representatives and five public sector representatives”, “the composition is aligned to the Mwongozo guidelines”, and “the private-public representation is well-balanced; there is also a good mix of skills and expertise”. Geographic balance was generally lacking. Additionally, none of the government committees or parastatals delivered a gender balance. The constitution says that “not more than two-thirds of the members of elective public bodies shall be of the same gender.” While these boards and committees are not elected, and thus not in breach of the constitution, arguably they are in breach of the principle. Given that the government tends to have multiple representatives, the government could be more proactive in seeking a better gender balance.

Some 86 percent of respondents reported that they received a fair hearing. Many respondents shared the general sentiment that “discussions are open and everyone is allowed to give their input” and, in one case, “all members are required to give their input on every agenda item under discussion.” However, one respondent claimed that “it is difficult to receive a fair hearing due to the large number of members” and another commented that “the number of members is too large [60] to have a fruitful discussion.” One respondent lamented that “we receive a fair hearing, but our proposals go unimplemented.” One perceived that women members were not given a fair hearing.

KAM perceives, most of the time, that the government is not seeking to influence policy outcomes of the committees on which it sits. However, it did cite a recent tussle in which the Ministry of Industry was thought to be muzzling the board of the EPZA and making it less effective. Overall, 85 percent of respondents perceived that the board or committee on which they sat was free to take decisions as they saw fit. Moreover, some boards aim for consensus. For example, the chair of the ACA is perceived to be keen to achieve consensus on all decisions and “the rare contentious issues are generally resolved effectively and amicably.” The Inter-Agency Committee on National Wages does not vote: if they cannot reach consensus, then “the position of each of the social partners is recorded and is taken as a matter that requires further negotiation.”

4.4 OUTPUTS, OUTCOMES, AND POLICY REFORMS

Most committees published reports of some sort. These vary from specific reports submitted to the Cabinet Secretary to annual reports. Some three-quarters of respondents perceived that these led to
policy reform, though one respondent complained that “one of the core functions of the board is to develop, adopt, and review policy, but none has been achieved so far.”

The responses tend to suggest that the committees dealing with technical issues are more likely to result in new or reformed policy. The National Performance Trials Committee, for example, has introduced a hybrid seed authorization model which has reduced the lead time for the certification of new seed varieties. The committees dealing with standards always see a policy reform as a result of their work. The Export Processing Zones Authority successfully advocated the reversal of a government policy, causing disruption to the handling of cargo destined for Mombasa.

At the Anti-Counterfeit Authority, KAM made proposals related to the protection of intellectual property rights, and the agency listened to these proposals and developed regulations to combat counterfeits. These regulations have now been passed by parliament and implemented by the agency. The National Construction Authority has influenced the local content requirements of the National Building Regulations.

4.5 SELF-EVALUATION

Effective organizations periodically assess their own performance and take steps to improve. Just half of respondents perceive that the committee on which they sit evaluates its own performance, though most rely on external assessment rather than self-assessment. The Ministry of Public Service evaluates the performance of state corporations annually\(^\text{13}\). The State Corporations Advisory Committee also undertakes annual performance appraisals in which the performance of the board and the individual members is evaluated. Several respondents report that their committee reports against its targets – indeed, the respondents with a clear view described hitting the agreed upon targets with effectiveness – though effectiveness covers a host of other aspects as well. In relation to board performance, factors might include whether all members have been able to contribute freely, whether board members have been able to introduce facts and opinion that might not have been otherwise available, whether they have been given any form of training to help them fulfill their functions more effectively, whether they have engaged in a suitable level of consultation and dialogue with third parties, etc.

On a positive note, the Kenya Industrial Property Institute requires its audit committee, inter alia, to assess organizational and board processes. The National Accelerated Agricultural Input Programme

Committee undertakes field visits to assess effectiveness. The EPZA, perhaps, offers a good model: it has an annual peer review where the board members and chairs of committees audit each other on the effectiveness in service delivery and the implementation of action points.

4.6 PREPARATION

Some 93 percent of respondents say that they can use knowledge gained as a result of participating in the committee to provide feedback to their association on current issues and policy debates. It seems, however, that only the Agricultural Council of Kenya (ACK) and KAM have formal mechanisms to capture learnings from government committees. ACK requires that its representatives complete ‘back to office’ reports, KAM collates feedback and refers to the relevant internal committee, and the KAM board receives reports. Just one respondent felt unable to share information – on the grounds of confidentiality – though another responded that “I do not present the interests of […] the board. It is made clear during induction that non-state actors should not bring the interests of their nominating bodies to the board but rather serve the interests of the nation”. We would argue that these are not mutually incompatible: indeed, it is precisely through representing broad-based interests that members bring the knowledge and experience required to ensure the board considers all evidence and all viewpoints.

