

# A review of the effectiveness of legislation protecting women from violence across the Commonwealth

---



## ABOUT CPA UK AND WOMEN IN PARLIAMENT

The Commonwealth Parliamentary Association (CPA) is the professional association of all Commonwealth parliamentarians, an active network of over 17,000 parliamentarians from 185 national, state, provincial and territorial Parliaments and Legislatures. CPA UK is located in and funded by the UK Parliament. We support and strengthen parliamentary democracy throughout the Commonwealth by bringing together UK and Commonwealth parliamentarians and officials to share knowledge through peer to peer learning.

A key focus of CPA UK's work is achieving representative democracies by helping women promote themselves in parliaments across the Commonwealth and developing the skills they need to succeed in their work. Our objective for this theme is to support parliamentarians to be active in implementing measures to increase gender representation and gender sensitive practices within procedure and scrutiny, and strengthen legislation to support ending violence against women and girls within their regions.



## ACKNOWLEDGEMENTS

This report would not have been possible without the insights of Commonwealth parliamentarians and legislative drafters who volunteered their time and expertise to contribute to this work. We would like to thank the representatives from:

The National Assembly of the Gambia

The Parliament of Ghana

The Parliament of Kenya

The National Assembly of Mauritius The

National Assembly of Seychelles The

Parliament of Sierra Leone

The Parliament of Tanzania

The National Assembly of Zambia The

Parliament of Malaysia

The People's Majlis of Maldives

The Parliament of Sri Lanka

The Barbados Parliament

The National Assembly of Belize The

Parliament of Canada

The Legislative Assembly of Saskatchewan

The Parliament of the Cayman Islands

The Parliament of Trinidad and Tobago

The Parliament of Cyprus

The Parliament of the United Kingdom

The Gibraltar Parliament

The States Assembly of Jersey

The Legislative Council of Saint Helena

The Parliament of Australia

The Parliament of New South Wales

The Parliament of the Republic of Fiji

The House of Assembly of Kiribati

The New Zealand Parliament

The Legislative Assembly of Samoa

The Legislative Assembly of Tonga

Expert insights were also received from civil society organisations and academics with regional oversight in the Commonwealth. We would like to thank the representatives from:

Womankind Worldwide

The Commonwealth Foundation

Women's Aid

Royal Holloway University of London

Florida International University

The University of the West Indies





# CONTENTS

EXECUTIVE SUMMARY	1	
KEY TERMS	5	
CHAPTER ONE: UNDERSTANDING INTERNATIONAL FRAMEWORKS AND CONVENTIONS	11	
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979		
THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN GENERAL RECOMMENDATION NO. 19 (1992)		
GENERAL RECOMMENDATION NO. 35 (2017)		
CEDAW OPTIONAL PROTOCOL 1999		
INTER-AMERICAN CONVENTION TO PREVENT, PUNISH AND ERADICATE VIOLENCE AGAINST WOMEN (THE CONVENTION OF BELÉM DO PARÁ) 1994		
THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (THE MAPUTO PROTOCOL) 2003		
CONVENTION ON PREVENTING AND COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (THE ISTANBUL CONVENTION) 2011		
INTERNATIONAL AND REGIONAL POLICY FRAMEWORKS		
CHAPTER 2: REVIEW OF LEGISLATION PROTECTING WOMEN FROM ALL FORMS OF VIOLENCE	19	
NATIONAL LEGISLATIVE FRAMEWORKS		
CRIMINALISATION OF ALL FORMS OF VIOLENCE AGAINST WOMEN		
PROSECUTION AND PUNISHMENT		
PROTECTION AND SUPPORT SERVICES		
PREVENTION		
IMPLEMENTATION		
ONLINE VIOLENCE		
CHAPTER 3: ACTION AREAS FOR PARLIAMENTARIANS	51	
ACTION AREA 1: REVIEW EXISTING LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN		
ACTION AREA 2: ADVOCATE FOR THE INTRODUCTION OR AMENDMENT OF LEGISLATION		
ACTION AREA 3: BUILD WOMEN’S CROSS-PARTY PARLIAMENTARY NETWORKS		
ACTION AREA 4: BUILD CROSS-PARTY PARLIAMENTARY NETWORKS WITH MEN		
ACTION AREA 5: BUILD EXTERNAL ALLIANCES		
ACTION AREA 6: CONDUCT PRE-LEGISLATIVE SCRUTINY		
ACTION AREA 7: ADVOCATE FOR A SPECIFIC AMENDMENT OF A BILL		
ACTION AREA 8: CONDUCT POST-LEGISLATIVE SCRUTINY		
ACTION AREA 9: CONDUCT A GENDER ANALYSIS OF THE BUDGET		
RESOURCES	57	
REFERENCES	58	

# EXECUTIVE SUMMARY

Violence against women remains one of the most widespread, prevalent, and largely unpunished violations of human rights in the world today. Accordingly, it is now the subject of a comprehensive legal framework at the international and regional level, obligating state action to eliminate gender-based violence in all its forms. Progress in the development of these standards, however, has not been accompanied by comparable progress in their implementation at the national level, which remains far from universal across the Commonwealth. Although many Commonwealth countries have domesticated international commitments to address gender-based violence, various challenges in implementation have limited the effectiveness of these provisions, creating a gap between the experiences of the constituency, the criminal justice system, and the legislature.

While legislation alone will not eliminate gender-based violence, a robust and comprehensive domestic legislative framework is a vital step to end impunity for perpetrators and sends a strong message that violence against women is not acceptable. Parliamentarians are key stakeholders in the elimination of gender-based violence in all its forms and are strategically placed to drive the national changes required to achieve this aim. They have an individual and collective responsibility to not only enact strong legislation but also to monitor the implementation of these policies and hold governments to account in making legislation more effective. In line with our key objective, the purpose of this report is to support current and future parliamentarians towards fulfilling this responsibility.

The report presents 9 key areas of action, designed to support all parliamentarians in their efforts to strengthen legislation protecting women from violence in their jurisdiction.

Parliamentarians are called upon to take responsibility for women's right to live free from violence - by taking ownership of these action areas and implementing any of the action points within their legislative context.

## ABOUT THE REPORT

Between November 2020 to March 2021 CPA UK has undertaken a project entitled 'Strengthening Democracy, Parliamentary Oversight and Sustainability in the Commonwealth.' This is funded by the UK Government's Foreign, Commonwealth and Development Office (FCDO) and includes workstreams on Public Accounts Committees (PACs), Women in Parliament and Climate Security. As part of the Women in Parliament work-stream, this report presents a review of the legislation protecting women from all forms of violence, including online harms.

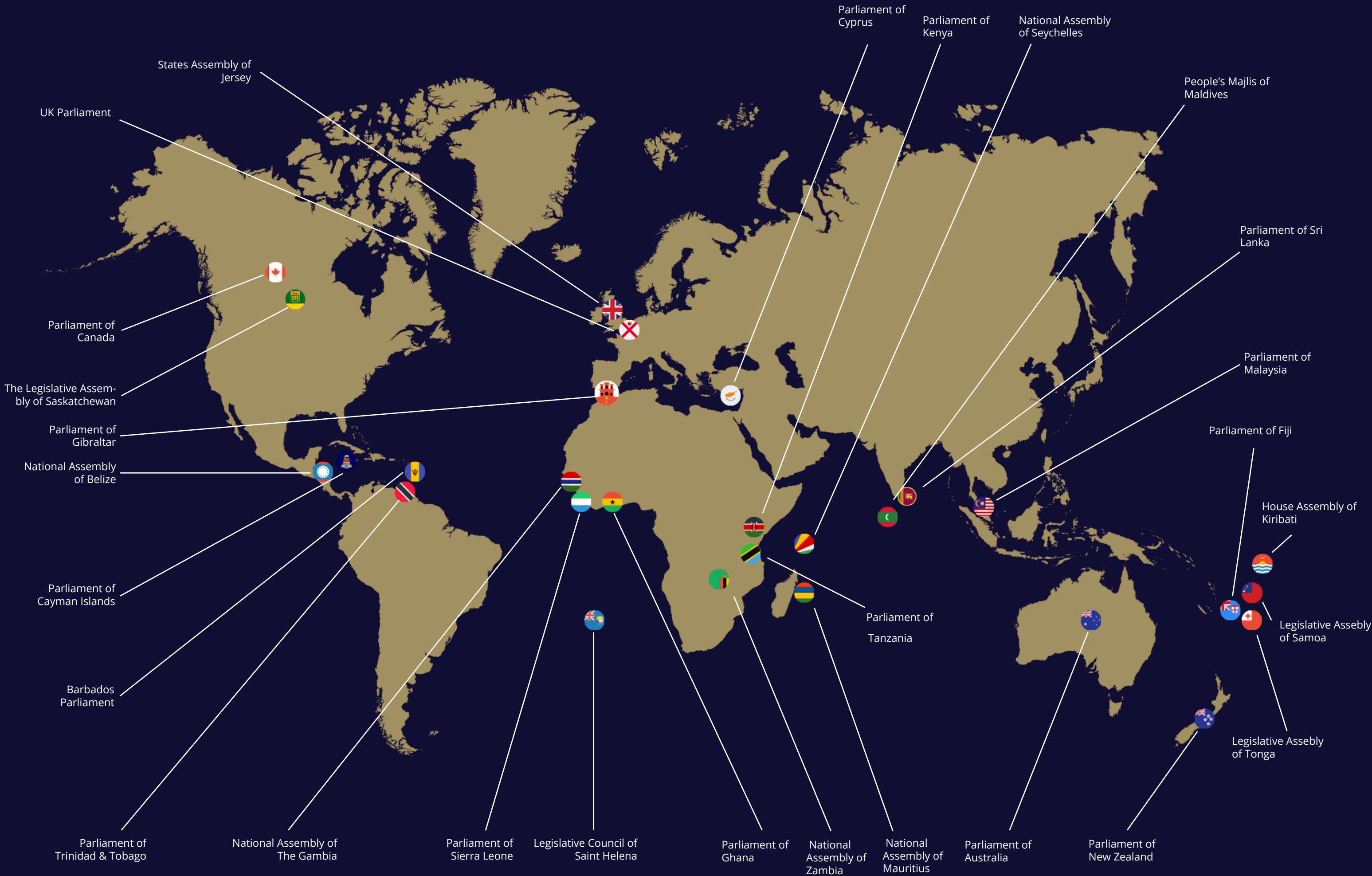
To inform this work, CPA UK hosted 6 regional roundtables with 32 parliamentarians and legislative drafters, to discuss the challenges being faced by Commonwealth legislatures in meeting international standards, and the role of parliamentarians in working towards this aim. The report also draws on consultation responses from parliamentarians and legislative drafters and a range of civil society organisations and academics with regional oversight in the Commonwealth. By bringing valuable insight into how effectively women are protected in their jurisdictions, this report aims to share good practice across the Commonwealth and demonstrate the importance of inter-parliamentary engagement in addressing the challenges which are Commonwealth wide.

The report reveals that despite vastly different legislative contexts and regimes across the Commonwealth, the barriers to breaking the cycle of impunity have been faced by parliamentarians internationally. The rapid rise of new forms of gender-based violence facilitated by information and communication technology has exposed the deficiencies in legal frameworks which means that parliamentarians across the Commonwealth are faced with a new and emerging challenge that has not yet been addressed with an effective legislative response.

## SUMMARY OF FINDINGS

- The need for legislation to be comprehensive covering prevention, prosecution, protection and provision of services for survivors.
- It is essential that legislation aligns with other laws – requiring a thorough review of the legislative landscape
- Wide and thorough consultation is essential, taking into consideration cultural, customary, and religious differences.
- Legislation should be ambitious, aiming to reach beyond legal frameworks to achieve wider cultural transformation.
- All genders are equal stakeholders in tackling gender-based violence against women and this should be taken into consideration at all stages.
- Legislation should include provision to gender sensitise all those responsible for its implementation, especially for those in the criminal justice system.
- Special court proceedings and more robust protection orders should be considered.
- Awareness raising is of key importance including education programmes for school aged children and campaigns for a wider reach.
- Legislatures addressing digital spaces and online communication must be updated and modernised to reflect and address new and emerging forms of online violence against women.

# PARTICIPATING COUNTRIES



## KEY TERMS CONCERNING VIOLENCE AGAINST WOMEN

### Gender-based violence

Gender-based violence (GBV) is an umbrella term that refers to any act of violence that is directed against a person, or a group of persons, based on their gender identity or presentation, or based on or their social roles and the expectations their society or culture has for them.

It includes “any act of violence that results in, or is likely to result in, physical, sexual, psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”. Gender-based violence is often used interchangeably with violence against women, that is, “violence which is directed against a woman, because she is a woman or that affects women disproportionately”. However, the term GBV recognises violence against lesbian, gay, bisexual, transgender, and queer-identifying persons.

