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Case study 2: Post-legislative scrutiny of gender- specific legislation

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Executive Summary

The case study titled 'Post-legislative scrutiny of gender-specific legislation' examines the role of gender-sensitive post-legislative scrutiny in achieving gender equality through gender-specific laws.

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

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

The present document identifies the role of gender-specific legislation for achieving gender equality and the potential contribution of post-legislative scrutiny for de facto gender equality. It focuses on important elements of a 'good' post-legislative scrutiny of gender-specific legislation and concludes with learning points for Parliamentary Committees.

Acknowledgements and Disclaimer

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Gender-specific legislation as a tool for de jure and de facto gender equality

The law is an important ally in the effort to achieve gender equality. It can transform 'individual suffering into an objective wrong' and thus make it relevant for everyone.¹ Law can contribute to gender equality by establishing rights and obligations, punishing perpetrators, instigating behavioural change, educating, creating remedies and sending out strong 'messages' to society.

During the last decades, an increasing number of laws around the world regulate a wide array of matters linked to gender equality: duties to mainstream gender equality in policies and legislation; obligations for equal pay; measures to reconcile professional and family life; quotas to ensure a more equitable representation of men and women in elections, in the corporate world and in decision making bodies; rules to ban and punish domestic and gender-based violence (GBV) and practices like female genital mutilation or child marriages. **However, the mere enactment of gender-specific legislation is rarely enough to achieve de facto gender equality. The transition from de jure to de facto equality requires laws that deliver results, and this is where post-legislative scrutiny has a role to play.**

How can post-legislative scrutiny (PLS) contribute to gender equality?

Post-legislative scrutiny is the process through which parliaments assess whether, and to what extent, laws have met their intended objectives and outcomes.² Like all laws, gender-specific laws need to be subject to meticulous scrutiny to ensure they are adequately enforced and implemented, that they achieve their objectives and that they positively advance gender equality. Gender-sensitive post-legislative scrutiny³ reveals how laws impact men, women and non-binary people and their positive or negative impact on existing stereotypes and inequalities. When conducted properly, post-legislative scrutiny can reveal achievements and errors in the design of legislation, gaps in implementation and enforcement and broader positive and negative impacts that enable or hinder gender equality.

For example, a post-legislative [scrutiny](#) on the [Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#) conducted in 2016 by the Equality, Local Government and Communities Committee of the Welsh Parliament identified gaps in the pace and consistency of implementation of the Act, low awareness of obligations among public authorities, limited possibility to fulfil demand for services and lapses in the publication of statutory guidance. A review of Lebanon's law 293/2014 that aims to protect women and family members from domestic violence revealed gaps resulting from the non-explicit criminalisation of domestic violence, its non-application to domestic workers, and its being secondary to existing customs.⁴ A scrutiny of Cabo Verde's Law Against Gender-Based Violence in 2014⁵ found that implementing rules to enforce the law had not been enacted thus hindering the required budget allocations and funding. A scrutiny of Uganda's [Prohibition of Female Genital Mutilation \(FGM\) Act 2010](#) revealed how the deeply embedded practice of FGM prevailed and became mutated following the enactment of the law.⁶ A scrutiny of the [Lei Maria da Penha](#) (law on violence against women) by the Joined Inquiry Committee of the Brazilian National Congress in 2012 confirmed omissions in the application of the instruments to protect women victims of violence. An inquiry of the Standing Committee on Legal and Constitutional Affairs of the Australian Senate in 2008 into the [Commonwealth Sex Discrimination Act 1984](#) proposed several ways to improve its effectiveness.

1. Martti Koskenniemi, 'Constitutionalism as Mindset: Reflection on Kantian Theories of International Law and Globalization' 2007 8 (1) Theoretical Inquiries in Law 28

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

3. Gender-sensitive post-legislative scrutiny adds a gender lens to post legislative scrutiny. It examines how laws affect women and men and how they contribute to advancing gender equality. See Policy Paper: Gender-sensitive Post-Legislative Scrutiny.

