



Deliverable Report

# D.2.2 Gendered laws and policies - Country reports



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## Table of contents

Table of contents.....	3
1. Executive summary.....	5
<b>1.1 Belgium</b> .....	5
<b>1.2 Netherlands</b> .....	8
<b>1.3 Poland</b> .....	10
<b>1.4 South-Africa</b> .....	12
<b>1.5 Spain</b> .....	15
<b>1.6 UK</b> .....	17
2. Introduction .....	20
3. Research approach.....	21
4. Country reports .....	26
4.1 Belgium.....	26
A. General Framework .....	26
B. Violence against women and girls.....	37
C. Women in leadership .....	43
4.2 Netherlands .....	48
A. General Framework .....	48
B. Violence against women and girls.....	69
C. Women in leadership .....	77
4.3 Poland.....	85
A. General Framework .....	85
B. Violence against women and girls.....	95
C. Women in Leadership .....	100
4.4 South-Africa .....	103
A. General Framework .....	103
B. Violence against women and girls.....	112
C. Women in leadership .....	122
4.5 Spain.....	131
A. General Framework .....	131
B. Violence against women and girls.....	145

C. Women in leadership .....	150
4.6 UK.....	157
A. General Framework .....	157
B. Violence against women and girls.....	169
C. Women in Leadership .....	176
Annex 1: Questionnaire D.2.2. Gendered laws and policies .....	179
Annex 2: Extra Examples of court cases in South-Africa that are gender-transformative and gender-exploitative.....	184



## 1. Executive summary

Executive summary of key findings per country

### 1.1 Belgium

#### I. Recognition and diagnosis

1. While Belgium recognises gendered law- and policymaking processes as a problem, there is no federal strategy or action plan specifically for gender equality
2. Gender mainstreaming strategies are implemented, but the focus often lies on the manifestation of the problem instead of the underlying causes such as gender norms and stereotypes (women in decision-making)
3. The possibility of gendered violence as well as the fact that women are disproportionately more often victims of violence is recognised, however, discrimination and gender inequality are not explicitly mentioned as underlying causes
4. Overall there is a lack of recognition of the importance of intersectionality

#### II. Root causes and gaps

1. Belgium began slow in the race towards gender equality, possibly due to its Catholic history, however, now Belgium is one of the frontrunners on gender equality
2. A complex political organisational structure complicates the implementation of effective action to counter gendered law- and policymaking processes
3. Not addressing the root causes of gender inequality limits progress at the symbolical and cognitive level. For instance: viewing underrepresentation of women in politics as a problem because it is harmful to democracy is simply fixed by increasing the amount of women in politics. This does not fix the underlying cause of the underrepresentation of women in politics such as stereotypes on good leadership.
4. Lack of awareness within certain fields.
5. Decolonial thinking is missing.
6. No National Action Plan on gender equality alongside a general lack of a coherent vision and goal

### III. Actions needed/recommendations

1. **Development of national vision on transformative equality approach, respective of the Art. 5a CEDAW obligation, setting out key goals:**
  - a. Focussing on and eradication of gendered power hierarchies, underlying harmful
  - b. gender ideologies stereotypes and biases; develop gender-sensitivity
  - c. Ensuring intersectional, decolonial and cultural sensitivity
  - d. Starting from human agency
  - e. In structural consultation/cooperation/co-creation with relevant stakeholders
  - f. (including NGOs and academia)
  - g. Ensuring crisis-proofness
  
2. **Structurally enshrine a gender mainstreaming approach:**
  - a. through strategic policy instruments
  - b. with political support to provide the political and administrative coordinators the
  - c. time and hierarchical support in order to carry out their tasks
  - d. with more personnel and experts implementing gender mainstreaming to reduce
  - e. the high workload and increase effectiveness
  - f. by educating relevant actors on the importance of gender mainstreaming and on how to tackle gendered law- and policymaking in order to operationalise the gender mainstreaming approach
  
3. **Ensure the effectiveness of gender tests:**
  - a. by raising general awareness: why is it important and why is the
  - b. gender dimension useful within specific (also technical) fields of laws and policies?
  - c. by educating law- and policymakers on how to carry out effective gender tests
  - d. by ensuring there is a coherent goal, instead of mere reference to gender mainstreaming
  - e. by building accountability mechanisms

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#### 4. Reinforce administrative capacity, awareness, support and learning

- a. make sufficient human resources available
- b. make sufficient financial resources available
- c. ensure mandatory training on gender tests to be applied
- d. facilitate and stimulate exchange/mutual learning

#### 5. Integrate an intersectional perspective

- a. address the full spectrum of experiences and vulnerabilities faced by individuals, especially women, who may encounter multiple forms of discrimination
- b. especially, but not only, regarding laws and policies on Violence Against Women

## 1.2 Netherlands

### I. Recognition and diagnosis

1. No overarching, consistent and coherent vision on emancipation goal to achieve
2. Focus on gender equality and mainstreaming, but less on recognising, identifying and analysing underlying gendered power problems and hierarchies and structural and institutional discrimination (women in decision-making)
3. Relevance of gender-sensitive VAW approach not (sufficiently) acknowledged
4. Relevance of intersectional approach only embryonically acknowledged
5. Discrepancy between internal and external policy (Feminist Foreign Affairs approach)

### II. Root causes and gaps

1. Persisting traditional thinking, based on gender stereotypes, biases, ideologies, filtering into law through different concepts (e.g. breadwinner, full-time worker)
2. Liberal 'free choice' thinking ('no need' for special treatment)
3. Political coalitions system
4. Focus on economic rationale/efficiency thinking (gender balance in decision-making)
5. Insufficient data (collection)
6. Decolonial thinking is missing
7. Soft law, self-regulatory and project-based approaches

### III. Actions needed/recommendations

1. **Development of national vision on transformative equality approach, respective of the Art. 5a CEDAW obligation, setting out key goals:**
  - a. focussing on and eradication of gendered power hierarchies, underlying harmful gender ideologies stereotypes and biases;
  - b. develop gender-sensitivity
  - c. ensuring intersectional, decolonial and cultural sensitivity
  - d. starting from human agency
  - e. in structural consultation/cooperation/co-creation with relevant stakeholders (including NGOs and academia)
  - f. crisis-proof



- 2. Enhance political/governmental commitment, ownership, consistency and responsibility by constructing a more politically-legally robust system:**
  - a. developing and imposing a legally enforceable gender mainstreaming approach
  - b. making gender mainstreaming/emancipation policy compulsory part of coalition/political agreement
  - c. making gender mainstreaming/emancipation policy compulsory part of each Ministry's work program and of the leading politicians/civil servants
  - d. establishment of national action plans
  - e. shifting responsibility from OCW to Ministry of General Affairs/Prime Minister
  - f. reinforcing interministerial cooperation platform
  - g. making gender tests and reporting on it legally binding
  - h. engage in ex-post evaluations of existing laws and policies to investigate their possible genderedness
  - i. introduce gender budgeting
  - j. ensuring compliance, monitoring and accountability
  - k. via existing bodies (e.g. NIHR, Council of State) or establishment of new supervisory body (Dutch Emancipation Authority)
  - l. tools such as gender reporting, auditing
  
- 3. Reinforce administrative capacity, awareness, support and learning**
  - a. make sufficient human resources available
  - b. make sufficient financial resources available
  - c. ensure mandatory training on gender tests to be applied (e.g. via Academy for Legislation/Civil Servants)
  - d. facilitate and stimulate exchange/mutual learning
  
- 4. Stimulate research and gender-sensitive awareness-raising in professional and public media/fora**
  - a. analyse and develop narratives on existing examples of gendered law- and policymaking and its impacts (e.g. VAW, social security/pensions)
  - b. ensure broad dissemination and discussion
  - c. ensuring also the engagement of men
  - d. discuss what 'good leadership' beholds

## 1.3 Poland

### I. Recognition and diagnosis

1. The basic principle of the constitutional order is the principle of equality.
2. The principle of gender equality mainly has a declarative meaning, no real implementation instruments.
3. Most national laws are gender-blind (commercial law, criminal law, etc.), and in situations where the gender of the addressees is distinguished, gender-neutral laws are adopted.
4. Gender is treated as a sociodemographic category.
5. The law does not take into account gender other than male and female.
6. Lack of a "Gender Test" for all laws and regulations as a tool to ensure impact assessment.
7. Serious risk that the introduction of a uniform binding measure in the form of quotas, in a situation of generally low social acceptance of quotas, may turn out to be only an artificial and symbolic measure
8. The existing National Action Plan lacks implementation and control measures. Funds for its implementation have also not been secured.
9. Relevance of intersectional approach.
10. High activity of local governments and NGOs - effective influence in defining problems and raising awareness about them - reports, promotion of data and good practices. Special focus on strengthening women themselves and their competences.

### II. Root causes and gaps

1. The stereotypical view of women as mother, parent, caretaker of the family hearth - the role of religion and culture.
2. Fear of so-called strong women, women who are liberated, enterprising, have careers outside the home, and are endowed with power and confidence derived from their material and professional position.
3. The problem of the neutrality of language, which is de facto masculine.
4. Financial/economic barriers to start in politics, increased standards for women, acquiescence to criticism and discrediting of women politicians (both from men

and women themselves), a sense of not belonging to the political "world," the inhibiting role of the system and lack of awareness.

5. Weaknesses of publicly available data:
  - a. poor quality data,
  - b. risk of data manipulation (example: women in managerial positions to which self-employed women are counted, employers avoid employment contracts and solve this through contracts with self-employed women, so that social benefits are covered by the self-employed and not the employer),
  - c. lack of comprehensive statistics on the problem of violence against women and domestic violence and killed by partners,
  - d. relevance of analyses that clarify whether women or men are discriminated against in digital resources.
6. Grassroots activities - from local government, NGOs and businesses are transformative.

### III. Actions needed/recommendations

1. Introduction of a gender impact assessment in the lawmaking process.
2. Ensuring economic security for women.
3. Revising the definition of rape to be based on the element of consent.
4. Incorporating the minority perspective into politics - a true minority perspective (not the perspective of Poles representing minorities).
5. Creating policies that consider the situation of specific groups of women, particularly vulnerable to discrimination (e.g., single mothers, the elderly, from sexual minorities).
6. Provide tools and resources for the implementation of the National Action Plan.
7. Introduce reliable cyclic gender surveys, including time budget surveys.
8. Increasing public awareness of the existing problem and the role of grassroots initiatives.
9. Raising awareness of the advantages of inclusive work environments and gender-diverse leadership bodies.
10. Increase dialogue between local initiatives and central-level activities.

## 1.4 South-Africa

### I. Recognition and diagnosis

1. South Africa has some of the highest levels of violence against women (VAW) in the world which is indicative of the extent of gender inequality in the country.
2. Women and gender non-conforming persons experience oppression on multiple and intersecting grounds including gender, sex, race, sexual orientation and gender identity, and class which makes them susceptible to inequality manifesting in violence and exclusion from decision making positions in the public and private sectors.
3. For the most part, South Africa has accommodating, and transformative gender laws and policies guided by a supreme Constitution based on founding principles of human dignity, equality and freedom. Legislative and policy changes are however required in relation to sex workers, domestic workers, and women working as waste-pickers and informal traders.
4. The South African government's regional and international commitments in terms of the Convention on the Elimination of all Forms of Violence against Women (CEDAW) and other instruments, similarly to domestic legislation, remains paperbound.
5. Whilst some progress has been made in advancing gender equality, the implementation and enforcement of laws and policies is uneven, inconsistent, and primarily poorly implemented. In many ways, women's constitutional rights against violence and to equal representation in decision-making in the public and private sectors has not been realized.
6. Women's representation in leadership in public office has increased substantially but progress has been slow. Much slower representation of women in leadership in the private sector is notable. Where women are represented in leadership, they are seldom represented in senior leadership and decision-making positions. The issue of meaningful representation of women in leadership is also questionable.
7. South Africa's National Strategic Plan on Gender Based Violence and Femicide, 2020 – 2023 (NSP) takes the most progressive and holistic policy approach to addressing violence against women (VAW) of all laws and policies aimed at reducing VAW. Measuring implementation of the NSP and whether it has been effective is yet to be seen after its five year review.

## II. Root causes and gaps

1. History of European colonialism and apartheid has instilled and continues to influence women's inequality, patriarchy in the private and public spheres of South African life, and a culture of ongoing violence.
2. Patriarchal, gender inequitable, and sexist social, cultural, and religious gender norms and roles are upheld by members of society and state role-players tasked with implementing laws and policies which contribute to high levels of VAW and poor service provision for VAW complainants.
3. Patriarchal, cultural, socio-economic, and political barriers constrain women's participation and representation in leadership.
4. Insufficient allocation of government funding and poor budgeting for implementing laws, policies, services, and programmes aimed at reducing and responding to VAW.
5. Lack of political will to ensure women's representation in senior leadership positions in the public sector and women's increased representation in decision-making in the private sector.
6. Lack of labour law and other legal protections for women who work in illegal occupation such as sex workers and undocumented migrants, and those who work as waste-pickers, informal traders, and domestic workers.

## III. Actions needed/recommendations

1. The development of laws and policies that aim to provide legal protection and advance the welfare and labour rights of women working as sex workers, undocumented migrants, waste-pickers, informal traders, and domestic workers.
2. Ongoing monitored and evaluated training and capacity building for state-role players and service providers to shift gender inequitable mindsets to improve compliance with legal duties and provision of support services for GBV complainants. Such training should include compulsory gender sensitivity training offered by professional bodies regulating criminal justice system role-players, including the department of health.
3. Improved and consistently applied disciplinary procedures for state role-players and service providers to fulfil their legal duties and to improve quality of services provided to GBV complainants.
4. Inclusion of gender, sexuality, and social context content in basic and higher education curricula.
5. Increased political will amongst political leaders, and the adoption and implementation of existing and future reforms to improve women's representation in decision-making positions and processes.

6. Utilising complaints mechanisms of the Commission for Gender Equality, instituting proceedings in the Equality Court and other courts to mandate compliance with quotas and measures to improve women's representation in decision-making positions.
7. Increased programmes targeting men and boys as part of a holistic approach to preventing VAW.
8. The introduction of technology and data driven approaches for identifying and rectifying gender bias in laws and policies.
9. Increased targeted and specialized services for women who experience intersectional discrimination resulting in VAW such as undocumented, migrant women, sex workers, and women with disabilities.
10. Promoting decolonial approaches to education, development, and training across all sectors and spheres of South African society, education, law and policy making, and amongst state-role players tasked with implementing law and policy making.

## 1.5 Spain

### I. Recognition and diagnosis

1. The legislation on gender equality has made considerable steps toward the transformation of gender roles. However, it has yet to identify and fully address the root causes of inequality (especially those that stem from market segregation, unequal distribution of care duties and gender-based violence) through non-discrimination provisions and law reforms on the labour market and welfare state.
2. Intersectionality is explicitly recognised in Law 15/2022 and Ley 4/2023, but other pieces of legislation focus on specific intersections (Law 2004, State Pact against GBV), without an explicit recognition of intersectionality. A full understanding of intersectionality and implications for law and policymaking in different fields is still missing.
3. In the last years gender adjudication (judging with a gender perspective) has started to emerge, particularly in higher courts (Supreme Court, Constitutional Court), especially in cases of GBV. More efforts are needed to incorporate gender adjudication in lower courts, also by strengthening gender training.

