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United Nations Entity for Gender Equality
and the Empowerment of Women



Gender-responsive law-making

Handbook for Parliamentarians No. 33

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Parliamentary staff:

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Glossary

Amendment	The process or act of passing legislation to change the text of an existing law.
Bill	A draft law that has been finalized for consideration by parliament.
Cabinet	Constituted by the most senior ministers of government, sitting together as a collective decision-making body.
Chamber	A generic term used to refer to the members of parliament when they are officially sitting together. Different terms such as “House of Representatives”, “House of the People”, “Senate”, “Lower House” or “Upper House” are used in different parts of the world.
Discriminatory legislation	Laws that operate to give men and women unequal status, rights and privileges in law and in practice.
Enactment	The process or act of passing legislation.
Gender equality	A term that refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women’s issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development. ¹
Government (executive)	Terms used to refer to the group of officials responsible for managing the day-to-day operations of a government. This group includes the head of state, head of government, ministers and the bureaucracy.
Law (legislation)	Terms used interchangeably to refer to a final bill that has been approved by the legislative and executive and that has entered into force.
Parliament	Term used as a generic reference to the legislative. Different terms such as “Congress”, “National Assembly” or local traditional names are used in different parts of the world.

¹ UN Women, “Concepts and definitions”. Available at www.un.org/womenwatch/osagi/conceptsanddefinitions.htm (accessed on 30 July 2021).

Parliamentarian	Term used as a generic reference to members of the legislative. Different terms such as “Member of Parliament”, “Congressperson”, “Senator”, “Representative” and “Assemblyperson” are used in different parts of the world.
Repeal	The process or act of passing legislation to remove a provision or law from operation.
Rules of procedure (standing orders)	The rules that govern how parliament operates and what processes apply to the conduct of its business.
Strategic needs of women and girls	These are services and/or opportunities which produce transformational impacts on women and girls. Examples include access to education at all levels, employment opportunities and access to social security.

Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COD	Chamber of Deputies (Chile)
CRC	Convention on the Rights of the Child
CSO	Civil society organization
CWP	Commonwealth Women Parliamentarians (group, New Zealand)
DWF	Department for Women and Families (Thailand)
EVAW	Elimination of violence against women
FGM	Female genital mutilation
GBV	Gender-based violence
GDP	Gross domestic product
GIP	Gender impact assessment
GSP	Gender-sensitive parliament
HRC	United Nations Human Rights Council
IPU	Inter-Parliamentary Union
MP	Member of parliament
NAP	National Action Plan
NCHR	National Centre for Human Rights (Uzbekistan)
NGO	Non-governmental organization
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PMB	Private members' bill
RIA	Regulatory impact assessment
RRRT	Regional Rights and Resources Team (Pacific)
SGBV	Sexual and gender-based violence
SDGs	Sustainable Development Goals
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review
WGE	Women and Gender Equity (Committee, Chile)
TWPG	Tanzania Women's Parliamentary Group

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Foreword

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) laid out a blueprint for women's rights, including commitments to embody the principle of equality between men and women in law and in practice. In the years since, the 1995 Beijing Declaration and Platform for Action and the 2030 Agenda for Sustainable Development have built on these commitments and reinforced the global drive to achieve gender equality and the empowerment of women.

Despite this progress, many countries around the world still have laws that actively discriminate against women. This is because laws have traditionally been made by men, without consideration of the voices, perspectives and priorities of women and girls in their design and implementation. At the same time there remain gaps in the law that could be filled by reforms that actively promote equal rights for all.

The COVID-19 pandemic has created a multidimensional global emergency. In the weeks and months since the virus began spreading rapidly around the world it became clear that its repercussions were many and varied, and that they extended beyond the threats to life and health.

Fragile progress on gender equality, including efforts to reverse discriminatory laws, enact new laws and implement existing legislation, along with broader initiatives to achieve justice for all, are under serious threat. At the same time, the pandemic has seen a recognition by policymakers around the world that implementing fundamental, transformative reform is possible if combined with serious political will and public support.

Against this backdrop, UN Women and the IPU are pleased to issue this publication, which we encourage parliamentarians everywhere to use, especially as countries design and implement their COVID-19 recovery plans and work to rebuild more equitable and inclusive societies. We hope that it will serve as a guide for revising and reforming existing laws and enacting new legislation in ways that ensure the rights of women and girls are meaningfully protected, promoted, resourced and implemented.

The world has less than a decade left to assess its performance in achieving the Sustainable Development Goals. Our organizations stand ready to support parliaments and their members to enact progressive laws and to completely reverse discrimination in law as part of the wider agenda for achieving gender equality. The priority theme of the sixty-fifth session of the Commission on the Status of Women, *Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls*, presented an opportunity to take stock of such efforts and ensure that the law truly and meaningfully works for women and girls.



Martin Chungong
Secretary General
Inter-Parliamentary Union



Sima Bahous
Executive Director
UN Women

Executive summary

Purpose, scope and methodology

Equality in law is crucial to gender equality, as women and girls look to the laws of their State to protect, fulfil and enforce their rights. Laws that discriminate and deny them equal rights with men and boys betray their trust in society and signal that gender discrimination is acceptable, normal and expected. Women and girls left behind by discriminatory laws are often permanently excluded from the benefits of development. Conversely, the implementation of good laws that conform to the human rights principles of equality and non-discrimination can help sustain efforts to move towards just, peaceful and inclusive societies; environmental and climate justice; equal participation in decision-making at all levels; universal access to essential public services; and economic prosperity for all. All aspects of the law – constitutional, civil, criminal, labour and administrative – that discriminate against women and girls need urgent attention. Repeal or revision of discriminatory laws is imperative, along with the work to enact and put into action laws that enhance existing legal protections and ensure backing by adequate resources. A law that is not being implemented is equally not working for those who need it the most.

This Handbook therefore aims to serve as a resource for lawmakers from around the world for designing gender-responsive laws. Such law-making should address the strategic needs of women and girls and must encompass the enactment of new laws, amending or repealing laws which are outdated, are inconsistent with constitutions, or discriminate against them. The Handbook was prepared in close consultation with parliamentarians from across different legal systems of the world, combined with a desk review of relevant literature.

The role of parliaments

Law-making, oversight, and representation and outreach are the core business of parliamentarians everywhere, albeit to differing degrees. Gender-responsive laws address the strategic needs of women and girls. Parliamentarians have a critical role to play in advocating, initiating, drafting, debating and enacting law reforms to strengthen the rights of women and girls. As representatives of their communities, parliamentarians are in a rare position as intermediaries between the people and the laws, institutions and systems of government that affect their daily lives. Parliamentarians can hear directly from their constituents and use information gathered to shape their law-making priorities and agendas, including progressive gender-responsive law reforms that promote the principles of non-discrimination and equality before the law. As countries “build back better” in a post-COVID-19 world, parliamentarians will be called upon to support national responses through appropriate laws, policies and budgetary appropriations. It would be imperative to ensure that this opportunity is harnessed for the effective realization of the rights of women and girls as an integral part of all national recovery processes.

A step-by-step approach to enacting gender-responsive laws

Accountability of all parliamentarians

Experience from around the world shows that reforms are most successful when male and female parliamentarians from across the political spectrum work together to ensure their enactment and implementation. Therefore, ensuring that men and women have equal rights in law and in practice is the duty of all members of parliament, not just women parliamentarians.

Stakeholders in law reform

Within the legislative, there are many stakeholders whose assistance and support will be important to ensuring that effective gender-responsive law reforms are enacted:

- The Speaker or presiding officer of parliament (or the head of the upper house, if applicable) often play an important role in deciding which bills are given priority for debate on the legislative agenda, and how debate on bills and amendments to such bills are managed.
- The business committee of the chamber (where one exists) also has a key role in determining which bills are placed on the legislative agenda. Members of this committee should be engaged early on to discuss and understand the proposed law reform, especially if the bill is being initiated by an ordinary parliamentarian as opposed to a government minister.
- The office within parliament responsible for providing legal advice and analysis (commonly referred to as the parliamentary counsel, legislative office or legal adviser) and parliamentary staff more generally also have an important role to play in supporting parliamentarians in their law reform efforts. In some instances, parliamentary counsel may be asked to draft a gender-responsive law reform bill.
- Members of parliamentary committees can play a key role in analysing and debating a bill into more detail. Members of relevant committees may draw on advice from parliamentary staff, government ministries, as well as expertise from women's rights non-governmental organizations, academics and/or other professionals.
- Data from the IPU shows that 93 parliaments around the world have established some form of formal or informal women's caucus.² Women's caucuses can be important vehicles for driving forward gender-responsive law reforms and building support for such reforms across the broader cohort of parliamentarians.

² Inter-Parliamentary Union, PARLINE database: comparative data on specialized bodies on gender equality, for lower chambers and unicameral parliaments: https://data.ipu.org/compare?field=chamber%3A%3Aspecialized_body_women&structure=any_lower_chamber#map and for upper chambers: https://data.ipu.org/compare?field=chamber%3A%3Aspecialized_body_women&structure=any_upper_chamber#map, (both accessed on 25 September 2020).

- Individual parliamentarians remain the critical factor in all reforms since their votes determine whether reforms will be enacted. In many parliaments, such votes are guided by political party decisions: parliamentarians vote as a bloc according to whether their party supports the reform. In such contexts, it will also be important to engage with political party leaders inside and outside of parliament.

Alongside parliament, the executive also plays an important supporting role in law reform efforts. In such contexts, the role of government ministers and their departments are critical. In particular, the following bodies of the executive are noteworthy:

- The ministry of women or national gender machinery is normally the formal government structure tasked with promoting gender equality and/or improving the status and rights of women. Ideally, this structure will house expertise on gender equality and women's rights issues and possess strong networks that can be drawn on to inform law reforms.
- The ministry of justice and/or attorney general's office plays a key role in all law reform activities. Usually, this ministry or office will be responsible for managing the government's legislative agenda, including deciding which laws will be prioritized for enactment, amendment or repeal on the legislative calendar.
- Some countries have created a specific ministry for parliamentary affairs, which acts as an official liaison between parliament and other ministries.
- The Office of the President or Prime Minister is usually responsible for working with the ministry of justice or the attorney general's office to agree on the annual legislative calendar, since law reforms form a key part of government business.
- The Cabinet is normally involved in discussing and signing off key law reforms.
- Civil society organizations can also play an important role in law-reform efforts. Here, the term is used broadly to include not only women's rights and human rights organizations, but also community groups, unions, religious groups, academics, professional associations, the media and members of the public.

Promoting public participation in law-making

Before adoption, every law with a far-reaching impact should be subject to broad consultations with all potentially affected groups. These consultations should take place at every stage of the legislative process – not just when there is already a fully drafted legislative text. The media can be a key partner in efforts to change mindsets and build support for gender-sensitive law reforms.

Identifying which laws need to be amended or enacted

Before embarking on any process of law reform to promote gender equality and tackle discrimination in law, it is first necessary to assess the existing state of the law in order to more systematically identify priority areas for law reform. Emerging good practice suggests that it is both more effective and more efficient to start a gender-responsive law reform process with a more comprehensive “legal assessment”. This could be commissioned by parliament itself or other bodies such as law reform commissions and national women’s machineries.

Drafting legislation

Once the executive and/or parliamentarians have decided to engage in some form of gender-responsive law reform, the next step is to determine which reforms are to be progressed and according to what timeline. A comprehensive legal assessment could inform such an analysis. Alternatively, governments and parliamentarians may simply choose to prioritize certain reforms based on their own agenda. Once a decision has been reached on which reforms are to be progressed, drafting work will need to begin.

Enacting legislation

Once the drafting of a bill is finalized, it will need to be formally submitted to parliament for review, debate, and approval or rejection. The detail of this process will differ in each country, depending on the type of political system and whether parliament has one or two houses. However, there are many common processes across countries.

Budgeting for gender-responsive laws

In addition to enacting law reform, one of parliament’s key functions is to scrutinize the implementation of the government’s gender-equality agenda. This includes reviewing expenditures to assess whether they achieved their intended gender-equality outcomes and ensuring that the budget properly supports gender-equality priorities.

Overseeing implementation of laws

Once parliament has passed bills to repeal or amend discriminatory laws and/or enact gender-responsive legislation, there are still procedural steps to be taken to ensure that bills become law and are implemented accordingly. In many countries, the executive (the President, monarch, governor or some other head of state) will need to officially approve bills before they become law.

Introduction

Purpose of the Handbook

This Handbook has been developed to assist women and men parliamentarians around the world to reflect on the importance of repealing existing discriminatory laws and identify practical approaches to enacting more-effective and equal legal protections for women and men. While gender-sensitive legal reforms have often been driven by women in parliament through cross-party and multi-stakeholder alliances, many male parliamentarians have been strong allies, using their positions on parliamentary committees, as party leaders or as ministers to drive such reforms forward. The Handbook recognizes the urgent role that all parliamentarians must play in promoting gender-responsive laws, and is intended to be of use to all Members who wish to take action in this critical area of law reform.

Defining gender-responsive law-making

Gender-responsive law-making starts with amending or repealing laws that discriminate on the basis of sex, either explicitly or implicitly. It also implies enacting laws that affirm the gender-equality principle and guarantee gender equality in practice. This includes ensuring the protection of women and girls from discrimination, as well as from any form of violence or abuse that affects them disproportionately.



Men and women MPs alike must stand for gender-equality legislation. © Adam Berry/Getty Images via AFP

A gender-responsive law-making process starts with careful consideration of the specific needs, perspectives and experiences of women and girls. The process must therefore be consultative and inclusive, and informed by the differential impact of the law on women and girls, men and boys.

For it to be effective, gender-responsive law-making must include measures to secure and monitor implementation of legislation, including the allocation of adequate resources and gender-responsive budgeting.

The broader context

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) laid out a blueprint for women's rights, including commitments to embody the principle of equality between men and women in law and in practice. In 1995, the Beijing Declaration and Platform for Action was adopted at the Fourth World Conference on Women³ and subsequently endorsed by the United Nations General Assembly. Law reform was identified as a cross-cutting priority underpinning progress across all 12 critical areas of concern identified in the Platform for Action.

In 2020, the Platform for Action was reviewed to mark the 25th anniversary of its endorsement, resulting in the "Political declaration on the occasion of the 25th anniversary of the Fourth World Conference on Women" in the context of the Commission on the Status of Women. The declaration includes a specific commitment by Member States to "Eliminating all discriminatory laws and ensuring that laws, policies and programmes benefit all women and girls and that they are fully and effectively implemented and systematically evaluated to ensure their effectiveness and that they do not create and reinforce inequalities and marginalization."⁴

The 2030 Agenda for Sustainable Development recognizes the importance of promoting gender equality and women's empowerment as a key driver of a more equitable, prosperous and inclusive world. Sustainable Development Goal (SDG) Indicator 5.1.1, measures 'Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex'. It determines government efforts to put in place legal frameworks that promote, enforce and monitor gender equality, including repeal or reform of discriminatory laws.⁵

Progress in enacting gender-responsive laws and removing discriminatory provisions has so far been uneven. Moreover, initial research suggests that COVID-19 policy and legal responses have been at best gender-blind and have commonly hit women harder than men. As countries grapple with reform in the context of COVID-19 and beyond, more needs to be done to ensure that domestic legislative frameworks address the legal needs of women and men and girls and boys. The 25-year review of the Beijing Declaration and Platform for Action reveals that progress in legal reforms around the world provides

3 United Nations, Beijing Declaration and Platform for Action: The Fourth World Conference on Women, Beijing, 15 September 1995. Available at www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf (accessed on 30 September 2021).

4 United Nations, "Political declaration on the occasion of the twenty-fifth anniversary of the Fourth World Conference on Women (E/CN.6/2020/L.1, Commission on the Status of Women", 64th session, New York, 2 March 2020) at para 12(a). Available at <https://undocs.org/pdf?symbol=en/E/CN.6/2020/L.1> (accessed on 30 September 2021).

5 The methodology for data collection in SDG indicator 5.1.1 has been designed by UN Women, the World Bank Group and the OECD Development Centre.

a strong foundation upon which to build: 191 constitutions now contain provisions on equality and non-discrimination and 24 include stand-alone provisions on women's rights. Between 2008 and 2017, 274 legal reforms on gender equality had been introduced in 131 countries.⁶ However, many countries around the world still have laws that actively discriminate against women and girls and/or have gaps or anomalies in the law that affect their ability to enjoy their rights fully and meaningfully and to live safe, peaceful and prosperous lives.

This situation brings the constitutional responsibility of parliamentarians for and in law-making into sharp focus. This duty empowers them to make a transformational difference in the lives of women and girls by using their mandate to enact gender-responsive legislative frameworks, which operate effectively to enable all members of society to enjoy equal rights in law and in practice. They also have a duty to exercise oversight in policy action and budgetary allocations with a view to ensuring that such laws translate into gender equality in all sectors.

Data from 2016 shows that, at current levels, discrimination against women is estimated to cost the global economy up to US\$ 12 trillion (or 16 per cent of global income).⁷ If women participated in the economy in the same way as men, with equal wages and labour-force participation, global annual gross domestic product (GDP) could be boosted by up to US\$ 28 trillion by 2025.⁸

For these reasons, parliamentarians must guarantee equal protection of the law through domestic legislation. This is especially critical in the aftermath of the COVID-19 pandemic, as governments and parliaments design and deliver legal and policy responses that aim to “build back better” in an equitable manner.

Parliamentarians have already made commitments to gender equality and gender-responsive law-making

In 2010, the IPU commissioned research, in support of its member parliaments, into whether and how they were implementing gender-sensitive approaches. A “gender-sensitive parliament”, for the purpose of this work, was defined as “one whose structures, operations, methods and work respond to the needs and interests of men and women,” and in which “both men and women have an equal right to participate in its structures and processes, without discrimination and without recrimination.”⁹

In 2011, the IPU published “Gender-sensitive parliaments: A global review of good practice” following extensive consultations with Members.¹⁰ This research was subsequently used

6 United Nations Commission on the Status of Women, “Review and Appraisal of the Implementation of the Beijing Declaration and Platform for Action and the Outcomes of the Twenty-Third Special Session of the General Assembly: Report of the Secretary-General”, at p.12. Available at <https://undocs.org/en/E/CN.6/2020/3> (accessed on 30 September 2021).

7 Gaëlle Ferrant and Alexandre Kolev, *The economic cost of gender-based discrimination in social institutions* (Paris, OECD, 2016), at p. 2. Available at: www.oecd.org/dev/development-gender/SIGI_cost_final.pdf (accessed on 30 September 2021).

8 McKinsey, “How advancing women’s equality can add \$12 trillion to global growth”. Available at www.mckinsey.com/featured-insights/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth (accessed on 30 September 2021).

9 Inter-Parliamentary Union, “Gender-sensitive parliaments: a global review of good practice” (Geneva, Inter-Parliamentary Union, 2011). Available at www.ipu.org/resources/publications/reports/2016-07/gender-sensitive-parliaments (accessed on 30 September 2021).

10 Inter-Parliamentary Union, n. 9.

to develop the *IPU's Plan of Action for Gender-sensitive Parliaments*,¹¹ which was adopted unanimously by the 127th IPU Assembly in Quebec City in 2012.

Implementation of the Plan of Action is supported by "Evaluating the gender sensitivity of parliaments: A self-assessment toolkit",¹² which has been developed to help parliaments reflect on the current operation and objectives of the institution, to identify both strengths and weaknesses, and to discuss and agree on priority areas for action. The Plan of Action identifies seven action areas, including "Action area 2: Strengthen gender equality legislation and policy". This action area recognizes that "Parliaments can become more gender-sensitive by implementing legislation and policies that support the principles of gender equality. The introduction of gender equality and gender mainstreaming legislation can be an effective catalyst for social and cultural change in attitudes towards gender equality."¹³



Global parliamentary gatherings have led to reaffirmed commitments to gender-responsive law-making.
© IPU/Qatar Parliament

In support of the Plan of Action, IPU Members have endorsed a number of specific declarations and documents setting out the actions that need to be taken to ensure gender equality in practice. In 2012, 128 Members adopted the landmark resolution on *Access to health as a basic right: The role of parliaments in addressing key challenges to securing the health of women and children*.¹⁴ In 2013, the IPU issued a handbook on providing guidance to parliamentarians on their role in addressing key challenges to securing the health of women (and children), including in relation to law reform.¹⁵

- 11 Inter-Parliamentary Union, "Plan of Action for Gender-sensitive Parliaments" (Geneva, Inter-Parliamentary Union, 2012). Available at www.ipu.org/resources/publications/reference/2016-07/plan-action-gender-sensitive-parliaments (accessed on 30 September 2021).
- 12 Inter-Parliamentary Union, "Evaluating the gender sensitivity of parliaments: A self-assessment toolkit" (Geneva, Inter-Parliamentary Union, 2016). Available at www.ipu.org/resources/publications/handbooks/2016-11/evaluating-gender-sensitivity-parliaments-self-assessment-toolkit (accessed on 30 September 2021); See also: European Institute for Gender Equality, "Gender-sensitive parliaments: Self-assessment toolkit". Available at <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-sensitive-parliaments> (accessed on 30 September 2021).
- 13 Inter-Parliamentary Union, n 11 at p. 10.
- 14 Inter-Parliamentary Union, Resolution on *Access to health as a basic right: The role of parliaments in addressing key challenges to securing the health of women and children* (Kampala, Inter-Parliamentary Union, 2012). Available at <http://archive.ipu.org/conf-e/126/Res-3.htm> (accessed on 30 September 2021).
- 15 Inter-Parliamentary Union, "The IPU Resolution on Women's and Children's Health: An Initial Framework for Accountability Reporting" (Geneva, Inter-Parliamentary Union, 2013). Available at <http://archive.ipu.org/pdf/publications/mnch-account-e.pdf> (accessed on 30 September 2021).

In 2014, the 131st IPU Assembly endorsed the “Outcome Document of the General Debate on the theme *Achieving gender equality, ending violence against women*, which included the following commitment:

“We need comprehensive legislation that criminalizes all forms of violence against women and includes provisions on prevention, protection and support for the survivors and prosecution and punishment of the perpetrators. It must also take into account and meet the needs of different groups of women, especially the most vulnerable, including girls, migrant women and refugee women.

...

Putting laws into practice remains the key challenge. Appropriate mechanisms must be envisaged in domestic law and budgets must be scrutinized to ensure that adequate financial and human resources are allocated to the effective implementation of legislation.”¹⁶

In 2015, the IPU facilitated the “Fourth World Conference of Speakers of Parliament”, which brought together presiding officers of parliaments from across the world in advance of the United Nations Sustainable Development Summit in September 2015, at which the Sustainable Development Goals (SDGs) were endorsed.¹⁷ The Conference Declaration committed Speakers and their parliaments to supporting a number of development priorities, including gender equality:¹⁸

“Millions of women and girls in every region of the world are subjected to all forms of violence, including physical, sexual and domestic violence, every day. We call on all countries to prioritize the elimination of all forms of gender-based violence now. There is an equally urgent need to put an end to widespread hatred and discrimination in all forms.

...

We call for greater efforts to end all forms of discrimination against women and girls with a view to achieving their empowerment and making gender equality a reality. Development of our societies and economies hinges on the enjoyment, by women and men, girls and boys, of full and equal rights, responsibilities and opportunities. We must rededicate ourselves to the full realization of gender equality and the empowerment of women and girls by 2030.”

In 2019, the 141st IPU Assembly recognized the need for “Redoubling our efforts to achieve gender equality and the political empowerment of women, in keeping with the provisions of the Beijing Platform for Action and Security Council resolution 1325 and taking urgent action for the full implementation of the Convention on the Elimination of All

16 Inter-Parliamentary Union, “Outcome Document of the General Debate on the theme *Achieving gender equality, ending violence against women*, Endorsed by the 131st IPU Assembly (Geneva, 16 October 2014)”. Available at <http://archive.ipu.org/conf-e/131/rpt-gendebate.htm> (accessed on 30 September 2021).