4. Dina Melhem, Post-Legislative Scrutiny of Gender Based Violence Laws in MENA region, Presentation at Expert's seminar on ex-post impact assessment of legislation and Post-Legislative Scrutiny, in cooperation with University of Hull and Wroxton workshop; 26 April 2019, London; <https://www.wfd.org/2019/02/13/gender-equality-laws-morocco/>

5. Elisabete Azevedo-Harman & Ricardo Godinho Gomes, Post-Legislative Scrutiny of the Law against Gender-Based Violence. The Successful Story of the Cabo Verde Parliament (2019) 21: 2 European Journal of Law Reform 175-180.

6. Gitta Zacharia, Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament. Experiences from an Emerging Democracy (2019) 21:2 European Journal of Law Reform 185-189

Laws are rarely perfect. As the examples reveal, **the barriers related to legislation on gender equality can be multifaceted, systematic and extensive. But they can be 'corrected', if properly identified, and this is where post-legislative scrutiny can make a difference.**

How to conduct a 'good' post-legislative scrutiny

A 'good' post-legislative scrutiny requires robust preparation, planning, implementation and follow up. The detailed steps below set a comprehensive framework for conducting post-legislative scrutiny in a parliamentary setting. Within this broader framework, the sections below will focus on some points which are of particular relevance for gender-specific legislation.

18 steps to post-legislative scrutiny⁷

Pre-planning phase

- Step 1: Decide to establish binding requirement for Post-Legislative Scrutiny prior to adoption of legislation
- Step 2: Identify triggers for Post-Legislative Scrutiny
- Step 3: Engage human resources for Post-Legislative Scrutiny
- Step 4: Engage financial resources for Post-Legislative Scrutiny

Planning phase

- Step 5: Select the laws and legal documents for Post-Legislative Scrutiny review
- Step 6: Define objectives for conducting Post-Legislative Scrutiny and public hearings
- Step 7: Identify and review the role of implementing agencies
- Step 8: Identify relevant stakeholders
- Step 9: Collect background information and relevant data
- Step 10: Determine timeframe of the Post-Legislative Scrutiny process

Implementation phase

- Step 11: Conduct the Post-Legislative Scrutiny stakeholder consultation
- Step 12: Review the effects of delegated legislation
- Step 13: Making the consultation public
- Step 14: Analysis of Post-Legislative Scrutiny findings
- Step 15: Drafting the report

Follow-up phase

- Step 16: Distributing the report and making it publicly accessible
- Step 17: Policy follow-up to the Post-Legislative Scrutiny inquiry
- Step 18: Evaluate the Post-Legislative Scrutiny inquiry results and process

7. De Vrieze (n 2)

Planning phase

Setting a clear focus for the post-legislative scrutiny

Post-legislative scrutiny is far from a formalised practice. Parliamentary committees usually have a wide margin of discretion to decide if, when and on what to conduct a post-legislative scrutiny. This decision can be triggered by an existing review or sunset clause in legislation and a report or memorandum submitted by the government. Review or sunset clauses in legislation are a starting point for scrutiny, but not the only one. Committees with a mandate on gender equality or women's caucuses may often take the initiative to review legislation or policy areas from a gender perspective. Other events might trigger reviews or inquiries.

Once a decision to conduct a review or post-legislative scrutiny is made, it is important to clearly determine its scope and focus. Practice shows that several committees make their mandate explicit in *Terms of Reference* and *specify the questions that the scrutiny seeks to address*. The scope of the scrutiny will depend on many factors, including the nature of the Act and the mandate of the committee, among others.

Potential questions to be considered in post-legislative scrutiny

The effectiveness of the law:

- Has the Act achieved its aim in relation to gender equality?
- Are there gaps in legal protection?

The implementation of the law:

- Are all provisions implemented?
- Are implementing regulations duly adopted?
- Does the implementation mechanism work properly?

Compliance and enforcement:

- Do subjects comply with the law?
- Do they benefit from the law? If yes/no, why?
- Are enforcement mechanisms accessible and effective?

Broader impacts of the law:

- What are the wanted/unwanted outcomes of the law?
- What are the reasons behind them?

A post-legislative scrutiny cannot address everything, so it is important to make its focus clear and specific. For example, the Equality, Local Government and Communities Committee of the Welsh Parliament in its scrutiny report titled *Is the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 working?* focused on the progress made in the implementation of the Act and its impact to date.