### Violence against women

Violence against women is defined in the Declaration on the Elimination of Violence Against Women 1993 as “any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

Violence against women can happen at any time during a woman’s life, which is why it is often referred to as violence against women and girls. The term “women” is used to cover females of all ages, including girls under the age of 18 years. It persists in every Commonwealth country and is not confined to a specific culture, region, or country.

The term ‘gender-based violence against women’ is used as a more precise term that makes explicit the gendered causes and impacts of the violence. It also underscores the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence.

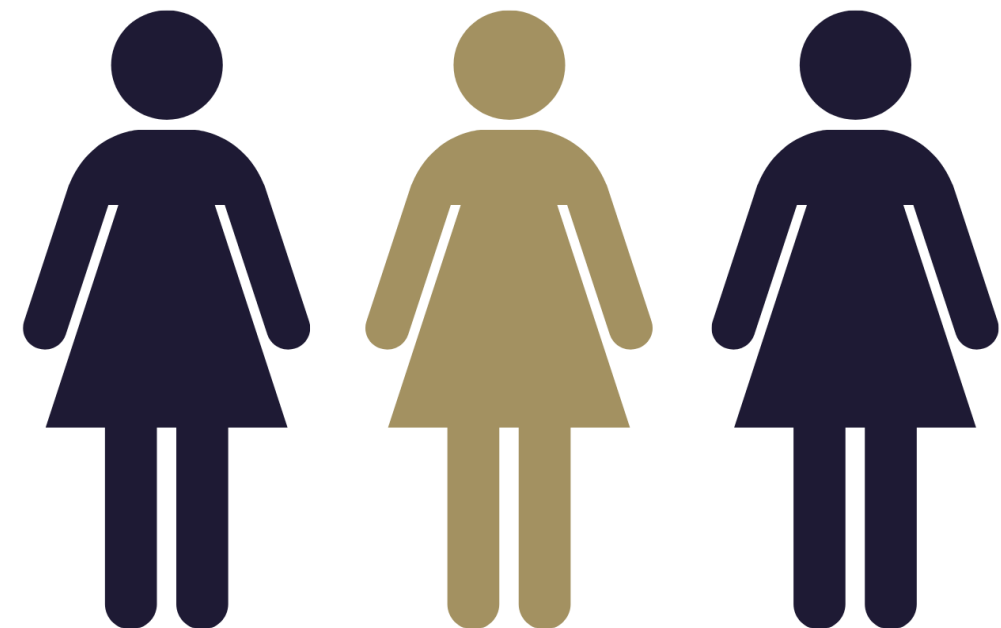
Gender-based violence against women is manifested as in a continuum of multiple, interrelated and sometimes recurring forms, including “acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty”.

Violence against women can occur in all spaces and spheres of human interaction, whether public or private, including in the contexts of the family, the community, public spaces, the workplace, leisure, politics, sport, health services and educational settings, and the redefinition of public and private through technology-mediated environments, such as contemporary forms of violence occurring online.

Women belonging to minority and indigenous groups, refugee women, internally displaced women, migrant women, women living in rural or remote communities, destitute women, women in institutions or detention, women with disabilities, elderly women, women in situations of armed conflict, and post-conflict situations and girl children are especially vulnerable to such violence.

**Over 1 in 3 women (35.7%) worldwide have been subjected to either physical and/or sexual intimate partner violence or non-sexual partner violence in their lifetime.**

The World Health Organisation, Global and regional estimates of violence against women, 2013





# KEY TERMS CONCERNING ONLINE VIOLENCE AGAINST WOMEN

## Online violence

Online violence, or violence facilitated by information and communication technology, refers to any act of violence that is committed, assisted by the use of information and communication technology (mobile phones, the Internet, social media, computer games, text messaging, email, etc). Relevant data and surveys have shown that, in the majority of cases, online violence is not a gender-neutral crime. Women are both disproportionately targeted by online violence and suffer disproportionately serious consequences as a result.

## Online violence against women

The United Nations Special Rapporteur on violence against women, its causes and its consequences, defines online violence against women, or violence against women facilitated by information and communication technology, as “any act of violence that is committed, assisted by the use of information and communication technology (mobile phones, the Internet, social media, computer games, text messaging, email, etc) against a woman because she is a woman”.

Plan International defines this more specifically as “action by one or more people that harms others based on their sexual or gender identity or by enforcing harmful gender norms. This action is carried out using the internet and/or mobile technology and includes stalking, bullying, sex-based harassment, defamation, hate speech, exploitation, and gender trolling”.

Online and ICT-facilitated acts of gender-based violence against women include threats of such acts that result or are likely to result, in psychological, physical, sexual, or economic harm or suffering to women. It can also lead to physical harm and has the potential to result in violence and abuse offline. Online forms and manifestations of violence are therefore part of a continuum of the offline reality of widespread and systemic structural discrimination and gender-based violence against women and girls.

The perpetrators may or may not be known to the victim. Technology has transformed many forms of gender-based violence into something that can be perpetrated across distance, without physical contact, and beyond borders, through the use of anonymous profiles to amplify the harm to victims. As a result, non-physical gender-based violence can approximate and sometimes exceed the harm of physical violence.

Some groups of women, such as women human rights defenders, women in politics, including parliamentarians, journalists, young women, women belonging to ethnic minorities and indigenous women, lesbian, bisexual, and transgender women, women with disabilities, and women from marginalised groups are further disproportionately targeted by ICT-facilitated violence.

Online violence and abuse can result in multiple layers of perpetration, as offensive or threatening content and images are disseminated and shared by others, and violence and abuse are repeated. All the forms of online violence create a permanent digital record that can be distributed worldwide and cannot be easily deleted, which may result in further victimisation of the victim.

**A survey by the World Wide Web Foundation found that 52% of young women globally have experienced online abuse.**

World Wide Web Foundation, Survey – Young people’s experience of online harassment, 2020





# KEY TERMS CONCERNING GENDER AND PARLIAMENT

## Gender mainstreaming

The process of assessing and taking into account the implications for women and men of any planned action, including legislation, policies or programmes, at all levels and in all spheres. The concept is understood as strategies that put gender issues at the centre of broad policy and programme decisions, institutional structures and resource allocation. Mainstreaming gender equality work into the work of parliament should contribute to effective implementation and oversight of policies that address the needs and interests of both men and women.

## Gender-sensitive parliament

A parliament that responds to the needs and interests of both men and women in its structures, operations, methods and work. Gender-sensitive parliaments remove the barriers to women's full participation and offer a positive example or model to society at large.

## Gender blindness

Gender blindness refers to a failure to identify or acknowledge difference on the basis of gender where it is significant.

## Gender sensitivity

Gender sensitivity is used to describe policies and processes that take into account the different impacts they have on men and women.

## Gender blind legislation

Legislation that is drafted in universal terms, ignoring gender-specific situations and power relations between women and men that underpin gender-based discrimination, including gender-based violence against women.

## Gender sensitive legislation

The integration of a gender perspective into all components of the legislative process, design, implementation, monitoring and evaluation, in order to achieve the ultimate objective of equality between women and men .

## Gender-sensitive budgeting

An approach that aims to mainstream gender in economic policy making and seeks to transform the entire budgetary process. Gender budgeting refers not only to expenditures earmarked for women, but also to an analysis of the entire budget from a gender perspective, in order to ensure that the allocations and resulting impacts respond to the needs of both women and men.





## CHAPTER 1: UNDERSTANDING INTERNATIONAL FRAMEWORKS AND CONVENTIONS

Violence against women is now the subject of a comprehensive legal framework at the international and regional level. These frameworks provide that every woman has the right to be free from gender-based violence, and place obligations on all areas of state action, including the legislative, executive, and judicial branches.

They require, amongst other things, the formulation of effective domestic legislation, along with the design of public policies, programmes, institutional frameworks, and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against women.

In addition to defining and condemning GBV, international and regional instruments establish the principle of due diligence. The due diligence principle establishes that every state must take all appropriate and reasonable measures to protect women within their jurisdiction from acts of gender-based violence and to investigate, prosecute and punish perpetrators, and prevent such violence before it occurs. Such failures or omissions constitute human rights violations under international law.

This section outlines the international and regional legal and policy frameworks to which Commonwealth countries are obliged to adhere. International and regional legal frameworks provide a comprehensive set of guidelines in which parliamentarians can utilise as a comprehensive set of benchmarks to which domestic legislation, at a minimum, should comply.

### International and regional legal frameworks

1. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979
2. The United Nations Committee on the Elimination of Discrimination against Women
  - i. General Recommendation No. 19 (1992)
  - ii. General Recommendation No. 35 (2017)
3. CEDAW Optional Protocol 1999
4. Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (The Convention of Belém do Pará) 1994
5. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) 2003
6. Convention on Preventing and Combatting Violence against Women and Domestic Violence (The Istanbul Convention) 2011
7. International and regional policy frameworks

## INTERNATIONAL LEGAL FRAMEWORKS

### Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN General Assembly in 1979 and came into force as an international treaty in 1981. It has been cited as an 'International Bill of Rights for Women', defining international standards for women's rights across the world, within both the public and private spheres.

The 189 States that have ratified the Convention are legally obliged to eliminate all forms of discrimination against women in all areas of life, and to ensure women's full development and advancement so they are able to exercise and enjoy their human rights and fundamental freedoms equally to men.

The Convention places several obligations on States to enact and enforce legislation towards this aim **Article 2** requires States Parties to condemn discrimination against women in all its forms and to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including:

- a. To embody the principle of the equality of men and women in their national constitutions or other **appropriate legislation** if not yet incorporated therein and to ensure, through **law** and other appropriate means, the practical realization of this principle;
- b. To adopt appropriate **legislative** and other measures, including sanctions, where appropriate, prohibiting all discrimination against women;
- c. To establish **legal protection of the rights of women** on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d. To take all appropriate measures, including **legislation**, to **modify or abolish existing laws**, regulations, customs, and practices which constitute discrimination against women;
- e. To repeal all **national penal provisions** which constitute discrimination against women

### Key points for parliamentarians

- Although not explicitly referenced, the elimination of gender-based violence as both a cause and a consequence of discrimination against women is encompassed within this legal obligation.
- Progress in implementation at the domestic level is considered by the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee), a body of 23 independent experts. The Committee also makes regular general recommendations on "any issue affecting women which it believes States parties should devote more attention".
- The Convention obliges States parties to undertake reports to submit to the Committee on the legislative, judicial, administrative, and other measures which they have adopted to give effect to the provisions of the Convention.
- Ratifying states must submit an initial report within one year after the entry into force of the Convention for that State, and thereafter at least every four years, and further whenever the Committee so requests.



## CEDAW Committee General Recommendation No. 19 (1992)

Violence against women was first addressed by the CEDAW Committee in its **General Recommendation No. 19 (GR 19)**. GR 19 holds that violence against women is a form and manifestation of discrimination within the meaning of **article 1** of the Convention, thereby reasserting state obligation under international law to pursue all appropriate means for its elimination.

In **Paragraph 24**, the CEDAW Committee provides several specific recommendations for States parties in reviewing their laws and policies to meet the requirements of the Convention:

- a. States parties should take all appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.
- b. States parties should ensure that **laws** against family violence and abuse, rape, sexual assault, and other gender-based violence give adequate protection to all women and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.
- c. That States parties should take all **legal** and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:
  - i. Effective **legal measures**, including penal sanctions, civil remedies compensatory provisions to protect women against all kinds of violence, including, inter alia, violence, and abuse in the family, sexual assault and sexual harassment in the workplace;
  - ii. Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
  - iii. Protective measures, including refuges, counselling, rehabilitation, and support services for women who are the victims of violence or who are at risk of violence.

## CEDAW Committee General Recommendation No. 35 (2017)

In its **General Recommendation No. 35 (GR 35)**, the CEDAW Committee updates **GR 19**. It adopts the term “gender-based violence against women” to make explicit the gendered causes and impacts of violence. This term also strengthens the understanding of violence against women “as a social rather than an individual problem, requiring comprehensive responses beyond those to specific events, individual perpetrators and victims/ survivors”.

**GR 35** also makes clear the Convention is fully applicable to **technology-mediated environments**, such as the internet and online spaces, as settings where contemporary forms of gender-based violence against women and girls are frequently committed in their emerging forms.

In **Paragraph 26**, the Committee reasserts that according to **Article 2** (c), (d), and (f) of the Convention, States parties are required to adopt **legislation** prohibiting all forms of gender-based violence against women and girls, harmonising **national law** with the Convention. In the **legislation**, the Committee recommends:

- Women who are victims/survivors of such violence should be considered to be right holders
- Legislation should contain age-sensitive and gender-sensitive provisions and effective legal protection, including sanctions on perpetrators and reparations to victims/survivors.