17 Inter-Parliamentary Union, “Fourth World Conference of Speakers of Parliament”. Available at <http://archive.ipu.org/splz-e/speakers15.htm> (accessed on 30 September 2021).

18 Inter-Parliamentary Union, “Declaration: Placing democracy at the service of peace and sustainable development: Building the world the people want” (2015). Available at <http://archive.ipu.org/splz-e/speakers15/declaration.pdf> (accessed on 30 September 2021).

Forms of Discrimination against Women – starting from within our own parliaments.”¹⁹ Similarly, in 2020, the 13th Summit of Women Speakers of Parliament called for accelerating change in this area by amending, repealing and eliminating laws that discriminate against women and girls, by passing legislation that contributes to advancing gender equality, and by overseeing the effective implementation of gender-responsive legislation. This item was subsequently included on the agenda of the Fifth World Conference of Speakers of Parliament in the same year.²⁰

Box 1: Plan of Action for Gender-sensitive Parliaments (2012)

The IPU's *Plan of Action for Gender-sensitive Parliaments* (2012) includes recommendations for parliaments on actions they can and should take to ensure that national legislation operates to promote gender equality.²¹ Specifically, the Plan of Action encourages as follows:

With the goal of promoting change in social and cultural attitudes towards gender equality, parliaments should:

- Enact laws that promote and protect gender equality; where gender equality laws were enacted but have become outdated or were enacted more than 10 years ago, parliaments should review such legislation to include gender mainstreaming frameworks and mechanisms for monitoring and enforcing implementation.

With the aim of guaranteeing a legislative mandate for gender mainstreaming, parliaments should:

- Consider introducing a law and/or mechanisms that require all government policy and legislation to be reviewed and assessed for their gender impact and compliance with the State's obligations under relevant international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights.

Structure of the Handbook

The Handbook consists of four additional sections:

Section 1 highlights the nature, scale and impact of gender discrimination in law. It provides several examples of laws which hinder gender equality, and of the benefits of gender-equal laws such as the lasting impacts such laws can have on women and girls.

19 Inter-Parliamentary Union, Belgrade “Declaration: Strengthening international law: Parliamentary roles and mechanisms, and the contribution of regional cooperation” (2019). Available at www.ipu.org/file/8196/download (accessed on 30 September 2021).

20 Inter-Parliamentary Union, “Fifth World Conference of Speakers of Parliament: Report on the virtual meeting, 19-20 August 2020”. Available at www.ipu.org/resources/publications/reports/2020-10/fifth-world-conference-speakers-parliament-report-virtual-meeting-19-20-august-2020 (accessed on 9 December 2020).

21 Inter-Parliamentary Union, n 11 at p. 10.

Section 2 deals with the role of parliamentarians in gender-responsive law-making, with emphasis on the value of law reform in support of gender equality; the critical role of parliamentarians in gender-responsive law reform; legislative systems and processes; types of laws that can be potentially reformed and how to build a favourable environment for parliamentary action.

Section 3 is the core of the Handbook. It presents a step-by-step approach to gender-responsive law-making by providing insights into the stakeholders involved; the importance of participatory processes; methodologies of identifying gaps in the law; the formulation of laws; legislative enactment; budgeting for gender-responsive laws and overseeing implementation of laws.

Section 4 elaborates on core international and regional commitments that have been made by Member States on gender equality, with a focus on the Convention on the Elimination of All Forms of Discrimination against Women as the international bill of rights for women and girls, and the role of human rights monitoring bodies and “Special Procedures”.

Section 1: The nature, scale and impact of gender discrimination in law



Public demand for gender equality can and should lead to firm parliamentary action. © Yasuyoshi Chiba/AFP

1.1 Introduction

Gender-responsive law reform is important for ensuring gender equality is achieved in all sectors. For historical reasons to do with patriarchy and colonialism, many countries still have discriminatory laws or provisions in their statute books. In many more countries, laws still do not proactively and/or explicitly ensure that men and women have equal rights on matters such as equal pay, employment rights, family law and protections against harmful practices.

The United Nations, the World Bank, and women's rights advocacy organizations such as Equality Now²² have consistently produced dedicated resources to track the state of gender-responsive law reform efforts.²³ According to *Women, Business and the Law 2021*,

22 Equality Now, "Achieve Legal Equality". Available at www.equalitynow.org/achieve_legal_equality?locale=en (accessed on 30 September 2021).

23 Sustainable Development Goals Knowledge Platform, "Goal 5: Achieve gender equality and empower all women and girls". Available at <https://sustainabledevelopment.un.org/sdg5> (accessed on 30 September 2021); World Bank, *Women, Business and the Law 2021* (Washington, DC, World Bank, 2020). Available at https://wbl.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021_ENG_v2.pdf (accessed on 30 September 2021).

the latest in the series of biennial publications by the World Bank, women around the world only have 75 per cent of the legal rights of men.²⁴

Additional gaps in the law and discriminatory provisions include the following:

- In many countries, criminal codes and criminal procedure codes have not been updated since colonial times, and still do not ensure equality between men and women in the manner in which crimes are defined and prosecuted. The result is that sexual and gender-based violence (SGBV) offences do not reflect the lived realities of women and girls. In some jurisdictions, for example, there are so-called “marry-your-rapist” provisions which allow men to avoid prosecution for rape by marrying their victim. In others, a woman’s allegation of rape must be corroborated by two witnesses.²⁵
- Almost 40 countries do not have legal protections against domestic violence²⁶ and more than 100 countries do not have legislation criminalizing marital rape.²⁷ This is despite the fact that, globally, 17.8 per cent of women in the age group of 15–49 years have been subjected to sexual or physical violence by an intimate partner in the previous 12 months – a figure that rises to 24 per cent in least developed countries.²⁸
- In 45 countries, women cannot obtain a divorce in the same way or on the same legal grounds as men.²⁹
- In 153 of 198 countries, women who want to marry must be aged 18 years or over, but many still allow exemptions to this requirement with parental permission and/or with judicial sanction. In addition, 38 countries have different minimum ages of marriage for men and women and, in almost all cases, the legal requirement for the latter tends to be lower for the latter compared to the former.³⁰
- In 25 countries, the law discriminates against women by limiting their ability to confer their nationality on their children on an equal basis with men.³¹ And, in approximately 50 countries, women are denied the equal right to acquire, change or retain their nationality, including the ability to confer their nationality to their non-national spouses.³²

24 World Bank, n 23 at p. 1.

25 Equality Now, “Words and deeds: Holding governments accountable in the Beijing +25 review process” (2020). Available at https://d3n8a8pro7vnm.cloudfront.net/equalitynow/pages/2260/attachments/original/1582923378/B_25_Report_EN.pdf?1582923378 (accessed on 30 September 2021).

26 World Bank, *Women, Business and the Law 2020* (Washington, DC, World Bank, 2020), at p. 15. Available at https://wbl.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2020_ENG_v2.pdf (accessed on 30 September 2021).

27 Our World in Data, “Does legislation explicitly criminalise marital rape?” (2015), Available at <https://ourworldindata.org/grapher/does-legislation-explicitly-criminalise-marital-rape> (accessed on 30 September 2021).

28 United Nations Commission on the Status of Women, n 6 at para. 8.

29 United Nations Commission on the Status of Women, n 6 at Box III.1.

30 Pew Research Center, “Many Countries Allow Children to Marry”. Available at www.pewresearch.org/fact-tank/2016/09/12/many-countries-allow-child-marriage/ (accessed on 30 September 2021).

31 UN Women, “Equality in law for women and girls by 2030: A multistakeholder strategy for accelerated action” (New York, UN Women, 2019) at p. 21. Available at www.unwomen.org/en/digital-library/publications/2019/03/equality-in-law-for-women-and-girls-by-2030 (accessed on 30 September 2021).

32 UN Women, n 31 at pp. 21–22.

- Laws still constrain the ability of many women to effectively own land, to engage in business and entrepreneurial activities, to work in certain sectors and to seek protection from sexual harassment in the workplace.³³
- In 115 countries, there are no legal prohibitions on gender-based discrimination in access to financial services.³⁴
- In 104 countries, there are still laws preventing women from working in specific jobs and, in 18 economies, husbands can legally prevent their wives from working.³⁵
- Close to 40 per cent of countries have at least one constraint on women's property rights as measured by the World Bank's Using Property indicator.³⁶
- In 36 countries, widows do not have the same inheritance rights as widowers and, in 39 countries, daughters are prevented from inheriting the same proportion of assets as sons.³⁷
- In 50 countries, there are no laws on sexual harassment in the workplace.³⁸
- Only 43 countries have paid parental leave that can be shared by mothers and fathers.³⁹
- Approximately half the countries in the world have not established a commission to receive complaints from victims of gender discrimination.⁴⁰

Box 2: Global efforts in support of national gender-responsive law reform initiatives

Governments and parliaments have made numerous international, regional and national commitments to ensure that domestic legal frameworks promote equality, do not permit unfair discrimination, and support gender equality. To step up the momentum on reversing discriminatory laws, UN Women, the Inter-Parliamentary Union, the African Union, the Commonwealth, Internationale de la Francophonie, the Secretaría General Ibero-Americana, the International Development Law Organization and other institutions launched "Equality in law for women and girls by 2030: A multistakeholder strategy for accelerated action" at the 63rd session of the United Nations Commission on the Status of Women in March 2019.⁴¹ The Strategy seeks to fast track the repeal of discriminatory laws in 100 countries between 2019 and 2023, focusing on comprehensive reforms and five other thematic areas as highlighted below:

33 World Bank, n 23.

34 World Bank, n 23 at p. 15.

35 World Bank, *Women, Business and the Law 2018* (Washington, DC, World Bank, 2018) at p.2. Available at <https://openknowledge.worldbank.org/bitstream/handle/10986/29498/9781464812521.pdf> (accessed on 30 September 2021).

36 World Bank, n 35 at pp. 7–8.

37 World Bank, n 35 at p. 13.

38 World Bank, n 23 at p. 15.

39 World Bank, n 23 at p. 8.

40 World Bank, n 35 at p. 18.

41 UN Women, n 31.

- **Comprehensive reforms:** Repeal discriminatory laws that directly and indirectly impact women and girls.
- **Promoting women’s economic empowerment:** Repeal laws that undermine equal pay, recognition of unpaid care work, protection of domestic workers, parental leave, and freedom of choice of employment.
- **Eliminating harmful and discriminatory minimum age of marriage provisions:** Promote 18 years as the minimum age of marriage, equalize the age of marriage between women and men, and eliminate related exceptions as appropriate.
- **Ending gender discrimination in nationality laws:** Uphold women’s rights to equality in nationality and citizenship laws.
- **Addressing discriminatory rape laws:** Revise provisions that exempt perpetrators from rape charges if they marry the survivor.
- **Promoting equality in family relations:** Repeal gender discriminatory personal status laws (one or more of the following: marriage, divorce, parental rights and inheritance).

Figure 1. Priority areas of law reform for parliamentarians to address

Repeal	Amend	Enact
<ul style="list-style-type: none"> • Marriage as an exception to rape laws • Certain defences against violent offences (“honour”, “provocation” and voluntary intoxication) • Laws prohibiting women from working in certain jobs • Laws requiring a woman to obey her husband • Restrictions on women’s freedom of movement (e.g., without the consent of their husband/father) • Restrictions on women’s access to reproductive health services 	<ul style="list-style-type: none"> • Age of marriage for girls (and boys) • Age of sexual consent for girls (and boys) • Unequal laws on divorce and custody • Unequal property laws (ownership, inheritance) • Unequal citizenship laws (passing on nationality to spouse and/or children, getting a passport) • Unequal access to finance 	<ul style="list-style-type: none"> • Comprehensive gender law • Comprehensive anti-discrimination law • Comprehensive family protection/sexual and gender-based violence law • Sexual harassment protections • Sex trafficking prohibitions • Law to address gender pay gap • Parental leave entitlements

1.2 What does this mean for women and girls?

The data above shows that, despite the commitments made by leaders globally, regionally and nationally, the law still does not properly protect the rights of women and girls in many countries worldwide. Importantly, inequality in law is not just a technical matter – it impacts the lived experiences of women and girls. For example:

- Unreformed rape laws and provisions on adultery can lead to unsuccessful prosecutions. Even more insidiously, they can result in raped women being penalized (e.g., being jailed for engaging in extramarital sex despite being victims of sexual abuse).
- Unequal labour laws mean that women may lose their jobs during their pregnancy and after birth because they lack adequate employment protection.
- The inability of a mother to pass on her nationality means that her children may be left stateless – i.e., they have no rights in any country. This can have consequences for the enjoyment of their rights throughout their lives.
- Exemptions that allow parents to consent to the marriage of daughters mean that girls may be married off to adult men. As well as being a fundamental rights violation, this situation also has developmental and health consequences. In many cases, these girls become mothers at a young age, do not attend school and are consequently trapped in cycles of poverty. Likewise, early childbearing has dangerous mental, physical and sexual health impacts.
- The lack of equal rights in law has exacerbated the harmful impact of COVID-19 on women and girls. For example:
 - A lack of proper legal protections for women and girls to address violence in the home has left women even more exposed during lockdowns, with reports of up to five-fold increases in family-based violence during the crisis.⁴²
 - Women are disproportionately employed in the informal sector and in temporary positions, leaving many extremely economically vulnerable. Government policy responses have tended to provide safety-net support to full-time workers. Part-time and casual workers, the majority of whom tend to be women, have received much less assistance, while the informal sector – where large numbers of women make their livelihoods – has been completely overlooked.
 - Women often have smaller savings and pension funds, both of which have been hit during the pandemic, as women have drawn on their limited financial resources to get by.

Key questions to consider:

- What do you think are the most pressing gender equality issues that need to be addressed in your country?
- If such priorities have not been decided:
 - Has your country designed a national gender policy, a legal reform roadmap or any other strategy that highlights legal reform priorities in favour of women and girls? Can you ask your parliamentary library or research unit to provide you with analysis and advice?
 - Can you speak with relevant government ministries, local non-governmental organizations (NGOs), academics or other experts to find out more about gender-responsive law reform issues?
 - Have any international human rights bodies recently produced reports that include recommended areas for legal reform in your country?

⁴² UN Women et al. 2020. "Justice for Women Amidst COVID-19". Available at www.unwomen.org/en/digital-library/publications/2020/05/justice-for-women-amidst-covid-19 (accessed on 30 September 2021).

Section 2: The role of parliamentarians in gender-responsive law-making



MPs can play a leading role in engaging with the public to raise awareness of the importance of gender-responsive legislation and its effective implementation. © Arun Sankar/AFP

2.1 The value of law reform in support of gender equality

Equality in law is a crucial element of gender equality, as women and girls look to the laws of their State to protect, fulfil and enforce their rights. Laws that discriminate and deny them equal rights with men and boys betray their trust in society and signal that gender discrimination is acceptable, normal and expected. Women and girls left behind by discriminatory laws are often permanently excluded from the benefits of development. Conversely, the implementation of good laws that conform to the human rights principles of equality and non-discrimination can help sustain efforts to move towards just, peaceful and inclusive societies, to achieve environmental and climate justice, to ensure equal participation in decision-making at all levels, to provide universal access to essential public services and to bring about economic prosperity for all.

Gender inequality is often discussed in abstract legal and economic terms. Yet the reality, for many women, is that gender inequality persists and is detrimental to their personal

well-being. For instance, early marriage leads to early childbearing and is a risk factor for the health and well-being of girls and adolescents; the lack of access to education impacts on women's lifelong employment prospects; limited protection from domestic violence leads to severe physical and emotional distress and tragically, in many cases, to loss of life; and a lack of equal access to the labour market and equal pay means that women cannot earn enough to address their practical and strategic needs, as well as those of their families.

Research demonstrates that ensuring gender equality can have immense economic benefits by harnessing and optimizing the economic contributions that women and girls can make when they are able to exercise their rights safely and effectively. Available data reveals that:

- In 2030, global per-capita GDP will be US\$ 8,378 without a reduction in gender-based discrimination in social institutions, compared with US\$ 9,142 if discriminatory social institutions are totally eradicated – a gain of US\$ 764 per capita.⁴³
- Gender gaps cause an average income loss of 15 per cent within Organisation for Economic Co-operation and Development (OECD) countries, 40 per cent of which is attributable to entrepreneurship gaps, with losses estimated to be significantly higher in developing countries.⁴⁴
- The cost of violence against women is estimated to amount to about 2 per cent of global GDP, or to US\$ 1.5 trillion – approximately the size of the economy of Canada.⁴⁵
- Ending the practice of child marriage would save billions of dollars in annual welfare expenditures, resulting in global savings of more than US\$ 4 trillion by 2030.⁴⁶
- Having fewer discriminatory laws and policies in place results in more investment in health and education (both for women themselves and for the next generation) and lower rates of sexually transmitted diseases.⁴⁷
- Child marriage is estimated to cost economies at least 1.7 per cent of their GDP.⁴⁸ Every year of marriage before age 18 reduces the likelihood of a young person completing secondary school by 4 to 6 percentage points, and the associated school dropout rates hamper girls' chances of earning better wages by 9 per cent over their lifetimes.⁴⁹
- Child marriage also increases the total fertility rate (the average number of children per woman) by 17 per cent, which is detrimental to developing countries battling high population growth. Conversely, curbing population growth rates in these countries could boost economic growth and save the global economy US\$ 566 billion by 2030.⁵⁰

43 Ferrant and Kolev, n 7 at p. 3.

44 World Bank, n 35 at p. 7.

45 UN Women, "The economic costs of violence against women: Remarks by UN Assistant Secretary-General and Deputy Executive Director of UN Women, Lakshmi Puri at the high-level discussion on the 'Economic Cost of Violence against Women'" (21 September 2016). Available at www.unwomen.org/news/stories/2016/9/speech-by-lakshmi-puri-on-economic-costs-of-violence-against-women (accessed on 30 September 2021).

46 Henrietta H. Fore, Natalia Kanem and Mabel van Oranje, "This is the economic cost of child marriage" (1 June 2018). Available at www.weforum.org/agenda/2018/06/the-cost-of-child-marriage/ (accessed on 30 September 2021).

47 World Bank, n 23 at p. 4.

48 Berkeley Economic Review, "The economics of child marriage" (8 October 2018). Available at <https://econreview.berkeley.edu/the-economics-of-child-marriage/> (accessed on 30 September 2021).

49 Berkeley Economic Review, n 48.

50 Berkeley Economic Review, n 48.

Box 3: Law reform to prevent child marriage

An example from Malawi

SDG 5.3 calls on countries to “Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”. Malawi achieved a breakthrough in February 2015 when its parliament passed the Marriage, Divorce and Family Relations Act to address the troubling statistic that 50 per cent of Malawian girls are married before 18 years of age.⁵¹ The enactment of the law was the culmination of a long campaign for reform, which began with a Law Commission inquiry in 2006.⁵² Action was delayed because of the sensitivity of the report’s recommendations, in relation to both child marriage and polygamy. The Chidyamakanda Bill (“Enjoy the Children Bill”) was finally passed in 2009, amending clause 9 of the Constitution of Malawi and raising the marriage age from 15 to 16 years. But it was not approved by the President and lapsed, in part as a response to concerns by women’s activists and the parliamentary women’s caucus that the bill set the age for marriage too low.⁵³ The issue was again referred to the Law Commission and discussed again in 2010 by Cabinet, but a new bill was not tabled again until 2015.⁵⁴ Legal reform efforts to end child marriage culminated in 2017 when the Parliament of Malawi passed the Constitutional Amendment Act No. 36, amending the Constitution to state that 18 years should be the minimum age of marriage, without exception.⁵⁵

Key questions to consider:

- If you had to make a speech in parliament about the value of gender-responsive law reform to society, what are the strongest arguments you think you could make?
- If you had to discuss gender-responsive law reform with people in your local community:
 - What issues do you think would be most important to them?
 - What arguments do you think would resonate most with your community about why it is important to take action?

2.2 The role of parliamentarians in gender-responsive law reform

Parliamentarians have a critical role to play in advocating, initiating, drafting, debating and enacting law reforms to strengthen the rights of women and girls. As representatives of their communities, parliamentarians are in a rare position as intermediaries between the

51 Vibeke Wang, “Ending child marriages – New laws bring progress but hurdles remain”, *CMI Insight*, No. 4, 2016. Available at www.cmi.no/publications/5802-ending-child-marriages-new-laws-progress-malawi (accessed on 16 January 2020).

52 Wang, n 51.

53 Wang, n 51.

54 Wang, n 51.

55 Girls Not Brides, *Malawi’s constitutional change: A step forward towards ending child marriage* (2017). Available at www.girlsnotbrides.org/documents/705/Malawi-case-study-template-19.12-FINAL.pdf (accessed on 2 September 2021).

people and the laws, institutions and systems of government that affect their daily lives. Parliamentarians can hear directly from their constituents and use that information to shape their law-making priorities and agendas, including progressive gender-responsive law reforms that promote the principles of non-discrimination and equality before the law. As countries “build back better” in a post-COVID-19 world, parliamentarians will be called upon to support national responses through appropriate laws, policies and budgetary appropriations. It would be imperative to ensure that this opportunity is harnessed for the effective realization of the rights of women and girls as an integral part of all national recovery processes.

2.2.1 Legislative systems and processes

Countries around the world have designed and developed their systems of government over time. Since political systems reflect countries’ special historical, social, political and economic contexts, there are almost as many variations as there are nation states. Yet there are many common elements that enable countries to learn from each other and share good practice and lessons learned across jurisdictions. At the most fundamental level, most countries have three branches of government: the executive, the legislative, and the judiciary. The way these branches interact varies considerably. But in almost all cases, the three branches of government perform the functions outlined in Table 1 below.

Table 1. Simple summary of legal functions of the three branches of government⁵⁶

BRANCH	WHO?	LEGAL FUNCTION
Executive	President, Prime Minister and/or Cabinet, Monarch, Governor-General, civil service	Implements laws <i>** Though the executive can issue orders and regulations subsidiary to laws</i>
Legislative	Congress, Parliament, Legislative Assembly	Adopts laws
Judiciary	Courts	Interprets and enforces laws and ensures they do not conflict with the national constitution or other legal norms (including international norms and standards in some jurisdictions)

Parliament is generally responsible for enacting laws, although the process for progressing law reform depends to a large extent on the system of government. Parliament is also responsible for oversight, to ensure that the executive is efficiently implementing laws.

⁵⁶ Modified from Fiji Women’s Rights Movement and Pacific Regional Rights Resource Team of the Pacific Community, “Changing Laws: A Legislative Lobbying Toolkit” (Suva, Fiji, FWRM/RRRT, 2010). Available at <https://hrsd.spc.int/node/819> (accessed on 3 February 2021).

The most common systems of government are presidential and parliamentary, with semi-presidential systems being designed as a variation, drawing on different elements of the two:

- ▶ In a presidential system, the legislative and executive are usually designed to be “coequal”, with a much stronger separation of powers. Each has its own as well as intersecting powers, which are designed to enable them to ensure checks and balances. To this end, parliament has relatively strong powers to initiate draft laws, including in relation to the budget. The executive may have over the power to veto legislation, to send legislative proposals to parliament for consideration and/or to issue executive decrees that operate as law unless overridden by parliament.
- ▶ In a parliamentary system, the relationship between the legislative and executive is much closer, with members of the executive being drawn from the parliament. By definition, the executive needs to be able to show that it has enough votes in parliament to win a vote of confidence to form the government and/or to pass the budget. In practice, this usually means that the executive has a permanent majority of votes in parliament and can enact whatever laws it proposes. In such systems, the executive usually initiates and drafts laws (although some systems allow for private members’ bills: see Box 16), while parliament technically has substantial powers of review and amendment.

In some parliaments, there may be what is called a “hung parliament”, where no single political party or coalition has sufficient votes to govern in its own right. This means that the ruling government will rely on non-aligned parliamentarians to stay in power. In such cases, it is more possible for individual parliamentarians to push their own ideas for law reform, if they can build their own majority of votes in support of a particular proposal.