Terms of Reference

for the Equality, Local Government and Communities Committee of the Welsh Parliament in the scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

The Committee looked at the progress made in the implementation of the Act's provisions and its impact to date. In particular, the Committee considered:

- To what extent the approach to tackling violence against women, domestic abuse and sexual violence is improving as a result of the obligations in the Act?
- What are the most effective methods of capturing the views and experiences of survivors? Are arrangements in place to capture these experiences, and to what extent is this information being used to help inform the implementation of the Act's provisions?
- Are survivors of abuse beginning to experience better responses from public authorities as a result of the Act, particularly those needing specialist services?
- Does the National Adviser have sufficient power and independence from the Welsh Government to ensure implementation of the Act?
- To what extent is the good practice guide to healthy relationships successfully influencing the development of a whole school approach to challenging violence against women, domestic abuse and sexual violence?

This scrutiny sought to validate the overall approach and impact of the Act to the problem addressed through legislation (q1), the existence and effectiveness of monitoring and data collection mechanisms (q2), the lived experience of the Act by beneficiaries (q3), the adequacy of the implementation mechanism of the Act (q4), and the effectiveness of a specific tool (good practice guide, q5).

The scrutiny of Cabo Verde's Law Against Gender-Based Violence in 2014 focused on implementation⁸. The scrutiny of Uganda's Prohibition of Female Genital Mutilation (FGM) Act 2010 addressed both implementation and broader impact of the law⁹.

8. Azevedo-Harman & Godinho Gomes (n5) 175-180.

9. Zacharia (n 6) 185-189.

In Canada, an Inquiry on [violence against young women and girls in Canada](#) by the House of Commons Standing Committee on the Status of Women in 2016 examined a set of broader -and more exploratory questions - that did not relate in particular into a specific law or laws.

Inquiry into [violence against young women and girls in Canada](#)

By the House of Commons Standing Committee on the Status of Women (Canada), 2016

The Committee adopted the following motion:

That the Committee study violence in the lives of young women and girls, with particular attention to (but not limited to):

- the nature and extent of cyberviolence against young girls and women and best practices to address and prevent it;
- the nature and extent of street harassment and disrespectful public behaviour and best practices to address and prevent it;
- the exploration of issues faced by young women on campus, and how to build a more consistent application of effective strategies by universities and colleges to address violence against young women on campus, including the notion of 'rape culture' and definitions and perceptions of consent;
- exploring the impacts of hypersexualisation of young women and girls in the traditional and social media, and how to engage relevant sectors in countering such practices;
- exploring best practices for engaging men and boys to be part of the solution on these issues;
- including, in the examination of the above, those groups in our society who are at particular risk, such as the LGBTQ2 [lesbian, gay, bisexual, transgender, queer and 2-Spirited] community, newcomer and immigrant young women and girls;
- and that the Committee report its findings to the House.

The Joint Enquiry Committee in Brazil set itself a broader mandate 'to investigate the situation of violence against women in Brazil and denunciations of omissions from public authorities in relation to the application of instruments established by the law to protect women victims of violence'.

In the case of the Commonwealth Sex Discrimination Act 1984 the Senate (Australia) directed the committee to inquire into and report on the effectiveness of the Act and determined an extensive and specific set of issues to be examined:

Questions examined in the scrutiny of the effectiveness of the Commonwealth Sex Discrimination Act 1984 (Australia)

- (a) the scope of the Act, and the manner in which key terms and concepts are defined;
- (b) the extent to which the Act implements the non-discrimination obligations of:
 - (i) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and
 - (ii) the International Labour Organization (ILO); or
 - (iii) under other international instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (c) the powers and capacity of the Human Rights and Equal Opportunity Commission (HREOC) and the Sex Discrimination Commissioner, particularly in initiating inquiries into systemic discrimination and to monitor progress towards equality;
- (d) consistency of the Act with other Commonwealth and state and territory discrimination legislation, including options for harmonisation;
- (e) significant judicial rulings on the interpretation of the Act and their consequences;
- (f) impact on state and territory laws;
- (g) preventing discrimination, including by educative means;
- (h) providing effective remedies, including the effectiveness, efficiency and fairness of the complaints process;
- (i) addressing discrimination on the ground of family responsibilities;
- (j) impact on the economy, productivity and employment (including recruitment processes);
- (k) sexual harassment;
- (l) effectiveness in addressing intersecting forms of discrimination;
- (m) any procedural or technical issues;
- (n) scope of existing exemptions; and
- (o) other matters relating and incidental to the Act.

