



Policy Paper: Gender-sensitive Post-Legislative Scrutiny

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Executive Summary

The policy paper titled 'Gender-sensitive post-legislative scrutiny' examines the meeting point between post-legislative scrutiny and gender analysis.

The purpose of the case study is to assist parliamentarians, parliamentary staff, policy makers, parliamentary development practitioners and civil society activists to design or support processes that identify gender-based consequences in the implementation of legislation.

The policy paper is part of a broader project of the Westminster Foundation for Democracy on Gender analysis and postlegislative scrutiny. The project includes several deliverables that are complementary to the present document and address different aspects of the topic. These are: a case study on gender-sensitive post-legislative scrutiny of general legislation; a case study on post-legislative scrutiny of gender-specific legislation; and a case study on data and gender-sensitive post-legislative scrutiny.

The present document starts by examining the relationship between legislation, sex and gender and the importance of gender-sensitive legislation as a legislative goal. It then moves into ways for achieving gender-sensitive laws and mainstreaming gender concerns throughout the legislative cycle. It then looks specifically at how post-legislative scrutiny can be made gender-sensitive, the role of parliamentary committees in this, the scrutiny questions to be asked, the kind of data to collect, the stakeholders to consult with, the challenges in the process. Last but not least, it addresses the ways to make post-legislative findings gender-sensitive and what to do after.

Acknowledgements and Disclaimer

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This paper has been authored by Dr. Maria Mousmouti and published in July 2020.

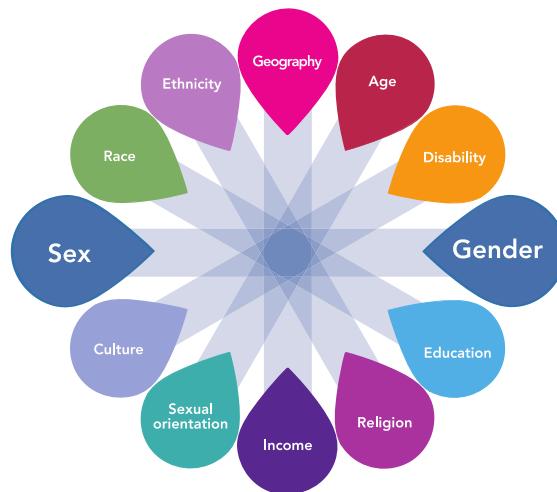
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The views expressed in the paper, as well as errors and mistakes, are of the author alone.

1. Background: legislation, sex and gender

Legislation intervenes in the life of all but does not impact everyone in the same way. Women, men, and non-binary people, the young and the old, persons with and without disabilities, people of distinct race and ethnic origin are all affected differently, because of their different needs and situations and because of existing structural inequalities in society. There are multiple factors that determine how legislation impacts individuals and sex and gender are only two of them.

Graph 1: Factors relevant to the impact of legislation



Source: WFD, *Learning materials on gender and intersectional analysis*

Without undermining the relevance or importance of all other factors, this paper will focus on sex and gender¹ as main determinants of advantage and disadvantage in relation to legislation. Laws have a 'gender' which is evident in their language, content and results. While in itself not a negative thing, there are several problems associated with the 'gender' of the law, when this is not consciously considered in legislative decision-making.

Firstly, legislation that does not use gender-sensitive or gender-neutral language jeopardises inclusivity and sends out wrong messages². If laws impose obligations on all citizens, why address only some of them? An increasing awareness around the symbolic and factual importance of gender-neutral or inclusive language in legislation³ and around the language used by parliaments and other institutions⁴ is noticed in many countries around the world.

1. It is important to differentiate the terms sex and gender. Sex refers to a biological construct, whereby an individual is defined as being male or female according to genetics, anatomy and physiology. Gender is a multifaceted and fluid construct, influenced by social and cultural contexts and environments to create gender norms which in turn influence commonly accepted ways of how people behave, how they perceive themselves and others, how they act and interact, and the distribution of power and resources in society.

2. Donald L. Revell, Jessica Vapnek, [Gender-Silent Legislative Drafting in a Non-Binary World](#) (2020) 48:2 Capital University Law Review 1-46; Office of the Parliamentary Counsel and the Government Legal Department (UK), [Guide to Gender-Neutral Drafting](#) 2019; Government of Canada, Department of Justice, [Legistics Gender-neutral Language](#); Ruby King and Jasper Fawcett, [The End of "He or She"? A look at gender-neutral legislative drafting in New Zealand and abroad](#) (2018) NZWLJ; Parliamentary Counsel (Australia), Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling, 2016; Office of the Parliamentary Counsel (UK), [Drafting Guidance](#), 2018

3. European Parliament, [Gender-Neutral Language in the European Parliament](#), 2018; 'European Parliament Resolution on Gender Mainstreaming in the European Parliament' 2018/2162 (INI) (15 January 2019); Council of the European Union, 'General Secretariat, Inclusive Communication in the GSC' (2018); Jutta Marx and Jutta Borner, 'Gender Mainstreaming in Latin American Parliaments: A Work in Progress' (2011), 30 accessed 29 July 2019.

4. See examples in Oxford Human Rights Lab, [Gender Sensitive Parliaments](#). Costa Rica uses gender-sensitive language on the parliamentary website; the Parliament of Montenegro uses gender-sensitive language in all official communications; in Peru, Law 28983 on Equal Opportunities for Men and Women stipulates that the government should use gender-sensitive language in all written communications and documents prepared by government bodies at all levels; in France gender-specific forms of address (Madame Minister) have been adopted.

Secondly, laws relying on gender bias have exclusionary effects and reproduce rather than eliminate stereotypes. For example, parental leave and its link to the female sex, does not only exclude men from the upbringing of children and reproduce stereotypes around gender roles, but also leaves little margin to families to make the choices that best suit their lifestyles. Even apparently neutral laws can affect men or women disproportionately or create access barriers, if they do not sufficiently reflect their distinct realities. **Legislation cannot be blind to the sex and gender of those it affects. Taking sex and gender into account in legislative decision making is the only way to produce gender-sensitive legislation that positively promotes gender equality.**

At this point, a disclaimer is in order. Gender-sensitive legislation is not about men and women alone. Gender-sensitivity refers to all genders and to the diverse factors that shape gender identities. In practice however, gender is often understood in a simplistic -binary- way that overlooks how individuals and groups understand, experience and express gender⁵. References to men and women in this paper should not be taken as an endorsement of a binary interpretation of gender equality or a narrow understanding of gender, but instead as a reflection of the way in which such concerns are currently expressed on the ground. And despite their limitations, they are acknowledged as a first -essential- step in the long discussion about gender and intersectionality that still has to materialise.