### II. Gaps

1. Persisting traditional thinking, based on gender stereotypes, biases, ideologies, filtering into law through different concepts (e.g. breadwinner, full-time worker)
2. Fill the data collection gap to measure the missing gender gaps (see below, for example sexual harassment at work) and allow intersectional analysis
3. Improve periodic reporting, research, and analysis by the Women's Institute
4. Decolonial thinking is missing

### III. Actions needed/recommendations

1. Improve compliance with international gender equality standards and instruments, in particular the BPfA (Beijing Platform for Action), CEDAW and the Istanbul Convention;
2. Ensure the effective implementation of gender mainstreaming (LO 3/2007 already set up the structures and mechanisms to this end), in all its part and in particular:



- a. Comply with monitoring and periodic evaluation of law's impacts
- b. Meaningful (not formalistic) GIAs that overcome the sectorial approach to gender mainstreaming (tendency to address gender only in 'feminised' sectors, and frame other sectors as gender neutral)
- c. Strengthen and improve mandatory gender training across key sectors (judiciary, medical staff, social services, police, etc.) and gender-sensitive curricula (e.g. medical career)
- d. Strengthen the independence, resources and mandate of the Women's Institute, in particular its policy evaluation tasks (see newly adopted Equality Bodies Directives)
- e. Restore the definition of consent in the Organic Law 10/22 for the Comprehensive Guarantee of Sexual Freedom, and remove the reference to physical violence and intimidation from the definition of sexual aggression
- f. Design gender-sensitive crisis management plans to address ongoing and future crises
- g. Design an effective policy to address the gender care gap and its implications in women's careers and pensions
- h. Reform the care sector to fight labour exploitation and violence against care providers, ensure decent working conditions of care workers in the public and private/family settings
- i. Strengthen consultation/cooperation/co-creation with relevant stakeholders, including CSOs and women's human rights organisations, ensuring an intersectional approach is reflected



## 1.6 UK

### I. Recognition and diagnosis

1. Consensus that considerable progress towards gender equality has been made in the last decades.
2. Recognition (especially in academic literature) of gendered law- and policy-making as an ongoing problem, especially in specific areas (e.g. social policy around the work-family axis)
3. Growing institutional appreciation of the need to consider a gender dimension in law and policy-making, coupled with awareness of – and, presumably, reliance on – hard data on gender gaps from international organisations.
4. No direct accountability mechanism that would prevent gendered law-making in the UK.
5. Women and Equalities Committee has recently published a comprehensive report on the need for a gender sensitive House of Commons.
6. Use of all-women shortlists or similar policies in general, local, and European elections by some political parties since the 1990s as an attempt to address gender imbalance in elected public offices, but with varying effects.
7. Recognition of VAWG by the government as a national threat alongside terrorism and serious and organised crime.
8. Recognition by stakeholders of the grossly inadequate investment in VAW prevention activities, particularly in schools, within the wider public, and in terms of work with perpetrators.

### I. Root causes and gaps

1. Gendered nature of policy-making acutely present in areas of social policy around the work-family axis.
2. Brexit poses a new risk of rolling back some gender equality gains, especially around class-based policies (i.e. 'policies which seek to address inequalities that stem from the sexual division of labour, such as those based on state-funded childcare or pensions).
3. The nature of parliament itself as a potentially gendered workplace, both in terms of the formal rules regulating parliamentary work and in terms of the informal practices around conduct and perceptions of political competence.

4. Government does not always follow recommendations of the Women and Equalities Committee (e.g. regarding new strategy in schools on issues of sexual harassment and gender-based violence specifically aimed at engaging boys and young men).
5. Women have historically been more likely to support parties of the right than men, due to their greater religiosity and lower exposure to the social institutions of the left.
6. Given that parties on the right of the political spectrum have typically been more sceptical, if not outright hostile, towards proactive gender equality policies, progress has been slow.
7. Even with political parties now endorsing policies and practices designed to address gender inequalities in representation, the effectiveness of such policies and practices is often undermined due to structural barriers.
8. A characteristic example is the considerable difference in the gender balance of Labour and Conservative Members of Parliament, with the latter consistently nominating their women candidates in less promising constituencies.
9. Current framing of VAW is shaped by significant socio-political factors, including the emerging gender divide in young people's attitudes to masculinity and women's equality, and the polarisation of the current discourse around sex, gender, and gender identities.

## II. Actions needed/recommendations

1. **Affirm political/governmental commitment to gender equality in central political institutions, especially through aiming for a more gender sensitive parliament:**
  - a. Adopt Open House report key recommendations for a more gender sensitive parliament across five key areas (equal representation; support for Members of Parliament (MPs) who are parents, carers, disabled or have long-term health conditions; a gender and diversity sensitive working environment; and transforming culture and behaviour in order to address bullying, harassment, and sexual misconduct).
  - b. Consider adopting tools and instruments that have been adopted in other jurisdictions. (e.g. training provision to Members of Parliament on leadership, public speaking, media training, parliamentary procedure, gender sensitivity, gender budgeting or gender-sensitive public consultations and media interviews).

**2. Address gaps in gender equality protection, and reinforce and expand the use mechanisms with a track record of success:**

- a. Strengthen the Public Sector Equality Duty and ensure it has measurable, practical effects.
- b. Strengthen the protection from intersectional discrimination, at the first instance through the entry into force of s. 14 Equality Act 2010 on combined discrimination.
- c. Consider use of positive action in areas of the public sphere (outside elections) encourage its use in the private sector taking account of an intersectional perspective.
- d. Further reinforce the role of the Women and Equalities Committee.
- e. Expand the use of schemes for reporting and holding perpetrators accountable for abuse, harassment and bullying in the public sphere (as per the scheme currently used in the House of Commons).
- f. Expand the use of policies and schemes designed to secure work-life balance for women leaders in the public sphere (e.g. proxy voting scheme for MPs on baby leave, additional Independent Parliamentary Standards Authority funding for staff to cover MPs constituency work while caring for a new-born).
- g. Actively encourage companies to sign up to sectoral instruments on gender equality (e.g. Tech Talent Charter; Athena Swan).

**3. Address violence against women in all its forms as a matter of priority:**

- a. Invest in comprehensive data collection, implementation, and monitoring of the government's commitments under the Istanbul Convention
- b. Remove the reservation for article 59 of the Istanbul Convention, which sets out state obligations to provide protection to migrant women.
- c. Move to an affirmative consent model in the definition of rape.
- d. Adopt the recommendations of the Domestic Abuse Commissioner's Safety Before Status report.

## 2. Introduction

The country reports on gendered law- and policymaking are part of RE-WIRING's Work package 2 on Laws and Policies: Enhancing Women's Voice, Agency and Decision-making Power. This work package focuses on the institutional dimension of ensuring a transformative equality approach. Specifically, its objectives are the generation of a detailed understanding of the gendered nature and gender-blindness of law- and policymaking processes, by establishing root causes thereof in the countries under study and investigating how these can be effectively overcome. It also comprises the identification of key legislation and policies regarding representation of women in decision-making and gender-based violence, as these two issues impact women's position in politics and therewith also the role they (can) play in de-gendering law- and policymaking processes. While women are still underrepresented in – public as well as private – power positions, in more recent years it has appeared that both online and offline violence against women and hate speech is a strong disincentive for them to enter or remain in politics.<sup>1</sup> The work package also aims at the identification of both organizational constraints and incentives to giving women voice and agency, as well as key indicators of gender-transformative approaches and good practices that may be inferred from this.

To these ends, this paper provides a country-level systematic review of the recognition and framing of the problem of gendered law- and policymaking in the countries under study and how this is being addressed by laws, rules and policies, both at the national general level and in the specific domains of gender-based violence (GBV) and representation of women in decision-making. It needs to be seen in connection with deliverable D.2.1 on the identification of effective transformative equality processes towards leadership positions and deliverable D.2.3, which provides the comparative analysis of the country reports and that zooms in on the root causes of gendered law- and policymaking processes and their effective tackling. Importantly so, we wish to establish to what extent some countries are already moving towards a transformative approach in their law- and policymaking processes or not for that matter, and to what extent this is subject of societal, political and/or academic debate at all.

This paper will proceed as follows. In section 3, the research approach underlying the country reports will be detailed. Next, in section 4 the country reports are presented in chronological order: Belgium (A); the Netherlands (B), Poland (C), South-Africa (D), Spain (E), the UK (F).

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<sup>1</sup> Women in politics and in the public discourse: What role can national Parliaments play in combating the increasing level of harassment and hate speech towards female politicians and parliamentarians? Background document for the European Conference of Presidents of Parliament (2019) <http://www.assembly.coe.int/LifeRay/APCE/pdf/ConfPres/2019Strasbourg/20191024-WomenPolitics-EN.pdf> accessed 1 July 2024.

### 3. Research approach

In the development of the country reports and in the identification of the key findings, we have proceeded on the basis of a questionnaire (see the Annex to this paper) that has taken its lead from three different approaches.

First of all, it has drawn inspiration from the Gender Equality Continuum Tool (GECT), established by the Interagency Gender Working Group (IGWG)<sup>2</sup> which has provided a helpful diagnostic tool and scale for the identification of institutional gender gaps. It does so in particular by distinguishing the nature and different levels of gendered-ness that law- and policymaking processes can take, both in a negative and positive way. As such, it is more nuanced than other approaches,<sup>3</sup> by distinguishing between **gender-blind and gender-awareness as the two major categories** and then identifying three different levels of gender-awareness. At the negative extreme, laws and policies can be framed in a **gender-exploitative** way by confirming and reinforcing existing gender stereotypes instead of combating these, while at the positive end of the spectrum one may find gender-responsive laws and policies that are fundamentally geared towards combating and eradicating such stereotypes and that can therefore be qualified as **gender-transformative**. In the middle, one can find deliberately framed **gender-accommodating** policies because of considering gender differences not relevant (enough) and a ground for taking a gender-responsive approach.

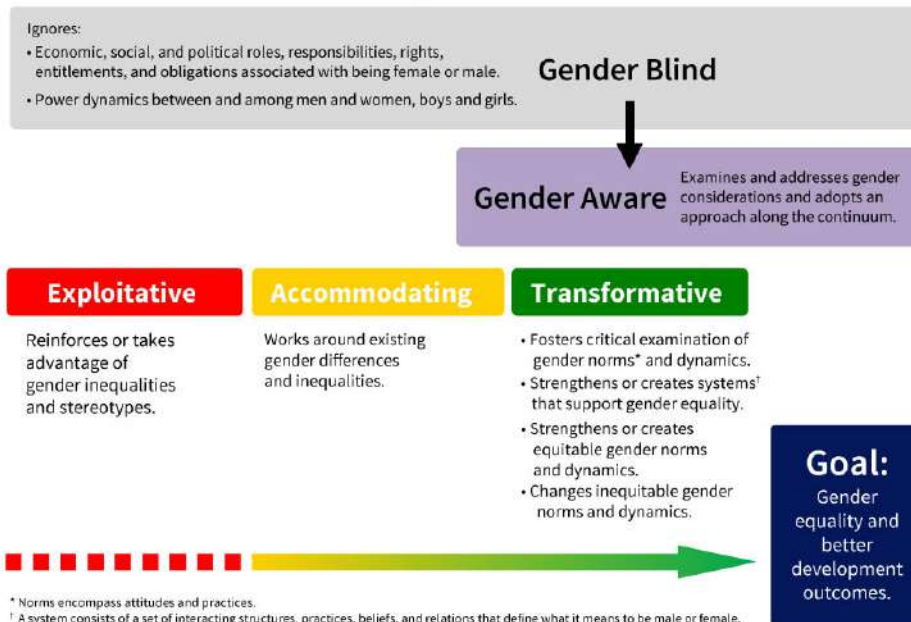
Considering the GECT in connection with other approaches and terminology used to describe and analyse the genderedness of laws and policies, one can consider gender-awareness and gender-responsiveness as being similar terms, even though the latter one is usually only referring to positive approaches. Yet, in and of itself 'responsiveness' could also take a negative/exploitative meaning and as such we see this term more as an overarching and general one, equal to 'awareness'. We also consider that 'gender-neutral' and 'gender-accommodating' are like terms, denoting the same phenomenon. **Gender-sensitive** approaches are not as such distinguished as a separate category in the GECT, yet we deem that these should be singled out as well, as they can be located in-between gender-accommodating and gender-transformative approaches. In particular, gender-sensitive approaches can be seen as less far-reaching for being geared towards eliminating inequalities but not as such towards examining and changing gender norms and stereotypes, tackling cultural values and unequal power structures underlying such gender inequalities.<sup>4</sup>

<sup>2</sup> The IGWG, established in 1997, is a network of multiple nongovernmental organizations, the United States Agency for International Development (USAID), cooperating agencies, and the Bureau for Global Health of USAID.

<sup>3</sup> That merely distinguish between gender neutral/blind, gender-responsive/sensitive, and gender-transformative.

<sup>4</sup> As framed by EIGE, gender-sensitivity concerns "the aim of understanding and taking into account of the societal and cultural factors involved in the gender-based exclusion and discrimination in the most diverse

## Gender Integration Continuum



Source: Interagency Gender Working Group, 2009; updated 2019.

spheres of public and private life” and as “policies that take into account the particularities pertaining to the lives of both women and men, while aiming at eliminating inequalities and promoting an equal distribution of resources, addressing and taking into account the gender dimension.”

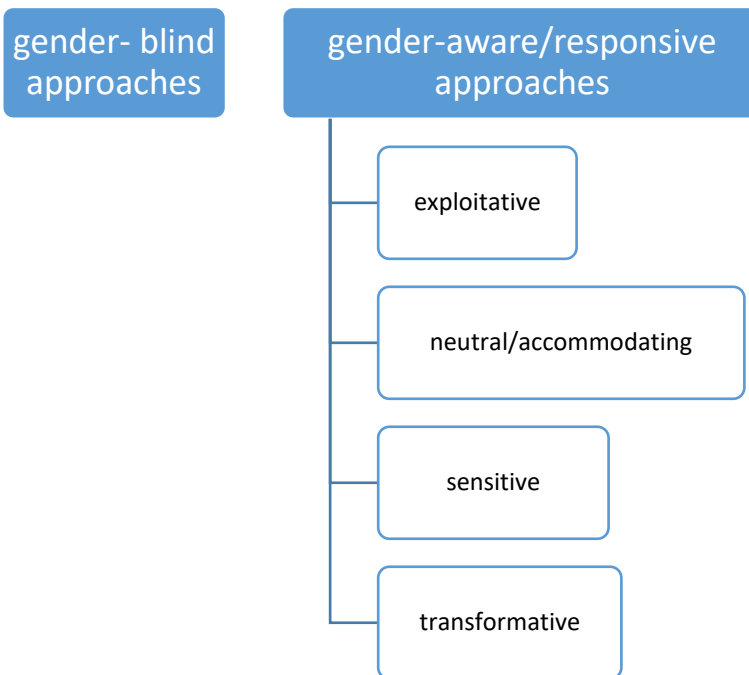
European Institute for Gender Equality, 'Equality bodies' (European Institute for Gender Equality, 2022) [https://eige.europa.eu/publications-resources/thesaurus/terms/1324?language\\_content\\_entity=en](https://eige.europa.eu/publications-resources/thesaurus/terms/1324?language_content_entity=en) accessed 1 July 2024.