**Paragraph 26** also highlights that the Convention provides that any existing norms of religious, customary, indigenous, and community justice systems are to be harmonized with its standards and that **all laws that constitute discrimination against women**, including those which cause, promote, or justify gender-based violence or perpetuate impunity for such acts, are to be **repealed**.

## CEDAW Optional Protocol 1999

The **CEDAW Optional Protocol** was adopted in 1999 and entered into force in 2000. The Optional Protocol strengthens the CEDAW Committee’s procedures for addressing violations of women’s rights by establishing two mechanisms: a complaints procedure and an inquiry procedure.

- 1) The complaints procedure allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the CEDAW Committee.
- 2) The inquiry procedure enables the CEDAW Committee to initiate inquiries into situations of grave or systematic violations of women’s rights.

## Key points for parliamentarians

- As interpretations of the Convention on the Elimination of All Forms of Discrimination against Women, GR 19 and GR 35 are legally binding on ratifying States parties.
- It is recognised internationally that opinio juris and State practice suggest the prohibition of gender-based violence against women has evolved into a principle of customary international law.
- Under the principle of due diligence, States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by State and non-State actors that result in gender-based violence against women.
- The Optional Protocol to CEDAW is the first gender-specific international complaints procedure.
- The Optional Protocol strengthens the mechanisms in which States can be held accountable for their compliance with the Convention.
- As an international treaty itself, States Parties must separately ratify the Optional Protocol to be bound by its provisions.
- Under the Optional Protocol, the Committee is able to request the State party concerned to take specific measures to remedy violations of CEDAW.



## REGIONAL LEGAL FRAMEWORKS

### Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (The Convention of Belém do Pará) 1994

The **Convention of Belém do Pará** was adopted as a legally binding regional treaty by the Organisation of American States in 1994. The Convention provides a broad definition of gender-based violence, covering intimate partner sexual violence and, importantly, includes relationships of the same-sex and cohabiting relationships. The Inter-American Commission on Human Rights (IACHR) established that the declaration is binding for all members of the Organisation of American States (OAS), including those that have not ratified the Convention.

**Article 7** requires States Parties to condemn all forms of violence against women and to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence. The relevant actions include:

- a. Include in their **domestic legislation** penal, civil, administrative, and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary
- b. Adopt **legal measures** to require the perpetrator to refrain from harassing, intimidating, or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property
- c. Take all appropriate measures, including **legislative measures**, to **amend or repeal existing laws** and regulations or to **modify legal or customary practices** which sustain the persistence and tolerance of violence against women
- d. Establish fair and effective **legal procedures for women** who have been subjected to violence which include, among others, protective measures, a timely hearing, and effective access to such procedures
- e. Establish the necessary **legal and administrative mechanisms** to ensure that women subjected to violence have effective access to restitution, reparations, or other just and effective remedies;

### The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) 2003

The **Maputo Protocol** was adopted by the African Union in 2003 and came into force as a binding treaty in 2005. It is a broad treaty addressing women's rights in all spheres and contains several obligations to combat all forms of discrimination against women through appropriate **legislative**, institutional, and other measures.

The Protocol establishes several obligations on States to specifically address violence against women through legal reform:

**Article 4(2)** requires states to take appropriate and effective measures to enact and enforce **laws** to prohibit all forms of violence against women, including unwanted or forced sex, whether the violence takes place in private or public. It also requires states to adopt such other **legislative**, administrative, social, and economic measures as may be necessary to ensure the prevention, punishment, and eradication of all forms of violence against women.

**Article 5** requires states to take all necessary **legislative** and other measures to eliminate harmful practices, including: prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.

**Article 8** requires that women and men are equal before the law and have right to the equal protection and benefit of the law. States Parties shall take appropriate measures, including the reform of existing discriminatory laws and practices to promote and protect the rights of women.



## CONVENTION ON PREVENTING AND COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (THE ISTANBUL CONVENTION) 2011

The Council of Europe adopted the Convention on Preventing and Combatting Violence Against Women and Domestic Violence in 2011. The Convention is cited as the most far-reaching treaty to tackle gender-based violence against women. It is also the first treaty that has explicitly prohibited discrimination on grounds of sexual orientation and gender identity, and also explicitly includes refugee and migrant women.

**Article 4** asserts that State Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere. This article also requires State Parties to take the necessary legislative and other measures to prevent it, by:

- Embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
- Prohibiting discrimination against women, including through the use of sanctions, where appropriate;
- Abolishing laws and practices which discriminate against women.

**Article 5** requires that States Parties take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that is perpetrated by both State and non-State actors.

**Article 7** requires that States Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive, and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.

### INTERNATIONAL AND REGIONAL POLICY FRAMEWORKS

While the below policy frameworks do not have the binding legal authority of a convention or treaty, they provide a strong statement of definitions, principle, and guidelines to the international community.

- United Nations Declaration on the Elimination of Violence Against Women 1993
- Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995
- Association of South East Asian Nations Declaration on the Elimination of Violence against Women and Violence against Children 2013
- Organisation of Islamic Cooperation Plan of Action for the Advancement of Women 2016

### KEY POINTS FOR PARLIAMENTARIANS

- Gender-based violence against women is defined broadly and consistently in international law as a form of gender-based discrimination and a violation of human rights, including all acts or omissions intended or likely to cause or result in death or physical, sexual, psychological, or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.
- States' responsibility and obligations to address gender-based violence are concrete in international law and encompass gender-based violence committed both by State agents and non-State actors.
- States have a duty to prevent acts of violence against women; to investigate and prosecute such acts when they occur and punish perpetrators, and to provide protection to those against whom acts of violence have been committed.
- International and regional standards should be used as a comprehensive set of provisions for inclusion in domestic legal frameworks.
- Implementation at the domestic level surrounds these three pillars: prevention, prosecution, and protection.
- Varying circumstances and constraints allow for different actions to be taken by individual States, therefore the specificities of State's obligations need to be clarified within the diverse contexts in which they occur. However, this does not excuse State inaction.
- Impunity for gender-based violence against women results from the failure to meet international standards through substantial national action and implementation.
- Even though the core international human rights instruments concerning violence against women were introduced prior to the advent of ICT, in its General Recommendation No.35 (2017), the CEDAW Committee made clear that the Convention is fully applicable to technology-mediated environments.
- It is therefore essential that the different forms of online gender-based violence against women be addressed through legislative and any other measures necessary to combat and prevent such violence.



## CHAPTER 2: REVIEW OF LEGISLATION PROTECTING WOMEN FROM ALL FORMS OF VIOLENCE

Across the Commonwealth, there has been major progress in establishing the right of women to live free from violence in domestic law. At the same time, there remains a considerable way to go for this right to become a reality.

Commonwealth member states have taken different routes to implementing international commitments concerning gender-based violence within their domestic frameworks. The legal instruments most frequently used in this regard are specific laws addressing different forms of violence, one singular law addressing all forms of gender-based violence, and the specification of contexts as aggravating circumstances within general criminal law.

International experience has shown that the effectiveness of the legal route taken to address gender-based violence is often dependent on the legislative context itself. Put simply, there is no 'best practice' approach that can be applied universally across the Commonwealth. Varying circumstances and constraints allow for different actions to be taken by individual legislatures, and what works effectively in one jurisdiction may not be feasible in others.

This section reviews effectiveness of legislation protecting women from all forms of gender-based violence, drawing on the insights of parliamentarians and legislative drafters. It highlights and synthesises the presence and absence of effective legal provisions, drawing on case study examples from a range of Commonwealth legislatures.

### Review of legislation protecting women from all forms of violence

1. National legislative frameworks
2. Criminalisation of all forms of violence against women
3. Prosecution and punishment
4. Protection and support services
5. Prevention
6. Implementation
7. Online violence

## NATIONAL LEGAL FRAMEWORKS

### LACK OF COMPREHENSIVE AND INTEGRATED APPROACH IN NATIONAL LEGISLATIVE FRAMEWORKS

1. As Commonwealth member states have increasingly enacted and introduced legislation addressing gender-based violence, research, and good practice have revealed that a comprehensive, integrated and multi-sectoral approach is essential to both act with due diligence and a key indicator of how effectively women are protected from all forms of violence.
2. This translates into a move away from isolated interventions, to encompass:
  - all legal domains, including criminal, civil, administrative, labour, and family
  - the criminalisation of all forms of violence against women
  - the prosecution and punishment of perpetrators, as well as the availability of remedies for survivors
  - protection, support services, and assistance for survivors
  - prevention.
3. However, there was a consensus among all regions participating in the roundtables that the systematic integration of protection and prevention continued to be limited within their jurisdictions. To date, many laws introduced to address violence against women have primarily focused on criminalisation, neglecting to fully address the three pillars of prosecution, protection, and prevention.
4. This was considered to be particularly notable in legislatures where violence against women has been addressed through amendments to national criminal laws. These amendments have demonstrated societal condemnation of these forms of violence and constitute an important step toward ending impunity. However, they do not provide for support and assistance to survivors, nor do they mandate preventative measures to be taken.
5. Some respondents indicated a comprehensive and integrated approach was easier to achieve in the context of one legal instrument addressing all forms of gender-based violence. A piecemeal approach was considered more likely to present barriers to the effectiveness of legislation, including gaps or fragmentation, particularly in the absence of an overarching national action plan.
6. While there is wide agreement that comprehensive, integrated, and multisectoral efforts by multiple stakeholders for the elimination of violence against women, there was a broad consensus that such efforts are rarely forthcoming on a large scale or in a sustained manner.

### KEY POINT FOR PARLIAMENTARIANS

National legislative frameworks should be comprehensive, covering all legal domains; criminalising all forms of violence against women, and addressing prevention, prosecution of perpetrators, the protection of survivors, and provision of support and remedies.



## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: ZAMBIA

A good practice example was highlighted as Zambia's anti-gender based violence act 2011. The act broadly defines gender-based violence, encompassing all forms of violence that result in or are likely to cause physical, sexual, psychological, and economic harm. The legislation provides for a wide range of offences penalised higher than general criminal law, including domestic violence, sexual assault, forced virginity testing, forced and child marriages, and 'sexual cleansing'. The act provides for fast track courts; protection orders; the provision of emergency funds; the establishment of police victim support units; shelters, village-led one-stop centres; and counselling services. This applies to survivors of all forms of gender-based violence.

A parliamentarian from Zambia reported the introduction of this legislation was the result of sustained anti-gender-based violence campaigning by women's rights organisations. The women's parliamentary caucus was highlighted as the key mechanism through which this campaign was translated into legislative provisions. Prior to 2011, there was no definition of gender-based violence offences within the national legislative framework or specified domestic violence legislation.

### EXISTENCE OF DIRECTLY AND INDIRECTLY DISCRIMINATORY LAWS

"If our aim is to truly eliminate violence against women and girls, we must not only look at standalone legislation, but analyse a whole host of laws to eliminate this problem".

Parliamentarian from Fiji

1. A common concern highlighted by respondents was the continued existence of legislation that either directly or indirectly discriminates against women, and therefore undermines the effectiveness of national legislative frameworks protecting women from gender-based violence.
2. The challenges discriminatory laws pose to eliminating gender-based violence are well researched. Laws that discriminate against women prevent the realisation of gender equality, promote economic dependency, prevent women from reaching decision making positions, and uphold the social and cultural norms that condone and support gender-based violence. Thus, even where gender-based violence legislation is in place, it operates in a context that prevents legal provisions from creating the social transformation necessary to eliminate violence against women.
3. Respondents in the regions of Africa, Asia, the Caribbean, and the Pacific, reported that discriminatory family and employment laws, including inheritance laws, and employment laws, have proven to be the most difficult area in which to secure reform. It was noted that they often enjoy public support because they reflect the 'traditional' embedded customs and belief systems in society which the public desire to uphold.

4. In the jurisdictions where national legislative frameworks do contain explicit provisions prohibiting discrimination on the basis of gender, it was highlighted by respondents that national legislative frameworks often continue to discriminate against women, albeit indirectly. In many cases, this was explained by a lack of gender mainstreaming within their legislature. Responses from parliamentarians suggest that, overall, legislatures are yet to adopt the systematic integration of a gender perspective into all components of the legislative process.
5. Parliamentarians and legislative drafters in all regions agreed that the adoption of a gender-sensitive approach to legislating was key to ensure women's experiences of gender-based violence are acknowledged and reflected in existing and newly enacted legislation. As such, the introduction or amendment of gender-based violence legislation should provide for the amendment of provisions contained in all other areas of law, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law that contradict the legislation adopted.

## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: NEW ZEALAND

New Zealand was pointed to as a good practice example in this area. In 2019 it became the first country in the Commonwealth to pass legislation placing an obligation on employers to offer victims of domestic abuse 10 days paid leave. The provision allows victims to separate from abusive partners, settle in new homes, and seek protection for themselves and their children.