2. Gender-sensitive legislation as a goal for legislators

Legislative practice around the globe provides myriad examples of how legislation can negatively affect the life of men and women, non binary people or other population groups, provide inappropriate solutions to problems, lead to inadequate or unjust allocation of public funds, jeopardise the wellbeing of specific groups and generate or entrench inequalities and injustice. This can happen for many reasons. One of them is when legislation intervenes blindly in social reality without duly considering the different needs of people of all genders (other factors like race or ethnic origin, disability, age and the intersection of the above). Gender-blind laws ignore the underlying situations associated with sex and gender and can exclude rather than include, create or perpetuate inequalities and leave an overall negative footprint on gender equality. Gender-sensitive laws⁶ on the other hand integrate the concerns of women, men and non-binary people into the political and legislative process to ensure that legislation affects them in a balanced way. **Gender-sensitive laws are the only effective legislative vehicle for the advancement of gender equality.**

3. How can gender-sensitive legislation be achieved?

Legislation plays an important symbolic and educational role, has a direct and tangible impact on the lives of citizens, and sends out strong messages about what matters in society. **Gender-sensitive legislation is not the result of good intentions and political will alone. It is the result of a systematic process of integrating gender concerns in legislative decision-making that is called gender mainstreaming⁷.**

Gender mainstreaming ensures that the needs, interests, concerns and circumstances of women, men and non-binary people are taken into account in decision making. Its ultimate purpose is to prevent discriminatory effects and positively promote gender equality. It is a process of questioning assumptions, actors, benefits, processes, policies and outcomes using a gender lens. Gender mainstreaming offers the framework, the methodologies and the tools to integrate gender perspectives in the design, implementation, monitoring and evaluation of policies, legislative and regulatory measures, and spending programmes. Gender mainstreaming does not guarantee the achievement of specific results. What it

5. Government of Canada, "Definitions of Sex and Gender", Canadian Institutes of Health Research. 2015.

6. OSCE, [Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation](#), 2017.

7. Gender mainstreaming was first introduced at the 1985 Nairobi World Conference on Women and established as a strategy through the [1995 Beijing Platform for Action](#), adopted at the 1995 Fourth United Nations World Conference on Women in Beijing. In 1998, the Council of Europe defined gender mainstreaming as: 'The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making'. In 1997, the United Nations defined it as ... 'the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated'. See United Nations, Report of the Economic and Social Council, 1997.

does guarantee is that the needs of people of all genders are considered in decision making, that potential impacts are examined in advance and that the (legislative) solutions selected are the ones that best promote gender equality within a given context and circumstances.

Gender mainstreaming tools

Gender analysis identifies the gender relevance of an initiative in the conditions, needs, participation rates, access to resources and development, control of assets, decision-making powers and so on, between women, men and non-binary people. It examines the start situation of diverse genders in terms of rights, access to power and resources.

Gender impact assessment analyses how distinct legislative solutions are likely to impact women and men, gender roles, relations, responsibilities and gender equality (ex-ante) or how they have actually impacted them (ex-post). It is an estimation of the (positive, negative or neutral) effects of a policy or activity in terms of gender equality.

Gender budgeting is a 'gender-based assessment of budgets incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures in order to promote gender equality'.⁸ It promotes accountability and transparency in fiscal planning, increases gender-responsive participation in the budget process and advances gender equality.⁹ When properly done, 'gender budgeting is considered good budgeting'.¹⁰

Gender analysis, gender impact assessment and gender budgeting are powerful tools to mainstream gender concerns across the life cycle of legislation.

4. Mainstreaming gender in the legislative cycle

Sex, gender and gender equality are not one-off concerns. Each stage in the lifecycle of the law presents distinct challenges from a gender perspective. **Gender-sensitive legislation requires gender mainstreaming throughout its lifecycle.**

Gender-sensitive legislative design can reveal relevant information and place important concerns on the agenda, prevent negative or unwanted effects, maximise positive achievements and anticipate failures. The decision-making process that leads to the adoption of legislation is a critical moment to consider sex and gender.

Gender-sensitive implementation integrates a gender lens into implementation decisions, budgets and criteria and allows gender-sensitive monitoring and data collection. Gender roles, identities, relations and institutionalised gender influence the way in which an implementation strategy works and implementation strategies might often inadvertently exploit or ignore sex and gender-related factors.¹¹

Gender-sensitive post-legislative scrutiny offers the possibility of looking at the bigger picture, identifying positive and negative change at a larger scale, looking at the crosscutting impact of legislation on gender and understanding what worked, what did not work and what needs to be changed.

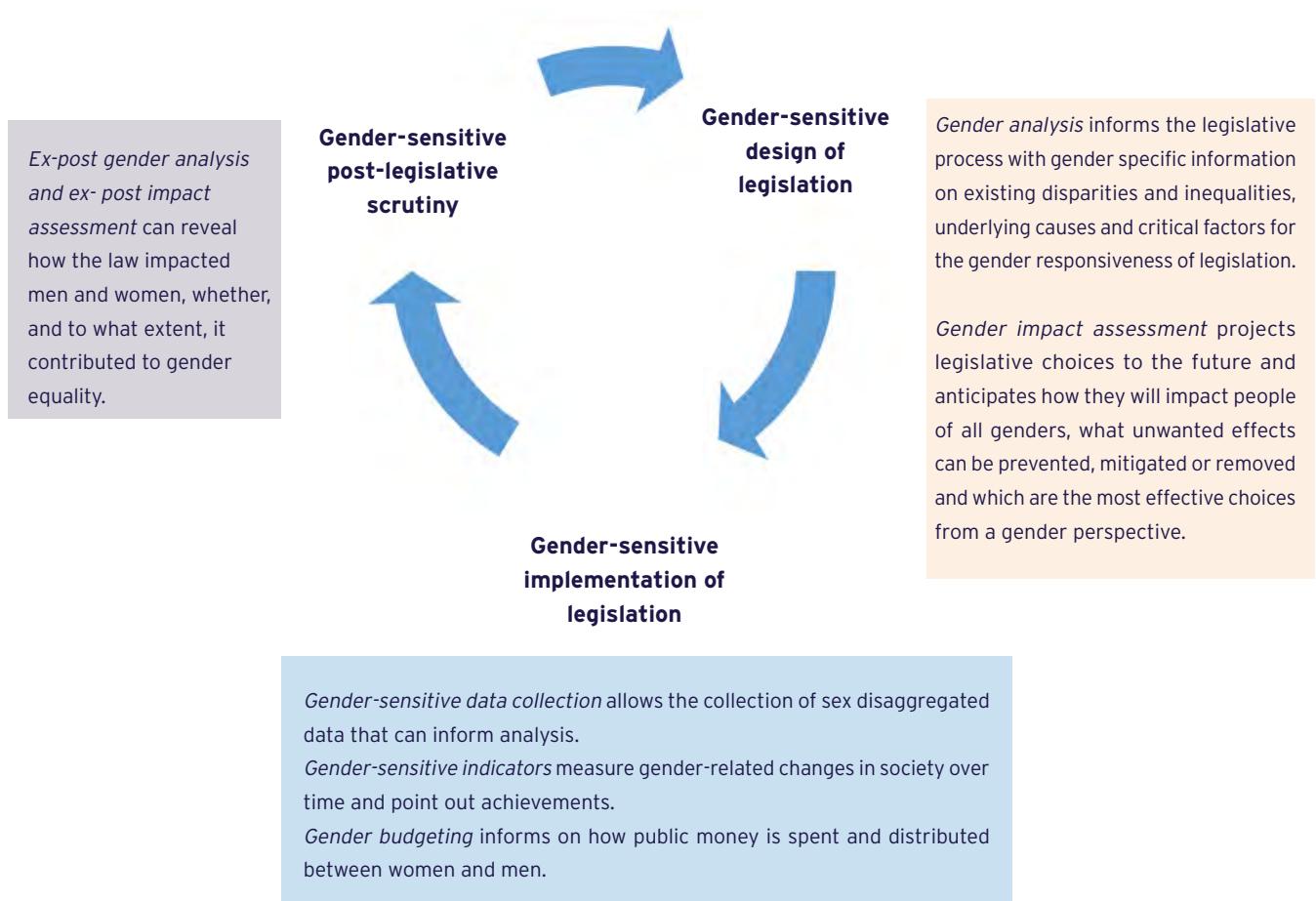
8. Council of Europe, [Final report of the Group of Specialists on Gender Budgeting](#) (EG-S-GB), EG-S-GB (2004) RAP FIN; Equality Division, Directorate General of Human Rights, 2005, p.10