Key questions to consider:

- In your role as a parliamentarian, how effectively do you think parliament works with the executive to ensure that all laws passed are gender-responsive?
- What avenues exist for improving your interactions with ministers and government officials, so that you can work more collaboratively to promote gender-responsive laws?

2.2.2 Types of laws that can be considered for reform

This subsection highlights the types of examples of legal frameworks that parliaments around the world could be engaged in enacting, reviewing or repealing. General recommendation 33 of the Committee on the Elimination of Discrimination Against Women on Women’s Access to Justice (CEDAW GR 33) sets out the categories of laws which impact on the rights of women and girls. A summary is provided below:

Constitutions

National constitutions are the highest form of law in every country, with all rights and powers of a country's people and State institutions deriving from them. Because of their fundamental legal importance, most constitutions are more difficult to reformulate or amend than ordinary laws. Constitutions are endorsed in different ways, sometimes by parliament and/or some form of separate constituent assembly and/or referendum. This means it is often harder to insert a new clause into a constitution (e.g., to promote gender equality) or to remove a clause from a constitution (e.g., to remove discriminatory provisions). Where a national constitutional reform process is being considered or is under way, this can serve as a critical opportunity for undertaking a gender audit to assess whether existing provisions reflect the principle of non-discrimination and advance gender equality. Where gaps or issues are raised, parliamentarians can proactively work with other stakeholders to advocate and drive constitutional reforms to entrench equal rights for women and girls.⁵⁷

In contrast to constitutional laws, ordinary laws are usually passed by parliament with a (simple or absolute) majority of votes and endorsed in some way by the executive. Many countries – especially those that underwent colonization and had colonial laws introduced into their national legal systems – still have laws on their books that entrench discrimination and do not reflect contemporary social norms and human rights standards. Even where colonialism has not been a factor, some laws have simply become outdated and need to be revised and updated to reflect what is now considered appropriate for an inclusive, respectful society that values the equality of all people. In practice, this will require parliamentarians to consider whether they need to take action to repeal or amend existing laws and/or enact comprehensive new gender-equality legislation. The broad category of laws consists of the following:

Civil law

This area of law extends to rights, procedures and remedies in the fields of personal/legal capacity, contracts, private employment, personal injury, consumer protection, inheritance and property rights. Article 15 of CEDAW guarantees women equality before the law, identical legal capacity to that of men and the same opportunities to exercise that capacity in civil matters. SDG Target 5.A encourages States to undertake reforms in the sphere of civil law that would give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. According to CEDAW GR 33, States are required to:

- Eliminate all gender-based barriers to access in civil law procedures, such as requiring that women obtain permission from judicial or administrative authorities, spouses and other family members prior to initiating legal action, or to obtaining documents relating to identity or title to property.

⁵⁷ UN Women, "Why and how constitutions matter for advancing gender equality: Gains, gaps and policy implications" (New York, NY, UN Women, 2017). Available at www.unwomen.org/en/digital-library/publications/2017/2/why-and-how-constitutions-matter-for-advancing-gender-equality (accessed on 30 September 2021).

- Deem null and void all contracts and other private instruments that restrict the legal capacity of women, as set out in the provisions of Article 15(3) of CEDAW.
- Adopt and enforce positive measures to ensure women are free to enter into contracts and other private law agreements.

Family law

Technically, family law (otherwise known as “personal law”), is a part of civil law. It is, however, treated as a separate legal domain under CEDAW GR 33 because of its specific impact on women. The family domain is, among others, a space in which women’s rights are frequently violated. Women assume various roles as wives, mothers and daughters, and in these contexts can experience various forms of rights violations. Unequal power relations between men and women, accentuated in families and at times exacerbated by the law, affect the extent to which women can make choices and exercise agency. If women and girls do not enjoy equal rights in the family as the basic unit of society, the realization of any other right is jeopardized from the outset.

Discriminatory personal status laws impede equality in marriage, divorce, inheritance, and parental authority and responsibilities. Further, these shortfalls often overlap with gaps in other rights, such as the right to be protected from various forms of violence (e.g., early marriage, widow inheritance and domestic violence), the right to food security and girls’ right to an education.

Repealing discriminatory personal status laws can involve:

- Undertaking an analysis of relevant laws in partnership with judges of family courts and other actors such as bar associations and women lawyers associations;
- Ensuring that legislative proposals are harmonized with laws against gender-based violence and, where anti-violence laws are inadequate, proposing their inclusion in the law reform process;
- Advocating the withdrawal of reservations to CEDAW; and
- Learning good practice examples from different regions.

Criminal law

Criminal law encompasses frameworks which define what constitutes a crime and the corresponding remedies and punishments. All legal systems recognize two important dimensions of criminal law in the context of women’s access to justice: when women are (1) victims or survivors of crime, and (2) persons in conflict with the law (see Module 3 and Module 4). Gender-sensitive reforms in criminal law could include:

- Creating gender-sensitive resources and procedures for dealing with crimes that are often committed against women, such as providing and training female police officers and medical examiners to support female survivors of sexual assault;

- Reviewing the legal status of behaviours that are not criminalized or punished as harshly if they are committed by men, such as pre-marital sex, adultery or prostitution;
- Revising laws that seek to regulate women's behaviour, but which are not crimes by any international legal standard, such as running away from home without permission, or failure to respect modesty and dress codes;

Administrative, social and labour law

Issues of special importance to women in this area include health services, social security entitlements, labour relations (such as equal remuneration, including for civil servants, and equal opportunities to be hired and promoted), housing and land zoning, compensation funds, governance of internet resources, and immigration and asylum, including detention in such cases. Measures to promote gender-responsiveness in this area of the law include:

- Carrying out independent reviews in accordance with international standards and ensuring that they are available for all decisions by administrative bodies;
- Requiring decisions rejecting an application to be reasoned and ensuring that the claimant can appeal to a competent body against the decision; the implementation of any prior administrative decisions should additionally be suspended pending further judicial review;
- Using administrative detention only exceptionally, as a last resort, and for a limited time when necessary and reasonable in the individual case; administrative detention must be proportionate to a legitimate purpose and in accordance with national law and international standards;
- Ensuring that all appropriate measures, including effective legal aid and procedures, to challenge the legality of their detention are available, as well as regular reviews of such detention in the presence of the detainee.

This area of the law significantly impacts upon marginalized and excluded women because they often cannot access institutions for protection. Examples include domestic workers, migrants and women who work in the informal economy without protection from economic and sexual exploitation.

Procedural and evidentiary rules

Procedural rules govern the steps that a complainant and respondent must fulfil to be fully heard and conclude a dispute, particularly in a formal or informal judicial forum. In the formal context, such steps could include the filing of documents within specified time periods and serving such documents on affected persons. Evidentiary rules on the other hand, determine who, when and how evidence on a particular set of facts is presented. Procedural and evidentiary rules cut across each of the above four areas of law because they are critical to the determination of a case, for example, in cases where women are not permitted to file claims without the permission of a male guardian,

where different standards of proof exist for men and women for certain crimes or in civil and family cases. Discriminatory evidentiary rules include those that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men to establish an offence or seek a remedy, as well as rules that exclude or accord inferior status to the testimony of women.

Even where procedural and evidentiary rules are gender-neutral, discriminatory approaches to their interpretation and enforcement can translate into the exclusion, discrediting or devaluation of women's testimony by law enforcement officials. Stigmatization of women, systematic failures in evidentiary collection procedures for crimes committed against women, and onerous probative requirements can destroy the evidentiary foundations of cases even before women are heard.

2.2.3 Cultural and religious texts

In some countries, religious texts and traditions also operate as a source of law, intersecting with parliamentary laws. In such cases, religious and traditional leaders often play a larger role in discussions regarding law reform, and their views can sometimes determine whether reforms will or can be enacted. That said, in many countries, progressive religious and traditional voices have argued for interpretations of texts that support gender equality. United Nations human rights bodies have also observed, on multiple occasions, that culture and/or religion should not be used to justify discrimination against women and girls and in law and in practice.⁵⁸

Box 4: Transforming gender relations through constitutional and legal reform

An example from Tunisia

When opportunities for constitutional reform arise (typically following conflict or major democratic upheaval), they are often a chance to drive through major reforms in the way societies are structured, including from a gender perspective. A recent example is Tunisia, where a major democratic transition process was implemented in response to the Arab Spring. Constitutional reform was undertaken, through a much more open and participatory law-making process than was used by the previous authoritarian regime. Within the National Constituent Assembly (which operated as both a parliament and a constitutional reform body), a women's group was formed to work proactively with civil society for gender equality constitutional provisions.⁵⁹ After many months of negotiation and consensus-building, the 2014 Constitution of Tunisia was enacted. The new Constitution confirms equality of rights, prohibits gender discrimination, calls for proactive efforts to promote women's participation

58 Office of the United Nations High Commissioner for Human Rights, *Report of the Working Group on the issue of discrimination against women in law and in practice* (A/HRC/29/40, 1 April 2015) at para 17. Available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/40 (accessed on 16 October 2020); United Nations General Assembly, *Elimination of all forms of religious intolerance: Note by the Secretary-General* (A/68/290, 7 August 2013) at para 30. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/91/PDF/N1342191.pdf?OpenElement> (accessed on 16 October 2020).

59 Mekki N, "Tunisia: Equality in Gender and Constitution" (Arab Forum for Citizenship in Transition & International Peace Institute, New York, September 2014).

in State institutions and specifically requires that the State will take “all necessary measures in order to eradicate violence against women.”⁶⁰

Since 2014, the executive and the legislative have been actively working towards implementing the new Constitution’s commitments to women and girls. In July 2017, the Assembly of the Representatives of the People passed the first-ever national law to combat violence against women, drafted to implement a comprehensive approach by combining measures for the prevention of violence and support for survivors.⁶¹ Also in 2017, President Beji Caid Essebsi established the Commission on Individual Freedoms and Equality, which was tasked with recommending “reforms linked to individual freedoms and equality, deriving from the provisions of the January 27, 2014 Constitution, international human rights standards and new trends in the fields of liberties and equality.”⁶² The nine-member Commission, which was headed by a parliamentarian, published a report in June 2018 recommending a range of law reforms. These included ensuring equality between men and women in inheritance and citizenship, eliminating so-called “morality” laws and removing provisions making men the head of the household.⁶³ Since then, legislation has been promoted to enable equal inheritance. But despite support from the President and the tabling of a draft law in the National Assembly, this reform effort stalled as conservative elements lobbied against it.⁶⁴ A new parliament was elected in October 2019 and will be called upon to consider reforms to equal inheritance law as part of its new legislative mandate.⁶⁵

Key questions to consider:

- Is there a process of constitutional reform under way in your country, or is one likely in the future? If so:
 - Are there any constitutional amendments you could propose to proactively entrench gender equality?
 - Are there any specific provisions that should be repealed or amended to remove gender discrimination in the constitution?

60 International Knowledge Network of Women in Politics, “Gender in the New Tunisian Constitution – UNDP Fact Sheet” (28 January 2014). Available at www.iknowpolitics.org/en/2014/01/gender-new-tunisian-constitution-undp-fact-sheet (accessed on 30 September 2021); UN Women, “Tunisia’s new Constitution: A breakthrough for women’s rights” (11 February 2014). Available at www.unwomen.org/news/stories/2014/2/tunisia-new-constitution (accessed on 30 September 2021); United Nations Population Fund, “Gender equality guaranteed in Tunisia’s new constitution” (17 September 2014). Available at www.unfpa.org/news/gender-equality-guaranteed-tunisia-new-constitution (accessed on 30 September 2021).

61 UN Women, “Tunisia passes historic law to end violence against women and girls” (10 August 2017). Available at www.unwomen.org/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women (accessed on 30 September 2021).

62 Human Rights Watch, “Tunisia: Landmark Proposals on Gender Bias, Privacy” (26 July 2018). Available at www.hrw.org/news/2018/07/26/tunisia-landmark-proposals-gender-bias-privacy (accessed on 30 September 2021).

63 Human Rights Watch, n 62.

64 Al Jazeera, “Tunisia’s president vows to give women equal inheritance rights” (14 August 2018). Available at www.aljazeera.com/news/2018/08/tunisia-president-vows-give-women-equal-inheritance-rights-180813172138132.html (accessed on 30 September 2021); Office of the United Nations High Commissioner for Human Rights, “UN Human Rights chief warmly welcomes move towards equal inheritance rights for women in Tunisia” (27 November 2018). Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23939&LangID=E (accessed on 30 September 2021); Middle East Online, “Tunisia balks at inheritance changes” (8 May 2019). Available at <https://middle-east-online.com/en/tunisia-balks-inheritance-changes> (accessed on 30 September 2021).

65 Human Rights Watch, “Tunisia: New Parliament’s Rights Priorities” (13 November 2019). Available at www.hrw.org/news/2019/11/13/tunisia-new-parliaments-rights-priorities (accessed on 30 September 2021).

- What is the role of religion and culture in your legal system? Are there constitutional or legal reforms that could be proposed to better align local norms with international gender equality norms and standards?

2.2.4 Building a favourable environment for action on constitutional and legislative reforms by parliamentarians



Women parliamentarians have been working across party lines through women's parliamentary caucuses on laws to uphold the rights of women and girls. © Mariana Duarte/IPU

Consensus-building

Parliamentarians have the mandate and powers to take action to reform the national constitution and/or ordinary legislation to ensure that it is gender-responsive. However, parliamentarians in many countries face practical challenges to progressing meaningful reforms. At the highest levels, political commitment to gender-responsive law reforms can sometimes present a barrier, with different political ideologies and/or competing political party agendas slowing down efforts. It can be difficult to overcome a lack of political will, and political and ideological differences across parties. But many parliamentarians have found ways of building consensus around priority reforms by working together across party lines. Parliamentary women's caucuses and cross-party parliamentary groups (see Box 5 below), as well as parliamentary committees (see Box 14 below and Section 2 more generally), offer opportunities for parliamentarians with different party affiliations to collaborate on issues-based reforms.

Political will is often built over time through multi-stakeholder strategies, which seek to build support for reforms among influential thought leaders and key interest groups. In the context of work to promote gender equality, building a diverse coalition of alliances has been critical to success, as this issue tends to trigger different reactions within the community. Resistance to change has often come from groups such as traditional and

religious leaders. At the same time, however, support from such leaders can play a critical role in changing people's minds, since they have enormous standing in the community. Increasingly, grass-roots campaigns and social movements such as the #MeToo campaign can mobilize ordinary community members behind issues – generating public pressure which can be important in encouraging parliamentarians to act.

Box 5: Parliamentarians have worked across party lines to promote law reform

Examples from New Zealand, Tanzania, South Africa, North Macedonia, Brazil

In most parliaments, members are affiliated to a political party and/or operate as part of a group of like-minded people with common political interests. This can sometimes make it difficult to form common positions across party lines, particularly in highly adversarial political contexts. Yet an increasing number of parliaments have created women's caucuses, youth caucuses and cross-parliamentary groups, who work on a multiparty basis to advance common causes. Data from the IPU shows that 93 parliaments around the world have established some form of women's caucus or network, either formal or informal.⁶⁶ Many more countries have formed parliamentary groups on a range of issues, such as gender equality, anti-corruption, and climate change. These groups can be effective at building coalitions within parliament and should be harnessed in support of gender-responsive law reform.

Parliamentary women's caucuses have been particularly active in lobbying for gender-responsive law reform. For example, the New Zealand Commonwealth Women Parliamentarians (CWP) group made history in 2019 by jointly tabling a bill to clarify the law around female genital mutilation.⁶⁷ The bill was developed as a joint private members' bill (PMB) through an alliance of women parliamentarians from Labour, National, the Green Party and New Zealand First.⁶⁸ Significantly, the Standing Orders were specifically amended to permit the use of a *joint* members' bill, which allowed parliamentarians to have new laws debated outside the government programme. Usually, only a few PMBs are chosen for debate by random ballot. In this case, however, the CWP group lobbied the Speaker and the parliamentary Business Committee to skip the ballot and put the bill on the agenda for debate.⁶⁹ Speeches from the women parliamentarians sponsoring the bill specifically acknowledged the contribution of civil society to the law reform process, including advocacy and advice from the FGM (Female Genital Mutilation) Education Programme, the New Zealand Human Rights Commission, and the Ethnic Minority Women's Rights Alliance of Aotearoa.⁷⁰ In July 2020, the bill was successfully enacted into law.

66 Inter-Parliamentary Union, "Global data on national parliaments: Specialized bodies". Available at <https://data.ipu.org/specialized-bodies?year=2020&month=11&structure=any> (accessed on 15 December 2020).

67 NZ Herald, "Historic first: Bill from women MPs of colour to fight female genital mutilation". Available at www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12285106 (accessed on 30 September 2021); Scoop, "Legislation defining Female Genital Mutilation Introduced". Available at www.scoop.co.nz/stories/PA1911/S00119/legislation-defining-female-genital-mutilation-introduced.htm (accessed on 30 September 2021).

68 New Zealand had five political parties represented in parliament, but the fifth party had only one member in the House, who was a male. While he indicated his support for the bill and was also willing to be a co-sponsor, it was decided that the bill would have a greater symbolic impact if it were presented by members of the parliamentary women's caucus only.

69 Stuff, "MPs reach across the House to ban female genital mutilation". Available at www.stuff.co.nz/national/politics/122286406/mps-reach-across-the-house-to-ban-female-genital-mutilation (accessed on 30 September 2021).

70 New Zealand Parliament, "Crimes (Definition of Female Genital Mutilation) Amendment Bill – First Reading". Available at www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20191204_20191204_16 (accessed on 30 September 2021).

In recent years, the Tanzania Women's Parliamentary Group (TWPG) has been active⁷¹ in working with the Office of the Speaker, together with gender equality-focused NGOs, to ensure the integration of gender-responsive language in three major laws prioritized by the National Assembly. The three laws in question were the Sexual Offences Special Provisions Act, the Political Parties Act and the Prevention and Combating of Corruption Act. More recently, in June 2020, the TWPG successfully advocated the National Assembly's review of its Standing Orders to promote gender equality. It is currently working on a proposal to establish a dedicated parliamentary committee on gender equality. The Speaker of the National Assembly has also asked the TWPG to work with the parliamentary draftspersons to provide advice on gender-responsive approaches to dividing matrimonial properties upon the dissolution of a marriage. This will inform the revision of existing laws in the next parliamentary session.

In South Africa, the Multi-Party Women's Caucus has been actively involved in efforts to review and revise the country's sex-work laws, and to amend them to implement better protections for sex workers. Although these efforts have not yet culminated in success, members of the caucus have worked with the South African Law Reform Commission and hosted a summit on sex-work issues and continue to advocate better protections in law.⁷²

In North Macedonia, the Women Parliamentarians' Club supported the adoption of a law establishing a 30 per cent parliamentary quota for women, contributed to drafting the Law on Equal Opportunities, and supported a new chapter in the Law on Families to protect victims of domestic violence.⁷³

In Brazil, the women's caucus (known as the *Bancada Feminina*), worked with the Feminist Centre for Research and Advice, a feminist lobbying group, to drive the enactment of several laws which advance women's rights, including laws against domestic violence and sexual harassment, a new civil code, and legislation concerning women's health and maternity benefits.⁷⁴

Financial and human resources

Parliaments require dedicated human and financial resources to effectively promote gender equality. In many countries however, the legislative is often severely under-

71 This information was gathered through the online consultations on the draft Handbook, organized in July 2020 by the Inter-Parliamentary Union and UN Women.

72 Parliament of the Republic of South Africa, "Multi-Party Women's Caucus Disappointed about Law Reform Commission Report on Adult Prostitution" (1 June 2017). Available at www.parliament.gov.za/press-releases/multi-party-womens-caucus-disappointed-about-law-reform-commission-report-adult-prostitution (accessed on 2 September 2021); News24, "Parliament's women's caucus to host sex work summit" (9 February 2018). Available at www.news24.com/SouthAfrica/News/parliaments-womens-caucus-to-host-sex-work-summit-20180209 (accessed on 2 September 2021); Parliament of the Republic of South Africa, "Report of the Multi-Party Women's Caucus on its activities undertaken during the 5th Parliament (May 2014 – March 2019)". Available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/190319pcwomensreport.thm.pdf> (accessed on 2 September 2021); Parliamentary Monitoring Group, *Multi-Party Women's Caucus programme & priorities* (25 July 2019). Available at <https://pmg.org.za/committee-meeting/28648/> (accessed on 2 September 2021).

73 IPU, "Guidelines for Women's Caucuses" (Geneva, IPU, 2013) at p 13. Available at www.ipu.org/resources/publications/reference/2016-07/guidelines-womens-caucuses (accessed on 2 September 2021).

74 UN Women, "Progress of the World's Women 2008–2009: Who Answers to Women?" (New York, NY, UN Women, 2009) at p.27. Available at www.unwomen.org/digital-library/publications/2008/1/progress-of-the-world-s-women-2008-2009-who-answers-to-women (accessed on 2 September 2021).

resourced. Many parliaments have limited staff to support parliamentarians in undertaking research and developing proposals for law reform, and little or no money to source technical expertise, commission research and/or hold public hearings to gather the views of experts and the public to inform law reforms. Even where parliamentarians want to take action to repeal discriminatory laws, they may not have access to the research and drafting support they require. Parliamentarians who are members of parliamentary committees also often do not have staff to organize and run committee hearings. Sometimes, even when committees hold meetings and gather information, they may lack support to produce reports reflecting their findings and recommendations.

It is essential that parliamentarians have access to the resources and expertise they need to progress gender-responsive law reforms. To this end, the annual budget process should be utilized to provide parliament with the funding it needs to effectively discharge its mandates – including ensuring that all laws promote human rights and gender equality. This requires adequate staffing, including for the parliamentary library, parliamentary committees, and any parliamentary drafting unit (or funds to recruit in such expertise as needed). Depending on the size of the parliament, consideration could be given to recruiting a dedicated gender specialist or some form of social inclusion expert, with a mandate to systematically analyse all laws addressing the rights and needs of women (including those who face multiple forms of discrimination, such as rural women, women with disabilities and those from indigenous and minority backgrounds). The specialist or expert could also be mandated to coordinate efforts with the executive (for example, the ministry of justice and the ministry of women) to ensure that parliament is kept apprised of all key law reform and policy developments in relation to gender equality and women's rights, including reports from United Nations and regional treaty bodies (see Section 4). Where recruiting dedicated personnel is not an option, staff can be given gender equality and human rights training to build their own understanding and capacities on these issues, and to enable them to provide gender-sensitive advice and support to parliamentarians.

Box 6: Gender mainstreaming benefits from dedicated parliamentary staff and mechanisms

An example from Chile⁷⁵

Since implementing gender-responsive law reform is central to the business of parliaments, core parliamentary resources should be dedicated to helping parliamentarians to progress this work. In Chile, parliament has implemented several new initiatives aimed at promoting gender equality, both within the institution and through law reform with the support of dedicated parliamentary staff. In 2018, the Chamber of Deputies (COD) created the Women and Gender Equity (WGE) Committee. The COD is currently working with the European Union's EUROsociAL+ Gender Equality Unit on a project aimed at strengthening the WGE Committee. Although delayed by COVID-19, the project will support an expert assessment of the ongoing gender law reform initiatives in Chile, with the aim of developing a so-called "gender agenda" to identify a comprehensive set of legislative priorities for the

⁷⁵ This information was gathered through the online consultations on the draft Handbook organized in July 2020 by the Inter-Parliamentary Union and UN Women.

committee to work on. The new project will also develop an evaluation mechanism to assess the gender impact of proposed law reforms.

In 2019, the COD also created the new post of Gender Policy Coordinator. The position was initially established to deal with the new Protocol for the Prevention and Sanction of Sexual Harassment within the COD, which was enacted in January 2019. The Gender Policy Coordinator, who is selected by the COD Ethics and Transparency Committee via a stringent vetting process, is tasked with supporting compliance with the Protocol, including by raising awareness among parliamentarians and managing complaints, and with coordinating gender equality work with other units in the COD. As part of a suite of reforms designed to make the COD more gender-sensitive, the official COD logo and web page were amended to include the feminine word for deputy. More recently, a new Gender and COVID-19 Working Group has been set up. Its members include the President of the Senate, the President of the WGE Committee, the President of the Labour Committee, other parliamentarians, and representatives of more than 70 NGOs. The aim of this initiative is to evaluate the gender implications of the pandemic and develop gender-sensitive response strategies.