### KEY POINT FOR PARLIAMENTARIANS

To be fully effective, the introduction or amendment of legislation on violence against women should be accompanied by a review and amendment of all other relevant laws to ensure that the elimination of violence against women is consistently incorporated.



# DISCRIMINATORY LAWS IN THE COMMONWEALTH

**IN  
10 COUNTRIES**

Women do not have equal rights to inherit assets if they outlive their husband



**IN  
17 COUNTRIES**

Women are not legally able to apply for a passport in the same way as a man

**IN  
40 COUNTRIES**

The law does not prohibit access to credit based on gender



**IN  
16 COUNTRIES**

The law does not prohibit discrimination in employment based on gender

**IN  
10 COUNTRIES**

Women do not have equal rights to inherit their parent's assets

**IN  
2 COUNTRIES**

There are legal provisions which require a married woman to obey her husband

## CONFLICTS BETWEEN GENDER-BASED VIOLENCE LEGISLATION AND CUSTOMARY OR RELIGIOUS LAW

1. The conflict between the provisions of civil, customary, and religious legal systems was highlighted as a notable challenge by respondents in the regions of Africa and Asia. It was reported that even where gender-based violence legislation is in place, cases of violence against indigenous women continue to be processed through customary or religious procedures, posing a challenge to harmonising with international human rights law.
2. The existence of plural legal systems is a common feature of former colonies in all regions of the Commonwealth. Multiple cross-country reports have confirmed that in remote and rural communities the rule of customary law often overrides statutory law, preventing survivors of gender-based violence from seeking protection or redress within the formal justice system.
3. The application of customary or religious law to cases of violence against women has been considered to be problematic by the CEDAW Committee, not least because it undermines the effectiveness of gender-based violence legislation in protecting women from violence. Most notably, customary and religious law has been critiqued for not focusing on the protection or providing redress to the survivor, and for framing sexual violence in a problematic framework of morality, public decency and honour, and as a crime against the family or society, rather than a violation of an individual's bodily integrity. Examples include the provision of "compensation" to the family or community of the survivor, and customary reconciliation practices of ceremonies of forgiveness.
4. Where discriminatory customary or religious laws and social norms still largely determine communities' behaviour, it becomes unlikely that legislation addressing gender-based violence will offer all women the same intended protections or contribute to any wider social and cultural transformation within these communities. This was noted by respondents to be particularly evident where legislative reform has not gained the support of customary or religious leaders.

"All stakeholders must be involved in this process, especially if they are controversial in terms of beliefs. They must be invited into dialogue and persuaded to be on board in order for the legislation to gain popularity"

Legislative Drafter from The Gambia

5. Several respondents highlighted that in the case of traditional practices such as FGM and child marriage, the involvement of religious and customary leaders in the process of legislative reform is critical to ensure the success of its eventual implementation. The Gambia has been highlighted as good practice in this area. During the consultation process for the Women's (Amendment) Act 2015 and Children's (Amendment) Act 2016, which outlaw FGM and child marriage respectively, the executive actively cooperated with non-governmental organizations to sensitise communities and religious leaders. This was modelled on the approaches taken by a number of countries in the MENA region.

# CRIMINALISATION OF ALL FORMS OF VIOLENCE AGAINST WOMEN

1. The criminalisation of all forms of violence is the first step to enabling the State to fulfil its obligation of prosecution, protection, and prevention.
2. While this measure is not sufficient in isolation, perceptions of women's rights can be fundamentally changed when acts are no longer legally permitted by explicit exceptions in the law.
3. As long as legislation excludes certain acts of violence, this at the very least condones and certainly does not prevent perpetration.

Of 54 Commonwealth Member countries....

## Domestic Violence

**3** countries do not have legislation specifically addressing domestic violence

Homosexuality remains criminalised in **31** countries, therefore LGBT women are excluded from the definition of partner

## Marital Rape



Explicitly legal in **14** countries

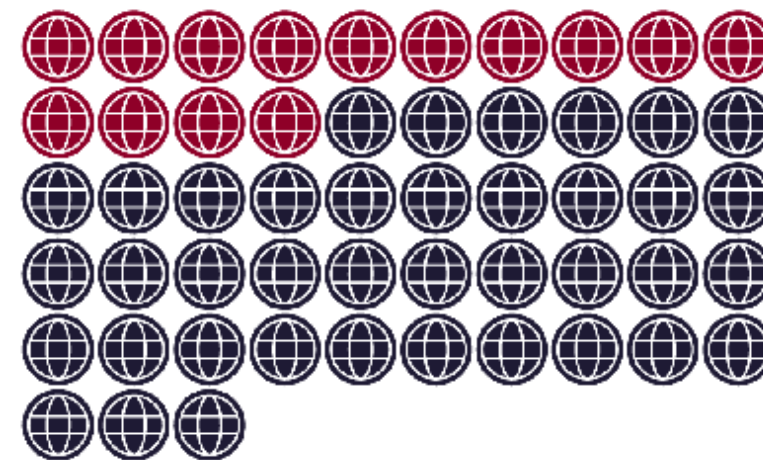
## Female Genital Mutilation

**16** countries have legislation on FGM

**1** country in Africa in which it is explicitly legal



## Sexual Harassment



**14** countries do not have legalisation preventing sexual harassment in employment

**40** countries have legislation on sexual harassment

**40/54**

## Sexual Violence

**20** countries require reform to be in line with international standards on a consent based definition of rape

**2** countries do not prosecute for rape if the perpetrator marries the victim





# BARRIERS TO STRENGTHENING NATIONAL LEGISLATIVE FRAMEWORKS PROTECTING WOMEN FROM VIOLENCE

## SOCIAL AND CULTURAL DISCRIMINATORY NORMS

1. Wider social and cultural discriminatory norms were identified by parliamentarians and legislative drafters in all roundtables as a key barrier to strengthening their national legislative frameworks. Respondents frequently reported that a lack of executive and widespread public support for legislative reform were due to the intractability of the social and cultural norms that both promote gender inequality and condone gender-based violence. As a result, the impetus for legislative reform was considered to be challenging without a wider process of social transformation towards gender equality.

“It is still difficult to come out of the comfort zone and admit violence exists in this society and challenge the notions that violence against women is a private issue or an inevitable way of life”.

Parliamentarian from The Maldives

2. A particularly problematic challenge facing parliamentarians was considered to be the elimination of wider discriminatory sociocultural attitudes, and economic inequalities, that reinforce women’s subordinate place in society .

3. A consistent response concerned the pushback against gender equality and the promotion of women’s rights from men. Parliamentarians and legislative drafters in all roundtables highlighted that their legislature is operating in a wider societal context in which the majority of men are resistant to, or do not prioritise, gender equality.

“We are battling to spread awareness on the benefit of a non-violent community, not only to women but to my brother, my nephew - the men need to understand this too. So long as it looks like a one-sided thing which benefits women, men are not going to engage”.

Parliamentarian from Zambia

4. Accordingly, the introduction or reform of legislation concerning gender-based violence is not given the same priority as other issues on the executive’s agenda, because it is not seen as an issue that is likely to gain popularity.

“A few legislations are on the table - Sexual Harassment bill; a Gender Equality bill and also reviewing the legal procedures on girl child marriages. In 2018 with the change of government, these were raised but quickly delayed due to Minister and Deputy not having the confidence to take on these issues, especially on the child marriages”.

Parliamentarian from Malaysia

## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: PAKISTAN

The importance of women’s parliamentary networks in challenging these wider social and cultural discriminatory norms was emphasised on several occasions.

The Women’s Parliamentary Caucus in Pakistan was highlighted as a good practice example in this regard, due to its sustained campaigning for gender equality both inside and outside of parliament. In the process of advocating for legislative reform, the caucus built networks with women’s rights organisations, male parliamentarians, experts on gender-based violence, and consulted widely with the public, to secure widespread support and ensure that legislative reform was part of a wider process of social transformation. In 2016, landmark amendments were made to the relevant sections of the Code of Criminal Procedure, the Evidence Act, and the Pakistan Penal Code, to make anti-honour killing and anti-rape laws more robust.

## KEY POINT FOR PARLIAMENTARIANS

Legislative reform should be utilised as a tool for wider social and cultural transformation and directly engage men, as the target group, in the process of reform.

Legislative reform must gain widespread support of the constituency and involve consultation with customary and religious leaders.

## LACK OF FEMALE REPRESENTATION, LACK OF MALE PARLIAMENTARIANS' ENGAGEMENT AND SUPPORT

1. Parliamentarians and legislative drafters in all regions cited the lack of female representation in their legislature as a key barrier to the strengthening of their national legislative framework in areas concerning gender-based violence and gender equality more broadly.
2. Some notable progress has taken place in this regard across the Commonwealth. Women parliamentarians now represent 61.3% of parliamentarians in Rwanda, 48.3% in New Zealand, and 46.7% in Grenada . However, despite marked improvements in recent decades, widespread gender inequalities in political representation persist. Vanuatu and Papua New Guinea represent two of three countries in the world where there are currently no women parliamentarians. Women's representation in the Commonwealth also lags behind the global average at 21.46% women parliamentarians, compared to 25.12% for the rest of the world.
3. The views of parliamentarians and legislative drafters are consistent with wider research that demonstrates legislatures with greater female representation are more likely to pass laws on sexual violence, domestic violence, and divorce.
4. This was considered to be aggravated by a lack of consistent engagement and support from male parliamentarians.

"There is a tendency in parliament when there is an issue to be debated for women, they [male parliamentarians] leave the debate for women. They say 'this is a woman thing' and allow only women to debate on this issue. Even if they vote for it, they leave the debate for the women".

Parliamentarian from Seychelles

5. A parliamentarian from Ghana also reported an affirmative action bill had been brought before parliament three times but voted down by the majority male parliament on every occasion. The likelihood of the bill passing was considered to be low, primarily due to a widespread lack of support from male parliamentarians.
6. A notable exception in this regard was highlighted by a parliamentarian from Zambia. The Zambian Men's Parliamentary Network on Gender Equality was launched in 2018 specifically to support the women's parliamentary caucus in advancing a gender equality agenda. Since its launch, the men's parliamentary network has reportedly worked closely with the women's parliamentary caucus and held workshops with other male parliamentarians to build momentum.
7. Respondents from Sierra Leone highlighted they were looking to introduce an affirmative action bill to promote gender equality and representation within their parliament and looking to model this on the work of the Rwandan Forum of Women Parliamentarians.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: RWANDA

The Forum of Rwandan Women Parliamentarians was also highlighted as a good practice example in this regard. The process that led to the adoption of the Act on the Prevention, Protection, and Punishment of all Gender-Based Violence (2009) is a key example of the importance of involving men in the legislative journey.

The Forum of Rwandan Women Parliamentarians, who initiated the draft private member's bill, successfully engaged with their male counterparts and involved them in the development of the legislation at every step of the process.

- a. Men and women parliamentarians were also involved in extensive public consultation and this dialogue was not limited to women constituents. This participatory process enabled male parliamentarians to demonstrate leadership and further secured male allies.
- b. The law was drafted with the help of men and women consultants, and in close consultation with women and men parliamentarians. Early drafts were shared with male colleagues to ensure they felt included, rather than alienated, by the introduction of the bill.
- c. The law was introduced in Parliament with four women and four male sponsors. This strengthened the legitimacy of the bill and ensured that it was not viewed solely as a 'women's issue'.

### KEY POINT FOR PARLIAMENTARIANS

Engaging and involving male parliamentarians in the consulting, drafting, and the introduction of legislation is critical to ensure its passing and the effectiveness of its eventual implementation, particularly within the context of marked gender inequality in political representation.



# PROSECUTION

1. Prosecution is one of the three key pillars required to effectively implement international commitments at the domestic level. It is intended to deter violence, end impunity, and prevent recidivism by the rule of law.
2. This obligation requires not only criminalising all forms of violence against women, but also that these cases are adequately recorded, investigated, and publicly prosecuted when they occur.
3. It is therefore the responsibility of legislation to place duties on law enforcement, prosecutors, and the judiciary and ensure they fulfil this responsibility.

1. Respondents in all roundtables highlighted that there has been progress towards creating an enabling legislative environment for law enforcement to investigate and prosecute cases of violence against women. Guidelines and protocols on the implementation of laws and policies regarding violence against women have been devised in several Commonwealth legislatures, and are considered to be good practice in that they establish clear and predictable standards to follow in response to reports of violence against women.

2. However, the most significant barrier to the effectiveness of legislation in this area was considered to be one of implementation. A common experience of respondents in all regions was one of low rates of reporting and low rates of prosecution.

3. The reasons women do not report violence are numerous and complex, including both the personal (shame, fear of retaliation, economic dependency) and the societal (stigma, privacy of the family, victim blaming attitudes). A common experience of parliamentarians and legislative drafters, however, concerned the response of law enforcement. The recounted experiences of women when they decide to report an act of gender-based violence suggest that such personnel, overall, do not have the gender sensitivity necessary to protect women from violence or further victimisation.