9. EIGE, [Gender budgeting](#), accessed 29 May 2020; OECD, [Gender Budgeting](#), accessed 29 May 2020; Franklin De Vrieze and Victoria Hasson, [POST-LEGISLATIVE SCRUTINY Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy](#), 2017

10. Stotsky, J., 'Gender budgeting: fiscal context and current outcomes' (2016) International Monetary Fund working paper, WP/16/149, p. 12.

11. Cara Tannenbaum, Lorraine Greaves, and Ian D. Graham, Why sex and gender matter in implementation research (2016) 16 BMC Med Res Methodol.145.

Graph 2: Sex, gender and the lifecycle of legislation



5. What is gender-sensitive post-legislative scrutiny and why is it important?

Post-legislative scrutiny is a broad concept whose scope can range from a technical assessment of the enactment of the law to a broader assessment of its impact¹². **Gender-sensitive post-legislative scrutiny adds a gender perspective to the scrutiny by assessing whether legislation has produced (positive or negative, unintended or unexpected) impacts on gender results and outcomes.**

Post-legislative scrutiny has the advantage of hindsight – and offers the possibility to look at cross cutting impacts and identify positive and negative change at a larger scale. It can show what worked, what did not work and why, and what needs to be changed. Gender-sensitive post-legislative scrutiny adds a complementary layer of analysis: how the law worked for women and men, whether there were achievements and unwanted impacts from a gender equality perspective and how to ‘correct’ them. It can reveal the actual impact of legislation on men, women and gender inequalities, and make visible biases, stereotypes and assumptions relating to gender and other characteristics, access, participation barriers and data gaps. It can make findings and recommendations about the working of the law more comprehensive and improve the effectiveness of legislative initiatives.

At the moment, gender analysis and post-legislative scrutiny do not often coincide. **Making post-legislative scrutiny gender-sensitive is a challenge linked to both the effort to improve the effectiveness of legislation and to pursuing de facto gender equality.**

12. Franklin De Vrieze, [Post Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017

6. How can post-legislative scrutiny be made gender-sensitive?

Gender-sensitive reviews of legislation can take different forms: a) horizontal reviews of policy or legislation from a gender perspective; b) scrutiny of gender-specific legislation; and c) gender-sensitive post-legislative scrutiny of general (non-gender-specific) legislation.

Horizontal reviews of legislation from a gender perspective are usually conducted by parliamentary bodies with gender-related mandates and tend to focus on broader gender issues, be more policy-oriented and not directly linked to the implementation and impact of legislation. Although not formally a post-legislative scrutiny, such a function would inevitably involve an assessment of the working and the impacts of legislation. For example, the Women and Equalities Committee of the House of Commons in the UK has conducted work on sexual harassment. Through inquiries and oral evidence sessions the Committee submitted a [Report on Sexual harassment and sexual violence in schools](#) with conclusions and recommendations on what needs to be done. In France, the [Délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes, a permanent delegation](#) in the National Assembly and the Sénat have the mission to inform both houses on governmental policies and their impacts on men and women and ensure the follow up of the application of legislation. Though this horizontal mandate, the delegation brings critical topics to the agenda, conducts analysis through public 'rapports d' information' and proposes improvements and change. [The Gender Equality Committee](#) (GEC) in Denmark does not only address issues with a 'gender equality tag', but also issues which appear gender-neutral but might have a greater impact on either women and men.

Scrutiny of gender-specific legislation is gender-sensitive by definition because of the type of legislation it focuses on. Indicative examples: a post-legislative [scrutiny](#) on the [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#) conducted in 2016 by the Equality, Local Government and Communities of the Welsh Parliament; the scrutiny of the [Lei Maria da Penha](#) (law on violence against women) by the Joined Inquiry Committee of the Brazilian National Congress in 2012; or the Inquiry by the Standing Committee on Legal and Constitutional Affairs of the Australian Senate into the effectiveness of the [Commonwealth Sex Discrimination Act 1984](#) in 2008.

Last but not least, scrutiny of 'general' (non-gender-specific) legislation focuses on legislation that does not have a 'gender tag' and is assumed to benefit men and women equally. Indicative examples of such scrutiny include the [Post legislative scrutiny of the Higher Education \(Wales\) Act 2015](#) by the Children, Young People and Education Committee of the National Assembly for Wales in 2019 or the [National Fraud Initiative](#) by the Scottish Parliament in 2017. The challenge with this form of scrutiny is to integrate into the questions consideration of gender-related concerns.

All three types of reviews can be triggered by **statutory obligations, review or sunset provisions or horizontal policy commitments to conduct gender analysis**. Statutory triggers can nowadays be found in legislation or policies that make gender mainstreaming, gender analysis and gender impact assessment a mandatory component of policy, programming and legislative decision-making, or introduce statutory duties to consider gender in policy and decision making. There are several examples of such statutory triggers and a few examples are mentioned below.