To assess the current state of resources and formulate a proper plan of action to address any shortfalls, parliaments may want to consider undertaking a systematic self-assessment of their existing capacities, using the IPU's self-assessment toolkit.⁷⁶ These self-assessments can provide a strong evidence base for justifying additional funding to support specific gender equality work. In Kenya, for example, a 2016 gender-sensitive self-assessment laid the groundwork for reforms. Since then, the Parliament of Kenya has conducted gender training for staff for the first time, set up a senior-level gender focal point to advise parliamentarians on advancing gender equality in their work and, more recently, created a gender caucus that brings together men and women parliamentarians to promote gender equality.

Key questions to consider:

- Is there existing political will, both within parliament and within the government (e.g., from the President, Prime Minister and/or ministers), to drive gender-sensitive law reforms?
 - If not, do you have any ideas on how to encourage key political leaders to act?
 - Are there any allies you could work with who could be useful in pressuring the government to act (e.g., religious leaders, traditional leaders, media, celebrities or NGOs)?
- Does parliament have adequate internal mechanisms and expertise to advance gender equality in the law?
- Would it be useful for your parliament to undertake a gender self-assessment or audit to identify whether and how it could more effectively ensure that all aspects of parliamentary work are gender-sensitive, including law-making? If yes, please contact the IPU for technical assistance.

⁷⁶ Inter-Parliamentary Union, n 12.

2.2.5 Advocating social norm change around gender equality

Why must parliamentarians address social norms?

While law-making and law reform are central to the mandates of parliamentarians around the world, they also represent the people they serve, both nationally as well as at the constituency and community levels. In this vital role as representatives – and as national and community leaders, parliamentarians are uniquely placed to raise awareness on the need and impact that reforming the law can have on women and girls. More importantly, parliamentarians can use their position as leaders to promote transformative social norm change – by discussing issues and working with their communities with a view to identifying and reversing the traditional cultural and social stereotypes and beliefs that contribute to ongoing discrimination and inequality between men and women.

Because ordinary people often live far from the capital cities where politics takes place, the work of parliaments can seem remote, and concepts such as gender equality – and even the SDGs – can be perceived as ideas that are more relevant to urban elites than everyday citizens. However, in many countries, parliamentarians receive public funding to set up and run constituency offices, which are designed to bring them closer to their communities. To address this sense of disconnect from national political discussions and debates, parliamentarians can transform their constituency offices into local information, education and awareness-raising hubs, where information on proposed bills are shared with constituents. Parliamentarians can also initiate Town Hall Meetings where they can discuss proposed laws and the benefits that are intended for all. This is one way to help socialize new ideas, and to work through concerns and issues people may genuinely have with changing long-held social customs and norms.

Box 7: In Mauritania, the women's caucus uses constituency outreach to inform parliamentary work

In 2015, the IPU responded to a request from the Speaker of the Parliament of Mauritania to support the newly established women's parliamentary caucus. Between 2015 and 2018, the IPU helped the caucus to bring together women from across the political spectrum despite the polarized political context. The caucus has forged partnerships with civil society and development partners in Mauritania and become a respected interlocutor and oversight body in the eyes of the Government and other key stakeholders. Its activities have included: developing an advocacy strategy to ensure that draft legislation was tabled and debated to address violence against women (including FGM and child marriage), the reviewing and amending the draft law on gender-based violence (GBV) once tabled in parliament and conducting outreach visits (known as "caravans") across the country to raise public awareness of, and support for, gender equality, combating violence against women and promoting women's political participation.

The work of the caucus has prompted discussions in parliament on the lived experience of rural populations that were not debated before, by either male or

female members. This shift has improved parliament's oversight work and brought the voices of the most vulnerable to the table. Results have included raising the profile of women parliamentarians relative to their male peers and among their constituents, the media, the Government, and other stakeholders. Their action has also served to bring forward issues of concern to women in rural areas through parliamentary debates. By building on their outreach visits to remote areas of the country, where they met mostly with women but also with local officials, civil society, and public servants, they gave legitimacy to their parliamentary work and fulfilled their representative function fully.

The women's caucus also successfully advocated the tabling of the Government bill on gender-GBV in 2016. Through coordinated action and legal preparation in committee work, the members of the caucus succeeded in including the criminalization of FGM in the bill. They also called for domestic violence and child marriage to be defined and prohibited in the bill and taken into account with specific measures to protect victims and to hold perpetrators to account.

But the law adoption process stalled. Following the 2018 elections, the women's caucus reconvened and is now building on its previous work. Recently, it has raised awareness of increased levels of GBV as a result of the COVID-19 lockdown. The Government has since adopted a revised draft law addressing the caucus's concerns, which has yet to be rescheduled on the agenda of the National Assembly. In the meantime, the caucus is developing yet another strategy to advocate public and peer support for the revised draft law.

What can parliamentarians do to address social norms?

Parliamentarians can leverage their status and public profiles as representatives to promote gender equality and publicly advocate equal rights for women, men, boys and girls – in law and in practice. Parliamentarians can partner with media groups to write and publish opinion pieces advocating law reforms, and to participate in radio and television programmes, where they can discuss these issues and start building momentum for change. Radio talk shows are a particularly useful way of informing communities about ongoing reform initiatives. Phone-in shows are excellent forums for discussing and debating changes and, where callers disagree with parliamentarians or query why change is needed, this can provide a unique opportunity for parliamentarians to educate the public and share information, using community friendly approaches.

Parliamentarians can also act as role models for change, demonstrating to voters and the community at large, through their personal conduct, that they are committed to gender equality and equal rights. For example, during parliamentary debates, members can ensure that they always speak respectfully to their women counterparts and never use misogynistic or sexist language to refer to parliamentary colleagues or staff. Likewise, parliamentarians can actively promote equal pay within their own offices and even their own businesses (if they continue to engage in the private sector). They can also lobby for the equal promotion of women to senior positions within both parliament and the public service, especially if they also hold ministerial posts. This kind of personal role-modelling can have a strong impact on members of the public – demonstrating that gender equality contributes to the well-being of all is a powerful act.

Some parliamentarians have particularly high profiles in the community and within parliament, which can provide them with a useful platform to advocate and drive gender law reforms. For example, Speakers and presiding officers manage the agenda of parliament and can use those powers to encourage issues to be discussed. Chairs of committees or others with leadership roles within parliament can also use those positions to engage in advocacy and/or to encourage their colleagues to take up specific law reform issues for consideration. Although gender is, of course, the responsibility of all parliamentarians, female members often carry an extra burden of responsibility because the community looks to them for leadership on gender equality issues. What this means, in practice, is that women members have an extra duty to ensure they are familiar with the data and issues in relation to women and girls, including on law reform.

Box 8: Parliamentarians show leadership in times of crisis such as COVID-19

Examples from Colombia and Mexico

The role of parliamentarians as leaders has been in sharp focus during the period of the COVID-19 pandemic, as ordinary people have looked to their leaders for guidance to help them sift through the flood of information (and misinformation) that has characterized the response.

Parliamentarians can demonstrate gender-sensitive leadership during the pandemic, including by continuing to advocate gender equality. The two examples below exemplify this show of leadership by parliamentarians.

The first example covers the work of the Women's Equality Commission of Colombia:

The Congress of Colombia has been promoting a gender-sensitive approach to the COVID-19 response through the work of the Women's Equality Commission, which brings together members of the House of Representatives and the Senate.

The Commission focuses on highlighting and addressing the alarming levels of violence against women, especially intra-family violence, as well as the specific needs of rural women. It has requested that violence prevention and response, as well as support to victims, be considered essential services during the crisis.

Reports of domestic abuse in the country have increased by 200 per cent. Therefore, the Commission launched a social media campaign called #MujeresSinVirusdeViolencia to sensitize the population on preventing and responding to gender-based violence. It also held hearings with relevant ministries and the Women's Equality Agency on action to mitigate the economic impact of the crisis on women in the short and medium terms.⁷⁷

⁷⁷ Inter-Parliamentary Union, "Compilation of parliamentary responses to the pandemic". Available at www.ipu.org/country-compilation-parliamentary-responses-pandemic (accessed on 2 September 2021).

The second example, which dates from May 2020, relates to the situation in Mexico:

A working group headed by the Speaker of the Chamber, with female deputies representing all parliamentary groups and presidents of committees such as the Gender Equity and Justice committees, have been meeting weekly. The group ensures that measures taken by the Government and the Congress during the pandemic are defined and implemented with a gender perspective. The group also addresses the problems women and girls are facing because of the health emergency.

The IPU President, Mexican MP Gabriela Cuevas Barron, called attention to the high proportion of women in the health sector and to the specific situation of women in unpaid or underpaid jobs, demanding investments in gender parity in the COVID-19 response.⁷⁸

Key questions to consider:

- Do parliamentarians undertake regular community outreach, which could be used as opportunities to discuss issues relating to gender-responsive law reform?
- Do parliamentarians have access to some form of constituency development funds, which could be used to support advocacy and/or implementation of gender-responsive law reforms?
- Are there thought leaders and/or community leaders with whom parliamentarians could work to advocate gender-responsive law reforms (e.g., religious leaders, traditional leaders or prominent public figures)?
- Do parliamentarians and parliament itself have social media pages (e.g., Facebook, Twitter) that could be used as platforms for advocacy?
- Are there any television, radio or other media channels that parliamentarians could harness to raise the profile of gender-responsive law reforms in the community and/or to educate people about what such law reforms seek to do and why they are important?
- Are there any national or international campaigns in which parliamentarians could participate that could draw more attention to gender equality and/or related law reforms (e.g., the UN Women He4She campaign, or campaigns against child marriage)?

⁷⁸ Inter-Parliamentary Union, n 77.

Section 3: A step-by-step approach to gender-responsive law-making

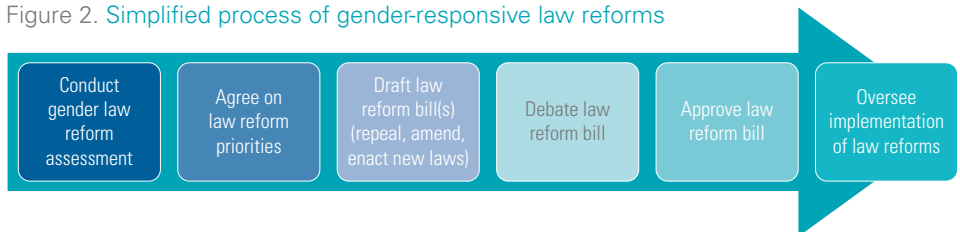


Constructive dialogue between parliament and the executive is key to ensuring women's rights are promoted through law-making. © Sam Mooy/Getty Images via AFP

3.1 Introduction

Law-making, oversight, and representation and outreach are the core business of parliamentarians everywhere, albeit to differing degrees. The process of making new laws and revising and reversing existing laws which discriminate against women, harnesses parliamentarians' efforts in all of these areas, although the act of law-making is the main focus. Figure 2 provides a simple summary of the key steps involved in gender-responsive law reforms. These are described in more detail in this section.

Figure 2. Simplified process of gender-responsive law reforms



3.2 Stakeholders in law reform

Ensuring that men and women have equal rights in law and in practice is the duty of all members of parliament, not just women parliamentarians. Experience from around the world shows that reforms are most successful when male and female parliamentarians from across the political spectrum work together to ensure their enactment and implementation. There are many examples of strong and successful collaborations of this type. In Kenya, for example, the Prohibition of Female Genital Mutilation Act (2011) was developed and driven by the Kenya Women Parliamentary Association, but the draft law was tabled as a PMB by a male parliamentarian to demonstrate solidarity and support for reform from both male and female members.⁷⁹

Although this Handbook is intended to help parliamentarians advocate, drive and support gender-responsive law reforms, it should be recognized that the process of law reform is not the responsibility of only parliament. The process of amending, repealing or enacting laws involves many different stakeholders. Good practice from around the world suggests that multi-stakeholder approaches to law reform are beneficial on many fronts: building support across the executive – and with the community and other affected stakeholders (such as the private sector for reforms relating to labour law) – is essential not only for ensuring that good laws are passed, but also that they are implemented effectively and result in actual changes in the lived experience of women and girls.

Law reform in support of gender equality can often be very sensitive and sometimes even controversial. It is therefore even more important that buy-in is cultivated across the spectrum of society throughout the process.



Within the legislative, there are many stakeholders whose assistance and support will be important to ensuring that effective gender-responsive law reforms are enacted, revised or repealed, as the case may be:

- The Speaker or presiding officer of parliament (or the head of the upper house, if applicable) often play an important role in deciding which bills are given priority for debate on the legislative agenda, and how debate on bills and amendments to such bills are managed.
- The business committee of the chamber (where one exists) also has a key role in determining which bills are placed on the legislative agenda. Members of this committee should be engaged early on to discuss and understand the proposed law reform, especially if the bill is being initiated by an ordinary parliamentarian as opposed to a government minister.

79 Rukia Yassin, “Female Genital Mutilation Illegalised as Kenya Passes Law Against ‘The Cut’” (24 October 2011). Available at www.gtzkenyahealth.com/blog3/p_9308/ (accessed on 30 September 2021).

- ▶ The office within parliament responsible for providing legal advice and analysis (commonly referred to as the parliamentary counsel, legislative office, or legal adviser) and parliamentary staff more generally, also have an important role to play in supporting parliamentarians in their law reform efforts. In some instances, [parliamentary counsel](#) may be asked to draft a gender-responsive law reform bill, alternatively, parliamentarians may call on the parliamentary counsel to advise on the impacts of the bill or to help them draft amendments to it. Parliamentary staff may also be called on to undertake research for parliamentarians on gender and discrimination issues.
- ▶ [Members of parliamentary committees](#) can play a key role in analysing and debating a bill in more detail. Members of relevant committees may draw on advice of parliamentary staff, as well as on expertise from women's rights NGOs, academics and/or other professionals.
- ▶ Data from the IPU shows that 93 parliaments around the world have established some form of formal or informal [women's caucus](#).⁸⁰ Women's caucuses can be important vehicles for driving forward gender-responsive law reforms and building support for such reforms across the broader cohort of parliamentarians.
- ▶ Individual parliamentarians remain the critical factor in all reforms, since their votes determine whether reforms will be enacted. In many parliaments, such votes are guided by political party decisions: parliamentarians vote as a bloc according to whether or not their party supports the reform. In such contexts, it will also be important to engage with [political party leaders](#), both inside and outside parliament.

Expert groups such as NGOs, academics and professional associations can be an excellent source of pro bono or subsidized research, information and technical advice. Many organizations will offer their services without charge, on the basis that gender equality law reform is in the public interest. Parliamentarians can reach out to these networks for support.



Box 9: Securing the buy-in of political parties is necessary for law reform

Political parties are often overlooked as key stakeholders in law reform. Although parties often do not have a formal, official role in the work of parliament, parliamentarians in many countries vote as part of a political party bloc. In such cases, it is the decision of the party – and often, of the smaller executive group of the party – that determines whether or not its parliamentary members will support a particular law reform initiative. For this reason, it is often important to work with political parties directly, in order to build their support for gender-responsive law reforms.

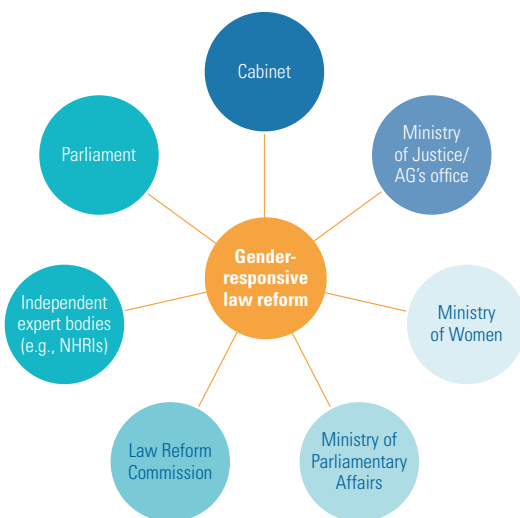
As discussed in Box 5 above, cross-party women's caucuses and cross-party parliamentary groups on gender equality or domestic violence can be useful parliamentary vehicles for driving forward gender-responsive law reforms. It may

⁸⁰ Inter-Parliamentary Union, n 2.

also be useful to engage political parties more directly in law reform initiatives, such as by working with executive bodies to include gender-responsive law reform commitments in their party manifesto and/or with political party women’s wings to internally advocate greater action and commitment to address discriminatory laws. Proactively engaging political parties in law reform efforts can ensure that, once party candidates are elected to parliament, they will already be committed to taking action. Moreover, once political parties are on board with gender-responsive law reforms, their leaders and candidates can themselves become community advocates and bring their members and voters along with them.

Alongside parliament, the executive also plays an important supporting role in law reform efforts. In such contexts, the role of government ministers and their departments are critical. In particular, the following bodies of the executive branch are important:

Figure 3. Executive stakeholders in law reform



➤ The [ministry of women or national gender machinery](#) is normally the formal government structure tasked with promoting gender equality and/or improving the status and rights of women. Ideally, this structure will house expertise on gender equality and women’s rights issues and possess strong networks that can be drawn on to inform law reforms. In reality, many of these bodies are under-staffed and under-funded. They also often operate on the margins of politics, with limited influence over the political or legislative agenda.

➤ The [ministry of justice and/or attorney general’s office](#) plays a key role in all law reform activities. Usually, this ministry or office will be responsible for managing the government’s legislative agenda, including deciding which laws will be prioritized for enactment, amendment or repeal on the legislative calendar. In most cases, it is also responsible for undertaking a comprehensive review of laws (although, in some countries, this work is done by dedicated law reform commissions: see below for more details). In addition, this ministry or office will usually draft bills and have dedicated legislative drafting staff to do this job (although, in some countries, sector-specific ministries may also have their own drafters on staff).

- Some countries have a specific [ministry for parliamentary affairs](#), which acts as an official liaison with parliament. This is usually the case in countries with a presidential or semi-presidential system, where parliament is more independent of the executive, and where cooperation and consultation must be deliberately facilitated. This ministry may also have a role to play in the process of finalizing the bill and preparing it for submission to parliament.
- The Office of the [President or Prime Minister](#) is usually responsible for working with the ministry of justice or the attorney general's office in agreeing on the annual legislative calendar, since law reforms form a key part of any government's agenda. Where gender-responsive law reforms are of public interest, the Prime Minister or President's office will sometimes even spearhead the initiative (see Box 4 for an example).
- The [Cabinet](#) is normally involved in discussing and signing off key law reforms. Cabinet discussions can become quite intensive, particularly in relations to sensitive or controversial gender equality proposals. If Cabinet cannot reach a consensus, reforms can stall at this late stage.

It can be useful for parliament to proactively engage with stakeholders within the executive, whose support will be essential to gender-responsive law reform. For example, a parliamentary liaison officer or a staff member with responsibility for ensuring all laws are human rights-compliant may be mandated to develop and maintain good relationships with the ministry of justice and ministry of women, to ensure that parliamentarians are kept well-informed about key gender equality developments.



Some countries have set up independent bodies to review laws and provide guidance on good-practice reforms. Around the world, more than 85 countries have established some form of independent law reform commission, which is mandated to examine legal issues and make recommendations for law reform.⁸¹ These commissions may carry out reviews into gender-related legal issues, which parliamentarians can use to inform their own law reform efforts. For example, the Law Reform Commission of Mauritius has undertaken a range of inquiries into gender-based provisions in the existing Criminal Code,⁸² while the Cayman Islands Law Reform Commission has conducted specific reviews on issues such as domestic violence, family law, sexual harassment, stalking, the Matrimonial Causes Bill, and the Maintenance Bill.⁸³

Other independent bodies such as national human rights institutions also sometimes undertake reviews of issues with legal dimensions, and propose recommendations calling for law reform. These expert reports can be useful sources of information for parliamentarians.

81 Philippe de Meneval, *Legal Reform & Law Reform Commission*. Available at <http://siteresources.worldbank.org/INTLIBYA/Resources/Legal-Reform.pdf> (accessed on 22 January 2020); British Columbia Law Institute, "Law Reform Resources". Available at www.bcli.org/law-reform-resources (accessed on 2 September 2021).

82 Law Reform Commission of Mauritius, "Reports and Papers". Available at https://lrc.govmu.org/lrc/?page_id=1860 (accessed on 22 January 2020).

83 Cayman Islands Law Reform Commission, "A-Z of Projects". Available at www.lrc.gov.ky/portal/page/portal/lrc/home/projects (accessed on 22 January 2020).

While this Handbook focuses on proactive and deliberate law reform through legislative action, the judiciary can also play a role in law reform through judgements. In some cases, the judiciary may trigger legislative action by issuing judgements that find that a government has acted improperly or in contravention of the constitution in relation to gender issues and/or by calling on the government or parliament to take action to address a legal deficiency. Courts have been particularly active around non-discrimination, as most countries' constitutions include sex discrimination provisions which are justiciable. In this context, law reforms may then be designed to elaborate on anti-discrimination rights and processes to address gaps in the constitutional text identified by the courts. Once laws are enacted, courts also play a key role in interpreting them and ensuring their application.

Box 10: Court decisions may influence parliamentary law reform processes

Examples from Algeria, Iraq, Lesotho

While parliaments lead on the enactment of legislation, it is the role of the courts to interpret the law. This can often work as a “feedback loop,” with court decisions affecting whether and how parliaments take action to reform laws. In some countries, parliaments can proactively seek advice from the constitutional court on the application of constitutional provisions. In Algeria, for example, constitutional reforms in 2008 instituted affirmative action in measures specifically related to women's political participation. Parliament subsequently amended a relevant organic law to make provision for quotas in elected assemblies.⁸⁴ In Opinion no. 5 of 2012, the Constitutional Council responded to a request by parliamentarians to review the constitutionality of their amendments, finding that they had properly implemented the Constitution, albeit with some suggestions for improvement.⁸⁵

The Federal Supreme Court of Iraq received a similar constitutional question from parliament, testing the constitutionality of quotas for women after a member of the Presidency Council did not accept a modification to Electoral Law No. 16 of 2005. The court upheld the parliament's actions.⁸⁶

In other cases, court decisions have been used to trigger reforms. In *Ts'epe v. The Independent Electoral Commission and Others*, a case brought before the Court of Appeal of Lesotho, the court was petitioned by a man who argued that gender parity provisions in the Local Government Elections Act (providing that one third of seats in municipal, urban and community councils would be women-only) were unconstitutional.⁸⁷ The Court of Appeal undertook a social context analysis to illustrate the historical disadvantage faced by women in the political arena and upheld the law, finding that “while throughout the world, the under-representation of women in public life is marked, in Lesotho the disparity is particularly acute.”⁸⁸

84 UN Women, *Academic paper: Gender equality and women's empowerment: Constitutional jurisprudence* (New York, NY, UN Women, May 2017) at p. 61. Available at www.idea.int/sites/default/files/publications/gender-equality-and-womens-empowerment-constitutional-jurisprudence.pdf (accessed on 30 September 2021).

85 UN Women, n 84 at p. 62.

86 UN Women, n 84 at p. 62.

87 International IDEA, “Gender quotas database: Lesotho”. Available at www.idea.int/data-tools/data/gender-quotas/country-view/174/35 (accessed on 6 February 2020).

88 UN Women, n 84 at pp. 62–63.

However, after considerable lobbying over the next five years, parliament amended the Local Government Elections Act in 2011. The change meant that one third of women would instead be elected from party lists.⁸⁹ This resulted in 40 per cent women being elected in the most recent 2017 local council elections, although this figure was down from a high of 59 per cent women in the first such local elections held in 2005, when a different electoral system was used.⁹⁰

Civil society organizations (CSOs) can also play an important role in law reform efforts. Here, the term is used broadly to include not only women's rights and human rights organizations, but also community groups, unions, religious groups, academics, professional associations, the media and members of the public. Gender-responsive law reforms often have wide-ranging impacts and attempt to address entrenched cultural norms and traditions. As such, it is critical that the diverse elements of society are brought on board with proposed reforms and are actively engaged in an inclusive manner. The media can be a critical partner in this context, helping to share accurate information about what is being proposed and the implications of law reforms.