European Commission (1998). 100 Words for Equality: A Glossary of Terms on Equality between Women and Men.



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The CEGT has been taken on board in the questionnaire with a view to being able to assess and classify the gendered-ness of national approaches and laws and policies applied at the general law- and policymaking level, but also to analyse two topical legislative cases; the first one relates to gender-based violence and the second one to women's representation in leadership positions (connected to the laws and policies identified already for D.2.1.).

Secondly, the questionnaire builds upon the important academic work of Carol Bacchi and of Rikki Holtmaat, who both developed practical research approaches grounded in feminist political respectively legal theory for a deeper analysis and understanding of the law and policy solutions that are adopted to address gender inequality, and the social and political factors that determine such choices. The formulation of the questions in the questionnaire have thus been inspired by Carol Bacchi's 'what's the problem represented to be' approach (2012), combined with questions from Rikki Holtmaat's 'towards a different law' approach (2004).

To establish whether damaging negative gender stereotypes lie at the basis of a particular policy area of law, Holtmaat proposed a methodology based on a two-level analysis, focusing on **the context (first order analysis) and the assumptions underlying a law/policy (second order analysis)**.<sup>5</sup> The context refers to the structure of the policy field or field of legislation and the way this field interacts with the wider society and politics (e.g. relationships of power between government and social partners, role of advisory committees in

<sup>5</sup> Rikki Holtmaat, 'Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination' (2004)



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policy making, structure of social services into which these arrangements must fit). Second order analysis is about the social structure in which policy and law is constructed and the contribution that policy or law makes to the functioning of this structure. The second order analysis looks at the power of law and its legal frameworks, its classifications (e.g. male citizen, worker, etc.), the presentation of men and women into fixed categories, and the law's tendency to present a male standard as neutral, etc. While such analysis would provide deeper legal analysis into the topic of gendered law- and policymaking, it would have required more extensive research and leave outside essential aspects that need addressing (e.g. actors involved, factors that lead to policy outcomes, etc.). As a result, while the responses to the questionnaire touch upon second order issues, the **questionnaire privileged the first order analysis**, seeking to grasp all those aspects that contribute to an understanding of how the policy outcome came about, starting from the problem representation, and delving into the actors involved in shaping the 'narrative', or challenging it with opposing ones, what social and political factors accompanied its adoption, etc.

This approach very much resonates with Bacchi's concept of 'problematization', a way of exposing the contingency of policy choices, letting their hidden assumptions emerge, and critically discuss them. Bacchi understands that laws and policies (as well as other propositions) "contain implicit representations of what is considered to be the 'problem' ('problem representations')".<sup>6</sup> A classic example is the introduction of training to improve women's employability and career opportunities. Such policy solution implies that their lack of training is the 'problem', responsible for 'holding them back'. By studying problematizations, we explore how policies create problems, and define what aspects are relevant or not, etc. A set of six questions constitute the WPR approach (Bacchi, 2012):<sup>7</sup>

1. What's the 'problem' (for example, of 'problem gamblers', 'drug use/abuse', 'gender inequality', 'domestic violence', 'global warming', 'sexual harassment', etc.) represented to be in a specific policy or policy proposal?
2. What presuppositions or assumptions underpin this representation of the 'problem'?
3. How has this representation of the 'problem' come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5. What effects are produced by this representation of the 'problem'?
6. How/where has this representation of the 'problem' been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?

For the purposes of our questionnaire, these questions were condensed into few general inquiries about:

<sup>6</sup> C Bacchi, *Analysing Policy* (Pearson Higher Education AU, 2009).

<sup>7</sup> Carol Bacchi, 'Introducing the 'What's the Problem Represented to be?' approach' in Alex Bletsas & Chris Beasley, *Engaging with Carol Bacchi: Strategic Interventions and Exchanges* (The University of Adelaide Press, 2012) 21-24



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- a) problematization of gendered law- and policymaking as such (in general and with regard to two specific policy areas: GBV and representation);
  - b) the actors/stakeholders involved in challenging gendered law and policymaking (both institutional actors, CSOs, etc.);
  - c) the social and political context in which such problematization(s) comes about.

In the third step, we have applied the RE-WIRING research and methodology template with a view to identifying in the executive summary the key findings of the country reports along the axis of its three main levels of analysis: recognition and diagnosis; gaps; and actions. These are the building blocks for the more in-depth comparative analysis in deliverable D.2.3, with a view to the identification of the actions and recommendations that would meet the RE-WIRING benchmarks for effective transformative equality.

## 4. Country reports

### 4.1 Belgium

#### A. General Framework

1. **Is gendered law/policymaking recognized as a problem in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?**

The *Belgian State* has demonstrated a longstanding commitment to advancing gender equality through comprehensive policy measures. This commitment has intensified as a result of the World Conference on Women in Beijing from 4-14 September 1995. The law of 6 March 1996 aimed at monitoring the application of this Conference's resolutions. In 2007, two new laws were enacted replacing this law of 1996. The first law is the Gender Act which plays a crucial role in regulating gender-related policies at the federal level. Aligned with European Union directives, the Gender Act combats discrimination based on various grounds, including gender, gender identity, and pregnancy. The second law is the *Gender Mainstreaming Law*. This law "aimed at monitoring the application of the resolutions from the world conference on women held in Beijing in September 1995 and especially over the integration of the gender perspective into the whole of its policies, measures, budgetary preparations and actions in order to avoid or correct inequalities between women and men." This Law is a pivotal piece of legislation mandating gender mainstreaming at the federal level, while similar obligations or mechanisms are also in place at regional and community levels. *Importantly, this law also entails a legal obligation for each new federal government to define its strategic objectives in this regard.*

Belgium has adopted a Federal Plan on Gender Mainstreaming in 2012, subsequently renewed twice, with the latest edition spanning 2020-2024. These laws and the federal plan show Belgium's commitment to degendering law- and policymaking processes.

The legal framework takes steps toward redressing gender imbalances through mechanisms like gender impact assessments and budgeting. The implementation of mandatory 'gender tests' for all laws and regulation, shows a systematic consideration of their possible gender impact and the requirement for gender budgeting further enhances responsiveness by integrating a gender perspective into the preparatory work on budgets. While Belgium shows recognition and takes action, the absence of a federal strategy or action plan specifically for gender equality limits the transformative potential of the legal framework. A more comprehensive and strategic approach could elevate Belgium's standing on the Gender Equality Continuum.

Pursuant to the recent evaluation of Belgian policy in light of the 1995 Beijing Conference, it has also been recognised that to 'the strengthen the dynamics of gender mainstreaming', it is necessary to adopt the following two innovations. Firstly, it is chosen now for a systemic interpretation of inequalities, driven by the consideration that the power relations between men and women are structurally and historically anchored in society. Secondly, gender mainstreaming needs to take into account different forms of inequality and therefore it needs to be combined with an intersectional perspective. Intersectionality is seen as an instrument that casts light on the multiple effects of

systemic discrimination that not only connects to sexism, but also racism, classism, homophobia, transphobia etc.

The *Belgian Institute for the Equality of Women and Men* captures gendered law- and policymaking under the concept of gender mainstreaming, in its Manual for the application of gender mainstreaming within the Belgian federal administration. There it is stated that:

“gender mainstreaming is an approach that assumes that all persons involved in the definition and implementation of policies think in advance about the goal of equality between women and men. This thought process consists in questioning and taking into account the potentially disparate effects of any policy on either of the two sexes, and determining if the policy under consideration is likely to reinforce or on the contrary reduce equality between women and men. Gender mainstreaming must become an acquired automatic response, a reflex that must incite everyone to take the influence and possible impacts of the policy on socio-economic differences among men and women into account.

Gender mainstreaming concerns:

- all political areas (e.g. Employment, Social Affairs, Finances, Health, Mobility, Justice, etc.);
- internal public activities (management plans, administrative contracts, personnel management, public procurement, subsidies, etc.);
- external public activities (legislation, political measures, citizen services, etc.);
- all persons involved in the definition and implementation of federal public policies (federal political representatives, federal civil servants, members of strategic units);
- all phases of decision-making (preparation, decision, implementation, evaluation).”

*Belgian academia* also shows concern about the genderedness of law- and policymaking processes. Gender mainstreaming policy appears to be less effective than expected and the Gender Mainstreaming Act in Belgium has been critiqued in research. Gender mainstreaming should address the traditional gender roles and masculine standards within society, but the formulation of gender mainstreaming initiatives in Belgium has been said to reveal a strong tendency to reduce gender equality policies to a formalistic exercise. People involved within the law- and policymaking processes thus do not seem to use the gender tests as a procedure to work on effective gender equality within their law or policy domain. Rather, they appear to experience them only as formal requirements which must be met without real concern for the policy objectives. The implication that law- and policymaking processes are rational processes in which people will fully integrate a gender perspective when asked, seems to be one of the reasons for the ineffectiveness of the mainstreaming policy. The conclusion of this research is that law- and policymakers should be made more aware of the purpose of the integration of a gender perspective within law- and policymaking processes, in order to reach gender equality through these laws and policies. Other Belgian research also addresses the need for a gender perspective specifically within Belgian aid and health policies.

*Women’s organisations* highlight the problem of gender inequalities in Belgium. RoSa has been the centre of expertise for information on women’s rights, feminism and gender in Flanders. This institute distributes knowledge on gender inequalities with the mission to improve the gender awareness in Belgium and hereby reduce the inequalities between men and women. In doing this, RoSa advocates gender-sensitive policy making. Gender-sensitivity is seen as something which induces recognition for the fact that norms, ideas and expectations about men and women impact our actions and

interactions with others. RoSa suggests we move further than gender-sensitive thinking and start moving towards gender-conscious thinking in which we do not only acknowledge these gender stereotypes and discrimination, but also consciously and actively fight and correct these inequalities. The last step would be towards gender-transformative thinking; within this kind of thinking we would still actively fight and correct gender stereotypes and discrimination, but we would also pay attention to how stereotypes come to persist in the first place and how these power structures can be transformed.

RoSa works together with an organisation named Zijn. This partnership between these two non-profit organisations is named The MoveMen platform and is committed to gender justice in Belgium, which sensitises and informs citizens about the harmful views of masculinity and gender stereotypes. They focus on how these views relate to gender(in)equalities in different fields and highlight the fact that gender inequality is not just a woman's problem, but also a men's one.

**2. Who are the key actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.) involved in de-gendering law- and policy making in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?**

Belgium has established a comprehensive framework for promoting gender equality through various governmental bodies, legislation, and consultations with civil society. Because of Belgium's complex regional and federal structure, regions and communities have their own gender equality bodies and policies, operating within their legal competence.

At the federal level, it follows from the Gender Mainstreaming Law that “the *government* is the most responsible party for the implementation of an efficient gender mainstreaming policy.” But also the Ministers have a very important role to play in this regard. The ‘gender test’ is the most specific intervention tool that has been devised for the degendering of law- and policymaking (further under question 3). Importantly also, there is the *Interdepartmental Coordination Group* (ICG) which oversees the Federal Plan on Gender Mainstreaming, involving representatives from different backgrounds. This is an important institutional mechanism that provides a platform for coordinated action also when it comes to the degendering of law- and policymaking. *Civil society, including women's organisations and feminist associations*, actively participate in consultations with authorities, contributing to the development of policies such as the Federal Plan on Gender Mainstreaming.

Another relevant actor is the *Commission of Health and Equal Opportunities*, which is the parliamentary body responsible for gender equality legislation. It discusses, reviews and votes on bills and proposals related to women's rights and gender equality. The *Council for Equal Opportunities between Men and Women*, established in 1993, acts as an advisory body to ministries and other public bodies, by producing reports and conducting research on equal opportunity policies. Three councils—the *Federal Council for Equal Opportunities between Men and Women*, the *Walloon Council for Equality between Men and Women*, and the *Brussels Council of Equality between Women and Men*—are actively engaged in gender equality issues. These are advisory bodies overseeing and reviewing the making and implementation of the gender mainstreaming law to ensure equality for men and women. *Social partners* are formally involved through the Federal Council for Equal Opportunities and participate in one-off projects. The *Gender and Development Advisory Council* provides expertise, debate, and advice on gender mainstreaming in development cooperation.

The *Institute for Equality between Women and Men* (IEWM), founded in 2002, operates as a semi-independent equality body with a specific focus on gender-related issues. The fact that Belgium has a (semi-)independent gender equality body solely focusing on gender equality and carrying out relevant functions shows commitment to the promotion of gender equality. The IEWM coordinates efforts against gender-based violence, implements gender mainstreaming at the federal level, and monitors equality policies in employment and decision-making. This Institute researches gender equality in Belgium, evaluates laws and policies by taking a gender-perspective, gives advice based on these evaluations, supports organisations or projects within the field of gender equality, and deals with cases when they conflict with gender equality laws. The IEWM also serves as the permanent independent body, providing reports on gender discrimination and collaborating with various entities, including the French Community, Walloon Region, Brussels-Capital Region, and German-speaking Community.

The Urban Engaged University in Brussels (VUB) also researches gender equality. They do this not only at the individual level, but also at the systemic level. They emphasise the need for change for an inclusive and equal society. A research group within the VUB is the RHEA, which specifically researches gender, diversity and intersectionality showing the importance of looking at the interaction of gender inequality with other characteristics like ethnicity, age, religion, social status etc. The VUB was the first academic centre for women's studies in Belgium.

**3. What specific measures or instruments have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA),<sup>3</sup> and who was involved in their adoption, implementation, and monitoring?**

**Are there studies or evidence on the effectiveness of tools or measures in your country aimed at preventing or addressing gendered law/policymaking?**

**Can you also give some successful examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?**

Belgium has implemented a comprehensive approach to prevent gendered law and policymaking, which is further evidenced by the adoption of the *Federal Plan on Gender Mainstreaming*. This plan was first introduced in 2012 as a result of the objective outlined in the Gender Mainstreaming Act; the integration of a gender perspective within law- and policymaking processes. This entails first of all that Belgium places a strong emphasis on *gender statistics*, as required by the Gender Mainstreaming Act. Gender statistics are deemed important in Belgium as they can underscore the significance of taking gender into account on various issues. An overview of the effects gender can have in different domains can help reveal existing inequalities which need to be addressed by laws or policies. The Gender Mainstreaming Act mandates federal agencies to produce, collect, and order statistics disaggregated by sex. The IEWM's report, 'Women and Men in Belgium: Statistics and gender indicators,' provides a comprehensive overview of gender indicators, contributing to evidence-based policymaking. The Belgium Statistical office 'Statbel' gathers information on Belgian citizens regarding different themes, including gender equality. They research the gender wage gap, the work-household task division in Belgian households and women in leadership/decision-making



positions. Although gender-related statistics are regularly disseminated through the IEWM, challenges exist in consolidating these statistics on a dedicated platform.