One way to trigger gender-related scrutiny is through a legislative duty on authorities to mainstream gender concerns. For example, the Finnish [Act on Equality between Women and Men](#) introduces a duty of authorities to promote gender equality by purposefully and systematically promoting equality between women and men in all their activities and creating and consolidating administrative and operating practices that ensure the advancement of equality in the preparatory work undertaken on different matters and in decision-making. The [Gender Equality Act 2020](#) in Victoria, Australia, introduces a duty to promote gender equality and the obligation of public entities to undertake gender impact assessments. Public entities, when developing policies and programmes and delivering services to the public must (a) consider and promote gender equality; and (b) take necessary and proportionate action towards achieving gender equality. Further, public entities must undertake a gender impact assessment when developing or reviewing any policy, programme or service that has a direct and significant impact on the public. In the UK, the [Equality Act 2010](#) imposed on public authorities a Public Sector Equality Duty¹³ that covers age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. This means that those subject to the equality duty must, in the exercise of their functions, have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct; advance equality of opportunity between people who share a characteristic and those who don't; foster good

13. Section 149 of the [Equality Act 2010](#); see [Public Sector Equality Duty main page; Guidance on the duty](#)

relations between people who share a characteristic and those who don't. In Belgium, the [Gender Mainstreaming Act of 2007](#) requires a 'gender test' to be applied to all laws and regulations, which would require the minister responsible to conduct an ex-ante gender impact assessment.

A second option is to mandate or guide parliamentary bodies to conduct gender related scrutiny. Vietnam's [Law on Gender Equality](#), 2006 (article 22) mandates the National Assembly committee responsible for gender issues to coordinate with Ethnic Minority Council and other committees to examine the incorporation of gender equality issues in draft laws, ordinances and resolutions before submitting them to the National Assembly and the National Assembly's Standing Committee for review and adoption. Matters to be examined include: the identification of gender issues in the project and draft law; the reflection of gender equality principles in draft laws; compliance with procedure and sequence for assessing the incorporation of gender equality issues in drafting legislation; and the feasibility of ensuring gender equality through draft legislation.¹⁴ In Peru, the Law of Equal Opportunities between Men and Women, 2007 provides guidelines (in Art. 6) calling for Congress to guarantee in legislation the right to equality between women and men at all levels and to monitor enforcement of norms and policies that guarantee equal opportunity and gender equality.¹⁵

A third option is to apply gender analysis as a horizontal government policy. For example, in Canada, the [GBA+ \(Gender Based Assessment+\)](#) is not explicitly legislated but is applied universally and requires all government departments and agencies to assess policy and regulatory decisions around a framework that considers gender and additional factors ('identities'). More recently, the [Canadian Gender Budgeting Act 2018](#) made obligatory the consideration of gender equality and diversity in the budget process through a) a report on the impacts in terms of gender and diversity of all new budget measures b) an analysis of impacts in terms of gender and diversity of tax expenditures and c) expenditure programmes. All reports are to be made publicly available.

A general duty or requirement to assess the impact of gender allows the parliament to use gender as an element of scrutiny. It is also sufficient legal basis to require the parliament to integrate this perspective into all post-legislative scrutiny it conducts.

In practice, the examples where post-legislative scrutiny meets gender concerns are limited, sporadic and ad hoc. One of the available examples is when the House of Commons Standing Committee on the Status of Women (Canada) reviewed in 2016 GBA+ and its implementation. In its [Report on Implementing Gender-Based Analysis Plus in the Government of Canada](#) the Committee proposed ways in which the government could more fully implement Gender-Based Analysis to advance gender equality, monitor the use of GBA in government processes, measure the impacts of policies and programmes in creating more equitable results and address gaps.

7. Role of parliamentary committees in conducting gender-sensitive post-legislative scrutiny

Parliaments play a key role in the adoption and scrutiny of legislation. They also have a key role to play in ensuring that laws do not discriminate against women and men and positively promote gender equality. Empowering parliamentary bodies to mainstream gender when laws (and budgets) are adopted and scrutinised ex-post are necessary to make gender equality a reality.

14. Sonia Palmieri, Gender sensitive Parliaments. A Global Review of Good Practice, IPU, 2012, p. 30

15. Ibid p.31.

In response to the increasing awareness around this role, many parliaments have put in place a 'dedicated gender mainstreaming infrastructure'¹⁶ that includes committees, sub-committees or multi-portfolio committees to address gender equality¹⁷. Other formal or informal gender equality mechanisms within parliaments include cross-party women's caucuses¹⁸, clubs or networks¹⁹, gender divisions or departments within the parliamentary secretariat, and gender or women's research centres²⁰. Their mandates include: the drafting or amending of gender equality laws; monitoring ex-ante legislation from a gender perspective; monitoring implementation of gender equality legislation and ensuring that laws do not directly or indirectly discriminate against women and girls; monitoring adherence to international gender equality obligations; horizontal scrutiny of policies and legislation from a gender perspective; the proposal of recommendations; and amendments and evaluation of government budget plans and expenditures from a gender perspective (ex-ante or ex-post).²¹

Gender-sensitive parliaments are founded on gender equality, where women and men have an equal right to participate and whose structures, operations, methods and work respond to the needs and interests of both men and women.²² In terms of parliamentary work, this means that parliaments must be in the position to implement a gender mainstreaming strategy, ensure gender oversight, produce gender-sensitive legislation, analyse budgets from a gender perspective and scrutinise the implementation and results of the law in a gender-sensitive way.

Parliamentary committees are the bodies that can mainstream gender in their legislative and scrutiny functions. This important role involves setting a gender-relevant agenda, conducting scrutiny and communicating the results of their findings both within and outside parliament.

There are numerous examples on how this can translate into the mandates of parliamentary committees.

In principle, a broad mandate leaves considerable flexibility in setting a gender-relevant agenda and initiating initiatives. The Canadian [House of Commons Standing Committee on the Status of Women](#) oversees the governmental Status of Women Canada, as well as all government bodies that conduct work related to the status of women. The Committee is mandated to scrutinise government gender policy, programmes, expenditure decisions and performance of these bodies. It also produces reports on specific topics, including the implementation of gender-based analysis at the federal level. Each fiscal year, the Committee reviews the main and supplementary estimates of the Status of Women government agency. In a similarly broad way, the [Committee on Empowerment of Women](#) in the Indian Parliament can consider reports from the National Commission for Women and report on measures to be adopted; scrutinise measures adopted by the Government; examine measures on education and representation of women in legislative bodies or services and other fields; report on welfare programmes and the action taken on the measures proposed by the Committee. Such committees have a free hand in raising issues with gender-relevance.