Key questions to consider:

- Within your parliament, which individuals or groups could you work with to progress gender-sensitive law reform (parliamentary leadership, committees, women's caucus, parliamentary groups or others)?
- Who in government could you work with, formally or informally, to progress gender-sensitive law reform (officials, ministers, or others)?
- Are there any independent bodies that could provide useful advice on key gender-sensitive law reform issues (law reform commission or other body)?
- Are there any CSOs which could be useful partners in law reform (NGOs, academics, think tanks, media, private sector bodies or others)?

3.3 Promoting public participation in law-making

Historically, the work of parliament was typically little understood by most people, and parliamentarians were often seen as doing their work behind the closed doors of the legislative building, far from the scrutiny of the public. In recent times, however, parliaments have increasingly committed to becoming more transparent, participatory

⁸⁹ International IDEA, n 87.

⁹⁰ At the 2005 election, Lesotho adopted a system of reserving one third of seats in a first-past-the-post system for women, i.e., only women could contest these seats. In addition to the reserved seats, women won 28 per cent of the openly contested seats, bringing the total to 58 per cent; see: Gender Links for Equality and Justice, "50/50 By 2030: Gender in the 2017 Lesotho Local Government Elections" (2018). Available at <https://genderlinks.org.za/wp-content/uploads/2018/10/LG-elections-report-LES3.pdf> (accessed on 30 September 2021).

and inclusive.⁹¹ Some countries have gone as far as to introduce rules in their standing orders permitting and/or requiring public consultation and participation in the work of parliament.⁹² Many parliaments now have websites where bills, committee reports, transcripts and other key working documents are regularly uploaded. Many parliamentary committees also have their own web pages where they upload information about committee hearings, invite submissions and publish both submissions and their reports. Some parliaments have also initiated the use of social media, sharing information on Facebook, Twitter, etc. and livestreaming their hearings on traditional and social media channels. These innovations are intended to bring the public into the work of parliament, and to build public understanding of the role of parliament and its value to the community.

When progressing law reforms, it is even more critical that parliaments and parliamentarians proactively engage members of the community, as well as special interest groups, policymakers and thought leaders, through the public consultation process. Making a particular law reform agenda acceptable to the community will require social norm change. This is particularly true when it comes to gender-responsive law reforms because gender norms are often deeply connected to culture and tradition. For this reason, experience reveals the importance of designing and implementing overarching public education and consultation processes, designed to mobilize public opinion in support of gender-responsive law reforms.

Before adoption, every law with a far-reaching impact should be subject to inclusive consultations with all potentially affected groups. These consultations should take place at every stage of the legislative process – not just when there is already a fully drafted legislative text. Parliamentary committees are often used for this purpose, as they often have mandates which empower them to undertake public consultations. This may involve calling for written or oral submissions from interested parties, as well as holding multiple hearings around the country to collect inputs. Doing so can help channel feedback not only from experts, but also from ordinary people who might be affected by the issues the law proposes to address.

Box 11: Facilitating public participation through online channels in a post-COVID-19 world

Examples from Brazil and France

The impact of COVID-19 has changed the way parliaments work, with many parliaments introducing or updating online parliamentary engagement mechanisms at a time when social distancing requirements have restricted face-to-face interactions. Many innovations have been trialled and, as a result, many parliamentarians are much more open to interacting with each other and with the public online. In the aftermath of COVID-19, parliaments can continue to harness these tools to support more-systematic public participation in law-making.

91 Andrew G. Mandelbaum, *Strengthening Parliamentary Accountability, Citizen Engagement, and Access to Information: A Global Survey of Parliamentary Monitoring Organizations* (Washington, DC, World Bank Institute & NDI, 2012). Available at <https://www.ndi.org/sites/default/files/governance-parliamentary-monitoring-organizations-survey-september-2011.pdf>; Opening Parliament. Available at www.openingparliament.org/ (accessed on 23 January 2020).

92 ParIAmericas, “Regulatory frameworks for citizen participation in the legislative process in the Americas and the Caribbean” (Ottawa, Canada, ParIAmericas, undated). Available at https://pariamericas.org/uploads/documents/Regulatory_Frameworks_for_Citizen_Participation.pdf (accessed on 30 September 2021).

Pilot practices already existed before COVID-19 and are likely to be expanded further. The CrowdLaw portal collects stories of innovative approaches to online public participation in government, including with parliaments.

The following example comes from a case study in Brazil:

LABHacker is the parliamentary in-house innovation unit that resides within the Chamber of Deputies, aiming to improve the transparency and public understanding of the legislative process. The LAB does this by promoting citizen projects and activities like hackathons and workshops with parliamentarians. Created in 2013, LABHacker also manages the eDemocracia portal, consisting of three activities: WikiLegis, a collaborative drafting platform where citizens can debate and edit text with deputies, interactive audiences in which deputies run live Q&A sessions with public audiences, as well as thematic discussions. e-Democracia's two greatest successes to date include the Youth Statute Bill, which crowdsourced 30 per cent of its final text from young people across the country, and the Internet Civil Rights Bill, which received 374 individual contributions on the Wikilegis platform, many of which were explicitly referred to by the rapporteur in the chamber, and adopted in the final bill.⁹³

The CrowdLaw case study below is from France:

Parlement & Citoyens is an online platform which brings together representatives and citizens to discuss policy issues and collaboratively draft legislation. It originated in civil society and has since been utilized by French representatives, though it continues to be run on a volunteer basis. The platform enables the French public to provide input for legislative drafting through a multistep, online consultation process. On the platform, representatives can host a consultation consisting of three to five different participation opportunities. For instance, a representative poses a problem that citizens help define and for which they generate solutions, and then help evaluate the proposed solutions. Citizens may also engage in video discussions with the representative. At the end of the process, a conclusory report explains if, when and how citizen input was incorporated into the resulting draft law.⁹⁴

In the context of gender-responsive law reform, public consultations should be designed to encourage engagement from women and girls. This can be particularly challenging in countries where women may not be as free or able to participate actively in parliamentary consultations and similar political activities. To address this, parliamentarians are encouraged to design specific activities to facilitate consultations with, and inputs from, women and girls. For example, parliamentarians could hold separate women-only or girls/youth-only meetings. Also, on sensitive issues such as domestic violence and FGM, witnesses to committees may be permitted to make anonymous written submissions or testify in closed-door hearings. Figure 4 below was developed by ParlAmericas, a regional parliamentary body composed of the 35 national

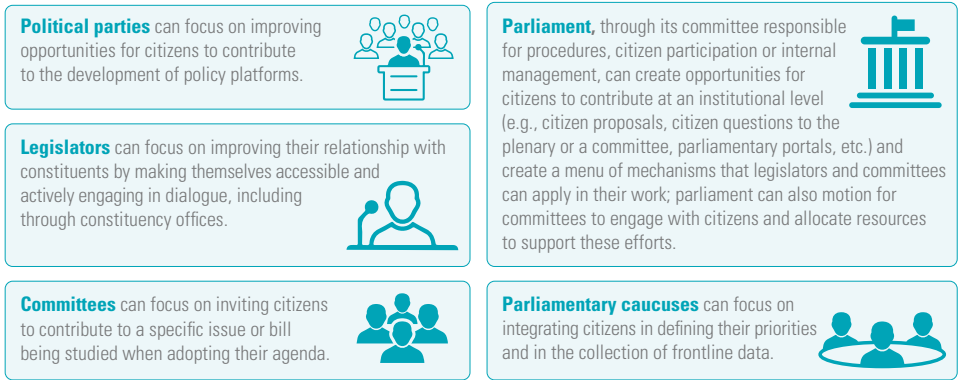
93 CrowdLaw, "CrowdLaw Appendix I: Case Studies". Available at <https://docs.google.com/document/d/1078APjyL2wArEUgsZLYjnDnbWY23eh7NNjiVflBvXZU> (accessed on 16 October 2020).

94 CrowdLaw, n 93.

parliaments from North, Central and South America and the Caribbean, as part of its handbook for parliamentarians entitled “Citizen participation in the legislative process”:

There are a range of organizations that can support parliamentary efforts to encourage public participation in the law reform process. Civil society organizations, especially women’s groups and human rights NGOs, often have very extensive networks throughout the community and pre-existing expertise in running advocacy campaigns that are designed to change mindsets and get community members more actively engaged in their issues. They can be invited to work with parliamentarians as partners for change. On sensitive topics, they may also be able to serve as intermediaries for parliament, collecting stories and information from affected parties who may not otherwise be empowered to interact directly with parliament. Likewise, Trade Unions also have strong networks among ordinary working people and, as such, can be particularly important partners on gender-responsive law reforms that seek to promote fairer working conditions for women. Professional bodies, such as bar associations and other organizations representing members of the legal profession, can also access influential thought leaders within the legal community, whose support for law reforms could be vital in convincing parliamentarians and other policymakers to take action.

Figure 4. Different parliamentary entry points for facilitating public participation⁹⁵



The media are also key partners in efforts to change mindsets and build support for gender-sensitive law reforms. Parliamentarians can reach out to journalists and media outlets to offer information about the substance of proposed law reforms and make themselves available to answer questions about complex or controversial elements of these reforms. Gender-responsive law reforms are particularly at risk of disinformation. Therefore, engaging the media enables reformers to get ahead of this challenge by directly offering the public accurate information and data as justification for the reforms and outlining the envisaged positive impact of such reforms.

The impact of community thought leaders on the law-making process should also not be underestimated. At one end of the spectrum are traditional and religious leaders, whose

95 ParAmericas, “Citizen participation in the legislative process” (Ottawa, Canada, ParAmericas, undated). Available at https://parlAmericas.org/uploads/documents/Toolkit_Citizen%20Participation%20in%20the%20Legislative%20Process.pdf (accessed on 30 September 2021).

often strong standing in the community can be used to support advocacy on specific law reform issues, including in relation to gender equality. At the other end are the more recently formed community of celebrities and online personalities – so-called “influencers”. The #MeToo movement was a highly visible example of this phenomenon, with female actors kick-starting a much wider societal and legal debate on sexual harassment and exploitation in the workplace. Media celebrities are increasingly being engaged in advocacy campaigns, in an effort to harness their influence in order to bring attention to law reform, including in relation to gender.

Box 12: Pacific women’s rights groups worked with parliaments to enact comprehensive family protection laws across the region

Examples from the Pacific region

Law reform is a core part of efforts to end violence against women (EVAW): without a clear and effective legal framework making domestic violence a crime and providing both sanctions and preventive measures, it is incredibly difficult for justice services and crisis workers to effectively help women and children who seek their protection.

Across the Pacific, recognition of the corrosive effect that violence against women and children has on individuals and communities prompted a major campaign to implement effective family protection laws as part of comprehensive EVAW programming.⁹⁶ The Regional Rights and Resources Team (RRRT), a unit of the Pacific Community, worked with national parliaments, government justice sector bodies and Pacific CSOs to advocate and provide technical guidance on family protection laws over almost two decades. This resulted in the enactment of 12 family protection laws between 2008 and 2017.⁹⁷ Over this period, RRRT held regional and national workshops with parliamentarians in several countries,⁹⁸ working alongside local ministries of women, ministries of justice, CSOs and international development partners to build awareness of the importance of EVAW law reform and the specific elements of good-practice EVAW legal frameworks.⁹⁹ Lawmakers were key partners in the reforms, although key government officials, law reform bodies and community leaders were also involved in advocacy. In addition, public education was critical, since law reform proposals were initially met with considerable resistance from religious and traditional leaders in some countries. Over time, however, through continued advocacy and engagement, community perspectives changed, with direct positive impacts for law reform efforts.

96 Pacific Women, *Ending violence against women: Roadmap synthesis report* (Suva, Fiji, Pacific Women, 2017). Available at <https://pacificwomen.org/key-pacific-women-resources/pacific-women-ending-violence-women-roadmap-synthesis-report/> (accessed on 2 September 2021).

97 Pacific Women, “Working together to implement domestic violence legislation across the Pacific” (24 December 2019). Available at <https://pacificwomen.org/news/working-together-to-implement-domestic-violence-legislation-across-the-pacific-2/> (accessed on 11 February 2020); Pacific Women, *Legal Response to Family Sexual Violence*. Available at <https://pacificwomen.org/wp-content/uploads/2019/06/29-04-19-Legal-Response-to-Family-Sexual-Violence-SPC-RRRT.pdf> (accessed on 30 September 2021).

98 Regional Rights Resource Team of the Pacific Community, “Pacific MPs united on ending violence against women” (29 August 2012). Available at <https://hrsd.spc.int/node/426> (accessed on 3 November 2021).

99 Regional Rights Resource Team of the Pacific Community, “Gender equality and violence against women and children”. Available at <https://rrrt.spc.int/ending-violence-against-women/gender-equality-and-violence-against-women-and-children> (accessed on 10 February 2020).

Key questions to consider:

- Do your parliamentary rules or standing orders include any specific provisions that permit and/or require public consultation or participation in the work of parliament, including in the law-making process?
- Does your parliament currently have specific mechanisms in place that facilitate public consultation or participation in the law-making process, including through the work of parliamentary committees?
- Does your parliament have a website and/or social media pages? If so, are these online channels being harnessed to effectively support public consultation and participation, including by regularly sharing information on draft bills and processes to review draft bills?
- Does your parliament have rules and processes that facilitate the work of the media in reporting on the work of parliament, including the different parts of the law-making process?
- Does your parliament have specific outreach programmes that seek to actively engage the community in the work of parliament? If so, are these programmes effectively designed to reach out to women?

3.4 Identifying which laws need to be amended

Before embarking on any process of law reform to promote gender equality and tackle discrimination in law, it is first necessary to assess the existing state of the law in order to more systematically identify priority areas for law reform. Experience shows that gender-responsive law reform processes tend to be ad hoc in nature, with parliamentarians supporting piecemeal reform efforts in response to pressure from CSOs, the media and even to international pressure. However, emerging good practice suggests that it is both more effective and more efficient to start a gender-responsive law reform process with a comprehensive “legal assessment” or “audit”. This could be commissioned by parliament itself or other bodies such as law reform commissions and national women’s machineries.

In most parliaments, parliamentarians have an opportunity to submit official questions (in parliamentary systems) or interpellations (in semi-presidential systems) to ministers, either in writing or orally, in order to request information or updates on policy issues. These can be used to keep pressure on the executive in relation to gender-responsive law reform. Parliamentarians can use question times or interpellations to ask key ministers how they will respond to any gender law reform audit and/or enquire about specific gender-responsive law reform issues.





Analysing legislation from a gender perspective is a key responsibility of parliament and requires dedicated mechanisms and expertise. © UN Women

A parliamentarian, parliamentary committee, or a parliamentary women's caucus (see Box 5 for more) could ask parliamentary staff or the parliamentary library to carry out research into which laws discriminate against women and girls and a timeline for bringing the country's laws in line with international gender equality norms and standards. If internal resources are inadequate for this type of task, parliamentarians could work with development partners to commission research through an external consultant or an NGO or academic.

Box 13: Gender or regulatory impact assessments can help inform parliaments about whether laws contribute to gender equality

Many countries require all proposed new laws, amendments and regulations to undergo a regulatory impact assessment (RIA). An RIA involves examining the impact of the law across a range of social issues, including gender equality. Data from 2015 shows that over 90 countries conduct RIAs. Specifically, 46 out of 58 high-income economies conduct RIAs, compared to only 5 of 29 low-income ones.¹⁰⁰ The European Union goes further and calls on countries to undertake a specific gender impact assessment (GIA), which should operate as an "analysis or assessment of a law, policy or programme that makes it possible to estimate the likelihood that a given decision will have positive, negative or neutral consequences for the state of equality between women and men."¹⁰¹

At a minimum, RIAs or GIAs are intended to inform decision makers about the economic, social and/or environmental impacts of proposed laws and regulations, to help determine whether these serve their purposes effectively. The impact on

¹⁰⁰ World Bank, *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments* (Washington, DC, World Bank Group 2015) at p.3. Available at <http://documents.worldbank.org/curated/en/905611520284525814/Global-Indicators-of-Regulatory-Governance-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf> (accessed on 30 September 2021).

¹⁰¹ European Institute for Gender Equality, "Gender Impact Assessment". Available at <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-impact-assessment> (accessed on 2 September 2021).

women and girls and the overarching contribution that a proposed law or regulation makes to gender equality should be an integral part of both types of assessment. The annexes to the UN Women publication “Equality in law for women and girls by 2030: A multistakeholder strategy for accelerated action”¹⁰² include a list of possible questions that parliamentarians may wish to use as a starting point for their own locally contextualized GIA. These questions relate specifically to data collection under SDG 5.1.1.

In many countries, RIAs are produced by the executive as part of the process of developing laws and regulations. In such circumstances, parliament can work with the executive to require these RIAs to be submitted alongside draft bills, so that parliamentarians can use them to inform their own decision-making. In some countries, parliaments themselves produce RIAs.¹⁰³ In practice, the parliamentary library or committee staff will produce the document and share it with members to help them better understand the implications of the proposed law before it is debated.¹⁰⁴

If promoting gender equality is an issue of national importance, parliament could also consider making a gender law reform assessment a more official process by mandating a parliamentary committee to undertake a specific inquiry into gender-responsive law reform. Depending on the rules of procedure, this would usually involve parliament approving a resolution setting out the terms of reference for the inquiry and referring it to an existing or ad hoc committee. Members of the committee will then have substantial powers to inquire into gender-responsive law reform issues, including calling on government ministries and other experts to provide information and advice. They can also call for written submissions from the public more generally.

The country reports and concluding observations provided by the CEDAW Committee, the CRC Committee and other treaty bodies, as well as the recommendations from the UPR process, are useful inputs for a gender law reform audit.



Parliamentary committee inquiries can be important ways to start national discussion about law reform. Hearings can be streamed online or broadcast on the radio, allowing the public to listen to the arguments in favour of reform. Some committees may even undertake hearings outside of the parliamentary precinct, offering opportunities for citizens throughout the country to participate in and listen to discussions about law reform proposals in person. Participatory parliamentary committee processes can be especially useful ways to start building public support for gender-responsive law

102 UN Women, n 31.

103 World Bank, “Global Database for Regulatory Impact Assessment (RIA)”. Available at <https://rulemaking.worldbank.org/en/ria-documents> (accessed on 2 September 2021); Parliamentary Budget Office of Georgia, “Regulatory Impact Assessment (RIA)”. Available at <http://pbo.parliament.ge/estimates/regulatory-impact-assessment.htm> (accessed on 2 September 2021); Parliamentary Counsel Office of New Zealand “Regulatory impact statement guidance”. Available at www.pco.govt.nz/ris-guidance/ (accessed on 2 September 2021); Council of Europe, *Regulatory Impact Assessment and Public Consultations: Comparative Models, Lessons Learned & Recommendations for Belarus* (2018). Available at <https://rm.coe.int/belarus-regulatory-impact-assessment-and-public-consultations-recommen/16808e3002> (accessed on 30 September 2021).

104 Enabling Environment for Sustainable Enterprises, “What is a regulatory impact assessment?”. Available at <http://eese-toolkit.itcilo.org/index.php/en/toolkit/toolkit-part-2/section-2-3/assessment-tool-12/what-is-a-regulatory-impact-assessment.html> (accessed on 2 September 2021).

reforms. At the end of the inquiry, the parliamentary committee would produce a report or white paper for consideration by parliament, as well as by the executive and the public at large.

Box 14: Dedicated parliamentary committees on women's rights or gender equality can be useful sources of information and expertise

Examples from South Korea, India, Canada, Colombia

Most countries have established parliamentary committees to oversee key sectors or issues. Depending on the size of parliament, the preferred approach of parliamentarians and/or the structure of government, some countries include gender equality issues in the mandates of all parliamentary committees. In other words, every committee is tasked with assessing the differential impact of laws, budgets, policies and programmes on women and men. In the last couple of decades, an increasing number of parliaments have taken a different approach by setting up parliamentary committees with a specific mandate to promote and oversee gender equality and women's rights commitments.

Research from 2015 shows that, between 2006 and 2013, more than 100 parliamentary bodies had been established to deal with gender equality across 86 countries.¹⁰⁵ By September 2020, a total of 93 lower or single chambers of parliament and 34 upper chambers had at least one specialized body on gender equality.¹⁰⁶ These bodies commonly have a mandate to review proposed laws, as well as to oversee government activities focused on gender equality and women's rights and to make recommendations for reform. Many have been quite effective in pushing for gender-responsive law reform and more systematic assessments of national gender equality issues. For example, "in South Korea, the Standing Committee on Gender Equality and the Family has promoted initiatives such as the gender budgeting clause included in the 2006 *National Finance Act*. Dedicated gender equality committees have also been tasked with auditing national women's machinery as in India, or may commission audits of gender mainstreaming in government, as in Canada."¹⁰⁷ These bodies have also played a key role in ensuring accountability for protecting women's rights and gender equality in the COVID-19 pandemic. In Colombia, the Women's Equality Commission launched a social media campaign called #MujeresSinVirusdeViolencia to raise public awareness around preventing and responding to gender-based violence (GBV). It also held hearings with relevant ministries and the Women's Equality Agency on action to mitigate the economic impact of the crisis on women in the short and medium terms.¹⁰⁸

In addition to spearheading a gender law reform assessment, parliamentarians could engage in a joint process with the executive (especially the ministry of women, the ministry of justice and/or the attorney general's office) and/or with women's rights NGOs.

¹⁰⁵ Marian Sawyer, "Beyond numbers: The role of specialised parliamentary bodies in promoting gender equality", *Australasian Parliamentary Review*, Vol. 30, Issue 1 (March 2015) at p.107. Available at <https://search.informit.org/documentSummary;dn=879163612825720;res=JELAPA> (accessed on 28 February 2020).

¹⁰⁶ Inter-Parliamentary Union, n 2.

¹⁰⁷ Sawyer, n 105 at p.113.

¹⁰⁸ Inter-Parliamentary Union, n 77.

This type of inclusive, multi-stakeholder process serves as the starting point for building support for gender-responsive law reforms from the very earliest stages. In some cases, participation can be formalized through the establishment of a gender equality working group, which brings together relevant stakeholders. Bringing in a range of stakeholders will enable different offices across government to start buying in to the process and will assist with the consensus-building efforts that are often so critical to successful law reform. Ideally, the process would involve representatives from parliament, the executive and civil society. Depending on the breadth of the review, bodies like the police service and the ministries of health, education, and social welfare could also be involved, as well as the ministry responsible for immigration (on citizenship matters). The law reform commission, if one exists, could also be engaged in the process.

Regardless of which branch of government leads the process, the most important outputs of a gender law reform assessment are the final conclusions and recommendations. They should identify specific areas that need to be addressed through law reform. These recommendations can then be considered by the executive branch and/or parliament and used as a basis for prioritizing and progressing law reform efforts. Parliamentarians can play an important role by using question times and interpellations to continue to push for law reform.

Box 15: A comprehensive gender equality legal assessment can focus attention on key law reform issues

Examples from The Gambia, Georgia

In 2019, the Government of The Gambia mapped and analysed national laws from a gender perspective as part of the country's democratic and transitional justice reforms. To ensure that the process was participatory and inclusive, and drew on expertise from across sectors, the Government set up a stakeholder committee to guide the review process, which included representatives of the Government and civil society,¹⁰⁹ and was supported by the United Nations and development partners. A consultant was commissioned to undertake a detailed review, but the stakeholders committee was engaged throughout, and the final draft report was also discussed in-depth at a national consultative workshop held in July 2019. The final analysis recommended that a total of 10 laws or provisions should be repealed in whole or in part, 19 laws should be revised or amended, and 2 new laws should be enacted to bring The Gambia's legislative framework in line with its regional and international obligations. The report also recommended 14 policy measures to ensure that revised laws fully delivered on women's rights in a meaningful and transformative manner.¹¹⁰ The Government and National Assembly are now working through implementation of the recommendations.