The examples show that the scope of issues that fall under scrutiny can be narrower or broader, linked to one or more pieces of legislation, and explore specific allegations or emerging issues. There is no right or wrong choice in this respect. Broad questions leave an important margin of discretion to the committee that conducts the scrutiny to choose the issues it wants to focus on and highlight the most prevalent or important ones. A related risk is that the review might be superficial, touching upon many issues but going into little depth. On the other hand, specific scrutiny can go into more depth but with a less broad scope.

In either case it is recommended for the body that conducts the scrutiny to make a clear choice on the focus of the scrutiny and come up with a clear and consistent set of questions that can be addressed – prioritising those that are most critical from the perspective of gender equality. Consolidating these questions in Terms of Reference is recommended to set a clear framework for the post-legislative scrutiny and make it focused and resource-efficient.

Selecting a consistent method for the scrutiny

Every post-legislative scrutiny raises more or less complex questions involving the design, the implementation and the impact of one or more Acts. Responding to these questions in a reliable way requires a method and data. The method for post-legislative scrutiny is not one-size-fits-all. Instead, it needs to be tailored to the intricacies of the area/policy/legislation scrutinised, the scope of the scrutiny, and the resources and capacity available to the committee conducting it. In practice, post-legislative scrutiny often relies on: quantitative and qualitative data (for example statistical data on gender-based violence (GBV) in a given country); information about implementation (adoption of secondary legislation, guidance and so on, funding and resources); information on legal, compliance or enforcement problems (for example lack of compliance, underreporting, non-mobilisation of enforcement agencies); the experience/perspectives of the subjects of legislation and / or service providers (barriers in enjoyment of rights, victimisation) and so on.

Common tools that committees use to conduct scrutiny involve inquiries, hearings, oral sessions and field visits, among others.

Examples of different methods to conduct scrutiny

The Equality, Local Government and Communities Committee of the Welsh Parliament collected evidence for its PLS through written submissions, oral evidence and field visits to four projects to meet with service providers and survivors.

The Women's Caucus in Cape Verde used a methodology that combined a survey, quantitative data on the ex-ante and ex-post cases of GBV and data on the legislative procedures, field visits to 22 municipalities, interviews with key informants and a questionnaire administered to 18 MPs.

The Standing Committee on the Status of Women (Canada) for its [study of violence against young women and girls in Canada](#) received testimony from 93 witnesses – individuals, representatives of organisations, provincial governments, federal departments and agencies, written briefs from organisations along with speaking notes and follow-up responses to questions from Committee members.

The Standing Committee on Legal and Constitutional Affairs in Australia advertised the inquiry in newspapers and on its website and invited submissions from over 140 organisations and individuals. In addition to the submissions received, the Committee held public hearings in Sydney, Melbourne and Canberra and heard witnesses.

What these examples show is that while the method can differ depending on the questions to be investigated, committees rely heavily on qualitative information that they collect via public authorities, experts, individuals and third parties. It is important, when determining the method of the scrutiny and planning hearings and oral sessions, to reflect on what information is needed, to ensure the involvement of a wide spectrum of stakeholders, to ensure diversity and gender balance in those invited to participate¹⁰ and ultimately to triangulate the information provided and make sure that it is balanced and non-biased.

10. See the report on [Witness gender diversity](#) in the 2017-19 UK Parliament

Implementation phase

A transparent process of conducting the scrutiny

Data collection needs to be a structured and transparent process. It is good practice to make the list of witnesses and sources and the type of evidence received transparent. It is good practice for post-legislative scrutiny reports to list in annexes all the sources considered, the witnesses and testimonies heard. In cases of vulnerable witnesses a balance needs to be achieved between the need for transparency and personal protection.