The Gender Mainstreaming Plan, now in its third edition (2020-2024), outlines objectives such as implementing gender mainstreaming, considering the gender dimension in policy preparation and execution, and paying attention to the *Regulatory Impact Analysis* (RIA) as a tool for administrative simplification.

Each edition of this plan aimed to help with the integration of a gender perspective within laws and policies by going through the following phases:

- Analysing the target audience for laws and policies and establishing whether within this target audience there are existing differences between the situations of men and women;
- Establishing the extent in which these differences are problematic;
- Establishing laws and policies which take the results from the gender tests into account and avoid or correct the possible inequalities.

The commitment to gender mainstreaming being enshrined within the law, has appeared to have led to a coherent plan on how to tackle gendered law- and policymaking processes. The Gender Mainstreaming Act could therefore be seen as a measure to prevent this genderedness. Importantly, the IEWM has developed *a manual and checklist on gender mainstreaming*.

The Gender Mainstreaming Act also mandates *ex-ante gender impact assessments, known as 'gender tests,'* for all laws and regulations. This legal obligation, reinforced by the Regulatory Impact Assessment (RIA) law and by a Royal Decree adopted on 21 December 2013, ensures that gender perspectives are considered in the formulation of policies presented to the Council of Ministers, fostering administrative simplification and improving the quality of government regulations. These gender tests consist of five open-ended questions to help law- and policymakers envision the impact a law could have on the situation of men and women. These questions are:

1. On whom does the draft have an impact (directly or indirectly) and what is the composition of this group(s) of persons, broken down by gender?
2. Identify any differences in the respective situations of women and men within the subject matter to which the draft regulation relates.
3. Do any of these differences restrict access to resources or the exercise of fundamental rights of women or men (problematic differences)?
4. Identify the positive and negative impact of the draft on equality between women and men, taking into account the previous answers?
5. What measures are being taken to alleviate/compensate for the negative impact?

To ensure the RIA's are of good quality and to reduce the risk of superficial and minimalistic interpretation, RIA's are externally reviewed and published.

The country has also embraced *gender budgeting* as a legal obligation under the Gender Mainstreaming Law. This requires a gender note to be prepared during the budgetary process, enumerating allocations aimed at promoting gender equality. In the words of the the IEWM manual on gender mainstreaming, "gender budgeting looks at whether socio-economic realities of women

and men are taken into account in the distribution of financial resources and means; the (possible) impact on the socio-economic situation of women and men (reduction or reinforcement of inequalities between the sexes) of the money invested in public policies.” The Circular on Gender Budgeting, implemented in 2010, categorises budgetary allocations, with specific attention to gender dimensions, ensuring that funds targeting equality are subject to a 'gender comment.' This practice enhances accountability and evaluation, making gender budgeting a crucial tool for gender mainstreaming. Research confirms that gender budgeting is useful and points out the strength of a gender budgeting initiative being underpinned by the law. Research on Gender Budgeting in Europe shows that Belgium's gender budgeting has a positive effect on policy development and resource allocation. Because gender budgeting is underpinned by the law, the gender perspective becomes a routine in the aspects of budget formulation, execution and audit. However this progress is still sector-specific and mainly in the fields of education, the labour market, income inequality, welfare, childcare and family care, citizen security, health, and foreign and development policy. This could be an indication of law- and policymakers not recognising the importance of the gender perspective within specific fields, due to not understanding the link their law or policy can have with gender inequalities.

Belgium also emphasises *training and awareness-raising* as key elements in its strategy to prevent gendered law and policymaking. The Federal Plan on Gender Mainstreaming includes the organisation of gender mainstreaming training within strategic units, although participation remains voluntary. The Institute for Equality between Women and Men (IEWM) states it is important that all people who are willing to commit to gender mainstreaming, have the opportunity to be educated on the basic principles of the concept of gender and gender mainstreaming. This training should focus on people within the processes of degendering laws and policies, but also on people responsible for this in the first place (see under question 2). The goal is not to turn these people into experts, but to make them aware of and (re)activate them to gender issues and enable them also to execute adequate gender tests. The IEWM distinguishes three kinds of training:

1. A training on the concept of gender and the inequalities between men and women: this training encourages people to think about their prejudices, stereotypes and attitudes within their conception of men and women and about the degree to which they agree with the principle of equality and to which they act accordingly. The goal is to foster awareness through the cognitive dimension (knowledge), the affective dimension (emotions and feelings), and a conative dimension (encouraging action).
2. Training on gender mainstreaming: a very methodological training on how to integrate a gender perspective;
3. Training on the importance of a gender perspective within specific themes: gender and public finance, gender and health, gender and development.

The IEWM has already conducted numerous of these training courses on gender equality, addressing discrimination and sexism, and providing valuable insights to high-level institutional and governmental staff.

### Effectiveness studies and concerns

Research states that gender equality training should be mandatory in order to reach everybody. However, other research mentions that mandatory gender equality training could cause backlash. Compulsory training appears to trigger the unconscious mind causing the experience to be seen as



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a confrontation and thereby reinforcing existing biases and undermining the training effort. This begs the question as to how to reach people who are not inclined to go to voluntary training sessions, because they are not aware that there is a problem needed solving. A possible way to do this could be through mandatory experiential learning sessions. Experiential learning has appeared to be a powerful process to raise awareness about gender inequalities in a non threatening way. Purely learning about these inequalities does not seem sufficient, people have to link the knowledge to their own experiences and feel as if they could act on that knowledge.

Research has also shown that RIA's are generally poorly executed. They appear to be superficial; most of them just state that the given law or policy does not differentiate between men and women or will treat men and women equally, without an actual assessment of the impact the law or policy could have. This indicates that law- and policymakers often do not see the necessity of a gender perspective and only fill out the RIA's as a formality.

A 2023 report on evaluating Belgium's progress and actions in light of the Beijing Platform of Action of 1995 has also revealed that only seven of the eighteen federal administrations who are part of the Interdepartmental Cooperation Group have signalled no difficulties regarding their implementation of gender mainstreaming laws and policies. The other eleven administrations have signalled various difficulties:

- the lack of a structurally enshrined gender mainstreaming approach through strategic policy instruments and hierarchical support;
- the high workload and the lack of time and personnel to implement gender mainstreaming laws and policies;
- the lack of possibilities with regard to internal organisation needed for this implementation (clear procedures, coordination between services);
- difficulties with clarifying the meaning of gender mainstreaming and with separating it from personnel policy, diversity policy or specific actions;
- the need for education to operationalise the gender mainstreaming approach;
- the necessity to focus on the integration of a gender dimension within policy lines in which the dimension is relatively obvious;
- the fact that there are multiple diversity plans which vary in their reporting mechanisms leading to complexity;
- the particularly complicated political context.

This report also underlines the importance of the training courses on gender mainstreaming organised in all policy units. While this education is useful as it raises awareness about gender inequalities and on the relevance of gender mainstreaming, it is not considered sufficient for the implementation of the gender mainstreaming approach within law- and policymaking processes. The IEWM therefore prefers direct contact with various actors within these processes, which would offer the opportunity for building experience with its implementation and for giving feedback.

The importance of political support for gender equality and gender mainstreaming is underscored as well, to provide the political and administrative coordinators the time and hierarchical support in order to let them carry out their tasks. Ideally, this would take shape in the creation of internal coordination



structures, composed of people from the various services with clear tasks in relation to the implementation of the Gender Mainstreaming Act of 2007. The implementation of a gender perspective within law- and policymaking processes requires expertise on a multitude of topics and political support has led already to more human resources within the IEWM.

**4. To what extent does the social and political context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality in legal frameworks?**

Historically, Catholicism has been Belgium's majority religion. The *Catholic church was opposed to the first-wave feminist movement*, causing people from Belgium to become less accommodated to the idea of gender equality before the second-wave than protestant countries. However, even though the country initially had a slow start in the race for gender equality (e.g. being late with introducing women's rights), Belgium is now part of the countries with a high gender equality score.

The *complex political organisational structure*, with both federal and federated authorities responsible for gender equality policies, adds intricacies to the Belgian context. Communities and regions possess legal power and competence comparable to the federal authority, resulting in independent gender equality bodies and gender mainstreaming strategies at different governance levels.

Belgium's approach to addressing gendered law- and policymaking is shaped by its *extensive policy experience* in gender equality, spanning several decades and the *enactment of legal measures* since the 1980s to promote gender equality and equal opportunities, both at the federal and regional levels and across public and private sectors. Belgium's constitutional amendment in February 2002 affirmed the principle of equality between women and men. This legal foundation, along with subsequent laws and plans, reflects the country's commitment to addressing gender inequality through a comprehensive and structured approach. The *Beijing Platform for Action (1995)* strongly influenced the development of the legal framework for gender mainstreaming at the federal level in Belgium and culminated in the Gender Mainstreaming Law of 2007. This law, alongside the Gender Act adopted in the same year, acts as a crucial legislative foundation in combating discrimination between women and men. The Gender Act explicitly prohibits various forms of discrimination based on gender, gender identity, gender expression, pregnancy, childbirth, and motherhood.

Another example is the adoption of legislative gender quotas for all parties in elections and on all levels of government in 1994. Belgium was the first country to implement these quotas. *Belgium's features of the electoral system, models of citizenship and models of political representation* played an important role in legitimising claims for gender quotas and a parity clause. However, these institutional factors were not sufficient for the adoption of the gender quotas or the parity clause. Without *civil society*, including the women's movement or political women's groups, issues regarding

gender inequality would have been less likely seen as an issue in need of policy. These women's organisations have played a significant role in consultations with authorities. The involvement of these groups in the development of policies, such as the Federal Plan on Gender Mainstreaming and the Action Plan to Combat Gender-based Violence, highlights a *collaborative and consultative approach*. It shows that the interplay between the experiential level and the institutional level is important; women sharing their experience and fighting for equal rights together with certain institutional features created a window of opportunity allowing these gender equality issues on the political agenda.

While Belgium has made notable progress in its legal and policy framework for gender equality, challenges remain in achieving a fully joined-up approach due to the complexities of federal and regional relationships. This complexity has influenced the development of gender mainstreaming strategies independently across regions and communities.

Importantly, the IEWM evaluation report of 2023 on the implementation of the Beijing Platform 1995 (see also question 3) has revealed that a big hurdle for future progress of degendering laws and policies is *the return of a more conservative cultural and religious tradition*. The conservative turn leads to a decrease in finance and attention for organisations, laws, and policies regarding gender equality. Even though the current government wants to develop laws and policies within this field, a majority within parliament but also part of civil society, resist these laws and policies. Specific hurdles mentioned in this report are:

- this conservatism leading to slow implementation of laws and policies down, as it causes political difficulties in getting a structural reform approved and results in a lack of human or financial resources which are needed to implement these laws and policies. Besides, the lack of awareness also seems to influence the effectiveness of the laws and policies.
- even though the gender perspective might not be needed in every aspect of the law- and policymaking processes (like within the technical aspects), it is important to not dismiss certain parts without a proper assessment. Applying a gender dimension within law- and policymaking processes remains a process which is not self-evident. More expertise is needed in order to point out the gender perspective is useful, maybe mostly so in fields it was priorly not regarded as such.

According to this report, these hurdles underline the importance of a permanent education on gender and the importance of the integration of a gender perspective within law- and policymaking processes. This way the concept of and importance of a gender perspective can be understood and integrated and implemented. Also, Belgium should take action and promote transformative manlihood; societal norms have to be changed as gender stereotypes appear to be a strong underlying cause of gender inequalities. The underrepresentation of women in decision making positions, their lower position in the labour market, gender based violence are all effects of societal norms and expectations of men and women

**5. Does the identified law or policy embrace gender-neutral or gender-sensitive language?**

Belgium has made efforts to embrace gender-neutral and gender-sensitive language within its legal and policy framework. The commitment to gender-neutral communication is evident in Belgium's efforts to develop tools for gender-neutral communications. The FPS Chancellery of the Prime Minister, responsible for the federal government's external communication, prioritises gender considerations in communiqués. This demonstrates a commitment to using inclusive language and avoiding gender-specific stereotypes in official communications.

Additionally, the IEWM has published a Practical Guide on Gender-Sensitive Communication; 'Integrating the gender dimension into federal communication,' offering practical insights into gender-sensitive communication practices. It signifies an effort to provide guidelines and promote the use of language that is free from gender bias. Gendered languages can shape people's perceptions and by making these languages more gender-neutral, it can have an impact on the treatment of men and women at an interpersonal level. Findings even suggest a relationship between the gendering of language at the macro level and macro level indicators of gender equality. This means that a gendered language has the ability to shape the perception of people and influence their judgements, decisions and behaviour in such a way that this in turn influences the gendered hierarchies between men and women at an interpersonal level. This gendered language therefore reinforces inequalities within a society causing it to be a predictor of the level of gender inequality within that society at the macro level. Multiple ministries have committed to integrating the gender-dimension in their policies, and are held accountable through regular assessments and evaluations. A gender-sensitive language can therefore be seen as an important step towards gender equality.

The Belgium Women's Institute RoSa sees the use of gender-sensitive language as an important step towards transformative change. This institute advocates for more than just the use of gender-neutral language because of the importance of the societal context. Language shapes and is shaped by social reality and can therefore not be seen as separate from social norms and expectations about gender. It is important to take the persisting power structures into account when formulating policies and not pretend these are non-existent.

**6. Are there any specific legal mechanisms or provisions that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?**

Belgium has incorporated accountability mechanisms within its legislative framework to prevent gendered law- and policymaking. As mentioned under question 3, the law stipulates the mandatory implementation of an ex-ante gender impact assessment, commonly known as a "gender test," for all proposed laws and regulations. Even though these tests are mandatory, research shows they are less effective than expected. As priorly mentioned, the superficial answers to the questions within the gender tests expose how these tests are often merely seen as a formal requirement. There

appears to be a lack of awareness of how seemingly neutral laws and policies can reinforce gender inequalities and therefore a gender perspective is deemed unnecessary. Mandatory gender tests could be seen as a best practice, but it seems like they have to be backed up by awareness raising strategies or stronger mechanisms to ensure the gender tests are carried out more thoroughly.

**7. Can technology and data-driven approaches be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilising technology for this purpose?**

While specific examples of technology-driven initiatives to identify and rectify gender biases in laws and policies in Belgium are not explicitly outlined in the available information, the general concept of leveraging technology for gender impact assessments and policy analysis is applicable. Potential initiatives could involve automated text analysis tools for scrutinising legal texts, data-driven policy evaluations to assess gender-specific impacts, online platforms for inclusive public input, and the implementation of gender-disaggregated data systems. For accurate and up-to-date information on Belgium's initiatives in this regard, consulting relevant government agencies, non-governmental organisations, or research institutions specialising in gender equality is advisable.