Some 97 percent stated that they were able to provide feedback to their BMOs on issues likely to arise in the future. In some cases, this allowed the BMO time to plan an advocacy campaign. One respondent explained that “this helps us in shaping our policy agenda”. The approach of one respondent is to work through the committee: “our strategy is to contribute to the policy agenda and shape the policy debate at the board – we therefore utilize advance intelligence to help us prepare adequately”. Others expect to lobby outside of the committee as well: “I advise the leadership […] on potential issues to enable them to prepare adequately to engage the relevant government authorities”. One explained that “this is one of the main reasons we sit on these boards”. Two-thirds of respondents said that their associations used the information gleaned from committee participation as a pretext for preparing a policy position, though often any advocacy was taken up outside of the committee.

It is easy for BMOs to attend meetings and be negative about proposals tabled by others without necessarily making alternative suggestions. Many of the BMOs interviewed clearly aim to make a positive contribution. The Kenya Medical Association, for example, has set up standing committees to discuss and debate the themes and issues taken up by the COVID taskforce and ensure that their representative feels properly briefed before he participates. KAM takes its membership on government committees very seriously. For example, EPZA is always on the KAM board agenda. KAM endeavors to fuse cooperation between the EPZA board, the companies within the export processing zones, and the
KAM board to make the discussions seamless. It reaches out to other stakeholders to seek their views on issues. KAM's strategy is to contribute to the policy agenda and aim to shape the policy debate. For ACA, KAM’s policy team reviews each agenda and supporting papers prior to ACA discussions. As with EPZA, it meets with stakeholders to seek their views on important issues. KAM perceives that the ACA board takes notice of the representation of the private sector and appreciates KAM's contribution. At least one of the independent members liaises closely with the BMO for which he works, discussing issues and advising them on which government agencies to engage with.

4.7 COLLABORATION

The ideal outcome, as promoted by the Council of Europe (q.v.), is for collaboration between government and interest groups to develop public policy. Appointing interest group representatives to government committees and task forces is clearly a step in that direction. However, it requires that all members of the committees collaborate as well. One respondent said there was limited collaboration, “due to the different agendas and conflicts of interest”, and another explained that there was a lack of collaboration due to members being “drawn from various institutions and busy”. Positively, however, four-fifths of respondents felt that there was effective collaboration among committee members, even though one tempered their response by saying, “there is still a lot of room and scope for improvement”.

KAM respondents, referring to the EPZA, observed that collaboration “is encouraged by the SCAC guidelines on objectivity and fairness.” Referring to the Anti-Counterfeit Authority, KAM respondents stated, “we are players in the same sectors, so we engage quite effectively.” With reference to the Anti-Illlicit Trade Multi-Agency Committee, KAM respondents explained that “there is a sense of teamwork between ourselves and the other members, including the public sector”. This last respondent continued on to say that KAM aims to engage through boardroom discussion, rather than going to the media; ensuring professional engagement and communication and being respectful of other points of view; offering solution; and trying to build lasting relationships. Perhaps the key lesson here is that successful collaboration necessitates that all parties want to collaborate. A positive approach by a BMO can go a long way towards encouraging others to collaborate effectively.

4.8 PERFORMANCE

A key question touched on the perception of whether the committee took any notice of private sector views. Here the response was decidedly mixed, with just two-thirds believing this to be the case: “the public sector seems to carry the day most of the time; they do not fully appreciate the role of the private sector in public policy formulation” and “the private sector is recognized but our issues are not addressed […] making the committee ineffective in delivering its mandate”. Others, however, were very
positive: “the board takes note of the representation of and contributions by the private sector”; “this committee was borne out of the collaboration between the private and public sectors, and it is a win for both”; “the committee recognizes and appreciates the contribution of the private sector”; “our voice is always heard and respected.”

The Kenya Medical Association perceives that it has influenced policy decisions on human resource issues for healthcare workers, the quality and cost of PPE, vaccines for healthcare workers, providing vaccination free of charge (the government had initially intended to charge a fee), and on isolation facilities. As noted above, KAM influenced the EPZA board in relation to a policy that was disrupting the movement of cargo. KAM perceives that it has shaped “key policy directions […] including] policy around competitiveness, incentives, taxation, offloading to local markets, and establishment of new zones”. KAM noted that its “members operating within the EPZs have registered satisfaction with our presentation of the issues affecting them.”

The Inter-Religious Council of Kenya (IRCK) describes itself as having made an important difference in that it influenced the decision to have the junior secondary level domiciled at secondary schools instead of at the primary schools as had been previously suggested.