Another important issue that might emerge during data collection is to spot gaps in the information collected and refer to additional sources, triangulate the information received and avoid capture and bias. For example, in the scrutiny conducted in Cabo Verde the pre-legislative consultations at district and sub-county level conducted by the Ministry of Gender, Labour and Social Development did not reach lower grassroots levels and failed to reveal critical aspects of the issue being scrutinised. The Women's Caucus picked this up during the scrutiny, consulted with lower levels of government and identified a number of implementation problems at that level. Further, governments might be unwilling to disclose negative information or might over-emphasise positive aspects of implementation. It is important to complement this information with the viewpoint of other actors that have a distinct perspective. Committees should also be aware of conscious and unconscious bias in the data and information provided.

Objective and evidence-based findings and conclusions

Data collection can provide a wealth of primary data and information, which can be of variable quality and reliability. Processing and analysing this information is the 'heart' of post-legislative scrutiny and a task that requires method, skills, resources and time.

The process of analysis inevitably leads to findings and conclusions, which are the answers to the questions that triggered the scrutiny. The findings can go all the way from highlighting factual issues (for example, the non-adoption of secondary legislation or delays in issuing guidance), to exploring the causes behind issues related to the law (for example the reasons behind the lack of compliance), to revealing broader effects (for example that quotas have only partially contributed to more equitable representation of women in parliaments).

For example, the scrutiny of the Law Against Gender-Based Violence¹¹ in Cabo Verde revealed mostly factual information related to delays in the adoption of secondary regulations and their stagnatory effect on the disbursement of budget allocations and funding required for the implementation of the law. The same can be said about the [scrutiny](#) of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 by the Equality, Local Government and Communities Committee of the Welsh Parliament. It identified gaps in the pace and consistency of implementation of the Act, low awareness of obligations among public authorities, limited possibilities for fulfilling demand for services and lapses in the publication of statutory guidance. In Lebanon, the scrutiny of Law 293/2014 identified the combined effect of gaps in implementation and limited awareness of the law by society and stakeholders. Since the adoption of Law 293 in 2014, forty women were documented as having been murdered by their husbands and only 175 Protection Orders were issued. The scrutiny showed that while the Law provided a solid legal foundation for efforts to reduce domestic violence, gaps remained in implementation across all sectors involved, and at the same time one third of the population had never heard of the law.¹²

In Uganda on the other hand, the findings of the scrutiny of the Prohibition of Female Genital Mutilation (FGM) Act 2010¹³ went beyond implementation to reveal broader impacts of the law. An important finding of the scrutiny was that, while as a result of the law the practice of Female Genital Mutilation appeared to

11. Azevedo-Harman & Godinho Gomes (n5) 175-180.

12. Melhem, Post-Legislative Scrutiny of Gender Based Violence Laws in MENA region (n4).

13. Zacharia (n 6) 185-189.

have gone down, in fact it had gone underground and involved covert methods of engaging in the practice in bushes, behind mountains, at night, in hiding or in neighbouring countries. The scrutiny also revealed the deeply entrenched cultural roots of FGM practice in specific regions and how the secrecy surrounding the practice of FGM since the law was passed led to unwillingness to report cases or provide evidence in court for fear of reprisal. Another set of findings revealed implementation problems at local level, including the low awareness of the law among local governments, the lack of translation of the law into local languages and the lack of resources and capacity within the police, among others.

The [Enquiry of Violence against Women by the Joint Parliamentary Committee of the Brazilian National Congress](#) in 2012 revealed a number of failures in the implementation of the Maria da Penha Law (the Law is named after a victim). The report pointed to the fragility of public policies to combat violence against women and highlighted implementation obstacles, including the fragile network of specialised services to victims of violence, the small number of specialised courts, the failure of the decision of the Supreme Court to prohibit application of the conditional suspension of proceedings, resistance on the part of jurists, and insufficient budgetary allocations for public policies to combat violence against women.¹⁴

Transforming information into evidence-based findings and conclusions related to the achievements and failures of the law and its contribution to gender equality is a task that needs to be done meticulously, and needs to identify the achievement or the problem but also the root causes lying behind them.