## B. Violence against women and girls

- 1. How is the problem of VAW framed in your national legislation; what are the underlying assumptions? Is it recognised as a form of discrimination in your domestic legislation? And what societal and political factors have shaped this framing?**

Belgium frames the problem of Violence Against Women (VAW) within the legal and policy frameworks outlined by Directive 2012/29/EU. This Directive, officially titled the "Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime," sets forth comprehensive standards for the rights, support, and protection of crime victims, including victims of gender-based violence. Specifically, the Directive addresses issues such as access to information, support services, and protection measures for victims.

In the context of addressing gender-based violence, the Directive provides a definition that aligns with international standards, reflecting a commitment to a comprehensive understanding of the challenges faced by women. It is important to note that while Belgium incorporates this definition, there is no explicit recognition of gender-based violence against women as an equality or discrimination issue within the national legal framework.

The regulation for the prevention and fight against femicides and gender-related homicides has come into force October 1st in 2023, making headlines as it was the first of its kind in northern-Europe. The law was passed almost unanimously in parliament on June 23, 2023, with only the N-VA party abstaining from voting. The Institute for the equality of women and men (IEWM) will be collecting data to provide insights into the scope of the problem and its characteristics. Next to this, a scientific committee will be established in order to analyse femicide and gender-related killing.

In this law, the underlying assumptions on violence against women can be found throughout its provisions, but most notably in the chapter on the definitions. Its Article 4, sub 6 and 7 respectively include the definitions of gender-related violence and gender-related violence against women. Gender related violence is defined as 'any type of violence directed at a person because of their sex, gender identity or expression, or violence which disproportionately affects persons of a particular sex.' Gender related violence against women is 'any violence against a woman because she is a woman, or that disproportionately affects women.'

Thus, through both terms and this law as a whole, recognition is given to the fact that violence can be gender-related, and it is recognized that it is possible for violence to occur to women just because of their gender, and can disproportionately affect them as such. But there is no explicit recognition of GBVAW as an equality/discrimination issue.

As for the socio- and political factors that have shaped this framing, it is helpful to consider the resolution on the Belgian Senate on the ten-year anniversary of the Istanbul Convention in 2023. From this resolution, we can extract some of the factors that illustrate the context of the adoption of the Belgian law. It is reflected upon that girls and women have a greater risk of gender-related violence, that there was an increase in the violence against women during the COVID-19 pandemic, and that it is necessary for governments to protect the rights of women and girls. International influences were also brought to the attention, specifically the withdrawal of Turkey from the Istanbul Convention. Conservatism from European countries such as Poland was considered as well.

**2. To what extent do the laws and policies in your country adopt the transformative approach set out in the Istanbul Convention or that is similar to the IC? Where do you locate the VAW legislation of your country in the Gender Equality Continuum?**

In 2016, Belgium ratified the Istanbul Convention. Belgium has incorporated it into its national legal framework, one of the measures includes the National Action Plan to Combat Gender Based-Violence. In 2019, Belgium has submitted an official report to the Committee of the Parties to the Istanbul Convention (GREVIO) on the implementation of the IC. While GREVIO did acknowledge that significant progress had been made in Belgium in the prevention of VAW by reducing stereotypes in education and the workplace, the main recommendations to Belgium are indicative of the need to take further steps to ensure the transformative approach contained in the IC.

These recommendations have thus specifically referred to the need to ensure that adopted policies and measures take a gender perspective and recognise the historic link between violence against women and patriarchy. It has also noted that the gender-neutral wording used in titles of laws and action plans can cause structural gender factors to remain unnoticed. It has also emphasised the need to integrate a gender perspective into existing risk assessment and management procedures and to take account of intersectional discrimination. Furthermore, it has pointed to weaknesses in the domain of VAW that have also been flagged already under Part A here above: the need to ensure greater coherence of policies and measures at different levels of government; identification of the amounts and budget lines globally allocated to preventing and combating violence against women; the need to build on and give greater recognition and support to the specialised expertise of women's organisations and specialised support services; and the improvement of monitoring and evaluation of the policies and collection of all data.

The differences between the different country and community level policies and measures in the field of preventing and combating VAW contribute to fragmentation and impact on the quality of both the legal and institutional response to VAW. GREVIO suggests enhancing coordination between the bodies concerned to promote joint action against VAW. There has been progress in the awareness training programmes in Belgium, but these campaigns mainly focus on teaching people to recognise and respond to violence instead of aiming at changing the root causes of and attitudes causing VAW. This makes these campaigns secondary or even tertiary prevention campaigns, not primary.



Following gender-based violence plans adopted by regions and communities, a national action plan was adopted at federal level in 2021. This plan runs until 2025 and defines several priorities. To the extent relevant here, they include the adoption of a conceptual framework on gender-based violence; the conducting of an integrated policy bringing together all sectors and civil society in order to act together against gender-based violence and collect data to improve knowledge of GBV; the modernisation of criminal policy towards violence, with particular attention to the protection of the victim and recognition of the victim as such; ensuring that gender-based violence is taken into account in asylum and migration policy; and action against gender-based violence at the international level.

**3. Does your national law put lack of consent at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?**

Belgium's national law does consider lack of consent as a central element in the definition of sexual violence. Article 36 of the Belgian Penal Code addresses sexual assault, and consent is a crucial factor in determining whether an act constitutes a criminal offense. GREVIO commends the focus on the lack of a victim's consent within the definition. The Penal Code defines rape in the first paragraph of Article 375 as "any act of sexual penetration, of whatever nature and by whatever means, committed on a non-consenting person". Under the code, marital rape is deemed illegal as well. Children aged under 16 are considered unable to consent to any sexual act.

Violence, duress, threats and surprise are classified as lack of consent, however, these circumstances do not fully cover the essential elements of the offence. Moreover, legislation on sexual offences encompasses the crime of voyeurism (Article 371/1, paragraph 1, of the Criminal Code), which includes non-consensual sharing of intimate images or videos, especially in cases of post-relationship breakup. An amendment to Article 371/1, enacted on April 16, 2020, has further clarified the scope of this offence, explicitly addressing non-consensual dissemination of sexual content. This amendment establishes procedures for the removal and blocking of such content, imposing fines on service providers who fail to comply.

Additionally, it empowers relevant authorities to take legal action, with the consent of the victim or their representatives, against perpetrators of offences outlined in Articles 371/1 and 371/2 of the Criminal Code. The recent law of 16 April 2020 refined the wording of Article 371/1, to more explicitly include online violations like the non-consensual sharing of sexual images and recordings. There is now a procedure in place to block and delete such images, and gives the IEWM the right to take legal action for any offences in the Articles 371/1 and 371/2 of the Criminal Code, if the victim or their beneficiaries agree.

In Belgium, sexual violence is defined in Book 2 within Part VII of the Criminal Code: "Crimes and offences against family, order and public morality" Book 2. This is not in line with the principles of

international human rights law in which rape and other non-consensual acts of sexual nature ought to be described as violations of the bodily integrity and sexual autonomy of an individual, and not as crimes against mortality, honour, public decency, family, or society. The Belgian classification has therefore been criticised in a 2017 report, which argues against categorising sexual offences based on concepts of "honour" or "morality" for several reasons. This historical categorization is a product of beliefs and societal norms which reinforce the idea that women bear the burden of upholding society's moral standards. Unfortunately, this approach often leads to a troubling dynamic where perpetrators of sexual and other violence against women are let off the hook, while the blame and responsibility for the violence are unfairly shifted onto the victims. This is also reflected in certain terms that are used: "délits de mœurs" (vice offences), "enquête mœurs" (vice investigations), and "inspecteur mœurs" (vice inspectors). The choice of words matters: it reflects the institutional context and view that is taken on the topic.

**4. To what extent are the laws in your country sensitive to the intersectional dimension of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)**

The most recent country report on gender equality in Belgium from the European Equality Law Network suggests that Belgium is among the states that do not explicitly recognize intersectional discrimination in relation to GBV, based also on findings of GREVIO and the shadow report on the implementation of the IC drafted by a coalition of civil society organisations. The report shows that anti-discrimination acts in general appear to speak of discrimination 'based on at least one criterion' in which concepts like multiple discrimination and intersectionality are not recognised. The GREVIO report also concluded that policies addressing VAW in Belgium do not include an analysis of the intersections of the different forms of discrimination. According to GREVIO, Belgium should take multiple discrimination into account in policies when preventing and combating types of VAW. It is also encouraged to produce statistics on the combination of various forms of discrimination and implement information campaigns targeting these vulnerable target groups.

The shadow report by the coalition of civil society organisations has been very critical of the lack of an intersectional approach and has specifically highlighted the lack of Belgian law and policy doing so in relation to migrant women, concluding that "on the issue of migration, the protection options for women experiencing violence in the context of family reunification are extremely limited. For asylum requests based on gender-based persecution, evaluation criteria become more and more strict in terms of proof needed and the evaluation of credibility. Finally, women in an irregular situation often desist from asking for protection for fear of being deported." It considers the Belgian approach thus to be in contravention of Article 59 § 1 to 3 of the IC.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?**



The absence of explicit mention or consideration of intersectionality in Belgian legislation can be seen as a limitation in addressing the full spectrum of experiences and vulnerabilities faced by individuals, especially women, who may encounter multiple forms of discrimination. Intersectionality, as a concept, recognizes that individuals may experience intersecting and compounding forms of discrimination based on various social categories such as gender, race, ethnicity, disability, sexual orientation, and others. As seen, the reports mentioned already here above note that Belgium has been slow to include the issue of multiple discrimination within laws and policies and should do this to address the full range of groups affected by violence. As measures already exist to help specific groups, for instance people with disabilities, further measures should also be possible. As mentioned under question A.1, since the end of 2022 there is recognition in Belgium that gender mainstreaming requires an intersectional approach and this must then also be applied to the area of VAW in the future.

Importantly, the shadow report on the implementation of the IC drafted by civil society organisations report has also heavily criticised the lack of sufficient resources to support and execute the policy to combat VAW and of a global governmental vision, as a result of which the measures contained in national action plans to combat VAW lack coherency and are sometimes even contradictory.

Furthermore, despite the existence of common definitions based on recognition of the gendered nature of violence against women, the GREVIO report has also noted that gender-based violence against women is relatively invisible within Belgian policies. The gender neutral language within the titles of laws and action plans, combined with a tendency to assume that equality between men and women is already achieved, risks maintaining and widening the gaps in support and protection for women because of the lack of a gender perspective within interventions by professionals.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards VAW as contained in the current legal and policy framework from a transformative equality perspective?**

As mentioned above, if the legal and policy framework in Belgium does not explicitly address intersectionality, it is limited in adequately addressing the diverse experiences of women facing multiple forms of discrimination, such as those related to race, ethnicity, disability, or migration status. Without a comprehensive and inclusive approach, there may be gaps in protection for certain groups of women, such as survivors in asylum centres, women and girls with disabilities, migrants or those belonging to marginalised communities. In the case of migrant women awaiting decisions on their residence status, asylum law impacts very negatively upon them as it is very difficult to comply with the legal residence requirements connected to family, when leaving the home/husband even in cases of violence. If the framework primarily focuses on responses and remedies after violence has occurred, there might be limitations in terms of proactive measures to prevent violence and address root causes.

Also, the gender neutral framing and assumption of equality can cause inequalities to persist, as mentioned in the previous answer. Likewise, the lack of a clear vision and coherent policy stands in



the way of implementing transformative equality. Yet, the governmental recognition of the need for an intersectional approach as well as the structural, gender stereotyping and patriarchal problem and system that is involved (see under Part A) may also offer a window of opportunity for future change towards the formulation and development of a clear vision and coherent policy in view of that.

## C. Women in leadership

- 1. How is the problem of women's representation in the public and the business spheres framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging the gendered nature of underrepresentation and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.**

In Belgium, the framing of the problem of women's representation in the public and business spheres is largely addressed through a comprehensive legislative and policy framework. Since the 1980s, the country has implemented legal measures to promote gender equality and equal opportunities, both at the federal and regional levels. The principle of equality between men and women was affirmed within the Belgian constitution by adding an amendment to article 10 in January 2002. This change incited the legislator to guarantee this equality through measures fostering equal access to elective and public offices for both men and women.

Before the amendment of the Constitution, the SmetTobback Law of 24 May 1994 ensured electoral lists in which more than two-thirds were candidates of the same sex were rendered illegal. This law was motivated by the recognition of the underrepresentation of women within politics and its purpose was to give women access to political mandates, in order to give them a more equal footing with men than previously was the case. This framing implicitly recognises structural inequalities between men and women within politics, and thereby the gendered nature of underrepresentation. However, discrimination and stereotypes are not explicitly mentioned as causes behind this underrepresentation. The law did not prove to be very effective in combating discrimination, because even though more women were put on the electoral lists, men received higher and better places on them.

The amendment of the constitution led to the adaptation of more laws at the federal level to increase the number of female members of federal, regional and European legislative assemblies. These laws included a law prohibiting electoral lists in which the differences between the number of male and female candidates was greater than one, and a law ensuring the first two candidates on these lists could not be of the same sex. These measures were deemed effective due to the strong compliance mechanism: when lists did not conform to these laws they were invalidated. While these laws recognise the underrepresentation of women within politics as a problem, the framing still lacks explicit recognition of the underlying gendered causes leading to the underrepresentation of women. The importance of representation within politics to ensure an effective democracy was the main motivation behind the implementation of these laws.

The IEWM was also established in 2002 with the purpose to combat every form of discrimination and inequality based on gender and in doing so develop instruments and strategies based with an integrated gender dimension. This institute focuses on different aspects of gender inequality, one of them being gender inequality within politics and decision-making positions.

Other measures to increase the representation of women in parliament were adopted alongside a statement in the Constitution itself guaranteeing the representation of women within the Belgian

government. An advisory committee was established to evaluate laws and policies to promote gender balance within consulting bodies, together with a law on equal participation between men and women in advisory bodies on May 3, 2003. This shows a commitment to degendering laws and policies, however, discrimination or stereotypes were still not mentioned within the explanatory memorandum. Lastly, the government of the French-speaking community in Belgium promoted equal participation between men and women in advisory bodies by obligating the consideration of at least one candidate of each sex for a vacancy within an advisory body and that the members of these bodies have to be composed of at least 35% of each sex. The Flemish Parliament adopted a similar decree in 2007 to ensure equal representation of men and women in administration's advisory and administrative bodies.