“When reporting violence women get treated like a criminal offender, and this discourages other women from reporting”.

Parliamentarian from Fiji

4. Legislative measures thus become ineffectual unless accompanied by changes in law enforcement standards, conduct, and culture. Several respondents reported that due to a lack of clearly targeted efforts to alter institutional culture and practices in law enforcement, and to mainstream gender in legislation and practice, legal reforms do not have the intended impact.

5. Parliamentarians and legislative drafters in all regions considered a key component of the effectiveness of legislation to be whether the police have an in-depth understanding of such legislation and are able to implement it in an appropriate, gender-sensitive and victim-centred manner.

## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: SCOTLAND

The Scotland model was cited as good practice concerning police education and training. The Scottish Government introduced the Domestic Abuse (Scotland) Act 2018 and funded specialised training for all police officers to prepare for the introduction of the legislation. The training gave a particular focus to the new provisions relating to coercive and controlling behaviour and was delivered by a non-governmental organisation with expertise in this field. The success of this training and capacity-building effort was found to be most effective, and implemented rigorously, due to being mandated by law and developed in close collaboration with women's rights organisations.

6. There was a broad consensus among parliamentarians and legislative drafters in all regions that specialised police units can be more effective and responsive in dealing with cases of violence against women. The experience of the UK, Scotland, India, and Sierra Leone has shown that the establishment of such units may facilitate the development of expertise in this area, may result in an increase in the number of cases investigated, and a better quality and more efficient process for the complainant/survivor. These stations are often staffed primarily by female officers to provide an environment where women may feel more comfortable in reporting and be assured that their reports will be properly handled.

## KEY POINT FOR PARLIAMENTARIANS

Legislation should mandate regular and institutionalised gender-sensitivity training and capacity-building on violence against women for law enforcement officials, including specific training and capacity-building when new legislation is enacted.

Legislation should where possible ensure the designation or strengthening of specialised police units on violence against women.

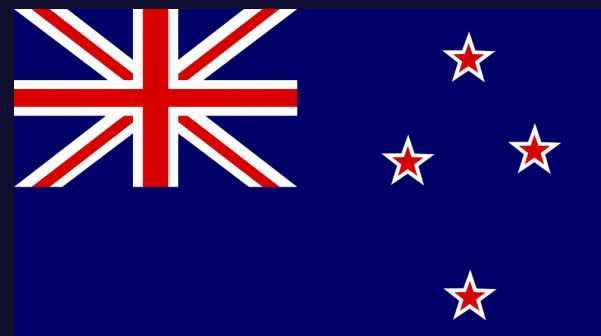
## THE JUSTICE GAP

1. The common experience across all regions of the Commonwealth concerned the disparity between women's protection from gender-based violence as enshrined within legislation, and their experience of the judicial system. In all roundtables, respondents reported on a prevailing culture of impunity: a failure in the application of laws and legal processes, due to a structural and systemic failure of the justice system to effectively address cases of violence against women as they occur.



In England and Wales just 3.28% of reported rape cases resulted in a conviction in 2018

In New Zealand in 2019 only 31% of sexual assault cases reported to police resulted in court action for the perpetrator, 11% resulted in a conviction and 6% resulted in a prison sentence.



2. While many Commonwealth legislatures have made progress with regard to mandating protocols for the police, comparatively fewer reported to have imposed binding guidelines or protocols on prosecutors and the judiciary in cases of gender-based violence.

3. Respondents highlighted that the experiences of survivors within the judicial system suggest that such personnel frequently do not have the necessary gender sensitivity or comprehensive understanding of the various laws that apply to violence against women cases.

4. In many cases, the experiences of women in the justice system can also be traced back to gaps and weaknesses in the legislation itself. For example, in several Commonwealth countries, the definition of rape relies on physical force and places the burden of proof on the survivor. Thus, court proceedings often focus on physical or forensic evidence, or the victim's credibility, rather than the credibility of the incident or the victim's lack of consent.

5. In many jurisdictions, survivors of gender-based violence do not have enforceable or specialised trial rights enshrined within legislation. Legislative provisions guaranteeing the survivor's right to submit evidence by alternative means; or to use pre-recordings or witness protection shields; were considered to be few and far between.

6. Respondents also frequently reported a lack of systematic monitoring and oversight of the judiciary. As a result, parliamentarians face challenges in assessing the adequacy and effectiveness of both the provisions laid out in legislation, and the capacity of those responsible for its implementation.

7. There was broad consensus among parliamentarians and legislative drafters in all regions that the provision of specialised courts is likely to contribute to the effectiveness of legislation in protecting women from violence. Such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be gender-sensitised and specialised regarding violence against women, and often include procedures to expedite cases of violence against women.

8. For example, in the UK a fast-tracking system has been introduced to expedite cases regarding violence against women in the courts. Sexual Offences courts are also provided in South Africa, which have reportedly reduced case turnaround time and increased conviction rates.

### KEY POINT FOR PARLIAMENTARIANS

Legislation should mandate gender-sensitivity training and capacity-building on violence against women for prosecutors and the judiciary, including specific training and capacity-building when new legislation is enacted.

Legislation where possible should ensure the designation or strengthening of specialised court proceedings guaranteeing expeditious, expeditious and survivor orientated handling of cases of violence against women.



# PROTECTION

1. Protection is the second key pillar required to effectively implement international commitments at the domestic level.
2. An essential component of protection is establishing the necessary conditions for the survivor to escape a situation of violence and prevent further violence from occurring, through both emergency and long-term measures. This includes protection orders; emergency protection orders; shelters; and access to specialist support services, legal advice, psychological counselling, financial assistance, housing, education, healthcare, social services, and assistance in finding employment.

## PROTECTION ORDERS

1. Protection orders were highlighted as the most common legal remedy offered to protect survivors of gender-based violence. Such orders are recognised to be the most effective and immediate means of redress and protection from further violence, although they vary greatly from legislature to legislature regarding the length of the order, who may apply for and issue it, and whether financial support or other relief may be ordered.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: NEW ZEALAND AND GHANA

Legislatures such as New Zealand and Ghana were highlighted as examples of good practice in this area, through making protection orders available independent of any other legal proceedings, such as bringing criminal charges of divorce. The UK has also made protection orders available for other forms of violence. The Forced Marriage (Civil Protection) Act 2007 allows courts to issue an order for the purposes of protecting a person from being forced into a marriage, or from any attempt to be forced into a marriage. Legislation in an increasing number of Commonwealth countries provides for the issuance of emergency protection orders in situations where there is immediate danger of an act of violence. In Fiji, for example, a court may grant an injunction under the Family Law Act (2003) following an 'ex parte' application by the complainant/survivor.

3. Parliamentarians and legislative drafters in all regions highlighted the most significant barrier to the effectiveness of legal provisions in this area was one of implementation. While protection orders are available in most, if not all, jurisdictions, a common concern was around their enforceability. In some jurisdictions, there is no criminal offence relating to the breaching of a protection order. A parliamentarian from Trinidad and Tobago reported that protection orders are 'very regularly breached' and therefore frequently fail to offer women the intended protection to prevent further acts of violence from occurring.

4. A further concern identified by respondents from Tanzania and Mauritius was around the pre-existing barriers which prevent women from accessing these protection orders, particularly indigenous women in remote and rural communities. This included unavailability of services, language barriers, lack of knowledge or the means of acquiring reliable and timely information about who to contact or how to do so, the costs of proceedings, and lack of financial and other resources.

5. A lack of gender-sensitive legislation, particularly concerning the diverse needs of different groups of women, was considered to have aggravated this circumstance. Several respondents noted that women's access to protection orders was not something that was regularly monitored, thus to what extent this legislative provision was working effectively remained unclear.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: KENYA

A good practice example in this regard is Kenya's enactment of the Legal Aid Act 2015, which aims to improve the delivery of legal aid and reduce disparities in access to justice between urban and rural communities within the jurisdiction. The legislation is coupled with a multi-sectoral National Action Plan and mandates funding a number of women's rights organisations that seek to address challenges linked to limited access to information by women and girls about their rights, difficulty in obtaining legal services, as well as financial insecurities that affect their access to legal support.

### KEY POINT FOR PARLIAMENTARIANS

Legislation should provide for protection orders for all forms of violence against women, independent of other legal proceedings, and criminalise any subsequent breaches. Legislation should also provide for the monitoring and data collection concerning how many are issued, denied or appealed, and ascertain the level of access for different groups of women.

# PREVENTION

- 1. Prevention is the third key pillar required to effectively implement international commitments at the domestic level. While prosecution and protection focus on the symptoms of violence after it has occurred, prevention focuses on addressing the root causes of violence against women.
- 2. This includes awareness-raising campaigns, sensitisation of the media, and educational curricula on violence against women and women’s human rights.
- 3. A lack of prevention work, however, was frequently highlighted by respondents as a sustained weakness within their national legislative frameworks.
- 4. Several respondents described the resources and funding dedicated for prevention activities as inadequate. In most cases, gender-based violence legislation has not mandated the allocation of funding for this specific activity or mandated a specific budget to civil society organisations to undertake this work.

## EDUCATION

- 1. Education programmes in schools were cited as the main form of prevention work being undertaken by Commonwealth member states. Experience has shown education to be one of the most effective entry points at which attitudes that perpetuate and promote gender inequality and violence against women can be challenged.
- 2. Furthermore, legislation protecting women from gender-based violence is more likely to be effective when discriminatory attitudes are eliminated from educational curricula, and when content promoting women’s human rights and gender equality is incorporated at all levels of education.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: GILBRALTAR

Gibraltar was highlighted as a good practice example in this regard. The Department of Equality worked with the Department of Education to deliver a programme of ‘Respect and Healthy relationships’ which delivered an age-appropriate way of educating children on consent and respectful relationships.

4. Notable exceptions in terms of legislative provisions can be found in the UK and New Zealand, where relationship and/or sex education is compulsory. In the UK, education on respectful relationships and unhealthy relationships, including violence, abuse and bullying, was legislated to become mandatory for children of all ages in 2019.

“Making children aware of healthy relationships and consent is the foundation for tackling violence against women”.

Parliamentarian from the UK

### KEY POINT FOR PARLIAMENTARIANS

Legislation should contain provisions for compulsory education at all levels of schooling on the promotion of gender equality and, specifically, the right of women and girls to be free from violence.

## AWARENESS-RAISING

- 1. A second approach to prevention is the use of awareness-raising campaigns. Experience has shown public education campaigns to be an effective way to expose and convey the unacceptability of violence against women, and an important tool for informing survivors about their rights and the existing laws and remedies they hold.

“We need public education to be able to ensure in the end that we do not need a domestic violence shelter”.

Parliamentarian from Canada



## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: CANADA AND MAURITIUS

A good practice example was highlighted as the Government of Saskatchewan's public education campaign on interpersonal violence and abuse. The theme of the campaign 'Excuses only cover the truth. Face the Issue. End the Abuse.' highlights a shared responsibility to shift attitudes and norms that perpetuate gender-based violence. The campaign addresses both men and women to highlight what is and is not acceptable and featured a video that was delivered through mainstream television and social media channels.

Mauritius also made reference to an innovative programme of "zero tolerance clubs" which aim to sensitise men and boys on gender-based violence and involve them in community-based activities to address the issue. The clubs were established in collaboration with community-based organisations in 2003 to support the effective implementation of the Domestic Violence Act.

## KEY POINT FOR PARLIAMENTARIANS

Legislation should mandate executive support and funding for public awareness-raising campaigns, including general campaigns to sensitise the constituency and specifically focused campaigns, designed to heighten knowledge of legislation and the remedies they contain.





# BARRIERS TO THE EFFECTIVENESS OF LEGISLATION

## THE IMPLEMENTATION GAP

1. Parliamentarians and legislative drafters in all regions of the Commonwealth were of the view that in the majority of jurisdictions, gaps in criminal law are not the main weakness in legislative provisions. It is instead a failure to implement the law, prosecute perpetrators, and impose sanctions that constitutes de facto impunity. As such, the effectiveness of legislation protecting women from gender-based violence in practice becomes dependent on whether the laws are implemented effectively to deliver the intended protection.

“We are so much in a hurry to pass laws but not in a hurry to enforce them. When we look at the number of gender laws compared to the amount of gender-based violence being recorded in the country, it shows they are not effective”.

Parliamentarian from Ghana

2. A multi-country research report by Oxfam reached similar conclusions concerning the shortfalls between executive commitments as laid out in legislation, and the realities of survivors of gender-based violence as they look to access justice, redress, protection, and services .