SMART recommendations

The ultimate purpose of post-legislative scrutiny of gender-specific legislation is to make recommendations on how to maximise achievements and address failures. The little available evidence on the nature and strength of the recommendations put forward through post-legislative scrutiny¹⁵ reveals that they relate to policy and practice, to further research/review needed, to actions linked to the implementation of legislation, to disclosure issues, to recommendations from other bodies, requirements for cooperation, funding and resources, campaigns/public information and guidance¹⁶. Recommendations can be soft and focus on factual issues (which appears to be the case for the majority), of medium strength calling for legislative action and (rarely) stronger ones calling for broad change such as the repeal of an Act or the adoption of new legislation.¹⁷

For example, the 16 recommendations of the Equality, Local Government and Communities Committee of the Welsh Parliament on the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 related to:

- setting out specific delivery dates for outstanding legislative obligations (R1, R2, R5)
- publishing outstanding guidance (R3, R4) and directions on its content (R7)
- funding (R6)
- legal issues (R8), including available sanctions (R15)
- teaching and training (R9), use of Good Practice Guide in schools (R10), publication of toolkit of resources and materials (R12), education in higher education institutions (R13)
- preparation of regulations (Recommendation 11)
- review the capacity of the National Adviser's role (R14) and alignment of their work plan with other plans (R16)

14. Carmen Hein de Campos, The Joint Parliamentary Committee of Enquiry and the Implementation of the Maria da Penha Law (2015) 23:2 Rev. Estud. Fem. [online] pp.519-531.

15. Tom Caygill, A Tale of Two Houses? (2019) 21:2 European Journal of Law Reform 2019 (21); Tom Caygill, Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament (2019) 25:2 The Journal of Legislative Studies, 295-313.

16. Ibid.

17. Ibid.

In the majority of cases, the recommendations are soft and do not require major change. Their focus is on improving implementation and they do not move in the direction of introducing major changes in the Act. Their main advantage is that they are specific and point out specific lines for action.

The post-legislative scrutiny on the FGM Act in Uganda, on the other hand, resulted in more far-ranging but less specific- recommendations. The scrutiny highlighted broader lessons learnt like the need for sensitisation campaigns prior to and after enactment of legislation, but provided less specific directions for action in response to the problems identified; that is, on how to improve the lack of sensitisation to improve policing, on how to ensure the involvement of local communities and community elders and so on. The recommendations of the committee are stronger as they go as far as proposing an alternative approach to FGM that would better induce compliance (termed 'the positive deviant approach') but is less specific in recommending concrete action to improve the effectiveness of the Act.

The Australian Committee came up with 43 detailed recommendations. Some of them propose amendments and others propose changes in the way the law is administered and understood by the community and those responsible for complying with the requirements set out in the law. An interesting feature of the recommendations is that the Committee 'organised' them into those that could be introduced immediately, changes for further consideration over the next 12 months and longer-term changes which require additional consultation.¹⁸

The Brazilian Joint Enquiry Committee made 69 recommendations addressing the weaknesses identified. What is interesting is that the Committee addresses different recommendations to different bodies at federal, national and municipal level and including the judiciary, the executive and the Parliaments. The recipients of recommendations include indicatively the Federal Supreme Court, the National Judicial Council, the Public Prosecutor, the Presidents of courts, specific Ministries, the government, national and municipal governments, and the Assemblies.

Recommendations are the contribution of the scrutiny to the future of an Act. Recommendations need to address both positive and negative findings and propose concrete steps on what to sustain and what to improve and how. Recommendations should be specific, measurable (where possible), achievable, relevant and time bound (SMART) in order to facilitate further monitoring and follow up.

Tips for SMART Recommendations

- acknowledge both positive and negative findings
- be specific with regard to what should be sustained or changed
- address the recommendations to specific authorities/institutions
- indicate how these will be monitored/followed up
- indicate timelines for the recommendations (short, medium, long term or specific deadlines) to facilitate follow-up and monitoring

Follow-up phase

Consistent follow up

Post-legislative scrutiny is the initiation of a dialogue between the parliament and the government around a specific Act. It is a unique exercise and it is important to publicise the findings in a consistent way and as widely as possible. Parliaments tend to publish post-legislative scrutiny reports on their websites, but these are not particularly easy to identify or trace. It is recommended that the publication of the PLS report is disseminated broadly and that its findings are communicated as widely as possible.