In 2007 the Gender Act was introduced. This act created a framework for tackling gender discrimination in different fields, including the gender discrimination women experience in the labour market. Various issues are addressed like discrimination in access to employment, during career progression, and in termination procedures. Other issues are also included like gender inequalities within partnerships in associations of practitioners, within working conditions, in health and safety, in well-being at work, and more. Alongside the Gender Act, the Collective Agreement n°9 of 10 October 2008 focuses on an equal treatment within all phases of employment, hereby also covering all items expressed in the Gender Act. The Ministry of equal opportunities set up a programme aiming to increase the number of women in high management positions in 2009. Lists of publicly available female and male director candidates were composed and women could follow a coaching programme providing mentoring for women who have an ambition to become managers. Even though this coaching programme possibly helped women navigate the labour market and attain decision-making positions, this measure is more focused on 'fixing the women' rather than tackling the system behind the underrepresentation of women within these positions. Women having to adjust themselves to fit within the male leadership standard, does not fix the gendered power hierarchy behind this problem. Besides, literature has shown that women are devalued when having a more masculine autocratic or directive style. Therefore it is important to address the real problem behind the underrepresentation of women in leadership positions: discrimination and stereotypes. In 2011 laws for increasing the number of women in top management positions were amended. At least one in three members of the board of directors of publicly traded and state owned companies should represent a different gender than other members. The compliance mechanism in place is the nullity of the appointment or suspension of the benefits for members are suspended in cases of non-compliance. A study of the IEWM has proven that these quotas are effective as the proportion of women on boards of directors has significantly increased. In 2012 quotas were also introduced at the first two levels of federal administration; women must occupy at least one in three higher management positions. To support this quota, the project 'Top Skills' stimulated women to apply for managerial functions. The symbolical reinforcement of quotas is a good example of how the institutional dimension should be underpinned by the symbolic dimension.

In 2022, the electoral quota introduced in 1994 were reformed by including a provision on equal access to elective and public mandates for men and women. The Belgian law stipulating the amount of men and women on electoral lists may not differ by more than one, and the law obligating the first two candidates to be of different sex are still in place. When lists do not meet these criteria they are still rejected by the head of the electoral board. This strong compliance mechanism has been flagged as effective as Belgium is one of the frontrunners of women's representation in politics (increase from 9 percent in the 1990s to 41 percent in 2019). Other factors have also contributed to this

increase: the contagion effect among political parties for setting ambitious voluntary targets, and consociationalism. Research confirms that parties with the most women in winnable positions have gender-related rules in place within their selection procedures for candidates. The institutionalisation of selection procedures appears to ensure the full implementation of gender quotas for lists, particularly the introduction of gender quotas for selectorates.

**2. More specifically, are the laws and policies recognising the underlying causes of underrepresentation of women in leadership position, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?**

As mentioned in the previous question, most laws focus on the importance of an accurate representation of the population within politics to ensure an effective democracy. The underlying causes such as stereotypes about good leadership and discrimination are often not explicitly mentioned. The establishment of the IEWM shows a form of recognition of gender discrimination within politics, but the stereotypical presumptions behind the underrepresentation of women in leadership positions could have been accentuated more.

**3. Are there specific provisions within the laws and policies that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies' leadership and that you think could be seen as a good/best practice?**

Belgium employs affirmative action and positive measures to address inequality within the sector or company. As mentioned above, strong compliance mechanisms appear to make quota's more effective as Belgium is now one of the frontrunners in terms of women's representation in politics. Also, the legislature recognizes manifest inequality and allows for measures aimed at achieving equal opportunities. The Royal Decree of 11 February 2019 outlines the procedure for implementing affirmative action through collective bargaining agreements, promoting diversity and inclusivity.

Belgium's commitment to increase the share of women within politics and within the government can be seen as a best practice as they set the right example for private and public companies. A point of improvement is the recognition and action of the underlying problem; stereotypes and discrimination. In conclusion, Belgium's framework is institutionally effective and to some extent also on the experiential level by increasing the amount of women in politics, in higher management positions, and the amount of women in power in general. However, on the symbolical and cognitive level there remains progress to be made as the underlying problems are not well addressed.

**4. How has this framing of the problem come about; what societal and political factors shaped it?**

The legal framing reflects societal and political factors aiming at aligning with principles of equality and non-discrimination. Influences include international human rights standards, EU directives, and efforts to create a more inclusive society. Social awareness and advocacy for gender equality have likely contributed to the development and evolution of these legal provisions.

The Women's movement played a crucial role in highlighting the importance of women in decision making positions in Belgium. Together with a proactive contribution of Belgian parties they made it possible to introduce gender parity reforms, showing the importance of social and institutional contexts for adopting policies for increasing gender equality. This can be linked to the three-dimensional framework which builds on the premise that effective change can only come about when three levels, the institutional, experiential and symbolic, simultaneously take action.

Even though Belgium was historically not the most egalitarian, gender quotas to increase women in public leadership positions were adopted pretty quickly. This is because the understanding of representation in Belgium is connected to the conception of citizenship and notions of group representation. Because Belgium is a consociational democracy, various social groups are integrated into the decision-making process and the balance of the representation of these groups legitimises the political system. Belgium therefore only had to prove that gender quotas fitted into the concept of representation of all social groups. This made the implementation of quotas easier as they were seen as an extension of already existing measures.

The adoption of gender quota rules for company boards in the private sphere, however, only came about after a political fight for a number of years, during which the balance only tilted step-by-step towards promotion of gender equality. The Norwegian quota example as well as the threat of EU-legislation also played a role in their adoption.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?**

While the legislation covers a broad range of protected criteria, continuous efforts are still needed to address intersectionality, considering the overlapping impacts of multiple forms of discrimination. A transformative equality approach could also involve more explicit measures to dismantle structural barriers and promote diversity in leadership positions.

Beyond that, the current approach still leaves mostly untouched the real problem underlying the underrepresentation of women in leadership: discrimination and stereotypes and does little to address the symbolical and cognitive level as to changing the male-dominated standard of leadership and of what good leadership entails.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?**

The legislation's effectiveness may face challenges related to enforcement and the need for continued awareness-raising. The legal framework provides a robust foundation for combating discrimination and promoting diversity. Affirmative action measures contribute to a proactive approach, fostering a more inclusive and equal society. The inclusion of affirmative action, protection against harassment, and the prohibition of direct and indirect discrimination can be seen as best practices within the Belgian legal framework. The robust legal framework reflects important steps forward at both the institutional and experiential level.





Limitations lie still in the lack of an intersectional approach and of including cultural diversity, as well as the recognition of the underlying problem of the underrepresentation of women in leadership positions. By not addressing the root causes of inequality, progress at the symbolical and cognitive level may still be limited.



## 4.2 Netherlands

### A. General Framework

1. **Is gendered law/policymaking recognized as a problem in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?**

Since 1983, the principle of equality and non-discrimination has been stated in the Constitution for the Kingdom of the Netherlands. Article 1 stipulates that everyone who finds themselves in the Netherlands will be treated equally in equal circumstances.<sup>8</sup> It prohibits discrimination on any ground, but the prohibition of discrimination based on sex is also mentioned explicitly. The law thus stipulates equality between men and women. While the problem of gender inequality and the development of anti-discrimination and emancipation policies has received particular attention at the level of government and parliament since the mid-70s,<sup>9</sup> their attention for gendered law- and policymaking over time has been fragmented and can be said to be still limited these days.

Over the same period of time, within academia, civil society organisations and the Dutch equality body, a deeper understanding and consideration of the problem of gendered law- and policymaking has been generated and they have criticised the government's policy in this regard. This criticism centres on the fact that the government's recognition of the problem of gendered law- and policymaking has not translated so far into a coherent and consistently applied emancipation and mainstreaming policy to combat it. The government's recognition is also more implicit, while (legal) scholars have framed it more in terms of structural, systemic and institutional discrimination. The Dutch approach to violence against women, especially domestic violence, has been specifically criticised because of its lack of gender-sensitivity (see further Part B).

#### *Governmental level*

Considering more closely the governmental level, one can first note that the development of a Dutch emancipation policy is still rather young. There have thus been two very major *manifestations of gendered laws* persisting until the mid-1950s, which have significantly hampered the development of women's self-standing socio-economic position. It took until 1957 until married women gained legal capacity in the Netherlands and also was there a legal prohibition for married women to work in administration until 1958.<sup>10</sup> Furthermore, the organisation of work has been built very much on the male breadwinner model, the effects of which are still noticeable these days.<sup>11</sup> The Dutch Social and Economic Council (SER), an important advisory body to the government, issued some important

<sup>8</sup> *Grondwet* BWBR0001840 [2023, 22 February]

<sup>9</sup> A. van Doorne-Huiskes et. al (2017), *van privéprobleem tot overheidszorg, emancipatiebeleid in Nederland* (Zoetermeer: Lecturium Uitgeverij) et seq. Robbert Dijkgraaf, Voortgangsbrief over inzet van het kabinet voor gendergelijkheid, seksuele en reproductieve gezondheid en rechten, en gelijke rechten van lhbtqi+ personen in de Europese Unie (*Open Overheid*, 2024) <<https://open.overheid.nl/documenten/dpc-7b644f7de1ae0f79c724376f972bd79e34b809cd/pdf>> accessed 19 February 2024

<sup>10</sup> A. van Doorne-Huiskes et. al, (2017), p. 35

<sup>11</sup> Centraal Bureau Statistiek, *Emancipatiemonitor* (2022) et seq. Centraal Bureau Statistiek *Verdeling werk en zorg tussen vaders en moeders vaak anders dan gewenst* (2023) et seq. Centraal Bureau Statistiek *Vrouwen werken meteen na afstuderen al vaker in deeltijd dan mannen* (2023)

advices in the 1950s,<sup>12</sup> 1960s<sup>13</sup> and 1970s<sup>14</sup> that alluded to the problem of gendered lawmaking in the sphere of equal pay for men and women, the issuing of a breadwinner benefit, the taxation of married working women and the overall structural, institutional and socio-cultural barriers persisting for (married) women's work.<sup>15</sup> The SER sees promoting gender diversity and equality as a major point of interest<sup>16</sup> and it also has a special division which focuses on promoting more diversity in the boardrooms of companies.<sup>17</sup>

Under question 4 here below, we will zoom in more on the political dimension of the Dutch emancipation policy in so far as relevant for the purposes of our report. Suffice it here to say that the development of this policy took off as of the mid-1970s, ensuing both from internal and external pressures, in particular the first UN Women's Conference in Mexico in 1975 which led up to the adoption and ratification of CEDAW in 1981. Furthermore, there were the EEC developments in case law as well as legislation in relation to equal pay for women and men, equality in access to and conditions of work and in social security. In 1981, the Dutch Emancipation Council was established, which in the mid-1990s criticised the Dutch government for lacking a coherent and integrated vision on emancipation.<sup>18</sup> In 1996, this Council was abolished as it was the government's conviction that for emancipation policy to be truly effective, it would need to be stronger integrated in the regular policy-making process in all domains and in the advisory process.<sup>19</sup>

A temporary emancipation expertise committee (TECENA) was established in 1998 to make an inventory and assessment within ministries and advisory bodies of the extent to which the gender and emancipation dimension was actually taken into account within the policy domains at issue. In 2000, this committee concluded that there was some progress in terms of gender mainstreaming, but particularly because of the insights and targeted efforts of some people only. In some important domains the emancipation dimension was explicated, including social security, taxation, human rights and the combating of crime. But its overall conclusion was that "[s]ustainable integration of the emancipation perspective, the realisation that this perspective is relevant within all different policy domains is often still far away and certainly not internalised. A sense of urgency is lacking in many cases."<sup>20</sup>

In 2001, the government adopted a governmental position on Gender Mainstreaming, making all ministers responsible for gender mainstreaming within their policy fields but also establishing an

<sup>12</sup> Council regulering (EU) 2023/970 Advies inzake het vraagstuk van gelijke beloning van mannen en vrouwen voor gelijkwaardige arbeid [2023]

<sup>13</sup> Sociaal Economische Raad, *advies inzake het vraagstuk van een kostwinnersbijslag* (1963/15) et seq. *advies over de arbeid van vrouwen in Nederland* (1966/15)

<sup>14</sup> Sociaal Economische Raad, *advies inzake de inschakeling van de gehuwde vrouw in het arbeidsproces* (1973/2)

<sup>15</sup> A. van Doorne-Huiskes et. al (2017), p. 48

<sup>16</sup> Sociaal Economische Raad Diversiteit in Bedrijf, 'Gendergelijkheid: naar een gelijkwaardige positie van vrouwen op de arbeidsmarkt' (*SER Diversiteit in Bedrijf*, februari 2022) <<https://www.ser.nl/-/media/ser/downloads/thema/diversiteitinbedrijf/publicaties/2022/Charterdocument-Gendergelijkheid.pdf?la=nl&hash=972FE2C8E047F3F501DDCA0E952E4E27>> accessed 19 February 2024

<sup>17</sup> SER Topvrouwen. <<https://www.ser.nl/nl/thema/topvrouwen>> accessed 7 June 2024

<sup>18</sup> Emancipatieraad (1997)

<sup>19</sup> A. van Doorne-Huiskes et. al, (2017), p. 160

<sup>20</sup> TECENA, report *Een wereld te winnen, eindrapportage over het adviesstelsel met conclusies en aanbevelingen*, (2000), Kst. 27 061 Nr. 2

interdepartmental supporting and facilitating structure. Upon recommendation of TECENA, the Dutch Ministry of Social Affairs and Labour also established an emancipation visitation committee in 2004 that had as its task:

- the testing of the integration of the man/women perspective in the development and execution of policies;
- the provision of insights as to improvement possibilities and indication of priority policy domains;
- the provision of good examples to political leaders;
- the provision of insight in the overall progress of the execution of gender mainstreaming and of recommendations for its adjustment where needed.

The findings of the committee indicated that the mainstreaming policy was falling short in many respects, amongst which: no specific personnel being appointed at some ministries; no budget being awarded; no responsibility taken by the highest civil servants; little use of external expertise; and no regular monitoring of the emancipation process.<sup>21</sup> *But most importantly, it concluded that within the ministries the started process of gender mainstreaming had actually led to the disappearance of the emancipation perspective.* In particular, it flagged the disappearance of expertise, little vision as to what emancipation would have to lead to and little felt urgency. Even more so, what was done seemed more incentivised by efficiency thinking and what emancipation could bring in an economic sense and not because of a commitment to equality ideals.<sup>22</sup>

In their 2017 evaluation of 40 years of emancipation policy in the Netherlands, the conclusion of some prominent Dutch researchers (which were also part of TECENA) that “the topic of women’s emancipation has perhaps never been considered as an intrinsically important theme in Dutch mainstream politics”<sup>23</sup> is telling. A visionary, systematic, long-term and coherent governmental approach towards the degendering of laws and policies has thus been lacking through time. The lack of such an approach is today still manifested in major law reforms such as the one concerning pension reform, which the Netherlands Institute for Human Rights has held to entail indirect discrimination on the basis of both gender and age for women, especially when working less hours at the beginning of their careers and combining work-life balance and motherhood.<sup>24</sup> Therewith, next to VAW, pensions/social security constitutes another domain that reveals an insufficient gender-sensitive approach, despite the data we have and these domains being very well known for their inequalities and negative lifelong impacts on women.<sup>25</sup>

More recently, the government did present the ‘Emancipation Policy Note for 2022-2025’, titled ‘Emancipation: A Task for All of Us,’ outlining a new vision and government approach for

<sup>21</sup> A. van Doorne-Huiskes et. al, (2017), p. 204

<sup>22</sup> Ibid p. 210-211

<sup>23</sup> Ibid p. 64

<sup>24</sup> College van de Rechten van de Mens, ‘college geeft advies over wetsvoorstel aanpassing pensioenstelsel’ (7 april 2022) <<https://www.mensenrechten.nl/actueel/nieuws/2022/04/07/college-geeft-advies-over-wetsvoorstel-aanpassing-pensioenstelsel>> accessed 24th of June 2024

<sup>25</sup> Policy Department for Economic, Scientific and Quality of Life Policies, report *the gender gap in pensions in the EU* (2018)

emancipation. In this document, the government recognises the existence of systemic discrimination in law and policymaking (processes) and need for a more coherent approach to tackle this and to enhance mainstreaming.<sup>26</sup> The establishment of three advisory bodies is to be seen in connection with this, and also as responses to important societal developments such as the Black Lives Matter movement.