3. On many occasions, this was explained by respondents as the absence of a comprehensive national action plan addressing gender-based violence, or the absence of an adequate national action plan focusing on a comprehensive and coordinated approach to the implementation of legislation. This was considered to be aggravated by a lack of dedicated or adequate funding to support its implementation.

4. Several member states, however, reported being in the process of drafting or finalising national action plans. Fiji reported that the Ministry is in the process of formulating a 5 year national action plan, focusing on the prevention of violence against women and its elimination. As part of the consultation process the Ministry has identified key stakeholders in 13 key sectors who have a role in preventing violence against women. These stakeholders have been invited to contribute to its design. The focus on prevention is intended to further protect women from gender-based violence by addressing the root causes, across key settings including education; health and social services; legal, justice, and corrections; faith-based; informal sector; and adolescents/youth. It was also reported that the Federal, Provincial, Territorial, Ministers responsible for the Status of Women in Canada are in the process of developing a National Action Plan to End Gender-Based Violence in Canada.

5. Several respondents further highlighted that even where national action plans were in place, they did not contain benchmarks and indicators to which the executive could be held to account. As a result, parliamentarians face challenges in assessing both the effectiveness of legislation and how effectively the system is working as a whole. The inclusion of benchmarks and indicators has frequently been cited as vital, allowing for the impact of practice and policy to be measured, gaps to be assessed, and performance to be improved, feeding into the overarching monitoring framework for the plan and legislation more broadly.

## KEY POINT FOR PARLIAMENTARIANS

Legislation should mandate the formulation of a plan, which should contain a set of activities with benchmarks and indicators, to ensure a framework exists for a comprehensive and coordinated approach to the implementation of the legislation.

Legislation should also mandate the executive to:

- Provide an adequate budget for the implementation of the relevant activities and/or
- Allocate a specific budget to non-governmental organisations for activities related to its implementation

## THE NEED FOR STRONGER POST-LEGISLATIVE SCRUTINY AND ACCURATE DATA

1. A common theme among parliamentarians and legislative drafters was around the lack of post-legislative scrutiny being undertaken within their legislature. In many cases, it was highlighted that this is not mandated by the legislation enacted, and there are often no other specific mechanisms in place to enable the periodic review of national legislative frameworks.

“We pass legislation and no one goes back to see how it’s working and what needs changing properly or sufficiently. We implement and that’s that”.

Legislative Drafter from Trinidad and Tobago



2. The monitoring and evaluation of legislation is recognised to be a critical role of parliament, not least to ensure that legislation is implemented effectively. Scrutinising the implementation of legislation may reveal gaps in the scope and effectiveness of the law, including the need for training of legal professionals and other stakeholders, a lack of a coordinated response, and unanticipated discriminatory consequences of the law for survivors. In so doing, it identifies areas in need of legal reform.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: CANADA AND WALES

A notable exception in this regard was highlighted as the Standing Committee on the Status of Women in Canada. The Committee was formed in 2004 and has a mandate to study the legislation, policy and programmes of department and agencies that conduct work concerning the status of women.

The Equality, Local Government and Communities Committee of the Welsh Parliament also conducted post-legislative scrutiny of the Welsh Government's Violence against Women, Domestic Abuse and Sexual Violence Act 2015. The Committee recommended 13 practical changes needed to improve the effectiveness of the Act, of which the Welsh Government implemented 13.

3. Respondents also pointed to the lack of reliable, comparable, and up to date, statistical data on gender-based violence as a significant challenge to conducting their roles effectively.

4. Without such data, parliamentarians felt they lacked understanding of both the scale of the problem and the adequacy of existing legislative provisions.

5. Furthermore, it was frequently reported that where crime statistics are recorded, they are not recorded with a gender-based lens, or disaggregated by sex, race, age, ethnicity, and other relevant characteristics.

6. As a result, there remains an urgent need to strengthen the knowledge base on the causes, consequences, and frequency of all forms of violence against women for the review of laws and reforms taking into account developments and evolving knowledge base on gender-based violence, informed by insights gained in application, monitoring and evaluation.

### HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: NEW ZEALAND AND BELIZE

A good practice example of utilising gender disaggregated data to inform legal reform was provided by New Zealand. A statutory body conducted a review of family homicides over the period of 2007-2012 and found that strangulation was commonly reported in the abuse histories of the victims examined. Two thirds of those victims were identified as women. This conclusion informed the amendment of the Family Violence Act in 2018 to contain a specific offence concerning strangulation. A parliamentarian from New Zealand stated this has led to an 'overwhelming' number of charges on this basis.

Belize presents a further good practice example of engaging the national statistical office in the collection of data. Belize's national action plan (2017-2020), the National Gender-Based Violence Plan of Action, included a specific objective to ensure the incidence, frequency and severity of gender-based violence is measured through an ongoing mechanism. The Statistical Institute of Belize is mandated as responsible for the development and implementation of this mechanism, with a timeframe and required resources for meeting the objectives identified in the plan.

### KEY POINT FOR PARLIAMENTARIANS

Legislation should look to mandate that statistical data be gathered at regular intervals on the causes, consequences, and frequency of all forms of violence against women, and on the effectiveness of legislative measures to prevent, prosecute and protect and support survivors.

# ONLINE VIOLENCE AGAINST WOMEN

## NATIONAL LEGISLATIVE FRAMEWORKS

1. Despite growing international recognition of the need for specialised legislative measures to address online violence against women, parliamentarians from all regions of the Commonwealth considered that their jurisdictions have been slow to respond. The overwhelming consensus was that coverage is neither robust nor universal.

2. While developments in technology have clearly far outpaced law reform, a more significant challenge was highlighted to be the lack of recognition of online violence against women as a 'real' form of violence.

"In the past, it [online violence] has been dismissed as not being violence but to women, it is violence. It takes so long to get these issues addressed because they disproportionately impact women and they are just not given priority".

Parliamentarian from the UK

3. Accordingly, most legislatures do not have a standalone legal framework addressing violence facilitated by technology. The legal instruments used most frequently in this regard are cybercrime laws, general criminal statutes, laws on domestic violence, hate speech laws, and laws on data protection and privacy.

4. There was a consensus that this piecemeal approach has resulted in gaps where some forms of online violence against women are not explicitly criminalised. Furthermore, most legal provisions in this field predated the development of social media, leaving the current criminal offences across the Commonwealth ill-suited to addressing these particular harms.

"There is no law protecting an abusive post on Facebook, it can only be reported to Facebook. This is where the harm is being done, especially for woman parliamentarians, democracy is at stake"

Parliamentarian from Mauritius

5. The effectiveness of outdated cybercrime laws being utilised in this regard was also highlighted as a point of concern. Respondents highlighted that this legislation was often drafted and formulated in a gender-blind manner and therefore fails to provide the necessary scope or appropriate protection to address the contemporary harms that women face.

6. Notable exceptions, such as New Zealand, Tonga and Australia, have developed relevant standalone legislation concerning 'Harmful Digital Communications'. This particular approach has also been recommended by the Law Commission in the UK.

## HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: NEW ZEALAND

In New Zealand, the stated purpose of the Harmful Digital Communications Act 2015 is to deter, prevent, and mitigate harm caused to individuals and provide victims of harmful digital communications with a quick and efficient means of redress. "Harm" is defined in the Act to mean "serious emotional distress" and a "Digital Communication" means any form of electronic communication. The resulting statute provides for a new complaint mechanism for information posted online about individuals, involving an "approved agency" that assists in resolving complaints, as well as a new civil process and criminal penalties for serious breaches of the Act.

7. Explicitly defining such activity was considered to alleviate the need to fit harmful conduct into more generalised offences, such as criminal harassment or mischief concerning computer data, and thereby extends protection and recourse to a greater number of women.

## KEY POINT FOR PARLIAMENTARIANS

Legislatures should look to review their national legislative frameworks addressing digital spaces and online communications, with a view to updating this to reflect and address new and emerging forms of online violence against women.



PROSECUTION AND PUNISHMENT

1. There was a broad consensus across legislatures that women have limited access to justice when they experience online violence, notably reflecting the lack of robust or comprehensive legislative provisions addressing this violence directly. In cases where women could seek to take further action, it was reported there is a lack of awareness concerning what their rights are.

“We do have an offence in our IT Act that penalises harassing someone. But people on the ground are not aware of it or that they can make a report to the police”

Parliamentarian from Cayman Islands

2. The gaps and inappropriateness of existing laws were considered to be aggravated by gender insensitivity on the part of law enforcement and the judiciary, who tend to trivialize online violence against women and hold the view that it does not constitutes a crime.

3. As a result, perpetrators benefit from a culture of impunity, where the failure of the justice system to address such abuses as they occur creates the perception that such acts can, and will, remain unpunished. Many respondents reported low rates of reporting, in addition to a lack of available information on investigation, prosecution and court procedures in such cases, reflective of the fact that criminal law has not yet been mobilised as the front line defence against online violence. Many victims have no choice but to remain in danger and without recourse until online conduct escalates or evolves into more ‘traditionally’ recognisable forms of wrongdoing.

4. A major barrier highlighted by respondents was a lack of adequate training of law enforcement in determining what constitutes a chargeable offence in the digital context. As a result, the police do not have the right training, skills, or resources to protect women survivors of online violence and abuse or bring the perpetrators to justice. On the more rare occasion where women victims succeed in reporting a case and having it investigated, it was also noted they encounter further obstacles posed by the lack of technical knowledge and ability in the judiciary.

5. Parliamentarians and legislative drafters in all regions emphasised the need for legislation to provide for specialised training for law enforcement, prosecutors, and the judiciary. It was highlighted that sensitivity training around all forms of online violence against women, and how those experiences map onto legally recognised categories of wrongdoing, would help to prevent inaction and mitigate harm. This was noted as something that New Zealand are currently looking into.

**KEY POINT FOR PARLIAMENTARIANS**

Legislation should mandate gender-sensitivity training and capacity-building on online violence against women for law enforcement, prosecutors, and the judiciary, including including specific training training and capacity-building when when new legislation is enacted.

PROTECTION

1. Respondents in all regions pointed to the inadequacy of existing legislative provisions in offering women who are victims of online violence adequate protection from further violence or means of redress.

2. A common theme was around the way in which information and communication technology allows for the easy and rapid dissemination of information and content, enabling the harm of online violence against women to be quickly amplified. As a result, the recurrence of further violence becomes an inevitability without provisions that facilitate the swift removal of harmful content and any subsequent resharing, along with de-linking from search results for abusive and harmful content.

3. This was frequently cited as an area that requires legislative intervention. There was agreement among respondents that internet intermediaries and social media companies do not have sufficient reporting procedures and mechanisms which provide women with protection from further violence and or adequate means of redress.

4. As a result, for a legislative response to be fully effective, participants highlighted it must establish independent mechanisms to enable survivors to obtain these remedies.

**HIGHLIGHTING GOOD PRACTICE IN THE COMMONWEALTH: AUSTRALIA**

Good practice in this area was highlighted by the Parliament of Australia with the introduction of the ‘eSafety Commissioner’. The eSafety Comissioner was established as an independent statutory office under the Enhancing Online Safety Act 2015. Women, and persons more broadly, are able to utilise a complaints mechanism to report an incident of violence facilitated by information and communication technology. The Enhancing Online Safety Act 2015 provides the eSafety Commissioner with the power to give enforceable removal notices to social media services, websites, hosting providers and perpetrators, requiring the removal of harmful material or face significant financial penalties. The parliamentarian from Australia reported this has had an 100% success rate to date.

**KEY POINT FOR PARLIAMENTARIANS**

Legislation should establish procedures for the immediate removal of gender-based harmful content through the elimination of the original material and its distribution.

## CHAPTER 3: ACTION AREAS FOR PARLIAMENTARIANS

All parliamentarians are key stakeholders in the elimination of gender-based violence. They have an individual and collective responsibility to not only enact strong legislation but also to monitor the implementation of these policies and hold governments to account in making legislation more effective. Research has demonstrated, however, that it is women parliamentarians who take the brunt of this responsibility and drive the national changes required to achieve this aim.

Accordingly, this section contains nine action areas to support women parliamentarians in their efforts to strengthen legislation addressing gender-based violence within their jurisdiction. It presents a broad range of action points that can be taken forward by all individual parliamentarians, irrespective of the established institutional mechanisms within their legislature. It is important to note that this is not a prescriptive list. The areas of action should be viewed as standalone recommendations, and with limited time and resources, one or a selection could be taken forward by parliamentarians in collaboration with their colleagues or other stakeholders.