In 2018, the Parliament of Georgia also undertook a comprehensive review of gender inequality in legislation and policy, which resulted in a list of recommendations

¹⁰⁹ The stakeholder committee included representatives from the Ministry of Justice, the Ministry of Women, Children and Social Welfare, the judiciary, the National Women's Council, the Female Lawyers Association-Gambia, Think Young Women, The Gender Platform and Network Against Gender-Based Violence; see: Government of The Gambia, UN Women and Commonwealth, *Mapping and Analysis of the Laws of The Gambia from a Gender Perspective: Towards Reversing Discrimination in Law* (2020) at p. 9. Available at <https://africa.unwomen.org/en/digital-library/publications/2020/08/mapping-and-analysis-of-the-laws-of-the-gambia> (accessed on 20 December 2020).

¹¹⁰ Government of The Gambia, UN Women and Commonwealth, n 109 at p. 7.

for consideration by parliamentarians.¹¹¹ The baseline research was carried out by the Gender Equality Council of the Parliament of Georgia, with support from the United Nations and other development partners,¹¹² and published in a report entitled *Gender Equality in Georgia: Barriers and Recommendations*. A team of researchers analysed the country's international human rights obligations and international good practice to identify legislative and policy gaps, and produced a set of concrete recommendations for advancing the gender equality agenda in nine areas: political participation, economic empowerment, violence against women, labour relations, health, education, sports, culture, and peace and security.¹¹³

Key questions to consider:

- Have any assessments been carried out by the government, by anyone within parliament (e.g., a parliamentary committee, the parliamentary library, or an interested member), or by any other group (e.g., an NGO, academics), to identify which laws currently discriminate against women or girls and/or what legal reforms should be enacted to better protect and promote gender equality?
- If no such assessments have yet been done, could you:
 - Discuss, with the ministry of women (as the lead ministry with responsibility for promoting gender equality), or the ministry of justice or the attorney general's office (as the lead ministries with responsibility for law reform), the possibility of commissioning such an assessment as a priority?
 - Ask the parliamentary library to undertake such an assessment?
 - Work with a particular parliamentary committee or the women's parliamentary caucus to undertake such an assessment?
 - Work with civil society (NGOs, academics) or development partners to undertake such an assessment?
- Are there any reports from international or regional human rights bodies setting out recommendations on law reform, which could be used to inform such an assessment?

3.5 Drafting legislation

Once the executive and/or parliamentarians have decided to engage in some form of gender-responsive law reform, the next step is to determine which reforms are to be progressed and according to what timeline. As discussed in Section 3.4 above, a comprehensive gender law reform assessment could inform such an analysis. Alternatively, governments and parliamentarians may simply choose to prioritize certain reforms based on their own agenda (for example, because they campaigned on a platform of reforming child marriage or inheritance laws).

111 *Caucasus Business Week*, "First Comprehensive Review of Gender Equality Legislation and Policies" (30 January 2018). Available at <https://old.cbw.ge/georgia/first-comprehensive-review-gender-equality-legislation-policies/> (accessed on 11 February 2020).

112 *Caucasus Business Week*, n 111.

113 *Caucasus Business Week*, n 111.

In a congressional system (where parliament has strong powers to initiate legislation), law reforms may be initiated by parliament itself. In a parliamentary system, meanwhile, the executive (e.g., the office of the attorney general or the ministry of justice) will be more likely to initiate reforms. In rare cases, legislation could also be initiated through a PMB (see Box 16 for more details).¹¹⁴

When drafting legislation or considering law reform, parliaments are encouraged to promote the use of gender-inclusive language. Parliaments around the world are increasingly developing helpful guidance for legislative drafters on the use of gender-neutral language in legislation.



Box 16: Private members' bills can be used to advance gender-responsive law reform

Examples from Ireland, New Zealand, Kenya, Sri Lanka, United Kingdom, Canada

In most parliamentary systems, it is generally the role of the executive and/ or ministers to introduce bills, although any member can then try to propose amendments once they have been tabled. However, individual parliamentarians may still be able to initiate law reform through PMBs. In such cases, a parliamentarian (or a small group or members) will draft the proposed law themselves and then work with other stakeholders within parliament to try to get their bill onto the legislative agenda. PMBs can be an important way of drawing public attention to an issue and showcasing a good-practice template on which the government can be encouraged to draw. They can sometimes be a successful way of getting a government to take action on a politically sensitive topic. For example, in Ireland,¹¹⁵ New Zealand¹¹⁶ and Kenya,¹¹⁷ FGM bills were tabled as PMBs but successfully passed with government support. Experience suggests that, even where PMBs never get on to the legislative agenda, they may push the government into taking action over time or provide a useful initial draft for an incoming reformist government.

In 2019, a number of PMBs were tabled in Sri Lanka with the aim of reforming discriminatory laws against women. In December of that year, the Chair of the Parliamentary Sectoral Oversight Committee on Women and Gender presented the Marriage Registration (Amendment) Act, which makes it mandatory for all marriages to be registered, alongside a second bill that sets the minimum age of marriage in

114 European Parliament, "Gender neutral language in the European Parliament" (Brussels, European Parliament, 2018). Available at www.europarl.europa.eu/cmsdata/151780/GNL_Guidelines_EN.pdf (accessed on 2 September 2021); Department of Justice Canada, "Legistics: Gender-neutral language" (2 December 1999). Available at <https://canada.justice.gc.ca/eng/rp-pr/csi-sjc/legis-redact/legistics/p1p15.html> (accessed on 30 September 2021); InterLaw Diversity Forum, "Guide to Gender-Neutral Drafting" (2019). Available at www.interlawdiversityforum.org/guide-to-gender-neutral-drafting (accessed on 30 September 2021).

115 Senator Ivana Bacik, "Legislation" (8 November 2013). Available at www.ivanabacik.com/legislation/ (accessed on 30 September 2021).

116 New Zealand had five political parties represented in parliament, but the fifth party had only one member in the House, who was a male.

While he indicated his support for the bill and was also willing to be a co-sponsor, it was decided that the bill would have a greater symbolic impact if it were presented by members of the parliamentary women's caucus only.

117 Yassin, n 79.

Sri Lanka at 18 years.¹¹⁸ A male parliamentarian also introduced two bills: one to repeal the Muslim Marriage and Divorce Act, which sanctions child marriages under Islamic law, and a second to make the 1907 Marriage Registration Ordinance (commonly referred to as the General Marriages Law) applicable to all citizens.¹¹⁹ In February 2019, another parliamentarian used a PMB to propose making it a legal requirement for women to be included on boards of directors in the corporate sector, in a move intended to ensure corporate gender equality.¹²⁰ These bills lapsed with the dissolution of parliament in March 2020 in advance of the parliamentary elections. In 2017, the Irish Labour Party initiated the Irish Human Rights and Equality Commission (Gender Pay Gap) Information Bill 2017, a PMB that called for more information to be provided by companies on the gender pay gap. In 2019, the focus of discussions on this issue shifted when the Government produced its own Gender Pay Gap Information Bill 2019.¹²¹ Both bills lapsed due to the general election in February 2020, but the Government's bill is back on the legislative agenda of the new parliament.¹²²

In 2017, a PMB tabled in the UK Parliament was successfully used to force the Government to accede to the Istanbul Council of Europe "Convention on preventing and combating violence against women," and domestic violence (the Istanbul Convention). Earlier, in 2014, a PMB was passed forcing the UK Government to consider the impact of its overseas aid spending on reducing gender inequality.¹²³

In Canada, a PMB successfully established a national Gender Equality Week,¹²⁴ but another PMB was unsuccessful in introducing electoral reforms that would have penalized political parties for failing to run equal lists of male and female candidates.¹²⁵

- 118 *Daily FT*, "Bills to repeal MMDA, fix minimum marriage age to 18 presented to Parliament" (9 January 2020). Available at www.ft.lk/news/Bills-to-repeal-MMDA--fix-minimum-marriage-age-to-18-presented-to-Parliament/56-693349 (accessed on 2 September 2021); Colombo Gazette, "Private Member's Bill to repeal MMDA submitted to Parliament". Available at <https://colombogazette.com/2020/01/08/private-members-bill-to-repeal-mmda-submitted-to-parliament/> (accessed on 2 September 2021); News 1st, "Private Members' bill to amend Marriage Act" (28 December 2019). Available at www.newsfirst.lk/2019/12/28/private-members-bill-to-amend-marriage-act/ (accessed on 2 September 2021).
- 119 *ColomboPage*, "Private member's bill tabled in Sri Lanka to introduce minimum marriage age 18" (8 January 2020). Available at www.colombopage.com/archive_20A/Jan08_1578498657CH.php (accessed on 2 September 2021); News 1st, n 118.
- 120 *Daily News*, "Private Members' Bill to make female representation mandatory" (26 February 2019). Available at www.dailynews.lk/2019/02/26/local/178582/private-members%E2%80%99-bill-make-female-representation-mandatory (accessed on 2 September 2021).
- 121 KPMG Ireland, "Gender pay gap reporting" (17 April 2019). Available at <https://assets.kpmg/content/dam/kpmg/ie/pdf/2019/04/ie-gender-pay-gap-reporting.pdf> (accessed on 3 November 2021); Lexology, "Ireland - Gender Pay Gap Information Bill 2019 aims to ensure compliance and enforcement" (20 May 2019). Available at www.lexology.com/library/detail.aspx?g=618d3f9e-9e15-4549-a5f1-46d4d793fd28 (accessed on 30 September 2021).
- 122 *The Times* (Dublin), "Gender pay gap law is expected this year" (18 August 2020). Available at www.thetimes.co.uk/article/gender-pay-gap-law-is-expected-this-year-2km5fd3jv (accessed on 30 September 2021).
- 123 *The Guardian*, "Development bill to tackle gender inequality poised to become law" (4 March 2014). Available at www.theguardian.com/global-development/2014/mar/04/development-bill-gender-equality-law (accessed on 2 September 2021); Wikipedia, "Private Members' Bills in the Parliament of the United Kingdom". Available at https://en.wikipedia.org/w/index.php?title=Private_Members%27_Bills_in_the_Parliament_of_the_United_Kingdom&oldid=916600786 (accessed on 23 January 2020).
- 124 Parliament of Canada, "Private Member's Bill C-309 (42-1) – Royal Assent – Gender Equality Week Act" (21 June 2018). Available at www.parl.ca/DocumentViewer/en/42-1/bill/C-309/royal-assent (accessed on 2 September 2021).
- 125 Doreen Nicoll, "Death of gender parity bill means Canadian women could wait until 2075 for equality in parliament" (19 October 2016). Available at <https://rabble.ca/blogs/bloggers/doreen-nicoll/2016/10/death-gender-parity-bill-means-canadian-women-could-wait-until> (accessed on 2 September 2021); Shannon Proudfoot, "The Liberals killed a bill promoting gender parity in politics. They were wrong." (24 October 2016). Available at www.macleans.ca/politics/ottawa/the-liberals-killed-a-bill-promoting-gender-parity-in-politics-they-were-wrong/ (accessed on 2 September 2021).

Regardless of whether the process is initiated by the executive or the legislative, it is important to determine the purpose of the reform legislation at the outset. A reform bill could focus on one issue only, such as amending existing legislation to remove barriers to women accessing finance or restrictions on the types of jobs women are allowed to work in. Alternatively, a bill could attempt to progress several reforms at once, by proposing amendments to, or repealing, multiple laws. For example, efforts to remove discriminatory provisions on women's property rights may involve amending property law (on land ownership), marriage law (on the division of assets upon divorce) and probate law (on property inheritance rights). A reform bill could also be drafted to establish an entirely new gender equality law. For instance, laws to combat family violence have often been developed and enacted as stand-alone pieces of legislation, although they may also be drafted to amend parts of the existing criminal code to ensure the final laws are in alignment.

Once a decision has been reached on which reforms are to be progressed, drafting work will need to begin. This will be undertaken either by the parliament's legislative unit or parliamentary counsel (if the reforms are being driven by parliament), or by the legislative drafting unit within the attorney general's office or the ministry of justice (if reforms are being initiated by the executive). In some cases, the ministry of women may lead on developing a draft bill. Some countries have opted to hire consultants to develop first drafts of reform legislation, often with support from development partners. Even in these cases, the relevant government drafting unit and/or parliamentary counsel should be involved in the process to ensure that the bill meets local drafting requirements and has buy-in from key legislative officials.

Implementing a participatory approach to legislative drafting helps to build support for reforms from the outset. Across government, it is important that government lawyers work with officials with subject matter expertise (e.g., from the women's ministry, health ministry, justice ministry). Civil society and academia can also contribute vital expertise.



Ideally, drafting should be a participatory process. As discussed in Section 3.4, a gender equality working group could bring together relevant stakeholders, including not only government officials but also civil society representatives and local experts – and sometimes even development partners – to discuss the substance of the law reforms. Women's rights NGOs often have deep expertise in relevant subject areas and can help to ensure that the law, as drafted, is practical and reflects the operational context. Academics and organizations representing the legal profession can also be a source of useful expertise.

Once the initial draft is finalized, the bill is sometimes put out for public consultation. The relevant government ministry may post the draft bill online and call for written comments. More proactive public meetings may also be held to discuss the draft with affected communities and/or the public at large. In some instances, particularly where legislation is sensitive or controversial, interest groups may be actively consulted. For instance, chambers of commerce, unions and workers' collectives could be consulted on reforms to women's employment rights. Likewise, family law reforms may be discussed with religious institutions, lawyers with family law experience and women's NGOs. These public consultations provide vital information on how existing laws work in practice, which can inform the design process to make sure the law works better.

The 57 participating States of the Organization for Security and Co-operation in Europe (OSCE) can request support for legal reform from the Office for Democratic Institutions and Human Rights (ODIHR). On request, ODIHR will assess individual pieces of draft or existing legislation for compliance with OSCE commitments, international human rights standards and established good practices. This free service is available to all OSCE participating States and can be used to assess different pieces of legislation from a gender perspective, as well as those dealing with gender equality issues. A compendium of these opinions is available on the ODIHR website as a source of learning for other countries.¹²⁶



Where a draft bill is being developed by the executive, the final draft will need to be submitted to Cabinet by the relevant minister or the attorney general. This process is an important step, since it serves as a public statement of the political will behind the proposed reforms. Unfortunately, gender-responsive law reforms often stall at this stage.

Since gender-responsive law reforms often relate to sensitive subjects, without sufficient consensus-building among political leaders, it is not uncommon for Cabinet to query drafts that have already been consulted widely with special interest groups but may not have been sufficiently discussed with influential leaders. Therefore, a multi-stakeholder approach to law reform is critical.

Box 17: Parliaments take action to repeal legal loopholes for rapists who marry their victim

Examples from Morocco, Jordan, Tunisia, Lebanon

The last couple of decades have seen considerable progress around the world on the development of legal frameworks to address sexual and gender-based violence. Nonetheless, in some countries, laws still contain outdated exemptions and anomalies that undermine protections for women and girls. Data shows that more than 100 countries still do not criminalize rape within marriage.¹²⁷ Nine countries also still allow an exemption for rapists who marry their victim,¹²⁸ while in Somalia and Afghanistan, the law is silent on this practice, which is still common.

In the last few years however, considerable progress has been made to reform discriminatory laws such as these, with parliaments in Morocco, Jordan, Tunisia and Lebanon all taking action to repeal or amend clauses in their penal codes allowing this

¹²⁶ Legislationline, “ODIHR Legal Reviews, Assessments and Guidelines: Gender Equality”. Available at <https://www.legislationline.org/odihr-documents/page/legal-reviews/topic/7/Gender%20Equality/show> (accessed on 30 September 2021).

¹²⁷ UN Women, “Progress of the World’s Women 2019 Dashboard: Does legislation explicitly criminalise marital rape?” (24 January 2020). Available at <https://data.unwomen.org/data-portal/sdm?tab=table&annex=Laws%20and%20Legal%20Frameworks&finic%5B%5D=P-43> (accessed on 24 January 2020).

¹²⁸ Algeria, Angola, Bahrain, Equatorial Guinea, Eritrea, Iraq, Kuwait, Libya, the Philippines and Syria; see: Equality Now, “Repealing ‘marry your rapist’ laws”. Available at www.equalitynow.org/repealing_marry_your_rapist_laws (accessed on 8 October 2020); *NowThis World*, “Which Countries Have ‘Marry-Your-Rapist’ Laws?” (12 August 2018). Available at www.youtube.com/watch?v=A41XXPt11XM (accessed on 30 September 2021).

exemption.¹²⁹ In 2014, ground-breaking law reform in Morocco was triggered by the suicide of a young girl who was forced to marry her rapist.¹³⁰ In 2017, reforms in Jordan were opportunistically introduced when King Abdullah II ordered a review of the 1960 penal code. Reformers used this opening to include the repeal of the discriminatory exemption which had been used in the previous six years as a defence by almost 160 rapists.¹³¹ In Tunisia, the repeal of the relevant provision in the penal code was passed as part of a broader package of legislation addressing domestic violence.¹³² The Lebanese reforms, meanwhile, were a response to strong public pressure on parliament, with NGOs mobilizing public opinion in favour of the reforms.¹³³

Key questions to consider:

- Is there research and legislative drafting support available within your parliament to help members analyse draft bills, prepare amendments to bills and/or draft PMBs?
- Do your parliament's rules allow for PMBs? If so, could this be a useful avenue for pursuing gender-sensitive law reform?
- Is there a legislative agenda or timetable setting out which bills will be submitted to parliament each session? If so, do parliamentarians have a role in deciding which bills will be brought on for debate? Can this process be used to prioritize gender-sensitive law reforms?
- Do your parliament's rules or standing orders require that all bills should go through some form of public consultation process before they are brought back to parliament for debate?

3.6 Enacting legislation

Once the drafting of a bill is finalized, it will need to be formally submitted to parliament for review, debate, and approval or rejection. The detail of this process will differ in each country, depending on the type of system and whether parliament has one or two houses. However, there are many common processes across countries.

129 UN Women, "Reforming the laws that forced women to marry their rapists" (16 July 2019). Available at www.unwomen.org/news/stories/2019/6/feature-story-of-change-reforming-laws-that-forced-women-to-marry-their-rapists (accessed on 2 September 2021).

130 USA Today, "Morocco amends controversial rape law" (22 January 2014). Available at www.usatoday.com/story/news/world/2014/01/22/morocco-amends-rape-law/4784019/ (accessed on 24 January 2020); Amnesty International USA, "Closing Morocco's Rape Loophole is Just the First Step" (31 January 2014). Available at www.amnestyusa.org/closing-moroccos-rape-loophole-is-just-the-first-step/ (accessed on 24 January 2020).

131 UN Women, Global Factsheet: "Progress of the World's Women 2019–2020". Available at www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/poww-2019-fact-sheet-global-en.pdf?la=en&vs=0 (accessed on 20 January 2021).

132 Human Rights Watch, "Middle East on a Roll to Repeal 'Marry the Rapist' Laws" (24 August 2017). Available at www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rape-laws (accessed on 2 September 2021); UN News, "UN human rights chief welcomes rape law reform in Lebanon, Tunisia, Jordan" (22 August 2017). Available at <https://news.un.org/en/story/2017/08/563662-un-human-rights-chief-welcomes-rape-law-reform-lebanon-tunisia-jordan> (accessed on 2 September 2021).

133 UN Women, n 129.

Proposed bills – whether they seek to repeal a law or provision, amend a law or enact a new one – will need to be sponsored by one or more parliamentarians. In parliamentary systems, this is usually the minister whose department is responsible for the bill (such as the minister for women or the attorney general). In presidential systems, where representatives of the executive do not sit in parliament, one or more parliamentarians will be responsible for sponsoring the bill. Whoever is “responsible” for the bill will also be responsible for managing the rules of procedure to get the bill onto their parliament’s agenda. Once the bill is on the agenda, the person responsible for the bill will be the one who officially submits it to the parliamentary chamber for consideration.

Bills can vary in length and complexity. Parliamentarians with no or limited staff to assist them in quickly getting across the substance of a proposed bill may want to ask parliamentary staff to prepare a brief on the main points of the bill and any key issues that need to be considered. Alternatively, parliamentarians may want to call on women’s NGOs or gender experts from academia to provide them with information and advice.



Different parliaments have different processes for considering a bill. In most houses, there are multiple “readings” of the bill, which operate as different steps in the process of debating the proposed law. The first step is to introduce and officially submit the bill for consideration. The second step is usually the most intensive part of the process, where the bill is explained by its sponsor in detail and then opened up for debate. At this point, the bill may be referred to a parliamentary committee for more detailed consideration. The parliamentary committee may have a subject-specific mandate (gender, economics, social welfare or similar), or it may be a general legislative committee responsible for vetting all laws.

Box 18: Legislative action across Latin America strengthens the enabling environment for women’s economic empowerment

Examples from Mexico, Colombia, Peru

Women’s economic empowerment has proved to be one of the most critical but complex areas of gender equality to tackle. The global gender pay gap means that women are paid less for doing the same work as men.¹³⁴ More fundamentally, women often do not have protections against discrimination or sexual harassment in the workplace, often lack access to maternity protections, and face legal obstacles to becoming entrepreneurs because they lack access to finance and land.

Parliaments around the world are beginning to take up these issues in earnest as part of their effort to promote gender equality through law reform. In Latin America, for instance, Argentina, Brazil, Chile, Colombia, Mexico, Peru and Venezuela have enacted laws that explicitly require that men and women be paid equally, and that

¹³⁴ *The Guardian*, “Global pay gap will take 202 years to close, says World Economic Forum” (18 December 2018). Available at www.theguardian.com/world/2018/dec/18/global-gender-pay-gap-will-take-202-years-to-close-says-world-economic-forum (accessed on 30 September 2021).

prohibit gender discrimination, with different avenues of legal recourse available to employees whose employers practice or tolerate gender discrimination in the workplace.¹³⁵ In Mexico, for example, workplace discrimination can result in the imposition of fines, and employees can also file complaints with the National Commission to Prevent Discrimination.¹³⁶ In Colombia, parliament has enacted a law requiring companies to maintain a gender pay record, which can be audited by the Ministry of Labour and captures gender-disaggregated information on issues such as remuneration, job descriptions and employment conditions.¹³⁷ In Peru, a new law specifically bans wage discrimination between men and women and obliges companies to keep and share information on salary levels and policies affecting remuneration.¹³⁸ The law further establishes that “continued discrimination may be considered a ‘hostile act’, giving grounds to employees to initiate legal action against employers to claim constructive dismissal and the payment of the mandatory severance.”¹³⁹ These examples also show the value of regional collaboration on common issues: although each country progressed its own law reforms domestically, there was a clear benefit in momentum-gathering across the region, which enabled governments to learn from comparative experiences from countries with similar contexts.

Where a bill is referred to a parliamentary committee, this can be a particularly useful point for parliamentarians to encourage transparency on the substance of the bill and promote wider public debate. Parliamentary committees commonly open the process up at this stage and invite experts and members of the public to make written submissions on the contents of the bill. In some cases, the parliamentary committee may also decide to hold oral hearings. Hearings provide an opportunity to draw in expertise from academics, think tanks and other experts, who may be able to offer advice to parliamentarians on how to improve the draft law. Once the parliamentary committee has considered any submissions and completed its review, it will produce a report – which may include recommendations – to be submitted for consideration by parliament. These types of parliamentary committee reports are intended to help parliamentarians to quickly grasp the key elements of the bill and understand if there are any critical points that require improvement.

Many parliamentary websites now feature portals through which submissions can be made to parliamentary committees. This means that anyone can submit from anywhere in the country, giving people from all walks of life an opportunity to become involved in the law-making process. Some parliaments even have a social media presence and call for parliamentary committee submissions on Twitter and Facebook. Parliamentary committees can even livestream hearings on Facebook or broadcast them on the radio. New technologies offer low-cost strategies for encouraging greater public participation.