Interviews with both BMO and CSO representatives on the KEBS Road Vehicles Technical Committee allow for some comparison in approach. Both Kenya Motor Repairers’ Association (KEMRA) and the Consumer Downtown Association (CDA) believe that it is now easier to campaign on issues of concern, but our perception is that the KEMRA representative, who also owns a garage and is thus effectively regulated by the committee, is better placed to advocate for reform through the discussions in which the committee engages. On the other hand, although the CDA representative is very good at making technical contributions, he is less effective at influencing his colleagues and instead relies on his CEO to lobby externally.

The Architectural Association made two interesting observations: that associations should be strategic about the contributions they make in committees since their presence is supposed to add value; and that associations should have clear expectations on what they hope to achieve through their participation. They would then be in a better position to measure the effectiveness of their participation.

**4.9 DOES COMMITTEE MEMBERSHIP MAKE ADVOCACY EASIER?**

We asked respondents to reflect on whether committee membership made it harder or easier to campaign on issues of concern. Some 86 percent felt that it was easier: “it makes it easier; although there are certain ground rules at the committee, they do not stop one from expressing what is best | for both the private and the public sectors”; “the committee membership has made it easier to
campaign on issues of concern to our organization”; “a good number of committee members are from the private sector and we have common interests”. A minority of respondents felt that it was harder: “the board [requires] members not to bring issues of the private sector into meetings, as it is perceived as a conflict of interest”. The balance is perhaps best summed up by the respondent who explained, “although my main agenda at the board is to serve national interests and not the interests of my constituency, it is a bonus [...] to have me there since I am able to keep them well-informed of the policy issues that may affect them and this enables them to prepare adequately and engage the government in a timely manner.”

IRCK explained that the experience and knowledge gained through participating in the Curriculum Taskforce, together with views gathered from Christian-based organizations and the Supreme Council of Kenya Muslims, has helped it to develop considered policy positions. Moreover, the IRCK representative reported that the experience he gained has empowered him to engage with government on policy issues more effectively.

A pertinent question to consider is whether interest groups that participate in task forces and boards become less likely to keep government accountable. In the case of IRCK members, they believe that participation has made it easier to deliver their mandate to enhance societal values and parental responsibility in the lives of children.

“Rather than feeling hampered by being a member of the Council, [...] perceives that it is now easier as he can influence dialogue between [...] and [...] members and have issues escalated for discussion at the Council.”
Conclusions and Recommendations

5.1 FOR GOVERNMENT

The government recognizes that engaging with the private sector “is critical to ensure that reforms address their real needs.” We agree – and note that an effective mechanism to employ is involving the private sector and other interest groups on government committees. There is an obvious question for the government to ask, however – which concerns the purpose of so many boards and committees. For those boards that have a primary role to provide direction and oversight – for example, to support a state-owned enterprise or a college – the purpose is clear, and the organizations can manage themselves without reference back to government.

Many of the boards and committees, however, have a regulatory function and need much closer collaboration with the government. Does the government genuinely want to bring in a range of interests to ensure proper debate and scrutiny? Or is this a fig leaf, intended to give the illusion of dialogue and legitimacy through the co-option of willing individuals who will defend the committee on which they sit? The Reform Milestones explains that “to address the needs of business, government can use a collaborative approach,” reflecting the work of the Presidential Taskforce on Parastatal Reform and the introduction to Mwongozo. While there is some scope to improve collaboration, some four-fifths of respondents believe that there is good cooperation, and the government is indeed committed to engaging in proper debate and scrutiny.

However, that might require that members of committees are briefed on ideas differently than how at least some members have been briefed during their inductions. Some of these members hold very different ideas about how to interpret Mwongozo.

It would only take a small rewrite of the introduction to Mwongozo to make that clear. Moreover, if it was clearer that every member is expected to bring all their knowledge, expertise, experience, and interests to the table without feeling that doing so created a conflict of interest, then there may be fewer instances of interest groups taking organisations and committees to court to have unpalatable decisions overruled. Indeed, the whole point of having balanced representation is so that people with diverse backgrounds and different experiences can share different perspectives and different knowledge.

15 Op. cit. (p76)
So, rather than stifling debate, discussion at the board or committee should be specifically facilitated to ensure that all opinions and supporting evidence are brought out into the open, that there is then a proper debate and the board or committee aims to develop a position which recognizes all the competing interests, and, as far as possible, though we recognize that political imperatives may intervene, seeks to find a position that is acceptable to all parties.