### Action areas for parliamentarians

1. Action area 1: Review existing legislation addressing violence against women
2. Action area 2: Advocate for the introduction or amendment of legislation
3. Action area 3: Build women's cross-party parliamentary networks
4. Action area 4: Build cross-party parliamentary networks with men
5. Action area 5: Build external alliances
6. Action area 6: Conduct pre-legislative scrutiny
7. Action area 7: Advocate for a specific amendment of a bill
8. Action area 8: Conduct post-legislative scrutiny
9. Action area 9: Conduct a gender analysis of the budget

## ACTION AREA 1: REVIEW EXISTING LEGISLATION ADDRESSING VIOLENCE AGAINST WOMEN

1. Parliamentarians are strategically placed to assess how violence against women is addressed within the national legal framework, to identify the gaps, and define a legislative goal for the adoption or the revision of legislation on violence against women.
2. At a minimum, national legislation must meet the international and regional standards and benchmarks to which legislatures have committed. When looking to strengthen legislation, these standards and benchmarks can be utilised as a comprehensive baseline of provisions to assess domestic law.
3. There are key benefits to reviewing legislation, even where it is considered to be robust and comprehensive. In such cases, it enables a greater reflection on implementation and legislative responses to new and emerging forms of gender-based violence.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Request that the executive undertakes a mapping exercise of existing legislation with the Convention for the Elimination of all forms of Discrimination Against Women, and regional bodies. This can be used to determine whether its provisions are consistent with the Conventions and to identify areas of incoherence.
- Review the concluding observations of the CEDAW Committee to identify areas of the national legislative framework which have already been identified by experts as weak or requiring reform.
- Request government collected data and information on the prevalence of all forms of gender-based violence, and evidence that legislation has so far achieved a short-term measurable outcome or a longer-term impact on the protection of women from violence.
- Advocate for the executive to undertake a national violence against women survey to improve the knowledge base on the causes, forms, manifestations, and consequences of violence against women. New and emerging trends are likely to expose gaps or weaknesses in the legislative framework.
- Organise open consultations with key stakeholders such as survivors of gender-based violence, law enforcement, lawyers, the judiciary, healthcare personnel, civil society organisations that work with survivors of gender-based violence, and national statistics offices, to gather views on the effectiveness of existing measures and specific areas of legislative weakness.



- Advocate for a thematic inquiry into the effectiveness of existing legislation in protecting women from all forms of violence. This can help gather much needed data and information on national trends, through the collection of oral and written evidence, and therefore provide a stronger impetus for reform.
- Gather the testimonials of survivors of gender-based violence. Women who have experienced gender-based violence, and experienced first-hand the judicial system, should be considered experts concerning both the issues and solutions. Parliamentarians should also specifically seek out the views of marginalised women who experience multiple forms of discrimination and multiple barriers to accessing justice.
- Conduct additional qualitative research, such as reviewing national reports, studies from regional or international organisations, and news articles, concerning women's experiences of gender-based violence and the justice system.

#### KEY QUESTIONS FOR PARLIAMENTARIANS TO CONSIDER WHEN REVIEWING THEIR NATIONAL LEGISLATIVE FRAMEWORKS:

- How does the national legislative framework map onto the Convention for the Elimination of all forms of Discrimination Against Women? This can be used to determine whether its provisions are consistent with the Conventions and to identify areas of incompatibility.
- Is the national legislative framework comprehensive and multidisciplinary, criminalising all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support, as well as adequate punishment of perpetrators and availability of remedies for survivors?
- Is protection against violence offered to all women without discrimination as to race, colour, language, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age or disability?
- Does legislation provide sufficient protection against newly emerging forms of violence against women, specifically online violence and violence facilitated by information and communication technology?
- Is there a comprehensive and coordinated national action plan to implement legislation on violence against women? Does this contain measurable benchmarks and indicators?
- Does the legislation mandate a budget that is sufficient to implement all aspects of the law?
- Are there adequate provisions to enable parliamentary monitoring of the implementation of the legislation, including the collection of relevant statistics?

## ACTION AREA 2: ADVOCATE FOR THE INTRODUCTION OR REFORM OF LEGISLATION

1. Parliamentarians have a key role to play in advocating for the introduction or reform of gender-based violence legislation.
2. Following a review of existing legislation, parliamentarians are well-positioned to lobby the executive towards this aim. To ensure the best possible chances of success, it is key that parliamentarians:

#### ACTION POINTS FOR PARLIAMENTARIANS:

- Define the legislative goal and strategy, with the aim of leveraging and focusing support on a key area. This should be underpinned by a strong evidence base and persuasive arguments based on fact.
- Organise a parliamentary campaign. Parliamentary campaigns help to raise awareness of issues and understanding of proposed solutions. This might include tabling a motion, statements or debates; working with a cross-party parliamentary group to produce a report; or organising seminars to discuss ideas and strategies.
- Secure wide-ranging and early support. This should include cross-party, bicameral parliamentarians, including both men and women, and external stakeholders, such as survivors of gender-based violence, law enforcement, lawyers, the judiciary, and civil society organisations.
- Partner with civil society organisations. Women's rights organisations often play a critical role in advocating for changes in legislation and bring the stories of the individuals they serve to the process. These stories form an important part of the evidence needed to convince the executive of the needed changes.
- Consider who will be an opponent and why are they opposed. It is important to anticipate and know the arguments against the position and develop responses based on fact and reason. Reference to best practices, research, and experience from other jurisdictions is most compelling. Parliamentarians should be able to explain how others, including the executive, will benefit from supporting the issue.
- Utilise the media with a communications strategy that identifies target audiences, key messages, and time frames. Both traditional and new media can be effective in communicating key messages and raising awareness. Greater media support creates greater pressure on the executive to support reforms and reduces resistance to a proposed legislative reform.

- Secure public support through engaging in public dialogue and consultation. Having public consultations on legislative topics builds the legitimacy of proposals, connects parliamentarians with constituents, generates useful data for drafting legislation, and sensitises the public on policy issues.
- Engage directly with groups who are likely to be opposed to the legislation in the consultation process, including conducting outreach visits to remote communities. The effectiveness of the legislation and its eventual implementation will be determined by the extent to which these groups are receptive to its enactment.
- Consider introducing a private member's bill. Although it is often unlikely to pass without government support, it can be an important parliamentary campaigning device, through raising awareness in parliament of pertinent issues concerning gender-based violence and the need to legislate appropriately. This can further prompt the executive to take action and act as a template for future legislation.

## ACTION AREA 3: BUILD WOMEN'S CROSS-PARTY PARLIAMENTARY ALLIANCES

1. Cross-party alliances are critical to demonstrate that legislating on gender-based violence is not a partisan fight, but one that should involve working across party lines.
2. In many legislatures across the Commonwealth, there have been commendable efforts to tackle gender-based violence against women through the formation of cross-party women's parliamentary networks.
3. Women's parliamentary networks demonstrate leadership on a number of important issues concerning gender-based violence, including reviewing the effectiveness of national legal frameworks in protecting women from such violence and advocating for the introduction or reform of legislation.
4. Very often, it is women's parliamentary networks who are the main agents for legislative change: they propose new legislation, produce evidence-based reports, initiate awareness-raising campaigns, call for debates, and work closely with civil society.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Establish, join or give further support to a women's cross-party parliamentary network. This can include joining as a member or collaborating on a particular campaign for legislative reform.
- Ensure that membership for women's cross-party parliamentary networks is open to all political parties and all genders. With a greater number of members or supporters, a women's parliamentary network is more likely to have a greater influence on the legislative process.
- Form or utilise pre-existing women's cross-party parliamentary networks to produce an evidence-based report to add weight and legitimacy to legislative proposals.
- Organise specific seminars or training for members on campaigning, communicating and speech writing for legislative reform. Raising a collective voice is key to the success and achievement of legislative objectives.
- Look to build relationships with the authority in parliament (including the executive and the opposition), and with the relevant parliamentary committee tasked with gender issues. Formalising these relationships is likely to secure greater influence and reduced resistance from the executive to legislative proposals.
- Ensure a close and collaborative relationship with civil society organisations, to access data and information about the needs of women constituents, and to rely on civil society to conduct advocacy campaigns in support of the legislative agenda.
- Secure time in the order of business for special debates on legislative reform or gender-specific questioning of ministers and encouraged all members to participate.
- Host meetings with other women's parliamentary caucus' to share good practice on building momentum and overcoming challenges.
- Learn from international successes. The Forum of Rwandan Women Parliamentarians and Pakistan's Women's Parliamentary Caucus are key examples of women's parliamentary caucus' that have successfully campaigned for legislative reform.



## ACTION AREA 4: BUILD PARLIAMENTARY ALLIANCES WITH MEN

1. Ensuring robust and comprehensive gender-based violence legislation is the responsibility of every parliamentarian, and women parliamentarians cannot advance this legislative agenda alone.
2. This is especially true in contexts in which parliaments are dominated by men. For the gender-based violence legislative agenda to gain ground, it requires their support.
3. It is therefore vital that women parliamentarians and women's parliamentary groups actively engage with men in the process of legislative reform, and gender equality efforts more broadly.
4. There are a number of strategic reasons for involving men in the legislative process: gaining legislative allies, attracting more votes for a bill or amendment, and increasing the effectiveness of the law's eventual implementation.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Develop strategic ways of discussing gender equality that presents gender-based violence as a social problem that negatively impacts both women and men. This is crucial to attracting support of male parliamentarians.
- Hold male peers accountable as legislatures. Reminding men of their responsibilities concerning gender equality and to protect their constituents is more likely to promote effective and collaborative engagement.
- Invite men parliamentarians to attend the meetings of women's parliamentary networks and actively involve them in parliamentary discussions in relation to legislative reform or the introduction of new laws.
- Invite men parliamentarians to engage in public outreach to raise awareness of proposed legislative reforms, and gender equality issues more broadly.
- Advocate for gender-sensitive training programmes for men parliamentarians.
- Hold seminars, events, and workshops for men on issues relating to gender-based violence, particularly focusing on the challenges women face, how to demonstrate effective allyship, and how to mainstream gender equality within parliament.
- Recruit men parliamentarians as spokespersons for addressing gender-based violence and gender inequality more broadly.
- Share early drafts of bills or amendments with male colleagues to ensure they have a sense of ownership over the legislation. This also increases the likelihood of male parliamentarians co-sponsoring a bill or amendment and increases the likelihood of male parliamentarians voting in its favour.

## ACTION AREA 5: BUILD EXTERNAL ALLIANCES

1. Parliamentarians are in a unique position to engage with a range of actors in the field of gender-based violence.
2. This includes law enforcement, the judiciary, healthcare personnel, civil society organisations, as well as target groups, such as religious and customary leaders, and technology companies.
3. There are several strategic reasons for engaging with external stakeholders: gaining sources of expertise for legislative proposals; gathering support for legislative reform; and pressuring a legislature to take action.
4. The strength of legislation, and the effectiveness of its eventual implementation, will be improved if those who work directly with survivors of gender-based violence have an opportunity to influence all aspects of the legislative process.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Establish and maintain regular dialogue and effective working relationships with all external actors in the field of gender-based violence. This allows parliamentarians to obtain a wide range of expert information, remain up to date with emerging trends, and better raise parliamentary awareness to take action.
- Organise roundtable events with survivors of gender-based violence, law enforcement, lawyers, the judiciary, healthcare personnel, and civil society organisations. This can be formalised through the establishment of a working group that could meet regularly to discuss issues pertaining to legislative reform.
- Consult with national statistics offices, think tanks, and non-governmental organisations to campaign for the collection of gender-disaggregated data. Building relationships with actors who can collate statistics is key to build a stronger evidence base to inform all aspects of the legislative process.
- Engage directly with groups who are likely to be opposed and their representatives. Establishing regular and productive dialogue with target groups is more likely to create an enabling environment to secure their support for legislative reform and reduce the disjuncture between the legislator and the constituency.
- Build alliances and collaborative relationships in the media. This is key to ensure the mobilisation of campaigning and awareness-raising efforts, and to ensure messages are communicated beyond the constituency. Additionally, allies in the media can provide a useful source of information concerning current affairs relating to gender-based violence and access to a greater number of national stakeholders.
- Collaborate with law enforcement and the judiciary, specifically women who are underrepresented in these professions. Building strategic alliances in this area are key to supporting gender mainstreaming throughout the system as a whole.

## ACTION AREA 6: CONDUCT PRE-LEGISLATIVE SCRUTINY

1. Scrutiny processes mean that parliamentarians are key stakeholders through the journey of legislation through parliament. The greater the involvement in the scrutiny of draft legislation, the better placed parliamentarians will be to monitor the eventual implementation of new laws, and to propose, where appropriate, remedies to any problems they identify.
2. The mechanisms through which parliamentarians are able to scrutinise proposed legislation will vary from legislature to legislature. However, there are a number of good practices which parliamentarians should look to emulate when scrutinising an executive's proposals.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Consult widely with external stakeholders when considering the executive's proposals and gather a strong evidence base to inform scrutiny. Expert advice is invaluable in identifying areas of controversy, weaknesses, or incoherence in proposals.
- Seek the views of the public, specifically those targeted by the introduction of the bill. Priority should be given to the views of gender-based violence survivors, civil society organisations, non-parliamentary lawyers, and the judiciary.
- Hold the executive to account by utilising written and oral parliamentary questions to gather more information on any areas of controversy, weakness, or incoherence. It enhances accountability and exposure when government proposals are subjected to thorough scrutiny on the public record, requiring Ministers to publicly defend their positions.
- Ensure to focus on the technical aspects of the proposals, not just the policy. Line by line consideration of a bill is necessary to expose areas which may only require a small amendment to significantly improve the practical reality of gender-based violence survivors seeking justice.