¹³⁵ Baker McKenzie, “Spotlight on the Gender Pay Gap in Latin America” (2018). Available at www.bakermckenzie.com/en/insight/publications/2018/06/spotlight-on-the-gender-pay-gap-in-latin-america (accessed on 2 September 2021).

¹³⁶ Baker McKenzie, n 135.

¹³⁷ Baker McKenzie, n 135.

¹³⁸ Baker McKenzie, n 135.

¹³⁹ Baker McKenzie, n 135.

Every bill, whether or not it is referred to a parliamentary committee, will at some point in the process be brought to the whole parliamentary chamber for detailed debate and discussion. The head of the chamber (usually referred to as the Speaker or President) will manage the debate. They will be responsible for deciding who speaks and when. Depending on the rules of procedure parliamentarians will have an opportunity to propose amendments to the bill in this part of the process. These proposed amendments will also need to be debated. This process can take some time, according to the complexity of the bill being debated – it could be a major repeal proposal, an entirely new bill, or one or more amendments to existing legislation. Debates can last from a couple of hours to several days or months. Eventually, any proposed amendments – and the bill in its entirety – will be called for a final vote. This vote, by parliamentarians, will determine whether the bill proceeds to the Executive for approval.

Box 19: Parliaments may want to consider enacting comprehensive gender equality laws

Examples from Denmark and The Philippines

Many parliaments choose to engage in incremental reform – targeting key provisions one at a time, or as neat packages of changes – while building public support as they move forward. Parliaments in some countries, however, have chosen to enact comprehensive gender equality legislation in an effort to send a message – both symbolically and legally – that gender equality is a fundamental value that must underpin the entire domestic legal framework. The comprehensive legislation route is a common feature in Scandinavian countries and is becoming more widespread in Asia.¹⁴⁰

In Denmark, for example, the stated purpose of the “Gender Equality (Consolidation) Act (2002)” is to “promote gender equality, including equal integration, equal influence and gender equality in all functions in society on the basis of women’s and men’s equal status [and] to counteract direct and indirect discrimination on the ground of gender and to counteract sexual harassment.”¹⁴¹

In the Philippines, parliament enacted the so-called “Magna Carta of Women” (RA 9710), which is described as a “comprehensive women’s human rights law that seeks to eliminate discrimination through the recognition, protection, fulfilment and promotion of the rights of Filipino women, especially those belonging in the marginalized sectors of the society.”¹⁴² This law is complemented by the Women in Development and Nation Building Act (RA 7192), the intent of which is to “promote the integration of women as full and equal partners of men in development and nation building and for other purposes.”¹⁴³

140 Wellesley Centers for Women, “Compilation of Gender Equality & Domestic Violence Laws from around the World”. Available at www.wcwonline.org/People-Extra-Information/compilation-of-gender-equality-a-domestic-violence-laws-from-around-the-world (accessed on 11 February 2020).

141 *Legislationline*, “Gender Equality (Consolidation) Act 2002”. Available at www.legislationline.org/documents/action/popup/id/6520 (accessed on 30 September 2021).

142 Philippine Commission on Women, “Republic Act 9710: Magna Carta of Women”. Available at <https://pcw.gov.ph/law/republic-act-9710> (accessed on 11 February 2020).

143 Philippine Commission on Women, “Republic Act 7192: Women in Development and Nation Building Act”. Available at www.pcw.gov.ph/law/republic-act-7192 (accessed on 11 February 2020).

Key questions to consider:

- Does your parliament have one or more committees dedicated to reviewing proposed bills and/or with a mandate to examine issues relating to gender equality or women's rights? If so, do these committees have sufficient resources to discharge their mandates?
- Does the government or parliament require any form of general socioeconomic and/or specific gender impact assessment to be attached to bills when they are submitted to members for consideration?
- Can parliamentarians access advice and expertise to help them effectively analyse draft bills relating to gender-sensitive law reform (e.g., from the parliamentary library, NGOs or academics)?
- Are parliamentary debates televised so that members of the public can have the opportunity to hear parliamentarians debate bills, including on topics such as gender equality?

3.7 Budgeting for gender-responsive laws



In addition to enacting law reform, one of parliament's key functions is to scrutinize implementation of the government's gender equality agenda. This includes ensuring that the budget properly supports gender priorities and facilitates gender mainstreaming, as well as reviewing expenditures to assess whether they achieved their intended gender equality outcomes. The budget process is a critical opportunity for parliamentarians to focus practical attention on ensuring that gender-responsive law reforms are sufficiently resourced. For example, where anti-discrimination legislation is enacted, the new law may require some form of anti-discrimination complaints body to be set up. This will require the executive to allocate resources and staff for setting up and running the body. More broadly, the budget process can be used to implement gender-responsive budgeting across all sectors covered by the government budget.

In some countries, a gender impact assessment must be attached to the budget when it is tabled (see Box 20 on gender budgeting requirements in Thailand for a good example). "Gender-responsive budgeting" is an approach in which gender equality objectives are systematically integrated into government policy, planning, budgeting, monitoring, evaluation and audit. It aims to highlight the gender-differentiated distributive impacts of the budget (in terms of both revenue raised and expenditures) and can be the basis for adjusting resources to ensure that both women and men benefit from government resources.¹⁴⁴ The IPU's *Parliament, the budget and gender: Handbook for parliamentarians*¹⁴⁵ and UN Women's Financing for Gender Equality web portal¹⁴⁶ provide useful guidance and resources to support parliamentarians with gender-responsive budgeting.

In some countries, government departments are required to report on expenditures through a "gender lens", which means that expenditures must be assessed against their impact on key gender equality priorities. These post-expenditure gender impact assessments can help parliamentarians to determine whether and how government money was used to specifically advance gender equality and make recommendations. Parliaments can use the gender assessment produced as part of the gender budgeting process to inform their own analysis of how the budget serves the community, and comment accordingly.

The budget cycle process is a critical opportunity for parliamentarians to review whether adequate resource allocations have been made for gender-responsive law reforms as well as the implementation of gender equality laws already in place. Parliamentarians can directly ask questions of relevant ministers on budgetary needs and commitments, and can also use their roles on budget, finance, expenditure and/or sectoral committees to ask ministers and officials about whether funding allocations are sufficient and are being used for the greatest impact.



During the budget process – and particularly during the review of the budget by parliamentary committees – parliamentarians can assess whether sufficient allocations have

¹⁴⁴ UN Women, Online Moderated Training Course on Gender Responsive Budgeting, Module 1 (2020).

¹⁴⁵ Inter-Parliamentary Union, *Parliament, the budget and gender: Handbook for parliamentarians* (Geneva, Inter-Parliamentary Union, 2004). Available at www.ipu.org/resources/publications/handbooks/2016-07/handbook-parliament-budget-and-gender (accessed on 2 September 2021).

¹⁴⁶ Available at <https://gender-financing.unwomen.org/en> (accessed on 18 December 2020).

been made for implementation of the law and make recommendations to the executive. Parliamentarians may request specific advice from the relevant ministry or independent experts on what would constitute a “sufficient allocation” to support implementation of the law (not only for the immediate budget cycle, but also to cover all implementation costs over time). They could also request their research assistants to undertake independent research within or outside of the parliamentary library. For example, where a gender equality law requires a new body to be set up (such as an observatory or commission), annual funding will need to be provided for staff and programming if it is to discharge its mandate effectively. Where criminal justice law reforms have been enacted (such as in relation to family violence), or where family law reforms have been passed, it may be necessary to direct more funds towards the police and court services. This will enable them to manage any new powers and duties, as well as provide training to ensure that police and judges fully understand the new reforms. Likewise, the establishment of shelters for survivors of violence throughout the country will require regular dedicated budgetary resources.

In some legislative systems, parliament may be able to directly propose and pass amendments to the budget and increase the budget line allocated to a particular reform. In the United States of America, for example, both houses of Congress – the Senate and the House of Representatives, can develop their own budget documents (the President can also develop a proposed budget, which will need to be reconciled with Congress through the budget process). Budget committees also have quite substantial powers to add, amend and delete budget line items. The power to amend budget bills can be proactively wielded by parliamentarians to ensure that gender law reforms are properly funded. Even where parliament cannot make changes to the budget, it can still make recommendations for consideration by the government to ensure gender reforms are properly implemented.

Box 20: Implementing the constitutional provision on gender-responsive budgeting in Thailand

The Government of Thailand has implemented a number of major gender law reforms in recent years. In 2015, for example, the National Assembly adopted the Gender Equality Act, which was the first legal instrument in Thailand to define and prohibit gender discrimination. Even more significantly, the new Constitution of Thailand, which came into effect in April 2017, prohibited discrimination on the grounds of sex and affirmed the principle of equality between men and women. It also went further by requiring the implementation of gender-responsive budgeting as a mechanism for concretely progressing women’s rights. This constitutional commitment was the result of the hard work of a range of notable Thai stakeholders, including parliamentarians, CSOs and academia, who came together to advocate a more gender-responsive constitution. The working group gathered information on gender perspectives from stakeholders, including by organizing a series of brainstorming seminars and workshops in 2015 and 2016. These inputs culminated in a constitutional reform proposal that was eventually submitted to the Constitution Drafting Committee.¹⁴⁷ As a result of their efforts, section 71 of the Constitution now includes the following provision: “In allocating the budget, the State shall take into account the different necessities and needs with respect to genders, ages and conditions of persons to ensure fairness”.

¹⁴⁷ This information was gathered through the online consultations on the draft Handbook organized in July 2020 by the Inter-Parliamentary Union and UN Women.

Since section 71 was included in the Constitution in 2017, the executive and legislative have been revising and reforming existing budgeting systems to facilitate its implementation. The Bureau of the Budget and the Department of Women's Affairs and Family Development (DWF) are leading on this process. Back in 2015, the DWF published *Gender-Responsive Budgeting Handbook for Government Agencies*. Initially conceived as a pilot, it faced challenges in being rolled out more widely.¹⁴⁸ From fiscal year 2020, as a direct response to the constitutional requirement on gender budgeting, the Bureau of the Budget is asking spending ministries to supply information on the gender impact of their budget requests by considering "the different needs and benefits of women, men, the elderly and various groups of stakeholders and the distribution of resources to achieve equality in society."¹⁴⁹ Initial feedback suggests that line ministries do not yet have a well-established methodology to assess the gender impact of their budget proposals.¹⁵⁰ This is a major opportunity for the National Assembly to use its budget oversight powers to drill deeper into the proposals being made by ministries to ensure that proper consideration is given to gender concerns.

Key questions to consider:

- Does your country's constitution or any law require that gender-responsive budgeting principles are integrated into the government budget process? If not, is this something that could be considered?
- Does your parliament have any specific requirements, when passing bills, to ensure that proper funding is allocated in the budget for their implementation?
- Is there a requirement that budget proposals submitted to parliament include a GIA?
- Are there any budget-related parliamentary committees that could be used to review whether gender-responsive law reforms are being properly resourced?
- Are parliamentary committees with a mandate to review expenditure and/or audit reports required to assess the extent to which the budget has achieved objectives, including in relation to gender equality?

3.8 Overseeing implementation of laws

Once parliament has passed bills to repeal or amend discriminatory laws and/or enact gender-responsive legislation, there are still procedural steps to be taken to ensure that the bill becomes law and is implemented accordingly. In many countries, the executive (the President, monarch, governor or some other head of state) will need to officially

¹⁴⁸ Organisation for Economic Co-operation and Development, "Thailand: Gender Budgeting Action Plan" (Paris, OECD, 2020) at 19–20. Available at www.oecd.org/gov/budgeting/gender-budgeting-action-plan-thailand.pdf (accessed on 30 September 2021).

¹⁴⁹ Organisation for Economic Co-operation and Development, n 148 at p. 20.

¹⁵⁰ Organisation for Economic Co-operation and Development, n 148 at p. 20.

approve the bill before it becomes law. In some cases, this may enable the executive to veto a law passed by parliament. To ensure that the bill passed by parliament becomes law, it is important to maintain pressure, including by mobilizing the public and media.

Many bills that are passed by parliament and officially signed off by the head of the executive include a commencement provision, which requires official gazettal of the law and/or sets out a date that the law will come into force. In some cases, this final step may also slow down implementation of the law, as gazettal stalls and the date for the law coming into force is delayed.

Parliamentarians are encouraged to continue tracking the passage of gender-responsive bills that have been enacted by parliament, to ensure that the final steps for the law coming into force are actioned.



Experience shows that even when gender-responsive law reforms are effectively enacted or a discriminatory law is repealed, this may still not be enough to bring about practical change on the ground. At the very simplest level, new laws need to be gazetted and, in some cases, regulations or legislative instruments will need to be developed to flesh out key aspects of the law's implementation. This should be relatively straightforward, but progress can stall when regulations bring with them additional budgetary requirements (such as regulations regarding which health services may be provided by government at a subsidized cost or for free).

Implementation can be even more difficult when laws are intended to bring about major social changes. For instance, even if the age for marriage of girls is amended to 18 years of age, families and communities may still not follow the law, and social welfare officers or the police may be hesitant to take enforcement action. Likewise, various operational actions may be needed to ensure that domestic violence legislation is effective, such as allocating extra resources and training for health-care professionals, police personnel and judges, or setting up crisis centres. These actions often stall if they are not given immediate and constant attention.

Where parliamentarians are concerned that insufficient action is being taken to implement gender-responsive law reforms, they can use a range of parliamentary processes to make inquiries and seek to hold the executive to account for inaction. These include:

- ▶ [Question times or interpellations](#): Parliamentarians can use their powers to ask questions of the executive to draw attention to the implementation status of a law reform and find out what the government is doing, has done and/or is planning.
- ▶ [Parliamentary hearings or inquiries](#): Parliamentary committees can be used to hold public hearings or longer inquiries into specific issues, including the effectiveness of the implementation of laws by the government. An existing committee may be able to use its mandate to call hearings with key ministries or government bodies to ask about implementation. Alternatively, parliament may

decide to set up a specific committee to hold a more in-depth inquiry into a particular area of law reform. Some parliaments are starting to require post-legislative scrutiny of laws, to ensure specific attention is given to ensuring proper implementation of law reforms.¹⁵¹

- **Independent inquiries:** In most countries, parliament has the power to set up an independent inquiry, which is given a specific mandate by law to inquire into a specific subject. These inquiries often have very far-reaching powers and can be used not only to track implementation of existing laws and law reforms, but also to make follow-up recommendations on how such laws can be improved. Law reform in this instance may be cyclical, with laws being enacted and then amended over time to ensure they continue to be effective in practice.

Parliamentarians can also work outside the formal institution of parliament to encourage implementation of gender-responsive law reforms. As individuals, parliamentarians are leaders and representatives of their electorates and communities. In this role, they can proactively champion gender-responsive law reforms by engaging in public education and awareness-raising activities with constituents. If there is misinformation, or simply lack of information, about a law, parliamentarians can go out to their communities and explain the new reforms, working with other community leaders to build support for gender equality reforms. This can be critical to ensuring that real change happens. Experience has shown that law reform is only the first step in a much longer process of socializing gender-responsive laws so that they are owned and supported by the entire society.

Box 21: Parliamentary oversight of implementation of legal reforms to combat gender-based violence

Examples from Spain and Wales

While several countries have enacted legislation to more effectively address violence against women and children, it is now becoming clear that proper implementation of these laws remains a challenge. To that end, there have been calls for more systematic monitoring to be entrenched in legislation, so that parliament provides more-effective ongoing oversight and is empowered to take action as needed.¹⁵²

In Spain, for example, Organic Act 1/2004 was enacted to prevent and combat GBV and to protect victims.¹⁵³ The law itself required the establishment of the State Observatory on Violence against Women, an interministerial body responsible for analysis, institutional cooperation, reporting and action plans.¹⁵⁴ One of the main

151 Maria Mousmouti, "Policy Paper: Gender-Sensitive Post-Legislative Scrutiny" (London, Westminster Foundation for Democracy, 2020). Available at www.wfd.org/wp-content/uploads/2020/07/policy-paper_updated1.pdf (accessed on 20 January 2021); 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 assistance* (London, Westminster Foundation for Democracy, 2017). Available at www.wfd.org/wp-content/uploads/2018/07/Comparative-Study-PLS-WEB.pdf (accessed on 30 September 2021).

152 Rosalyn Park, "Implementation of Legislation: Monitoring and Overseeing Government Action" (New Delhi, The Advocates for Human Rights, 2011). Available at <http://archive.ipu.org/splz-e/newdelhi11/park5.pdf> (accessed on 30 September 2021).

153 Constitutional Act 1/2004 of 28 December, on Integrated Protection Measures against Gender Violence.

154 Estefanny Molina Martínez, "The Hidden Figures of Gender-Based Violence in Spain" (13 October 2017). Available at <https://eu.boell.org/en/2017/10/13/hidden-figures-gender-based-violence-spain> (accessed on 28 February 2020).

reasons for setting up the Observatory was to create an official database to collate all information provided by the relevant public institutions with a focus on GBV, to ensure that the scale of the phenomenon and its development could be analysed. This information would then be made available to key institutions, such as parliament, to inform oversight.¹⁵⁵ In 2008, the parliamentary Commission on Equality also set up a subcommittee with a specific mandate to review the implementation of the law.¹⁵⁶ The subcommittee spent more than a year receiving submissions from a range of experts within and outside government. and the resulting report and recommendations were unanimously approved by the Commission.

More recently, in Wales, the Assembly Committee on Communities, Equality and Local Government was responsible for scrutinizing the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill before it became law in 2015.¹⁵⁷ A year later, the renamed Equality, Local Government and Communities Committee undertook a post-legislative inquiry to look at “the progress made in the implementation of the Act’s provisions and its impact to date [including the extent to which] the approach to tackling violence against women, domestic abuse and sexual violence is improving as a result of the obligations in the Act [and] whether the National Adviser [on violence against women] has sufficient power and independence from the Welsh Government to ensure implementation of the Act.”¹⁵⁸

Key questions to consider:

- Can you use question times or interpellations to ask the government about progress with gender-responsive law reforms and/or the implementation of such reforms?
- Could any parliamentary committees use their mandate to hold hearings to investigate whether gender-responsive law reforms are being implemented and working as anticipated?
- Does parliament have the power to set up its own independent commissions of inquiry to examine issues such as the implementation of key gender-responsive law reforms?

155 Martínez, n 154.

156 Inter-Parliamentary Union, *Global Parliamentary Report 2017 – Parliamentary oversight: Parliament’s power to hold government to account* (Geneva, Inter-Parliamentary Union, 2017) at p.53. Available at www.ipu.org/resources/publications/reports/2017-10/global-parliamentary-report-2017-parliamentary-oversight-parliaments-power-hold-government-account (accessed on 30 September 2021).

157 Welsh Parliament, Report of the Communities, Equality and Local Government Committee on the *Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill: Stage 1* (November 2014). Available at www.assembly.wales/laid%20documents/cr-ld9993-e-%20-%20communities,%20equality%20and%20local%20government%20committee%20-%20gender-based%20violence,%20domestic%20abuse%20and%20sexual%20violence/cr-ld9993-e.pdf (accessed on 20 January 2021)

158 Equality, Local Government and Communities Committee of the Welsh Parliament, “Post legislative inquiry into the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015” (2015). Available at <https://business.senedd.wales/mgIssueHistoryHome.aspx?Ild=15768> (accessed on 20 January 2021)

Section 4: Key commitments on gender equality



International human rights commitments include banning child marriage. ©Yusuf Wahil/AFP

4.1 Core human rights instruments

The Universal Declaration of Human Rights, adopted by United Nations Member States more than 70 years ago, states as follows: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”¹⁵⁹ This basic set of principles was elaborated upon in the two major international human rights covenants adopted by the United Nations General Assembly in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Similar rights are enshrined in national constitutions around the world: 191 constitutions now contain provisions on equality and non-discrimination, and 24 include stand-alone provisions on women’s rights.¹⁶⁰ International and regional human rights commitments reinforce domestic rights provisions and often inform how national laws are made.

159 United Nations, “Universal Declaration of Human Rights”. Available at www.un.org/en/universal-declaration-human-rights/ (accessed on 30 September 2021).

160 United Nations Commission on the Status of Women, n 6 at p. 12.

It is important for parliamentarians to be aware of global and regional human rights norms and standards in favour of women and girls. This includes the contexts in which countries have ratified such treaties. Human rights commitments also entail their own monitoring and reporting mechanisms and requirements, which provide entry points for parliamentarians to both oversee the effective protection and promotion of rights, and to take action in parliament to address gaps or inequalities in law where they are identified.

4.2 Incorporation of human rights norms and standards into domestic law

Parliamentarians must be aware of the legal systems which underpin law-making in their respective countries. A legal system refers to the sum of all formal and/or informal laws and institutions, including the principles which govern the interaction of laws and institutions and the manner in which human rights treaties are ratified and integrated into domestic law and practice. Systems in which formal and informal laws and institutions interact are known as plural legal systems. In some settings international human rights norms are automatically integrated into domestic law. In such systems, known as abiding by “monist legal traditions”, the courts also apply international human rights norms in their decisions. Civil law countries, such as France, Belgium, Mali, Luxembourg, and several countries in Eastern Europe, apply the monist approach. In contrast, the “dualist legal traditions” are adopted by countries which require parliamentary approval and legislation prior to the incorporation of international treaties into domestic law. The courts of such States are not bound to apply treaties in their decisions, although an increasing number demonstrate such usage. Common law countries such as Australia, Canada, Ghana, Nigeria, the United Kingdom and Ireland fall within this latter category.

4.3 Fundamental legal norms on gender equality in international treaties and commitments

CEDAW, adopted in 1979, explicitly recognized the right of women and girls to equality before the law. Article 2 of CEDAW specifically calls on countries to embody the principle of equality in national constitutions and other legislation, to establish legal protections for the rights of women, and to amend and/or repeal all laws that discriminate against women.¹⁶¹ Article 15 also explicitly provides that “States Parties shall accord to women equality with men before the law.”¹⁶² Since ratification of CEDAW is now near-universal

¹⁶¹ United Nations, Convention on the Elimination of All Forms of Discrimination against Women (adopted by General Assembly resolution 34/180, New York, 18 December 1979). Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/28&Lang=en (accessed on 30 September 2021).

¹⁶² United Nations, n 161.

(189 States Parties as at September 2020), this means that almost the entire global community has committed to ensuring that their domestic legal frameworks ensure women and girls have equal rights to men and boys in law and in practice. In its *Handbook for Parliamentarians “The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol”*, the IPU provides an overview of what parliamentarians can do to promote implementation of CEDAW and offers examples of good practice that parliamentarians can draw on to progress gender equality at home.¹⁶³

How is “discrimination” defined?



Article 1 of CEDAW defines “discrimination against women” as follows: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Reinforcing CEDAW in relation to the rights of girls is the Convention on the Rights of the Child (CRC), which was adopted by the United Nations General Assembly in 1989 and came into force in 1990.¹⁶⁴ The CRC has been ratified by almost all States with the exception of the United States of America. Article 1 defines a child as anyone under age 18. Article 2 calls on States Parties to take action to protect children from all forms of discrimination, in similar terms to CEDAW. This puts a duty on parliamentarians to support national efforts to ensure that the rights of children are protected through appropriate laws, which respect the commitments made in the CRC.¹⁶⁵

Box 22: Regional treaties reinforce global agreements on gender equality

While CEDAW and CRC operate as international legislative frameworks, many regions have also developed and endorsed additional regional treaties and agreements, many of which provide more detailed and/or regionally contextualized guidance on how best to protect the rights of women and girls. For example, members of the African Union have developed the African Charter on Human and Peoples’ Rights,¹⁶⁶ along with the Protocol to the African Charter on the Rights of Women in Africa (the “Maputo Protocol”)¹⁶⁷ and the African Charter on the Rights

¹⁶³ Inter-Parliamentary Union, *Handbook for Parliamentarians “The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol”* (Geneva, Inter-Parliamentary Union, 2003). Available at www.ipu.org/resources/publications/handbooks/2016-07/handbook-parliamentarians-convention-elimination-all-forms-discrimination-against-women-and-its-optional (accessed on 30 September 2021).