18. Sarah Moulds, A deliberative approach to post legislative scrutiny? Lessons from Australia's ad hoc approach (2020) The Journal of Legislative Studies 1-25.

Post-legislative scrutiny recommendations address the government and the agencies involved in implementation. Governments respond to the post-legislative scrutiny and publish their response, positioning themselves against the recommendations and announcing their further commitments (see for example the [response](#) of the Welsh Government to the scrutiny of the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015). However, this is not the end of the process. Evidence shows that committees are not very meticulous at looking closely at government responses and following up on them.¹⁹ Further follow up actions are strongly recommended to hold the government to account. However, several interesting examples of follow up actions can be noted.

The Equality, Local Government and Communities Committee of the Welsh Parliament followed up on its scrutiny of the 2015 Act through a debate in Plenary, a follow up [evidence session](#) after the publication of an Audit Office [report](#) on the Act and an additional [scrutiny session](#) with the Minister. In Cape Verde the Women's Caucus conducted an advocacy campaign to follow up on the scrutiny of the Law Against Gender-Based Violence, put the issue on the political agenda and exercise pressure for the implementation of the recommendations. It used the budget formulation process as an entry point for gender responsive budgeting scrutiny around gender equity and the implementation of gender policy targets. This eventually led to the approval of the GBV regulations.

Keeping track of the pace of implementation of the Act and engaging in further follow up actions is strongly recommended.

What difference can post-legislative scrutiny make?

Post-legislative scrutiny can make a difference and leave a lasting mark in the progress towards gender equality. Although there is little systematic evidence with regard to the lasting impact of post-legislative scrutiny and methods to maximise it, several encouraging examples show its potential.

For example, in Brazil, the reviews of the [Lei Maria da Penha](#) triggered legislative change. The Penal Code was amended and femicide was established as an aggravating circumstance for crime. However, further change can be noted: the Congress decided to establish a permanent joint committee on the same subject and related action was also taken more recently by the Assembly.

The review on the [Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality](#) in Australia is also considered to have had a lasting positive impact on laws and policies relating to sex discrimination, and on the way law makers engage with the community. Moulds²⁰ identifies several impacts: amendments to the SDA by the federal Government in response to several of the Committee's recommendations; the report sparked inquiries and legislative amendments across a number of Australian States; the report was used in advocacy by community groups calling for improvements to Australia's antidiscrimination regime and inspired the Sex Discrimination Commissioner to commence inquiries that led to strategies and recommendations for improved responses; it was a catalyst for the 2009 Productivity Commission's inquiry into Paid Maternity, Paternity and Parental Leave (Australian Productivity Commission, 2009), which in turn led to the adoption of Australia's first paid parental leave scheme in 2011. Post-legislative scrutiny appears to have a transformative potential to trigger legislative, policy and institutional change and to empower advocacy.

19. Ibid.

20. Moulds (n 17) 1-25.

Conclusion: learning points for parliamentary committees

- o The law is an important ally in the effort to achieve gender equality. De facto gender equality requires laws that deliver results, and this is where post-legislative scrutiny has a role to play.
- o Post-legislative scrutiny can reveal achievements and failures in the design, implementation and enforcement of the law and ways to correct or address them. Gender-sensitive post-legislative scrutiny can reveal whether legislation has produced (positive or negative, unintended or unexpected) impacts on gender relations and gender equality.
- o A 'good' post-legislative scrutiny of gender-specific legislation requires robust preparation, planning, implementation and follow up. Points that require specific attention are the following:
 - the scrutiny must have a clear gender focus, consolidated in Terms of Reference
 - the scrutiny must have a consistent method, tailored to the intricacies of the related topic investigated and coupled with strategies to generate appropriate data
 - the scrutiny process must be transparent with regard to the information and the sources used. The competent committee must try to triangulate information and avoid capture and bias.
- o Post-legislative scrutiny of gender-specific legislation is an important task for Equality Committees or other parliamentary bodies as it is the only way to measure the contribution of the law to de facto gender equality. It is therefore important for committees to integrate the scrutiny of gender-specific legislation in their agenda and to come up with:
 - objective and evidence-based findings and conclusions indicating achievements and failures in relation to gender equality
 - make recommendations that address both positive and negative findings and propose concrete steps on what to sustain and what to improve and how. They must be specific, measurable (where possible), achievable, relevant and time bound (SMART)
 - engage in follow up actions to hold the government to account.
- o Post-legislative scrutiny can make a difference in the progress towards gender equality by triggering legislative change in the short or medium term, encouraging advocacy by other bodies and by creating awareness and ripple effects within parliaments and other bodies around gender equality issues.