### KEY QUESTIONS FOR PARLIAMENTARIANS TO CONSIDER WHEN CONDUCTING PRE-LEGISLATIVE SCRUTINY:

- How do the proposals map onto the Convention for the Elimination of all forms of Discrimination Against Women? This can be used to determine whether its provisions are consistent with the Conventions and to identify areas of incompatibility.
- Are the legislative proposals sufficiently evidence-based? Do they address national realities and serve to protect all groups of women?
- Has the executive sufficiently consulted with all relevant stakeholders in the drafting of the bill, including the public and target groups? This is likely to determine the effectiveness of its implementation.
- How do the new proposals interact with the existing legislative framework on gender-based violence? Are they harmonised and aligned, or do they leave further gaps or inconsistencies?
- Does the legislation mandate the creation of a national plan or strategy for its implementation? Does this include benchmarks and timetables to which the executive can be held accountable?
- Does the legislation mandate a budget that is sufficient to implement all aspects of the law?
- Are there adequate provisions to enable parliamentary monitoring of the implementation of the legislation, including the collection of relevant statistics?



## ACTION AREA 7: ADVOCATE FOR A SPECIFIC AMENDMENT TO AN EXECUTIVE BILL

1. The introduction of a bill by the executive is a key entry point for parliamentarians to influence the future form and content of the legislation itself.
2. Scrutiny processes mean that parliamentarians are key stakeholders in the legislative process.
3. Amendments by individual parliamentarians can serve the purpose of strengthening gender-based violence legislation and ensuring its eventual implementation will be effective.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Define the goal and set an agenda to press for action with the aim of leveraging and focusing support on a key area. This may include strategically focusing on the most controversial or weakest aspects of government proposals to gather momentum.
- Open up effective negotiations with the relevant Minister. Private meetings should be held to discuss the specific points of concern, as in some cases, consensus or compromise can be reached without a significant public debate.
- Obtain cross-party support for a proposed amendment. This is critical for its passing so it is not presented as a partisan concern. Parliamentarians should utilise stakeholder and public support of the issue or cross-party parliamentary networks to call for political unity.
- Involve male parliamentarians in both early discussions regarding proposed amendments and the process of drafting. This increases the likelihood of male parliamentarians co-sponsoring an amendment and increases the likelihood of male parliamentarians voting in its favour.
- Partner with civil society organisations to launch an advocacy campaign. Women's rights organisations often play a critical role in advocating for specific amendments and bring the stories of the individuals they serve to the process. These stories form an important part of the evidence needed to convince government of the needed changes.
- Ahead of debates on the bill and proposed amendments, it is important to have strategic arguments in place. Parliamentarians should be able to explain how the executive will benefit from supporting the issue. Drawing on a strong evidence base, international good practice and the support of external stakeholders adds legitimacy and weight to a contribution.

- Gather media attention around the most controversial proposals, and the proposed amendments. This can promote public awareness and place further pressure on the executive to reconsider its position.
- Draft amendments strategically to avoid immediate objections from the executive. To have most chances of success the proposed amendment must be accurately drafted, legally sound, and considered to be realistic by the actors responsible for its implementation.

## ACTION AREA 8: CONDUCT POST-LEGISLATIVE SCRUTINY

1. Responsibility for monitoring and evaluating the effectiveness of legislation also lies with parliamentarians. They have a responsibility to hold governments accountable for implementing the domestic legislation they have enacted.
2. Individual parliamentarians can use various parliamentary mechanisms to scrutinise, monitor, and lobby for better implementation of legislation.
3. Post-legislative scrutiny can also reveal gaps, weaknesses, and unintended consequences of legislation, and is therefore critical to inform future law reform.
4. There are several strategic reasons for engaging in post-legislative scrutiny effectively: it can trigger legislative change in the short or medium-term; encourage advocacy by other bodies; and create awareness within parliament concerning gender-based violence.

### ACTION POINTS FOR PARLIAMENTARIANS:

- Hold the executive to account by utilising parliamentary questions to Ministers concerning the implementation of gender-based violence legislation and national action plans. Gather a strong evidence base to inform scrutiny and represent the views of gender-based violence survivors, and those responsible for implementing the law, as a priority.
- Hold the executive to account by utilising parliamentary questions to Ministers to follow up on the executive's commitments to implementing the concluding recommendations of the CEDAW Committee reports. Debates can also be utilised to discuss the concluding comments and raise awareness on the steps that need to be taken to accelerate implementation.

- Utilise existing parliamentary mechanisms, such as parliamentary committees, or set up new parliamentary bodies specifically mandated to oversee the implementation of gender-based violence legislation.
- Request the executive conduct an evaluation of gender-based violence legislation and national action plans in relation to short-term measurable outcomes or a longer-term impact on the protection of women.
- Request the executive to commit to a periodic review of laws and regular reforms taking into account developments in knowledge on violence against women and insights gained through post-legislative scrutiny.
- Engage regularly with external stakeholders and allies in the executive, law enforcement, the judiciary, service providers, and civil society organisations. This not only builds a strong evidence base for scrutiny, but further supports a coordinated approach between these actors.
- Undertake visits to monitor implementation on the ground, including court monitoring, outreach to service providers in remote areas, and visits grassroots women's rights organisations.
- Organise public consultations to gain stakeholder views on the performance of the executive in implementing legislation, and to assess how effectively the system between the executive, law enforcement, and the judiciary is working as a whole. This should also gather information on public awareness and opinion regarding the legislation and what it provides for.
- Undertake public education campaigns to raise awareness and educate women about their rights. While such programmes should be designed and adequately funded by the executive, parliamentarians have an important role as public advocates in explaining legal provisions and challenging the media, civil society, and others to do the same.

#### KEY QUESTIONS FOR PARLIAMENTARIANS TO CONSIDER WHEN CONDUCTING POST-LEGISLATIVE SCRUTINY:

- Has the legislation achieved its aim in relation to gender-based violence? To what extent are women better protected from violence as a result of provisions in the legislation?
- Are there gaps in legal protection? Have there been any unintended consequences of the legislation?
- Are survivors experiencing improved and gender-sensitive responses from public authorities as a result of the legislation?
- Has the criminal justice system become sensitive to the issues of violence against women? In this regard, what is police practice? How many cases are investigated by the police? How are victims generally dealt with by the police?
- How many protection orders have been granted under the legislation? How many were denied, cancelled or appealed? How many were breached by perpetrators?
- How many cases of violence against women have been prosecuted under the legislation? What is the rate of attrition? What is the rate of conviction? What type of judgements are given in such cases?
- What are survivors experiences of court processes? Are they effectively made aware of their rights? Do survivors suffer secondary victimisation at any point throughout the process?
- Do survivors have access to support services such as shelters, legal and psychological counselling, specialized assistance and rehabilitation provided either by the government or by non-governmental organizations? Is this access equal between different groups of women?
- Have the benchmarks and indicators set out in the national plan of action been met?



# ACTION AREA 9: CONDUCT A GENDER ANALYSIS OF THE BUDGET

1. It is well recognised that for legislation to be effective in addressing gender-based violence it requires appropriate financial resources.
2. It is critical that parliamentarians ensure, through parliament's budgetary powers, that allocated resources match the requirements of legislative and national action plans on gender-based violence.
3. Parliamentarians also have a responsibility to adopt a budget that includes sufficient funding aimed at preventing gender-based violence and supporting survivors.

## ACTION POINTS FOR PARLIAMENTARIANS:

- Request that the executive undertakes a cost assessment of proposed legislation to identify the needs for effective implementation.
- With the introduction of a new budget to parliament, request that the executive conduct an analysis of whether the allocated resources match the commitments as laid out in international and domestic legislation addressing violence against women.
- Organise consultations with external stakeholders to gather views and generate a strong evidence base regarding whether allocations are sufficient to implement all aspects of gender-based violence legislation.
- Utilise parliamentary questions and debates concerning the budget to advocate for the allocation of resources to the effective implementation of gender-based violence legislation. Prepare strategic arguments, particularly concerning the economic costs to the executive as a result of not effectively addressing gender-based violence against women.
- Build strategic alliances with members of finance and public accounts committees to advocate for gender-sensitive scrutiny and ensure that the gender perspective is represented during committee sessions.
- Conduct a broader gender analysis of the budget, an approach designed to mainstream the gender dimension into all stages of the budget cycle. This involves an analysis of actual expenditure on women as compared to men, accounting for their different needs and priorities.
- Utilise networks with external stakeholders to build independent research capacity to analyse the total budget presented by the government. By levelling the information asymmetry that characterises parliament- executive relations, parliamentarians can ensure they have the technical capacity to effectively scrutinise the budget process as a whole.

## KEY QUESTIONS FOR PARLIAMENTARIANS TO CONSIDER WHEN REVIEWING BUDGET PROPOSALS:

- Do budget proposals reflect the fact that gender-based violence disproportionately affects women?
- Is the allocation of the budget sufficient to implement all aspects of the national legal framework?
- Do budget proposals include funding for gender-sensitive training public officials who will enforce the law?
- Are there funds allocated for use by civil society organisations to assist in the implementation of the law?
- Do budget proposals provide allocations for educating the public on all aspects of violence against women?
- Do budget proposals enable the collection of data and information on violence against women?

## RESOURCES

### LEGISLATING ON VIOLENCE AGAINST WOMEN

- United Nations, Handbook for Legislation on Violence against Women, 2012
- United Nations, Supplement to the Handbook for Legislation on Violence against Women: 'Harmful Practices' Against Women, 2012
- United Nations, Handbook for National Action Plans on Violence against Women, 2012
- OSCE/ODIHR, Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation, 2017

### GUIDELINES FOR PARLIAMENTARIANS

- United Nations Division for the Advancement of Women and the Inter-Parliamentary Union, Handbook for Parliamentarians "The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol", 2003
- Association of European Parliamentarians with Africa, Guidelines for Parliamentarians: Abolishing Female Genital Mutilation/ Cutting, 2012
- Westminster Foundation for Democracy, Policy Paper: Gender-sensitive Post-Legislative Scrutiny, 2020
- Inter-Parliamentary Union, Guidelines for Women's Caucuses, 2013

### GUIDELINES FOR PARLIAMENTS

- Inter-Parliamentary Union, Parliaments Take Action on Violence against Women: Priority Actions for Parliaments, 2009
- Commonwealth Parliamentary Association, Gender Sensitising Parliaments Guidelines: Standards and a Checklist for Parliamentary Change, 2020
- Inter-Parliamentary Union, Gender-sensitive Parliaments: A Global Review of Good Practice, 2011

## REFERENCES

- European Parliament, Discriminatory Laws Undermining Women's Rights, 2020
- Inter-Parliamentary Union, Evaluating the Gender Sensitivity of Parliaments, 2016
- Inter-Parliamentary Union, Plan of Action for Gender Sensitive Parliaments, 2017
- Office for National Statistics, Sexual offending: victimisation and the path through the criminal justice system, 2018
- OSCE/ODIHR, Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation, 2017
- Oxfam, Legislative Wins, Broken Promises: Gaps in implementation of laws on violence against women and girls, 2017
- Plan International, Free to be online?, 2020
- Plan International, Protecting Children from Harmful Traditional Practices, 2016
- Special Rapporteur on violence against women, its causes and consequences, Online violence against women and girls from a human rights perspective, 2018
- The World Health Organisation, Global and regional estimates of violence against women, 2013
- UN Women and Inter Parliamentary Union, Women in Politics: 2021, 2021
- UN Women, Access to Justice for Women in South East Asia, 2014
- UNICEF, No to the Female Genital Mutilation of Girls, 2019
- United Nations Office on Drugs and Crime, Effective police responses to violence against women, 2015
- United Nations, Handbook for National Action Plans on Violence Against Women, 2012
- United Nations, Handbook on Legislation on Violence Against Women, 2009
- United Nations, Study of the Secretary General: Ending violence against women, 2006
- World Bank, Women, Business and Law, 2021
- World Wide Web Foundation, Survey – Young people's experience of online harassment, 2020



CPA UK

Westminster Hall | Houses of Parliament | London | SW1A 0AA

T: +44 (0)207 219 5373

W: [www.uk-cpa.org](http://www.uk-cpa.org)

E: [cpauk@parliament.uk](mailto:cpauk@parliament.uk)