The alternative, articulated by some of the respondents, is accepting statements such as "this is a government body", "the government does what it wants," and "you must take care of the interests of the government". If these are true, then the committees are indeed just a fig leaf, and it is not surprising that interest groups go to court.

The boards and committees in which we were especially interested are those that have a role in reviewing or advising on regulation. Inevitably, therefore, there will be a desire by interest groups, regardless of whether they have a representative on the committee, to influence the outcomes of the committees. In addition to creating principles on corporate governance, the OECD has developed principles for transparency and integrity in lobbying. These include a requirement to build an effective and fair framework for openness and access; to ensure that all stakeholders are consulted as part of the process of developing public policies; to enhance transparency; to ensure that public officials, citizens and businesses can access details on the lobbying activities of others and scrutinize them; and to foster a culture of integrity, with clear rules and guidelines of conduct for public officials.

Mwongozo is certainly a step in the right direction, but that did not stop a recent World Bank report from observing that currently “there is lack of a clear and consistently applied classification among oversight institutions, departments and reports, which complicates fiscal reporting, impedes transparency, and hampers oversight.”

We thus recommend that the government:

- Builds on Mwongozo to extend its principles to all government boards, task forces, and committees and edit them accordingly.
- Makes clear that all appointments to boards, task forces, and committees are by the Cabinet Secretary of the appropriate Ministry acting on behalf of the President, and that the appointment can be withdrawn at any time if the government loses confidence in the appointee.

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16 OECD, lobbying in the 21st century
• Stresses that a duty to the committee on which people serve does not mean that they can no longer raise points of concern to specified interests.

• Aims for a balanced membership of all boards and committees covering interests, expertise, and gender.

• Creates and maintains a publicly (ideally internet-based) accessible database of all state-owned corporations, task forces and committees, with contact details so that interested parties can submit research evidence, opinions, and ideas for policy reform and an explanation of how committee members are appointed.

• Maintains a publicly (ideally internet-based) accessible list of all members of boards, task forces and committees with disclosure of possible conflicts of interest (which would include, for example, nomination by a business association) if appropriate.

• Makes public all reports and proposals related to the review, creation, or implementation of policy, legislation, and regulation and offers an opportunity for public responses prior to making recommendations to government. Adequate periods of time should be allowed for such consultation. Furthermore, best practice would involve the government summarizing and publishing the views of consultees and explaining whether and how these have affected the final proposals.

5.2 FOR BUSINESS MEMBERSHIP ORGANIZATIONS

It is clear that BMOs have a much higher level of representation than we had anticipated when we started this research. While this is extremely positive, and some, such as KAM, take their membership very seriously, it is not clear whether BMOs maximize the benefits from their participation. An insight from the preliminary research was that many business associations found it difficult to list the advisory committee boards on which they have nominees. We infer, therefore, that many associations are not closely monitoring the work of the committees on which they are represented and are therefore failing to provide the research evidence and reasoning that would enable their representative to make the arguments that might influence policy outcomes.

Ensuring that members representing interest groups are effective relies not only on their personal knowledge and experience but also on the support that the group is able to provide in terms of undertaking research and preparing policy ideas. In many cases, the issues being discussed will impact

38 Irwin D & Kyande M op. cit.
businesses across sectors and certainly across business associations. Yet, with a couple of notable exceptions, it seems that most interest groups fail to collaborate outside of the meetings of their committees. While that is understandable, and perhaps reflects a degree of competition to secure committee representation, it is a missed opportunity.

Overall, however, we conclude that BMOs and other interest groups are able to influence the outcomes of the committees on which they sit and that the committees in turn influence public policy. It would appear that most success comes from addressing technical issues rather than political issues (for example, speeding up the testing of seeds rather than questioning the need to test). There is little doubt that the BMOs that take a professional and systematic approach are the most effective.

We recommend that business associations:

- Become more proactive in identifying which boards, task forces, and committees might impact their members and seek to nominate members with appropriate knowledge and expertise, if they are not already doing so.
- Think clearly, strategically, and with realistic expectations about the difference they can make to the committees in which they participate.
- Require that representatives prepare reports for information and discussion within the business association (at board or policy committee level) and provide support, insofar as they are able, in terms of providing research evidence and policy ideas.
- Share intelligence with each other on discussions, especially related to potential future policy and regulatory reform – which should not be regarded as problematic if the boards and committees are genuinely aiming to be transparent.
- Where there is more than one association with an interest in the work of a committee, but a limited number of BMO representatives, the BMOs should coordinate more effectively among themselves.
- Consider how to establish an ‘observatory’ that monitors the work of boards, task forces, and committees – and the opportunities to consult – and acts as a clearinghouse for research evidence and policy briefs that could be used by any member of any committee.