The first one is the *National Coordinator against Discrimination and Racism (NCDR)*, set up in 2021. It is an independent advisory body that reports to the Ministry of Interior Affairs and provides annual action programs, the last of which put important emphasis on the need to establish by law a public sector equality duty for all governmental and public authority levels, akin to the Irish and UK example thereof. Such a duty would require all governmental and public authority levels and bodies to respect and implement the equality and non-discrimination principle in all their policies and actions and hold them accountable for this.<sup>27</sup> As is recognised in the Emancipation Policy Note, the NCDR's work is helpful in building more coherency in the government's approach.

The other body is the *State Commission against Discrimination and Racism*, which is a temporary independent and scientific advisory body, set up in 2022 for a period of 4 years upon the request of the Parliament. This commission researches the nature, scope and causes of discrimination and racism in all societal sectors and whether discrimination and ethnic profiling occurs in public authorities and their organisational culture. The task of the commission comprises explicitly also the monitoring of effects of laws and policies and to advise on better guarantees and the improvement of law- and policymaking with a view to eradicating discrimination and racism. Particular areas that should be considered are the housing market, labour market, education and health care.<sup>28</sup> The commission also explores the option of the development of a public sector equality duty.

With the new coalition and government based on the outcome of the November 2023 elections, it is uncertain now however whether this approach will continue. The so-called 'Hoofdlijnenakkoord'<sup>29</sup> it has published concisely outlines the main policy goals and commitments that have been agreed upon for the upcoming governing period. The document contains no mention of emancipation at all, let alone policy on gender equality, gender mainstreaming, or policies that would contribute to addressing gender disparities.

Next to this, there is the *Government Commissioner for sexual misconduct and sexual violence*, in order to raise awareness for the issue.<sup>30</sup> She advises the government on the measures that need to be taken in addressing and preventing sexual misconduct and violence. She was appointed by the previous government in 2022, in response to a scandal taking place then. It was revealed that there

<sup>26</sup> Ministerie van Onderwijs, Cultuur en Wetenschap, *Emancipatienota 2022-2025*, (2022), Kst 30420, nr. 374 We will expand further on the development and toolbox of the Dutch emancipation and mainstreaming policy and the way in which these (can) contribute to degendering laws and policies under questions 2 to 4

<sup>27</sup> Nationale Coördinator tegen Discriminatie en Racisme, *National action program 2023*, p. 8

<sup>28</sup> Nationale Coördinator tegen Discriminatie en Racisme, *National Action Program 2023*, p. 8

<sup>29</sup> HOOP, LEF EN TROTS - Hoofdlijnenakkoord 2024 – 2028 van PVV, VVD, NSC en BBB

<sup>30</sup> Regeringscommissaris seksueel grensoverschrijdend gedrag en seksueel geweld, <https://www.rcgog.nl/over-de-rcgog> accessed June 25 2024



was a pattern of sexual violence and misconduct behind the scenes of one of the most famous talent shows on television in The Netherlands, *The Voice of Holland*.<sup>31</sup>

### Scholarship

There is prominent Dutch legal scholarship that has concentrated on gendered law- and policymaking and the development of feminist legal theory. Dutch gender/feminist legal scholarship has made a very important contribution to not only the identification of the problem of gendered law- and policymaking in the Netherlands, but also by providing approaches for its further research and solution.<sup>32</sup> Some of this research has zoomed in on particular legal domains, including that of family law, labour law and criminal law and also extended it to other discriminated groups; ethnic minorities and homosexuals.<sup>33</sup> The area of violence against women, in particular domestic violence, has received particular attention in the Netherlands because of its gender-neutral approach. This is because the gender-neutral approach of the Netherlands can cause policy-makers, intervention developers and implementers to not take gender-specific factors into account and therewith leaving structural inequalities unnoticed (more on this under Part B).<sup>34</sup>

Some of this scholarship has put particular emphasis on Article 5a CEDAW and legal obligations that ensue from it. According to this provision, States that are party to this Convention “shall take all appropriate measures” to modify the social and cultural patterns of conduct of men and women, with a view to achieving “the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. Van Maarseveen was one of the earliest scholars to underscore that the Convention is not directed solely at providing women with rights equal to those of men, but that it also aims at “(...)a possible feminisation of the culture, at least of the culture that is represented in the legal order.”<sup>35</sup> Rikki Holtmaat carried out an extensive research for the Ministry of Social Affairs

<sup>31</sup> NOS, 'Wat heeft BOOS onthuld over The Voice en hoe gaat het verder?' (NOS, 20 January 2022) <<https://nos.nl/collectie/13887/artikel/2413872-wat-heeft-boos-onthuld-over-the-voice-en-hoe-gaat-het-verder>> accessed 26 June 2024

<sup>32</sup> H. van Maarseveen, 'Vrouw en Recht' (1980) NJB, 1170-1182.; H. van Maarseveen, 'Rechtstheorie en vrouwen: patriarchie als juridisch concept' (1984) NJB, 709-716; Rikki Holtmaat, *Naar een ander recht. De macht van juridische begrippen. Ontwikkeling van een feministische rechtstheorie* (1988) *Nemesis*, 3-13; C. Smart, 'The woman in legal discourse/De vrouw in het juridische vertoog' (1991) *Tijdschrift voor Vrouwenstudies*, 499-514; J.W.J. van den Oord, 'Sexuele differenties in en door het recht' (1992) *Nemesis* nr. 6, 5-23 J.E. Goldschmidt, 'We need different stories' (1993) W.E.J. Tjeenk Willink, p. 17-20

<sup>33</sup> K.D. Lünemann, M.L.P. Loenen en A.G. Veldman, *De onzichtbare standaard in het recht. In-en uitsluiting van vrouwen, etnische minderheden en homoseksuelen in het familierecht, arbeidsrecht en strafrecht* (1999, Gouda Quint)

<sup>34</sup> K.B.M. de Vaan, M.M. de Boer & M.C. Vanoni, 'Genderscan aanpak huiselijk geweld' (Regioplan Beleidsonderzoek, 2013) <<https://www.regioplan.nl/wp-content/uploads/data/file/rapporten-2400-2499/2435-Genderscan-aanpak-huiselijk-geweld.pdf>> accessed 20 February 2024.; W. Guns and J. Janssen, "Gender En Geweld" (2020) 99 *proces* 394; S. Bouma, 'Economisch Zelfstandig En (Niet) Beschermd Tegen Partnergeweld: Hoe Het Complexe Verband Tussen Economische Zelfstandigheid En Partnergeweld de Noodzaak van Gendersensitief Beleid Onderstreept' (2021) 24 *Tijdschrift voor Genderstudies*, p. 109

<sup>35</sup> H. van Maarseveen, 'Internationaal vrouwenrecht. Een afzonderlijk rechtsgebied?' in: H. van Maarseveen, D. Pessers & M.J. Gunning (red.), *Internationaal recht en vrouwen* (Deel 1 Commentaren, Zwolle: Tjeenk-Willink 1987), p. 69-80, at p. 75

and Employment in 2004 on the meaning and legal obligations Article 5a entails and applied it to the Dutch context. She has argued that it

“not only obliges State parties to conduct an active policy to ban stereotyped images of men and women, for instance in the media and in education, but also to critically scrutinise law and policy with a view to uncovering the existence of hidden gender stereotypes.”

She has termed this latter obligation as the obligation to eliminate structural gender discrimination,<sup>36</sup> which goes beyond the realisation of formal and substantive equality. Holtmaat has also developed a particular methodology for the analysis of law and policy so as to uncover their gendered nature and effects and underlying gender stereotypes. This methodology has been taken as one of the main leads for the questionnaire underlying this country report.

It is important to note that the first Dutch report on CEDAW, established by the Groenman Committee, was at the basis of Holtmaat’s research. This report linked Article 5a to the aim and obligation of CEDAW to combat the dominant gender ideology,<sup>37</sup> emphasising that

“The current gender ideology distinguishes between men and women by attributing different values and qualities to their behaviour, ideas, feelings, value judgements and expectations. This ideology must be exposed, and the exclusion mechanisms to which it gives rise must be combated effectively.”<sup>38</sup>

The Committee also pointed to the double function of gender ideologies: not only do they play a role in constituting peoples’ ‘identity’, but they are also constitutive for almost all societal structures and institutions. As such, the Committee deemed that Article 5a is presumably also

“directed at eliminating or eradicating gender differences that become ‘wired into’ in societies structures and systems.”

The construction of paid labour was given as an example and said to have a gender-specific content, as law and policy in this field are still taking the full-time working male employee (the ‘breadwinner’) as its standard.<sup>39</sup>

#### *The Netherlands Institute for Human Rights*

The Netherlands Institute for Human Rights (NIHR) holds a prominent position within the sphere of human rights. It is established by the government, but functions as an independent supervisory body in the field of human rights. Its primary responsibilities encompass doing research, advising the government and parliament, reporting to international human rights institutes, providing information and promoting human rights education. The Institute deals with individual discrimination cases as well. The NIHR promotes the gender-sensitive approach and has recently issued a report in which it has explicitly criticised the Dutch government for not sufficiently applying this approach with regard to domestic violence.<sup>40</sup> In the vision of the NIHR, a gender-sensitive approach would entail that there

<sup>36</sup> H.M.T. Holtmaat (2004), *Towards Different Law and Public Policy; The significance of Article 5a CEDAW for the elimination of structural gender discrimination*. The Hague: Ministry of Social Affairs and Employment, p. 4

<sup>37</sup> Holtmaat (2004), p. 11-12

<sup>38</sup> Groenman Committee 1997, p. 24, as discussed by Holtmaat (2004), p. 11-12

<sup>39</sup> H. Mars, I. Ceelen & A. Renckens, ‘Ervaringen, gedrag en genderopvattingen van mannen in Nederland’ (Atria, 2022) <https://prod-cdn.atria.nl/wp-content/uploads/2022/11/16201215/IMAGES-literatuuronderzoekNL.pdf> accessed 20 February 2024

<sup>40</sup> College voor de Rechten van de Mens, “Gendersensitieve Aanpak Nog Onvoldoende Aanwezig in Bestaand Beleid, Gemeenten En Rijksoverheid Aan Zet” (*College voor de Rechten van de Mens*, September 20, 2023)



is awareness of and taking into account of gender and gender inequality being a root cause of the violence occurring, and in particular of the ideas between partners and in society on manhood and womanhood and of the expectations and differences in power and dependency that ensue therefrom.<sup>41</sup> The aforementioned Advice on the new pension law proposal provides another example of the NIHR flagging the lack of (a sufficiently) gender-sensitive (and implicitly also intersectional) approach.

### *Societal level*

At the societal level, it is of relevance that there are several women emancipation agencies in the Netherlands focussing on gender equality,<sup>42</sup> and that some of these are outspoken on gendered law- and policymaking. To begin with, Atria is the knowledge institute for emancipation and women's history in the Netherlands. It does research and distributes information on (the history of) gender and the fight for equal rights and provides training.<sup>43</sup> In 2019, this institute has highlighted the importance of gender-sensitive policymaking and has identified nine examples of successful gender sensitive policies,<sup>44</sup> including the areas of healthcare, education, science and policy to appoint more female professors, anti-poverty, spatial planning and defence. The Dutch parliament had asked Atria to map successful examples of gender-sensitive policy. The examples were selected on the basis of their different policy areas, levels and availability of data, in order to illustrate how a gender-sensitive approach can affect policy in practice. Under reference to the ILO approach,<sup>45</sup> Atria holds gender-sensitive policies to:

“recognize that men and women are assigned different roles in society, and that as a result, they often have different and sometimes conflicting needs, interests, and priorities. The policy drawn up and implemented then takes into account the gender-related factors of the policy problem in question. This does not mean that there will be different solutions or different policies for men and women, but that the different needs, barriers and other inequalities between men and women will be taken into account. Gender-sensitive is therefore a counterpart of sex-neutral or gender-neutral policy: a form of policy that does not pay attention to gender, so that in practice it can have unequal outcomes for men, women and non-binary people.”<sup>46</sup>

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<<https://www.mensenrechten.nl/actueel/nieuws/2023/09/20/gendersensitieve-aanpak-nog-onvoldoende-aanwezig-in-bestaand-beleid-gemeenten-en-rijksoverheid-aan-zet>> accessed February 26, 2024

<sup>41</sup> Written submission UPR Netherlands - Netherlands Institute for Human rights, or the 41st session of the Universal Periodic Review Working Group concerning the human rights situation in the Netherlands. March 2022

<sup>42</sup> The oldest organisation is the Women's Council Netherlands, which was founded in 1898 and which is a collective of some 50 organisations now concerned with improving the position of all women in the Netherlands. This organisation provides practical tools, methods and interventions, and information on various topics including Violence Against Women (VAW), gender discrimination in the labour market, and the Beijing Declaration and Platform for Action. As far as we could establish, it does not work specifically on gendered law- and policy issues, although some of its member associations may do.

<sup>43</sup> Atria, 'Over ons' (Atria) <<https://atria.nl/over-atria/>> accessed 20 February 2024

<sup>44</sup> Atria, “Gendersensitief Beleid: Illustratieve Voorbeelden” (Atria, March 6, 2019) <<https://atria.nl/nieuws-publicaties/internationaal-nationaal-nationaal-beleid/gendersensitief-beleid-illustratieve-voorbeelden/>> accessed February 26, 2024

<sup>45</sup> International Labour Organization, *Manual for Gender Audit Facilitators: The ILO participatory gender audit methodology* (2007, Geneva: International Labour Office)

<sup>46</sup> ILO (2007) p. 3



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The Clara Wichmann bureau focuses on enhancing the social and legal position for women in the Netherlands.<sup>47</sup> By promoting and influencing the law, legislation and regulations in which issues are raised that directly affect the rights of women, they support combatting all forms of gender discrimination, inequality and stereotyping. When it comes to influencing law, Clara Wichmann supports court cases brought on by both individuals and collective action, granted they are of importance for women. Other ways in which they influence policy concern lobbying for the abolition of the legal reflection period for abortion, for example through campaigns or letters to ministers and working together with other organisations.<sup>48</sup> Women Inc. runs campaigns advocating gender equality on various issues, provides training and advice to organisations on the subject of gender equality and collaborates with national and local governments, companies and institutes to increase gender equality.<sup>49</sup> This organisation has advocated a gender-sensitive approach particularly in the area of health care.<sup>50</sup> There is also a platform called WO=MEN, which fights for gender equality and the empowerment of women and girls by monitoring policies, sharing knowledge and connecting/mobilising people to achieve social transformation for equality between men and women.<sup>51</sup> Other relevant organisation are Amnesty International<sup>52</sup> (distributes information on gender inequality and runs campaigns on issues regarding gender equality), Feminist march<sup>53</sup> (raises awareness of the issues in the lives of women and non-binary people), and the 'Vote for a Woman' foundation<sup>54</sup> (improves the political representation/emancipation of women by getting and keeping more women active and elected in politics). All of these institutes/organisations advocate gender-sensitivity; some do this in an explicit way as seen here above,<sup>55</sup> but others promote gender-

<sup>47</sup> Bureau Clara Wichmann, 'Wat wij doen' (Bureau Clara Wichmann) <<https://clara-wichmann.nl/over-ons/>> accessed 20 February 2024

<sup>48</sup> Bureau Clara Wichmann, *Jaarverslag 2022* (Bureau Clara Wichmann) <<https://clara-wichmann.nl/wp-content/uploads/2023/10/v1.2-Jaarverslag-2022-ontwerp.pdf>> accessed at 26th of May 2024.