Resources

Articles

- Azevedo-Harman, Elisabete & Ricardo and Gomes, Godinho. Post-Legislative Scrutiny of the Law against Gender-Based Violence: The Successful Story of the Cabo Verde Parliament (2019) 21 :2 *European Journal of Law Reform* 175-180.
- Caygill, Tom. A Tale of Two Houses? (2019) 21:2 *European Journal of Law Reform* 2019 (21)
- Caygill, Tom. Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament (2019) 25:2 *The Journal of Legislative Studies*, 295-313.
- De Vrieze, Franklin. [Post-Legislative Scrutiny. Guide for Parliaments](#), Westminster Foundation for Democracy, 2017
- Hein de Campos, Carmen. The Joint Parliamentary Committee of Enquiry and the Implementation of the Maria da Penha Law (2015) 23:2 *Rev. Estud. Fem.* [online] pp.519-531
- Koskenniemi, Martti. 'Constitutionalism as Mindset: Reflection on Kantian Theories of International Law and Globalization' 2007 8 (1) *Theoretical Inquiries in Law* 28
- Moulds, Sarah. A deliberative approach to post legislative scrutiny? Lessons from Australia's ad hoc approach (2020), *The Journal of Legislative Studies*, 1-25.
- Zacharia, Gitta. Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament: Experiences from an Emerging Democracy (2019) 21:2 *European Journal of Law Reform* 185-189

Post-Legislative Scrutiny Reports

- [Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality](#), Standing Committee on Legal and Constitutional Affairs, Australian Senate, 2008
- Equality, Local Government and Communities Committee, [Post legislative inquiry into the Violence against Women, Domestic Abuse and Sexual Violence \(Wales\) Act 2015](#), 2016
- [Enquiry of Violence against Women, Joint Parliamentary Committee, Brazilian National Congress](#) 2012
- Melhem, Dina. Post-Legislative Scrutiny of Gender Based Violence Laws in MENA region, Presentation at Expert's seminar on ex-post impact assessment of legislation and Post-Legislative Scrutiny, in cooperation with University of Hull and Wroxton workshop; 26 April 2019, London
- Standing Committee on the Status of Women (Canada), [Taking Action to end violence against young women and girls in Canada, Report of the Standing Committee on the Status of Women](#), 2017

About the author

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At the IALS, she teaches at the [LLM in Drafting Legislation, Regulation, and Policy](#) at the Legislative Drafting Course and other specialised short courses offered to students and practitioners. She has been actively involved in the design and delivery of several professional courses on post-legislative scrutiny offered by the IALS in cooperation with the Westminster Foundation for Democracy. She coordinates the work of the [Sir William Dale Legislative Drafting Clinic](#) and is in charge of the [Urban Law Initiative](#), a research cooperation between the Sir William Dale Centre for Legislative Studies at IALS and the United Nations Human Settlement Programme (UN-Habitat) that promotes innovative research, generates knowledge and improves the quality of urban legislation in countries around the world.

She is Secretary of the Board of the [International Association for Legislation](#), participates in several international research networks and works as an Expert for the European Commission. Her consultancy work over the years has focused on supporting legislative and policy reform initiatives through research, evidence-based advice and capacity-building in more than 20 countries in the EU, Southern Europe, the Middle East, Africa and Central Asia.

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