A second option is to mandate other parliamentary mechanisms (beyond equality dedicated committees) to oversee government performance from a gender perspective. For example, the [Committee on Public Accounts](#) (Canada) requires all federal departments and agencies to report on the use of gender analysis in the development of policy and legislation.

16. Ibid, p. 39.

17. Ibid, Chapter five for an overview of different options in parliamentary practice around the world; Franklin De Vrieze, [Post Legislative Scrutiny Guide for Parliaments](#), Westminster Foundation for Democracy, 2017

18. Caucuses are forums that bring parliamentarians together across political party lines to share information, discuss policy issues, channel common interests and concerns, and engage civil society. See Women's Parliamentary Caucuses, <https://www.iknowpolitics.org/en/discuss/e-discussions/womens-parliamentary-caucuses>; Johnson, Niki & Josefsson, Cecilia, [A New Way of Doing Politics? Cross-Party Women's Caucuses as Critical Actors in Uganda and Uruguay](#) (2016) Parliamentary Affairs 69; ParlAmericas, MULTI-PARTY CAUCUSES FOR GENDER EQUALITY. A Handbook for Parliamentarians in Latin America and the Caribbean, accessed 29 May 2020.

19. Finnish Parliament, [Network of Finnish Women Members of Parliament](#); Interparliamentary Union, Forum of Women Parliamentarians and the [Bureau of Women Parliamentarians](#), Speakers' Reference Group on gender The Polish Parliamentary Group of Women, Chile, women's caucuses and groups in the Senate; in the UK All Party Parliamentary Group on Women in Parliament; [Parliamentary Gender Caucus](#) in Mauritius.

20. OECD, [Toolkit for Mainstreaming and Implementing Gender Equality](#) 2018; CPA Secretariat, [Women's organisations worldwide \(parliamentary/non-parliamentary\)](#), accessed 29 May 2020; UNDP, [Strengthening women's political participation](#), 2016

21. Palmieri, Gender sensitive Parliaments (n 14) p. 39ff; OECD (n 20),

22. IPU, 2008, Equality in Politics: A Survey of Women and Men in Parliaments, p. 61

A third - and more specific - form of scrutiny relates to the scrutiny of budgets from a gender perspective and is a rapidly evolving practice. For example, the Lower House of the Swedish parliament mainstreams gender concerns in the formulation and oversight of the national budget through the Committee on Finance and guidelines on gender-responsive budgeting. The Committee reviews the gender-specific breakdown of expenditures in all sectors and conducts gender-disaggregated data analysis of direct and indirect taxes on men and women. Parliamentary bodies also engage in a gender-disaggregated data analysis of the impact of user charges or fees (such as court fees) on women and men. In addition, financial audits of expenditures and compliance are assessed from a gender perspective. The gender budgeting findings are attached as an annex to the formal budget bill.²³

8. Scope of gender-sensitive scrutiny: laws, provisions or cumulative effects resulting from the implementation of related laws

The focus of post-legislative scrutiny can range from a single law, to specific provisions, to the cumulative effects of related laws, including implementing regulations.²⁴ What should be the focus when scrutinising legislation from a gender perspective? There is no a priori right or wrong answer to this question; a case by case approach is required. In post-legislative scrutiny, parliaments need to choose wisely²⁵ depending on the mandate of the committee exercising the scrutiny, the available time and resources and their most effective use, the potential for high quality of the scrutiny, the existence of data and other related reviews, and the timeliness or importance of a topic, among others. Often, the mandate of committees allows a broad margin of discretion in agenda setting, determining the focus and scope of scrutiny. This discretion can be used to select the approach that will maximise the impact of every scrutiny.

9. What questions should be asked when conducting gender-sensitive post-legislative scrutiny?

As mentioned before, gender is an element that permeates the entire lifecycle of legislation. This means that an essential function of gender-sensitive post-legislative scrutiny is to look back and revisit the questions asked in the initial gender analysis. If such an initial analysis is not conducted, then basic questions on the impact of legislation on sex and gender should be addressed. But what questions should be asked?

The Gender Equality Act 2020 of Victoria (Australia) identifies what a gender impact assessment is expected to do: assess the effects of a policy, programme or service on persons of different genders; state how the policy, programme or service will be developed or varied in order to meet the needs of persons of different genders, address gender inequality and promote gender equality; and take into account gender inequality compounded by disadvantage or discrimination on the basis of aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation. These concerns should be revisited during the post-legislative scrutiny of the law, including additional aspects highlighted by its implementation. Gender-sensitive criteria for evaluation essentially reflect the impact of legislation and policies on gender. According to the European Institute for Gender Equality,²⁶ [gender-sensitive evaluation criteria](#) include relevance, efficiency, effectiveness, impact and sustainability. Relevance examines the effective contribution to favourable conditions for gender equality; efficiency focuses on whether implementation has been efficient with respect to gender equality; effectiveness examines the results and the achievement on gender equality; impact examines outcomes and impact which enhance gender equality and women's rights; and sustainability examines the longevity of achievements in gender equality after the end of funding.

23. OECD (n 20)

24. Franklin De Vrieze, [Post-Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017

25. Ibid.

26. EIGE, Examples of gender-sensitive evaluation criteria, accessed 29 May 2020

Gender-sensitive evaluation criteria

European Union

Relevance

- Did the programme respond to the practical and strategic gender needs of women, and contribute to commitments on gender equality?
- Was the treatment of gender equality issues throughout the implementation phase logical and coherent? Were adjustments made to respond to external factors of the project or programme (for example, economic crisis, new government and so on) which influenced gender relationships?

Efficiency

- Are the means and resources being used efficiently to achieve results in terms of improved benefits for both women and men?
- Have the results for women and men been achieved at reasonable cost, and have costs and benefits been allocated and received equitably?

Effectiveness

- Have the results contributed to the achievement of the planned results and outcomes, and have benefits favoured male and/or female target groups?
- Did stakeholders (organisations, institutions, indirect target groups) benefit from the interventions in terms of institutional capacity-building in the area of gender mainstreaming and the development of gender competence among their staff?

Impact

- What has been the impact of the project's outcomes on wider policies, processes and programmes which enhance gender equality and women's rights?
- For example, did it have an impact on reducing violence against women? Did it contribute to a more balanced distribution of unpaid care labour and family responsibilities between women and men?

Sustainability

- To what extent has ownership of the policy goals been achieved by male and female beneficiaries?
- To what extent have strategic gender needs of women and men been addressed through the project, and has this resulted in sustainable improvement of women's rights and gender equality?
To what extent has capacity for gender mainstreaming through the project been built and institutionalised?