¹⁶⁴ United Nations, Convention on the Rights of the Child (adopted by General Assembly resolution 44/25, New York, 20 November 1989). Available at www.ohchr.org/en/professionalinterest/pages/crc.aspx (accessed on 30 September 2021).

¹⁶⁵ CEDAW Committee and CRC Committee, “Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices” (CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014). Available at <https://undocs.org/CEDAW/C/GC/31/CRC/C/GC/18> (accessed on 30 September 2021).

¹⁶⁶ African Commission on Human and Peoples’ Rights, “African Charter on Human and Peoples’ Rights” (1981). Available at www.achpr.org/legalinstruments/detail?id=49 (accessed on 30 September 2021).

¹⁶⁷ African Union, “Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2003). Available at <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> (accessed on 30 September 2021).

and Welfare of the Child.¹⁶⁸ Similarly, the Organization of American States (OAS) has developed the Inter-American Convention on the Granting of Civil Rights to Women,¹⁶⁹ the Inter-American Convention on the Granting of Political Rights to Women¹⁷⁰ and the Inter-American Convention on the Nationality of Women.¹⁷¹

Importantly, Member States have also endorsed global and regional agreements that call on countries to address violence against women and girls as a specific priority. The United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women in 1993.¹⁷² The OAS has developed the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the “Belém do Pará Convention”).¹⁷³ The Council of Europe has developed the Convention on Preventing and Combating Violence against Women and Domestic Violence (the “Istanbul Convention”),¹⁷⁴ article 70 of which states that national parliaments should be involved in monitoring implementation of the Convention. And in the 2012 Pacific Leaders Gender Equality Declaration, Pacific leaders pledge to “Enact and implement legislation regarding sexual and gender-based violence to protect women from violence and impose appropriate penalties for perpetrators of violence.”¹⁷⁵

4.4 Guidance on gender-responsive law reform from international human rights bodies

Many United Nations and regional treaties include monitoring and oversight mechanisms that parliamentarians can use to inform their own oversight activities. In *Human Rights: Handbook for Parliamentarians*, the IPU provides detailed guidance on how human rights can be protected and promoted, including through law reform.¹⁷⁶ These recommendations,

168 African Union, African Charter on the Rights and Welfare of the Child (1990). Available at <https://au.int/en/treaties/african-charter-rights-and-welfare-child> (accessed on 30 September 2021).

169 Organization of American States, “Inter-American Convention on the Granting of Civil Rights to Women” (1948). Available at www.oas.org/en/cim/docs/CCRW%5bEN%5d.pdf (accessed on 30 September 2021).

170 “Inter-American Convention on the Granting of Political Rights To Women” (Organization of American States, Bogota, Colombia, 1948), www.oas.org/en/cim/docs/CPRW%5bEN%5d.pdf (accessed on 30 September 2021).

171 Organization of American States, “Inter-American Convention on the Nationality of Women” (1933). Available at www.oas.org/en/cim/docs/CNW%5bEN%5d.pdf (accessed on 30 September 2021).

172 United Nations, “Declaration on the Elimination of Violence against Women” (proclaimed by General Assembly resolution 48/104, New York, 20 December 1993). Available at www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaration%20elimination%20vaw.pdf (accessed on 30 September 2021).

173 Organization of American States, “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women” (1994). Available at www.oas.org/juridico/english/treaties/a-61.html (accessed on 30 September 2021).

174 Council of Europe, “Council of Europe Convention on preventing and combating violence against women and domestic violence” (2011). Available at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210 (accessed on 30 September 2021).

175 Pacific Islands Forum, “Pacific Leaders Gender Equality Declaration” (2012). Available at www.forumsec.org/pacific-leaders-gender-equality-declaration/ (accessed on 30 September 2021).

176 Inter-Parliamentary Union, *Human Rights Handbook for Parliamentarians* (Geneva, Inter-Parliamentary Union, 2016). Available at www.ipu.org/resources/publications/handbooks/2016-10/human-rights (accessed on 30 September 2021).

and others from similar bodies, can inform national gender-responsive law reform efforts, since they often highlight critical law reform areas and provide practical suggestions for reform that reflect comparative knowledge from other countries. Human rights bodies also often issue “general recommendations” on specific topics. These provide useful advice to parliamentarians on specific law reform issues, based on comparative good practice from a wide range of countries. For example, the CEDAW Committee has issued general recommendations on GBV, equality in marriage, equal pay and FGM.¹⁷⁷

The United Nations established the CEDAW Committee (in 1982) and the CRC Committee (in 1991) – known as the “Treaty Bodies” – to support implementation and monitoring of the two conventions. These bodies can also accept complaints from countries that have signed up to the CEDAW and CRC optional protocols, which set up these procedures.¹⁷⁸ In 2006, drawing on good practice from existing United Nations treaty bodies, United Nations Commission on Human Rights was replaced by the United Nations Human Rights Council (HRC), and the Universal Periodic Review (UPR) process was established. The UPR is a State-driven process, under the auspices of HRC, in which every United Nations Member State’s human rights performance is assessed by other States with the aim of improving the human rights situation on the ground, including by proposing areas

Human rights treaties provide entry-points for MPs to progress gender-responsive law reform



Parliaments have a role in (i) providing inputs to and review of the reports governments sent to UN treaty review bodies, (ii) participating in delegations to discuss such reports with UN treaty bodies, and (iii) reviewing and acting on the recommendations that UN treaty bodies make to countries based on those reports. UN treaty bodies provide written concluding observations to countries that often include specific recommendations in relation to law reform which legislatures have a role in acting on. These reports should be systematically considered by legislatures for action. Parliamentary committees on foreign affairs or human rights often have a mandate to review such reports, which should be tabled in the legislature for review and discussion.

CEDAW-CRC general recommendation on harmful practices



In November 2014, the CEDAW and CRC Committees issued a joint set of recommendations which specifically focused on addressing harmful practices affecting girls and young women. Issues such as child marriage, FGM, polygamy and honour punishments were discussed in detail. The Committees called for a holistic approach to dealing with these issues, including law reform, but also programmes addressing education, health, and other critical needs.

177 Office of the United Nations High Commissioner for Human Rights, “Committee on the Elimination of Discrimination against Women: General recommendations”. Available at www.ohchr.org/en/hrbodies/cedaw/pages/recommendations.aspx (accessed on 30 September 2021).

178 Office of the United Nations High Commissioner for Human Rights, “Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”. Available at www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx (accessed on 30 September 2021); Office of the United Nations High Commissioner for Human Rights, “Optional Protocol to the Convention on the Rights of the Child on a communications procedure”. Available at www.ohchr.org/EN/ProfessionalInterest/Pages/OPIICCRC.aspx (accessed on 30 September 2021).

where law reform is needed to uphold and entrench human rights. In 2018, HRC published its report, the *Contribution of parliaments to the work of the Human Rights Council and its universal periodic review*, in which it acknowledged the value of parliaments in promoting human rights, including through their participation in the UPR process.¹⁷⁹

Box 23: The CEDAW Committee has proactively engaged parliamentarians to encourage gender-responsive law reform

The CEDAW Committee is the only United Nations treaty body to have adopted a policy on cooperation with parliaments and the IPU.¹⁸⁰ The Committee has specifically recognized that “Given the key role of parliaments... States parties [should] ensure that parliamentarians, as representatives of the people, be made aware and informed of the Committee’s work so that they may take it into account in their legislative functions.”¹⁸¹ The Committee also reiterated “the importance of strengthening the national machinery dedicated to equality at the level of parliament, such as commissions on gender equality, missions and information on inquiries relating to violence against women, and improvement of legislation on equality between women and men.”¹⁸²

Parliamentarians are encouraged to work with the IPU to identify concrete opportunities for its Members to systematically engage with the CEDAW Committee, and to use their expertise and advice for the benefit of gender-responsive law-making and oversight. Many parliaments have standing committees with a mandate to deal with foreign affairs and/or international relations. Such committees can act as liaison points for the CEDAW Committee. They can also work with the national Ministry of Foreign Affairs to ensure that parliamentarians are involved in international and regional human rights delegations – not just to the CEDAW Committee, but also to other human rights bodies. Such parliamentary committees are also encouraged to facilitate parliamentary inputs to national human rights reporting and to ensure that reports back from United Nations and regional treaty bodies are tabled in parliament by the Minister for Foreign Affairs and discussed in the chamber.

In practice, States that have ratified CEDAW and CRC are required to submit a report to the relevant committee at least every four years.¹⁸³ Through the UPR process, they are also required to submit a comprehensive report on human rights and treaty implementation to HRC every four-and-a-half years.¹⁸⁴ The CEDAW and CRC Committees, as well as HRC, hold hearings with country delegations as part of the review process. Parliamentarians can be involved in the delegations that present to these committees.

179 Office of the United Nations High Commissioner for Human Rights, *Contribution of parliaments to the work of the Human Rights Council and its universal periodic review* (A/HRC/38/25, Human Rights Council, New York, 17 May 2018). Available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/25 (accessed on 30 September 2021).

180 Inter-Parliamentary Union, “Working with the CEDAW Committee”. Available at www.ipu.org/our-impact/gender-equality/womens-rights/eliminating-discrimination/working-with-cedaw-committee (accessed on 30 September 2021).

181 Office of the United Nations High Commissioner for Human Rights, “National Parliaments and the Convention on the Elimination of All Forms of Discrimination against Women”, at p.3. Available at www.ohchr.org/Documents/HRBodies/CEDAW/Statements/Parliamentarians.pdf (accessed on 30 September 2021).

182 Office of the United Nations High Commissioner for Human Rights, n 181 at p. 3.

183 Office of the United Nations High Commissioner for Human Rights, “Committee on the Elimination of Discrimination against Women”. Available at www.ohchr.org/EN/HRBodies/CEDAW/pages/cedawindex.aspx (accessed on 30 September 2021).

184 United Nations, *Resolution adopted by the General Assembly on 15 March 2006 on the Human Rights Council* (A/RES/60/251). Available at <https://undocs.org/en/A/RES/60/251> (accessed on 2 September 2021).

They can also play a key role in actioning recommendations made by these bodies, many of which specifically relate to law reform.

Box 24: In Uzbekistan, the Oliy Majlis engages proactively with CEDAW reporting and implementation

The most recent periodic report on CEDAW reiterated strong support for enacting gender law reforms and progressing equal opportunities for men and women in Uzbekistan. The Oliy Majlis (Supreme Assembly) plays an active role in these efforts. The report is prepared through a participatory process involving more than 60 government agencies and civil society institutions, coordinated by the National Centre for Human Rights (NCHR). A draft is prepared by the NCHR-led working group, in accordance with paragraph 5 of the Resolution of the President of the Republic of Uzbekistan of 10 December 2018 “On improving the activities of the National Centre for Human Rights of the Republic of Uzbekistan.” The draft report is then sent to the chambers of the Oliy Majlis for discussion. Following this discussion, resolutions are adopted by both chambers (the Legislative Chamber and the Senate), formally approving the draft and endorsing its submission to the CEDAW Committee. The national delegation, which attends the CEDAW Committee hearings, usually includes representatives from the Oliy Majlis.

Once the concluding observations of the CEDAW Committee are received, the national delegation reports back to the Oliy Majlis and a National Action Plan (NAP) is developed to progress the recommendations. In accordance with the 2018 Resolution of the President of the Republic of Uzbekistan, the NAP is then approved by a joint resolution of both chambers of the Oliy Majlis. This joint resolution also triggers the creation of a monitoring group for implementation of the NAP, which includes representatives of parliament and the NCHR. Since this new NAP process was introduced, the Oliy Majlis has enacted two important laws: “On the protection of women from harassment and violence” and “On guarantees of equal rights and opportunities for women and men”, both in September 2019.

A notable innovation by the Oliy Majlis has been the introduction of a mechanism by which all draft legislation is first checked by the ministry responsible for its development, and then the Ministry for Justice, for gender bias, before it is submitted to parliament. Only draft legislation that passes this checkpoint can be forwarded for further progression.

Most recently,¹⁸⁵ in October 2017, the Legislative Chamber established the Commission on Family and Women’s Issues, which works to raise parliamentarians’ awareness of the role and significance of CEDAW. The Senate Committee on Women and Gender Equality, which began its work in August 2019, has now set up a national platform to support women’s participation in all spheres of society. The Senate committee has also been conducting broad public consultations on the law

¹⁸⁵ The information in this paragraph is summarized from the Sixth periodic report submitted by Uzbekistan under article 18 of the Convention, due in 2019 (CEDAW/C/UZB/6, 23 January 2020) at pp. 6–7. Available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvqIKm%2f71Q4iogAZSMqJYVs60KRy5crJ6kEiuyr%2bMf3kQZOR7xy6os%2fgrfVi6U8SWJzQ3hoasS%2fykjav139nSZnRcGQupOQSQqDBq117mFGpC> (accessed on 2 September 2021).

“On the Guarantees of Equal Rights and Opportunities for Women and Men” and the law “On the Protection of Women from Harassment and Violence”. The committee has furthermore considered over 150 petitions from women, working in conjunction with the Legislative Chamber’s Commission on Family and Women’s Issues.

In 2010, the HRC recognized that “women everywhere are still subject to significant disadvantage as the result of discriminatory laws and practices” and that “de jure and de facto equality has not been achieved in any country in the world”; and determined to establish a United Nations Working Group on Discrimination against Women and Girls, comprising five independent experts.¹⁸⁶ The Working Group reports back annually to HRC, primarily through country reports, drawing on research and advice to help Member States identify and progress their priorities in relation to ensuring equality before the law and in practice. Also of relevance are thematic reports of the Working Group. These have included that of 2014, which focused on economic and social life and included reflections on law reforms to ensure equal labour rights for women. The 2015 report discussed gender equality in family and cultural life, including guidance on issues such as the reform of family codes to eliminate discriminatory provisions against women and girls. And in 2016, the report on health and safety reflected on the instrumentalization of women’s bodies through unfair laws.¹⁸⁷ The mandate of the Working Group has been renewed through to 2022, in recognition of the need to continue monitoring and supporting domestic efforts by governments and parliaments to progress law reform and implementation efforts.

The HRC has created several other “Special Procedures” whose mandates also intersect with discrimination in law and law reform more broadly. They include the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on Extreme Poverty, and the Special Rapporteur on the rights of indigenous peoples.

Regional organizations, such as the African Union, OAS, the Council of Europe and the Pacific Islands Forum, have also recognized the importance of reforming the law to support gender equality and/or non-discrimination.¹⁸⁸ In 1994, the Inter-American Commission on Human Rights also established the Office of the Rapporteur on the Rights of Women, which is mandated to analyse the “extent to which laws and practices involving women’s rights in the OAS Member States comply with the general obligations set forth in regional human rights instruments.”¹⁸⁹ Only a few years later, in 1998, the African Commission on Human and Peoples’ Rights established the Special Rapporteur on Rights of Women in Africa, in recognition of the need to place particular emphasis on the problems and rights specific to women in Africa.¹⁹⁰ The Special Rapporteur’s mandate has been renewed and extended four times since then.¹⁹¹

186 United Nations, *Resolution adopted by the Human Rights Council: 15/23: Elimination of discrimination against women* (A/HRC/RES/15/23, 8 October 2010). Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/167/91/PDF/G1016791.pdf?OpenElement> (accessed on 30 September 2021).

187 Office of the United Nations High Commissioner for Human Rights, “Annual thematic reports of the working group on discrimination against women and girls”. Available at www.ohchr.org/en/Issues/Women/WGWomen/Pages/Annualreports.aspx (accessed on 30 September 2021).

188 UN Women, n 31 at pp. 16-17.

189 Organization of American States, “Rapporteurship on the Rights of Women”. Available at www.oas.org/en/iachr/women/mandate/mandate.asp (accessed on 18 October 2020).

190 African Commission on Human and Peoples’ Rights, “Special Rapporteur on Rights of Women”. Available at www.achpr.org/specialmechanisms/detail?id=6 (accessed on 9 December 2020).

191 African Commission on Human and Peoples’ Rights, “Special Rapporteur on Rights of Women: Mandate and biographical notes”. Available at www.achpr.org/specialmechanisms/detailmech?id=6 (accessed on 9 December 2020).

Key questions to consider:

- How is your parliament involved in reporting to United Nations treaty bodies, the UPR process and HRC in general? If it is not involved, would it be possible to call on the government for more systematic involvement of parliamentarians in these processes?
- Are there any regional human rights bodies that may have produced relevant reports on human rights, gender equality and law reform?
- Is there a specific parliamentary committee with responsibility for overseeing or participating in reporting on obligations related to women's rights?
- Does the government table in parliament the draft reports to United Nations or regional human rights bodies and/or the concluding observations made by these bodies, so that parliamentarians can discuss them and hold relevant ministries, departments and agencies to account?

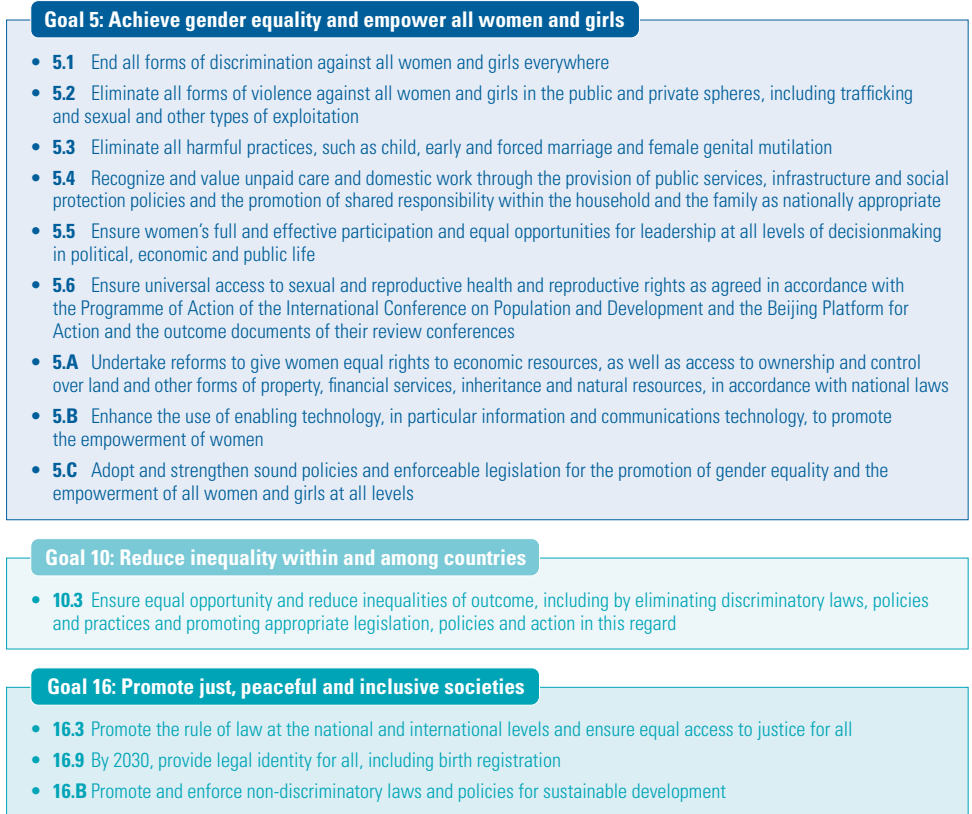
4.5 The SDGs and gender-responsive law reform

In September 2015, world leaders came together to discuss and agree on the new 2030 Agenda for Sustainable Development and the 17 new SDGs. They are underpinned by a human rights-based approach to development, which “seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people being left behind.”¹⁹²

Accordingly, in addition to being a goal in itself, gender equality was recognized as a cross-cutting priority that would need to be addressed if the other SDGs were to be achieved. The 2030 Agenda Declaration, which was agreed by Heads of Government, specifically recognizes that: “Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities.”

¹⁹² UN Sustainable Development Group, “Human Rights-Based Approach”. Available at <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach> (accessed on 30 September 2021).

Figure 5. Relevant SDG targets on gender equality, discrimination and the law



As Figure 5 shows, SDG 5 specifically focuses on gender equality, and all three Goals have dedicated targets prioritizing laws that promote gender equality and non-discrimination in law. Several SDG targets and indicators call for gender-responsive law reform, to provide women and girls with effective legal rights and protections in relation to discrimination, access to health services and economic resources, land rights, financial services, and inheritance. Parliaments must look to Sustainable Development Goal 5 (SDG 5) which specifically focuses on promoting gender equality, calls on States to: “End all forms of discrimination against all women and girls everywhere” (Target 5.1), while indicator 5.1.1 measures: “Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination based on sex.” These targets recognize that, in order to achieve the SDGs, it is critical to have an enabling environment that supports their implementation, including national legal frameworks.

Most countries are now integrating the SDGs into national and sectoral development plans, including plans relating to gender equality and women’s rights. These plans can be important sources of local analysis regarding the specific issues affecting a country. They also often provide useful baseline data and, in some cases, help to disaggregate issues

at the subnational level – which can be useful for parliamentarians representing different areas of the country. National SDG progress reports often include specific analysis of the current legal frameworks relevant to achieving the SDGs, including areas for law reform.

Key questions to consider:

- Does your country produce reports on its implementation of the SDGs, generally known as Voluntary National Reporting? If so, what does the report say on issues relating to gender equality? Are there any gender-responsive law reform issues raised by the SDG report?
- Has your country produced any sectoral reports relevant to gender equality (for example, on women’s rights, children’s rights, health, education, or employment)? Do these reports identify any specific gender-responsive law reforms as a priority?
- Are members of your parliament familiar with their country’s reporting on SDG indicator 5.1.1 related to: “Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination based on sex”?
- Has your parliament undertaken any efforts to follow up on your country’s gender equality commitments and related IPU resolutions and guidance, including recommendations issued by human rights treaty bodies and the Universal Periodic Review?



Parliamentarians can and should drive the gender-responsiveness of laws and oversee their implementation. © Sergii Kharchenko/NurPhoto

Conclusion

The law provides the underlying foundation for how societies operate, setting out what constitutes acceptable behaviour by individuals, corporations, and communities – and what does not. It is the role of parliamentarians to ensure that laws serve the interests of all members of society and protect and promote the rights of everyone – women, men, boys and girls. Yet, as Section 1 of this Handbook demonstrated, the reality is that, for various reasons, women and men are not equal in law in many countries around the world. In some cases, the law even operates to actively disadvantage or harm women.

This Handbook explains the role that parliamentarians can play in ensuring that domestic laws effectively and appropriately protect and promote the rights of women and girls, taking into account both international (or regional) and domestic norms and good practice. As elected officials, parliamentarians have the standing in the community to work with stakeholders nationally and internationally and to initiate discussions about whether and how law reform should be progressed to ensure women's empowerment. As a result of their direct interactions with voters and local communities, parliamentarians are well

placed to find out about practical areas of law reform that require action, and to take that information back to parliament to push for change.

Parliamentarians are core stakeholders in the process of law reform because they have the mandate to pass laws and oversee their implementation by the government of the day. Different processes of law reform may be used, depending on the context. Parliamentarians can drive change themselves, or they can work in partnership with government officials, civil society, academics and/or international development partners. They can analyse gaps and anomalies in the law and then implement a reform process that will enact changes in law and contribute to changing the behaviours of individuals and communities. Getting good laws on the statute books is a first step. But ensuring that all stakeholders implement those laws is a longer-term challenge. It requires parliaments to continuously monitor, to provide guidance and resources, and to criticize where necessary. In this way, parliamentarians can play a vital role in ensuring that women and girls everywhere have equal protections and equal rights in law, and enjoy prosperous, safe and dignified lives.

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For democracy. For everyone.

 +41 22 919 41 50
 +41 22 919 41 60
 postbox@ipu.org

Chemin du Pommier 5
Case postale 330
1218 Le Grand-Saconnex
Geneva – Switzerland
www.ipu.org



United Nations Entity for Gender Equality
and the Empowerment of Women

 +1 646 781-4400
 +1 646 781-4444

220 East 42nd Street
New York, NY 10017
United States

www.unwomen.org