Source: EIGE, Gender evaluation, accessed 29 May 2020

In Canada, [gender-sensitive evaluation](#) examines: the relevance of the policy to equality, diversity and inclusion; design and delivery in terms of access and barriers to participation; effectiveness in the achievement of expected outcomes in relation to target groups and efficiency in terms of cost and inclusion.

Gender-sensitive evaluation criteria

Canada

Relevance

- Is the policy, program or service expected to contribute to promoting equality, diversity and inclusion?
- Does it meet the needs of its target population groups?
- Were the target population groups appropriately identified?
- Is the policy, program or service equally relevant to different target population groups?
- Are there population groups that should be targeted but have been omitted?
- Does the policy, program or service align with or contribute to the achievement of government-wide priorities on gender equality?
- Does it align with or duplicate the objectives of other policies, programs or services?
- Are there lessons learned from comparable policies, programs or services that include a GBA + approach at the provinces, territories, municipalities, or other countries that could be applied?

Design and delivery

- Does the policy, program or service provide equal access to diverse groups of individuals?
- Does the policy, program or service create or perpetuate barriers for certain target population groups?
- What kind of barriers (for example, limited access due to financial barriers) do those target population groups perceive?
- How could the policy, program or service be improved to foster inclusion of target population groups (for example, by enhancing said groups' feedback on or contribution to development of the policy, program or service)?
- Are there particular target population groups that are not being reached with this policy, program or service?

Effectiveness

- To what extent have underrepresented target population groups participated in the policy, program or service?
- To what extent, and in what ways, have expected outcomes had an impact on different target population groups?
- Have outcomes differed across diverse target population groups? What accounts for the differences?
- To what extent have any disparities in outcomes for different target population groups been addressed, if necessary?
- Does the policy, program or service address the needs of various target population groups equally?
- Have there been any unexpected or unintended impacts (positive or negative) on any target population groups? If so, how were they addressed, if at all?
- Is the policy, program or service taking steps that could be considered gender-transformative? For example: To what extent has the policy, program or service fostered changes that promote gender equality? How have managers of the policy, program or service and representatives of target population groups taken into account relevant gender considerations as a result of activities conducted in relation to the policy, program or service?
- Are results related to equality and diversity likely to be sustained?

Efficiency

- To what extent are effective and efficient means being used to ensure that target population groups are included when implementing this policy, program or service?
- What are the administrative costs of the policy, program, or service for each target population group?
- Can administrative efficiency be improved for specific target population groups?

Source: Integrating Gender-Based Analysis Plus into Evaluation: A Primer, 2019

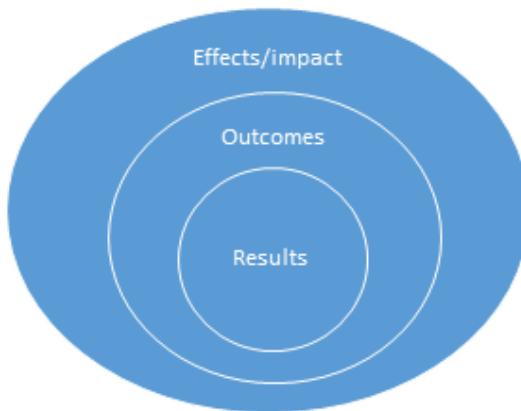
While post-legislative scrutiny questions might differ per jurisdiction, the important message is to identify and express their gender relevance- and ask the related questions.

10. What kind of data is needed for gender-sensitive post-legislative scrutiny and where can it be found?

Post-legislative scrutiny and gender analysis both rely heavily on data. The power of data is that it can reveal the results and impacts of legislation. If data is not in place, legislation remains a 'blind shot' as little is known about how it operates in real life and what changes are triggered. This is even more true with regard to impact of legislation on men and women, as many results might only be visible through big or micro data.

Legislation generates a matrix of results at micro (individual), meso (cumulative) and macro levels that range from individual compliance and solutions to problems, to broader legal and social change (direct results, outcomes and impacts or effects). All three types capture real altered situations achieved *through the law*.²⁷

Graph 3: The results of legislation



Source: M. Mousmouti, *Designing Effective Legislation*, 2019.

Results are a direct consequence of the implementation of the law (for example decisions, cases, permits, convictions and so on), outcomes are cumulative effects of direct results resulting in broader legal, behavioural or societal change and impact reflects the total effect of an Act on policy goals and behaviours. For example, the direct results of legislated quotas would be the exact number of women sitting on boards before and after the quotas, the number of company boards that have complied with this obligation and so on. The outcome of quotas would be an assessment of their contribution to a more equitable representation of both genders in the corporate world, while their impact would focus on their contribution to the advancement of gender equality in a specific context. **In principle, all data related to the results, outcomes and effects of the law is relevant for a gender-sensitive post-legislative scrutiny.** The type and nature of data required will differ depending on the law being scrutinised, but reliability and objectivity are the key concerns.

Data is always needed but it might be challenging to generate or procure. So the question is rephrased to what data is already available and what data can be generated for the purpose of the scrutiny. This includes both quantitative and qualitative data. Statistical data can demonstrate the broader picture and impact at a larger scale, while qualitative methods can delve into the barriers, and the personal experiences of the subjects of legislation. However, an important factor when it comes to data is availability. The systematic collection of data on results of the law is an emerging practice, and gaps remain in several areas.

27. Maria Mousmouti Designing Effective Legislation (Elgar 2019) p. 86.

Graph 4: Different types of data that can be used in post-legislative scrutiny



Statistical data. Statistics and sex-disaggregated data are very important to reveal the magnitude of an issue and the change achieved over time. The gender pay gap is an excellent example to prove this point. Although invisible or minimal within an individual company, the cumulative picture of the gap in pay between women and men is the only way to grasp the full extent of the issue and determine appropriate action. It is through cumulative data on the gender pay gap that it is possible to assess that in 2019 in the UK the [gender pay gap](#) among full-time employees stood at 8.9 per cent, that there was little change from 2018, and a decline of only 0.6 per cent since 2012; that the gender pay gap among all employees fell from 17.8 per cent in 2018 to 17.3 per cent in 2019, and is in decline, while for age groups under 40 years, the gender pay gap for full-time employees is now close to zero.

Administrative data. Many government departments and agencies collect administrative or programme data as part of their performance measurement responsibilities. This data is very useful to show the implementation of legislation where gender discrimination might often occur.

Quantitative data generated through surveys is also important to measure the prevalence of an issue. **Qualitative data** is useful to highlight the lived experience of the subjects of legislation and allow more in-depth investigations into the roots of potential problems. Qualitative data can be collected through interviews, focus groups, expert panel discussions and case studies, among others.

-What are primary and secondary data from a gender analysis point of view?

The data that is relevant for a gender-sensitive post-legislative scrutiny of legislation is that which can capture any real altered situation achieved through the law that has an impact on men and women. Primary data in this respect would include all data related to the implementation of the law, such as statistics, big data, implementation or administrative data, qualitative or quantitative data collected through surveys, interviews and so on. Secondary data would include any qualitative analysis, studies, reviews, research and so on.

-What are the quality indicators for collected data?

Data is rarely perfect. However, this is not a reason to give up on scrutiny and on the use of data in scrutiny. Features of 'good' data are validity and reliability. Validity refers to the factual accuracy of the data, the accuracy in capturing the meaning and interpretations of participants and the generalisability of the findings. Reliability is the degree of accuracy and comprehensiveness of coverage and is linked, again, to the scope and the method of the scrutiny.²⁸

28. Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (6th Edn Routledge) 2007 p 349

Data on gender and discrimination is often beset with methodological challenges. However, this does not mean that available data should not be used or that new data should not be generated. Practice shows that very interesting - and valid - results can be generated by being creative in analysing existing data from a gender perspective or joining up data sets. This means however that methodological challenges should be clearly identified and that the data should always be carefully used and interpreted. Data scientists, statisticians, research staff in parliaments but also gender experts can provide valuable help in making the best possible use of available data and analysis.

-Can the law foresee mechanisms to collect gender-disaggregated data?

Sometimes legislation itself includes provisions that impose data collection or reporting duties. These can take the form of obligations on state or private bodies to report, publish or collect data.

Gender pay is an area where such obligations - and mechanisms - are quite common. The [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) (UK) imposes a duty on all employers of 250 or more employees to publish their gender pay gap for workers. They have a duty to report (a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees; (b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees; (c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees; (d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees; (e) the proportions of male and female relevant employees who were paid bonus pay; and (f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands. Aggregate [gender pay gap data](#) is then made publicly accessible allowing all interested parties to browse, compare and use it.

The French [Law 2006-340 on pay equality](#) defined a specific mechanism to evaluate progress on its goals: annual appraisals of negotiations on pay differences by the national commission for collective negotiation, a medium term evaluation of the application of the law by the Supreme Council of professional equality, an appraisal from a national conference on the basis of this report and an evaluation report six years after the promulgation of the law. Based on the mid-term evaluation, the Government could impose, if necessary, salary-based contributions for non-compliant enterprises. [Décret n° 2006-1501 du 29 novembre 2006 relatif aux outils méthodologiques de suivi de l'application de la loi du 23 mars 2006 relative à l'égalité salariale entre les femmes et les hommes](#) established specific methodological tools for the follow-up of the application of the law, including a review of negotiations and related agreements, a scoreboard based on information provided by the enterprises, indicators on the workforce; total annual earnings reported to social security, gross salaries, bonuses and benefits in kind; average number of hours of different types of training; promotions and recruitments by type of contract.

In relation to monitoring on equality issues in a broader sense, the Equality Act 2006 (UK) imposed a statutory duty on the Equality and Human Rights Commission to monitor social outcomes from an equality and human rights perspective, by developing indicators and reporting on progress. This led to a specialised [measurement framework](#) for the monitoring and evaluation of progress towards protecting and promoting equality and human rights in a systematic way across England, Scotland and Wales. Using this framework, the Equality and Human Rights Commission reported to Parliament in [2010](#), [2015](#) and [2018](#) on progress towards a society at ease with its diversity, where every individual has the opportunity to achieve their potential and where people treat each other with dignity and respect. Subsequent reports compare latest results with data from previous years, in order to monitor change over time.

-Which institutions or individuals should be targeted for gender-sensitive data?

Several institutions have gender-sensitive or gender-relevant data that can be useful in a scrutiny. This would essentially include governmental institutions responsible for official statistics, implementing agencies for administrative data, independent agencies and equality bodies for monitoring or reporting data, research institutes and think tanks, and NGOs that can often provide micro data that is useful in case studies. Parliamentary committees can also generate data through expert meetings, citizen juries or other similar initiatives.

-Data collection tools

Depending on the scrutiny conducted, different data collection tools will be used. This depends on the type of information that needs to be collected but also on the available time and resources. Quantitative methods can include surveys, while qualitative methods include structured or semi-structured interviews, focus groups, observations, field visits and so on.

Taking a look at parliamentary practice, the data collection methods most commonly used include calls for evidence, the organisation of hearings, inspections and visits, conducting surveys or bringing together expert groups. For example, the [Gender Equality Committee](#) (GEC) in Denmark conducts its mission of scrutinising gender issues through public and closed hearings, parliamentary questions, study trips, meetings with civil society, and an open dialogue with civil society organisations through MPs and committees. The Committee does not only address issues with a 'gender equality tag', but also issues which appear gender-neutral but have a greater impact on either women or men.

It is important to note that data collection tools need to be accessible and user-friendly to attract responses from those addressed. For example, it cannot be expected to get evidence from women members of minorities without publicising the call for evidence in their language or making interpretation facilities available. The House of Lords in its scrutiny on '[The Equality Act 2010: the impact on disabled people](#)' adjusted its working methods to enable the involvement and contribution of the most relevant informants. It issued a Call for Evidence in standard and EasyRead format and then in British Sign Language (BSL); it accepted evidence in BSL with audio transcription or subtitles. As a result, the Committee received 144 responses, heard oral evidence, received supplementary written evidence, took evidence from witnesses with physical disabilities, mental health problems, learning difficulties and visual impairments and officials of the British Deaf Association in BSL. In addition, Committee members visited the offices of an organisation run by and for people with disabilities people and spoke directly with a wide range of people with disabilities.

Mixed research methods combine quantitative and qualitative methods. Their advantage is that they offer a more comprehensive picture of the issue at hand and allow the verification of information coming from different sources and limit biases. Triangulation involves drawing conclusions from various data sources; the variety of sources strengthens the rigour of the analysis.

11. Which stakeholders should be engaged?

A stakeholder is any person, group or institution with an interest in a topic. **The engagement of stakeholders can generate qualitative data useful for scrutiny but also adds to the credibility** of the scrutiny as a process. The golden rule for selecting the stakeholders to be engaged in post-legislative scrutiny is to define who may be affected directly or indirectly by a law. This general rule would include a large number of actors like citizens, businesses, professional associations, business organisations, non-governmental organisations, consultancy, research and academia, organisations representing regional, local and municipal authorities, national and international public authorities, among others.

[The Six Tests for Stakeholder Identification](#)

- 1) Those directly impacted
- 2) Those indirectly impacted
- 3) Those potentially impacted
- 4) Those whose help is needed to make it work
- 5) Those who think they know about the subject
- 6) Those who will show an interest in the subject.

Narrowing this down for the purpose of a gender-sensitive post-legislative scrutiny, related stakeholders would include state authorities with a mandate on gender equality, women's associations, local women's rights organisations, relevant community groups, specialised departments or units dealing with gender issues, specialised research institutions, academics and gender equality bodies within professional bodies and associations. This list will differ depending on the type of law being scrutinised but also on the time and resources available. For example, the Committee on Gender Equality in the Danish Parliament, when arranging public or internal hearings, invites stakeholders who are both independent experts - researchers and field workers and government representatives, and the responsible minister(s). The involvement of stakeholders can take different forms ranging from sharing views, experience and expertise, participation in the development of scrutiny questions and review of data collection instruments, actual data collection, validation and dissemination of the scrutiny results.

12. Analysing the functioning of implementing agencies from a gender perspective

It is not only policies and legislation that have a gender. Institutions do too. The structure, hierarchy and resources of institutions, the composition of their decision-making bodies, the balanced representation of both genders in top management and other positions all determine an institutions' gender-friendly or gender-blind approach. The administrative mechanism that will implement the law is not an indifferent matter from a gender perspective. An important role of implementing institutions lies in adopting regulations to specify legislative provisions, in collecting data, in resolving disputes. It is not rare that while a law is not in itself discriminatory, criteria with such effect might creep into implementing regulations or decisions. Unless institutions are gender-sensitive their decisions might reproduce gender bias whether in the field of employment, school education or many other areas. Implementing agencies and their gender sensitivity are important issues to be picked up during post-legislative scrutiny²⁹.

A post-legislative scrutiny can investigate whether the implementing model has worked and why / why not; and to what extent the organisation of an administrative agency encourages officials to behave in a manner that defies transparency, accountability, and stakeholder participation. From a gender perspective the relevant questions are whether the implementing agency is subject to biases that might endanger its independent implementation of the law.³⁰

Checklist for assessing implementing agencies

Important elements for this analysis involve the gender sensitivity of the institution in terms of:

- I. A gender mainstreaming approach in the function of the implementing agency
- II. Gender balance in human resources
- III. Inclusivity of inputs
- IV. Gender-sensitive monitoring and feedback
- V. Gender-sensitive decision making processes and appeals

Source: WFD, *Manual for Parliaments, Checklist for assessing implementing agencies*

29. Franklin De Vrieze, [Post-Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017, p. 25.

30. Ibid.

13. How to draft gender-relevant findings for the post-legislative scrutiny report

Post-legislative scrutiny is not an end in itself. It is an important step in the life cycle of legislation that can shed light on the results and impacts, and the achievements and failures, of legislation. Gender analysis can enrich post-legislative scrutiny with a gender lens, ultimately contributing to gender-sensitive and effective legislation that promotes gender equality. **Ideally, every post-legislative scrutiny should explore how the law has affected men, women and non - binary people and should report gender-related findings.**

Gender-relevant findings

To be reported in post-legislative scrutiny:

- a) Gender-relevant issues; for example distinct impact on women, men and non-binary people
- b) Links to the concerns identified in the ex-ante phase
- c) Gender-relevant findings emerging from the collected data and available evidence or implementation
- d) Good and bad practice
- e) Recommendations for improvement, areas requiring action, impact (positive or negative) on diverse target population groups and broader learning points.

Findings should be shared with target groups and stakeholders.

14. Challenges in conducting gender-sensitive post-legislative scrutiny and how these can be managed

Gender mainstreaming is not an easy task. Several factors might militate against it: resistance to change and culture, entrenched stereotypes, limited awareness or capacity on the importance or relevance of gender issues, the nature of politics, and attitudes of both women and men.³¹ Some common challenges are identified below together with some ideas on how to mitigate or address them.

Culture and mindset. The painful reality is that, despite progress, our world remains increasingly unequal and gendered. There is still much to be desired with regard to gender equality in general and within parliaments, governments and other institutions. Further, there is a noted gap between the political will to talk about gender equality and the intention to actively seek to attain it.³² A male-dominated culture and gender biases remain deeply entrenched in decision making institutions and practices and parliaments are no exception. At the same time, lack of awareness of gender bias often makes it invisible and hence very difficult to address and eliminate. Culture and mindset can be changed by putting gender issues on the political agenda, raising awareness in a consistent manner and investing in identifying and understanding bias and how this influences policies and legislation. Women's committees, cultural transformation committees or any other bodies in parliaments with a related mandate have an important role to play in this respect.

Data disaggregated by sex and gender. The collection of robust sex-disaggregated data to inform and support evidence-based policy making poses a significant challenge. The integration of a gender focus in data collection, disaggregation, analysis and publication of all demographic, social and economic statistics is a broader goal that often cannot be achieved in the short term. While sex-disaggregated statistics are available on topics like mortality, labour force participation, education and training, this is much less true for sectors like informal employment, entrepreneurship, unpaid work, or gender-based violence. In recognition of this challenge and the critical importance of data to track progress, the Sustainable Development Goals framework includes requirements for the collection and dissemination of sex-disaggregated data. What parliaments can do is to think early on about data, introduce relevant requirements, monitoring indicators and data collection mechanisms to ensure that it will be made available during the implementation of the law.

31. Anthony Onwumah, Tayo George, Olawale Olonade and Christiana Adetunde, Factors militating against gender mainstreaming in Nigeria, (2019) 17:4 Gender & Behaviour; see also <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>

32. Franklin De Vrieze and Victoria Hasson, POST-LEGISLATIVE SCRUTINY Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy, 2017

Capacity and resources. Parliaments and parliamentarians often have limited staff, research capacity and resources to put gender analysis and gender impact assessment into practice. It is important to equip parliamentary bodies with sufficient resources such as people, budgets, access to experts and expertise that can help integrate gender analysis into everyday legislative work. However, gender analysis and other gender mainstreaming tools entail a way of thinking that can be used with or without resources. Using creatively the resources and data that are available, taking advantage of knowledge and expertise and integrating gender concerns into legislative decision making is a very promising start.

15. How to use the results of gender-sensitive post-legislative scrutiny

Post-legislative scrutiny is not an end in itself; instead, it is the beginning of a dialogue on change achieved through law, improvements, achievements and failures. **Gender-sensitive post-legislative scrutiny is at the same time informative and transformative.** It is informative because it can highlight gender-related issues in an evidence-based way, give them a place in the political agenda and create awareness around them. It is also transformative because it can influence social relations, inform future work and thinking around legislation and its impact on gender.

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