<sup>49</sup> Women Inc, 'Onze missie' (*womeninc*) <<https://www.womeninc.nl/missie>> accessed 20 February 2024

<sup>50</sup> Women Inc, "Actiepunten Gendersensitieve Gezondheidszorg" (Women Inc, September 29, 2015) [https://www.womeninc.nl/actueel/actiepunten-gendersensitieve-gezondheidszorg?gad\\_source=1&gclid=CjwKCAiAivGuBhBEEiwAWiFmYda-ZOPRoBzhFyZriA674qWP5u3cdDmdgQ9MdXivdguNWDX7Mum-DxoCja8QAvD\\_BwE](https://www.womeninc.nl/actueel/actiepunten-gendersensitieve-gezondheidszorg?gad_source=1&gclid=CjwKCAiAivGuBhBEEiwAWiFmYda-ZOPRoBzhFyZriA674qWP5u3cdDmdgQ9MdXivdguNWDX7Mum-DxoCja8QAvD_BwE) accessed 26 February 2024

<sup>51</sup> WO=MEN, 'Hoe Werkt WO=MEN' (WO=MEN Dutch Gender Platform) <<https://www.wo-men.nl/wat-we-doen/hoe-werkt-wo-men>> accessed 20 February 2024

<sup>52</sup> Amnesty International, 'Gender en mensenrechten' (Amnesty International – wat we doen) <<https://www.amnesty.nl/wat-we-doen/gender-en-mensenrechten>> accessed 20 February 2024

<sup>53</sup> Feminist March, 'Missie en Visie' (Feminist March – Missie en Visie, 2023) <<https://feministmarch.nl/missie-visie/>> accessed 20 February 2024

<sup>54</sup> Stichting Stem op een Vrouw, 'Over ons' (Stem op een Vrouw, 2023) <<https://stemopeenvrouw.com/over-ons/#wiezijnwij>> accessed 20 February 2024

<sup>55</sup> In addition, see, WO=MEN, "Duurzame Steun Voor Gendergelijkheid En Vrouwenrechten" (*WO=MEN*, 2024) <<https://www.wo-men.nl/wat-we-doen/duurzame-steun-voor-gendergelijkheid-en-vrouwenrechten>> accessed February 27, 2024; Juffermans J, "Seks Zonder Instemming Is Straks Strafbaar, Ook Zonder Dwang" (*Amnesty International*, June 13, 2022) <<https://www.amnesty.nl/wordt-vervolgd/waarom-instemming-bij-seks-zo-belangrijk-is>> accessed February 27, 2024

sensitivity implicitly by highlighting the importance of taking gender into account when issues can be impacted by gendered power structures.<sup>56</sup>

**2. Who are the key actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.) involved in de-gendering law- and policy making in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?**

The current governmental authority responsible for emancipation policy in the Netherlands is the Ministry of Education, Culture and Science (OCW).<sup>57</sup> This directorate used to fall under the Ministry of Social Affairs and Employment, and thus the relocation to OCW reflects a shift in focus from the socio-economic domain to the topic of (cultural) identity as well.

After the evaluation of gender mainstreaming in 2007, as discussed here above, the Netherlands adopted a so-called ‘system responsibility’ approach to gender mainstreaming. Since then, the Directorate for Emancipation of OCW is specifically responsible for gender equality and the rights of LGBTI people, but the ‘system responsibility’ approach entails that other ministries than solely the Ministry of OCW can also be held accountable by parliament to fulfil their duty regarding gender equality policy. The Ministry of OCW/Directorate for Emancipation establishes a general framework for gender equality and anti-discrimination policy for the government and supports the ministries in the embedding of gender equality policies within their domains.<sup>58</sup> Other departments and ministries can consult the Directorate about existing or new policies, which can lead to relevant adjustments. Cooperation agreements specify the contribution by said ministries to the objective of gender equality. There have been efforts to improve this cooperation between ministries, however, a formal structure to reinforce this cooperation remains absent.

The ‘system responsibility’ approach implies that there is a need for political responsibility taken by the political leads and hierarchy at the different ministries for implementing gender equality in all of the laws and policies taken and proposed, while also securing that this is and can be done at the administrative level by all civil servants involved. This requires quite some actions and investments, as detailed further under question 3.

Other functions of the Directorate for Emancipation are the integration of gender equality considerations in the EU and international affairs, and the coordination of the implementation of government decisions and international agreements on gender equality. Lastly, the Directorate

<sup>56</sup> Bureau Clara Wichmann, “Wat Wij Doen” (*Bureau Clara Wichmann*, April 9, 2018) <<https://clara-wichmann.nl/over-ons/>> accessed February 27, 2024; Feminist March, “Missie & Visie – Feminist March” (*Feminist March*, 2023) <<https://feministmarch.nl/missie-visie/>> accessed February 27, 2024; Stem op een Vrouw, “Over Ons” (*Stem op een Vrouw*, February 4, 2021) <<https://stemopeenvrouw.com/over-ons/#wiezijnwij>> accessed February 27, 2024

<sup>57</sup> EIGE Europa, ‘Gender-Mainstreaming Netherlands’ (EIGE Europa, 2021) <[https://eige.europa.eu/gendermainstreaming/countries/netherlands?language\\_content\\_entity=en](https://eige.europa.eu/gendermainstreaming/countries/netherlands?language_content_entity=en)> accessed 19 February 2024

<sup>58</sup> EIGE Europa, ‘Gender-Mainstreaming Netherlands’ (EIGE Europa, 2021) <[https://eige.europa.eu/gendermainstreaming/countries/netherlands?language\\_content\\_entity=en](https://eige.europa.eu/gendermainstreaming/countries/netherlands?language_content_entity=en)> accessed 27 May, 2024

monitors and verifies progress in gender equality in the Netherlands.<sup>59</sup> Annually, the Directorate issues the Emancipation Progress Report to inform the parliament on the state of gender equality in the Netherlands.<sup>60</sup> In carrying out its functions, OCW/the Directorate recognises the importance of underlying gender stereotyping and to eradicate these and also tackles laws and policies that unintentionally have negative gendered impacts and works on the development of gender-sensitive law- and policymaking.<sup>61</sup>

There is also a Legislative Consultation (WGO) on Emancipation in the House of Representatives. In the past, a coordination unit was operational, but it has been discontinued. The parliamentary body “the Standing Committee on Education, Culture and Science” includes a focus on gender equality. In principle, the minister speaks once a year on gender issues with the parliament.

As it emerges already from the answer under question 1, there are several important advisory bodies that inform and advise the Dutch government and parliament specifically on the gendered nature and possible gender impacts of the laws and policies proposed and in force. These are the Netherlands’ Institute for Human Rights (NIHR-College voor de Rechten van de Mens), the National Coordinator against Discrimination and Racism, the State Commission against Discrimination and Racism. As seen, the NIHR conducts research on policies protecting human rights, including gender-sensitive evaluations of policies and makes recommendations on the protection of human rights policies.<sup>62</sup> The Institute also provides concrete advice - upon request or voluntary - to the government on law or legislation concerning human rights.<sup>63</sup> The areas of VAW and social security/pension reform are some important illustrations of this. Also in its role of giving (non-binding) decisions in individual complaints that are brought to the NIHR, it can highlight negative gendered impacts of existing laws. The Institute mainly provides consultations on new laws or policies instead of existing ones, however, the Institute often gives unsolicited advice on a variety of issues on its own initiative. In most cases (80%), the consultation of the Institute causes an adjustment of policies or legislative instruments.<sup>64</sup>

What seems lacking so far, though, is a consistent and regular procedure for independent advice and monitoring of the testing of the possibly gendered nature of law- and policymaking. The NIHR can thus be involved rather at will of the government, this is also more at the ex ante stage of the law- and policymaking process. The NCDR and the State Commission are (so far) more involved in

<sup>59</sup> Ibid.

Standing Committee for Education, Culture and Science (n.d.) Emancipation <[https://www.tweedekamer.nl/kamerleden\\_en\\_commissies/commissies/ocw/emancipatie](https://www.tweedekamer.nl/kamerleden_en_commissies/commissies/ocw/emancipatie)> accessed 25 June 2024

<sup>60</sup> Ministerie van Onderwijs, Cultuur en Wetenschap, ‘Voortgangsrapportage Emancipatie’ (*Open Overheid*, 2020) <<https://open.overheid.nl/documenten/ronl-402f94c9-b772-4875-b991-aa165afd6bfb/pdf>> accessed 20 February 2024

<sup>61</sup> Report Regioplan 2018, p. 16

<sup>62</sup> College voor de Rechten van de Mens, ‘Monitor Discriminatiezaken’ (*Mensenrechten*, 2021) <<https://publicaties.mensenrechten.nl/publicatie/5940855c-f125-4126-bc61-6c11a734051b>> accessed 20 February 2024

<sup>63</sup> College voor de Rechten van de Mens, inbreng College voor de Rechten van de Mens t.b.v. commissiedebat over huiselijk geweld en geweld in afhankelijkheidsrelaties, 15 September 2023.

<sup>64</sup> College voor de Rechten van de Mens, ‘veelgestelde vragen’, under ‘onze rol’ , <https://www.mensenrechten.nl/mensenrechten-voor-jou/wat-doet-het-college/veel-gestelde-vragen>, accessed 31 May 2024



ex post evaluation and flagging existing problems in certain domains. Yet, they are working on the development of longer term actions and tools - such as the public sector equality duty - that would apply also at the ex ante stage and throughout the policy cycle. Furthermore, while the NCDR is foreseen as a permanent body, the State Commission is not. A question that remains is to what extent the general advisory body on new legislation to the government - the Council of State - comprises a gender test in its work. As it is under a duty to consider whether newly proposed legislation is in conformity with higher - international - law, a test under Article 5a CEDAW could be considered to fall within its task or a check whether the legislator has duly executed a gender test on the proposed legislation.

Importantly, the consistent consultation of NGOs or citizens has also not been specified in a specific legal arrangement for the field of gender equality. NGOs can however react ad-hoc to legislative proposals, by using online consultations or upon invitation. The Ministry of OCW may also enter into strategic partnerships with alliances of NGOs within the gender equality field. These alliances receive subsidies and are regularly consulted on gender equality issues.<sup>65</sup> But as such, the involvement of NGOs is rather fragmented and ad hoc, and the lack of a formal consultation structure for their involvement has also been heavily criticised, most notably in the area of VAW.<sup>66</sup>

**3. What specific measures or instruments have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA),<sup>3</sup> and who was involved in their adoption, implementation, and monitoring?**

**Are there studies or evidence on the effectiveness of tools or measures in your country aimed at preventing or addressing gendered law/policymaking?**

**Can you also give some successful examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?**

As a starting point, it can be observed here that the Netherlands has relatively low scores on relevant EIGE indicators for monitoring progress regarding institutional mechanisms for promoting gender equality and gender mainstreaming, following Area H of the Beijing Platform for Action. On the evaluation of the governmental commitment to promoting gender equality, it scores 6.0 out of 12, which is below the EU average of 7.2.<sup>67</sup> This is mainly attributed to a deficiency in accountability because of the absence of a national action plan. The second indicator concerns the assessment of personnel resources in gender equality bodies, with the Netherlands scoring 1.0 for both governmental and independent bodies, indicating a workforce of 10-25 employees, on par with the EU average. For the third indicator on gender mainstreaming, of particular relevance here, the

<sup>65</sup> For the 'Emancipatienota 2022-2025, Ministerie van Onderwijs, Cultuur en Wetenschap, 18th of November 2022', more than 30 NGOs were invited in different sessions at the ministry to deliver input on different topics, that were included in this policy guide

<sup>66</sup> The NGOs' comments on the reply of the Netherlands to the reporting form on the implementation of the Recommendation of the Committee of the Parties on 30 January 2020 (IC-CP/Inf(2023)3), Dutch CEDAW Network, March 30, 2023. Further discussed in Part B.

<sup>67</sup> EIGE Europa, 'Gender-Mainstreaming Netherlands' (EIGE Europa, 2021) <<https://eige.europa.eu/gender-mainstreaming/countries/netherlands>> accessed 7 June, 2024



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Netherlands scored 3.3 for governmental commitment and 3.8 overall, whereas the EU averaged 5.1 and 5.4. In this respect, EIGE identified notable gaps in the existence of coordinating structures and consultation processes. The fourth and last indicator focussed on the statistics disaggregated by sex, where the Netherlands scored above the EU average with a 5.0 out of 6 and lost points for the effectiveness of disseminating gender-disaggregated data

#### *Gender statistics*

Considering first more closely the collection of gender statistics, it is the Netherlands Institute for Social Research (SCP) and Statistics Bureau of the Netherlands (CBS) that are responsible for monitoring the progress towards gender equality. The SCP and the CBS connect their research by working together to create the Emancipation Monitor every two years.<sup>68</sup> They focus on different areas of gender equality: work, education, violence and safety, health, and compare them to other countries. The Monitor is also used for the dissemination of sex-disaggregated data via press statements. Since 2022 the SCP is no longer involved in publishing the gender statistics, but solely the CBS. The Ministry of OCW (education, culture, and science) finances the research.

The website links you to Statline M/F, which is a digital database developed by the Ministry of OCW, where relevant datasets can be viewed and explored by theme. The Emancipation Monitor comprises an extensive analysis and therefore does not produce additional publications on the website. The SCP however, also issues publications on gender equality on an ad hoc basis through their website. The official functions of the SCP are to monitor, explain and explore social and cultural issues and to inform law- and policymaking. By researching the progress of gender equality, gender-sensitive policies could also be evaluated on their effectiveness.

#### *Gender mainstreaming, impact assessment and the 'policy compas'*

There is no legal obligation of gender mainstreaming in the Netherlands, but it is formal policy already for about two decades (see under question 1). As of January, 24, 2019, a gender impact assessment has been made a compulsory quality requirement of the so-called 'Integral Assessment Framework of Policy- and Lawmaking' (IAK; *Integraal Afwegingskader voor Beleid en Regelgeving*) that is to be followed by civil servants and legal draftsmen to ensure good law and policy.<sup>69</sup> This quality requirement was added with a view to the implementation of the UN Sustainable Development Goals, in particular SDG 5 on gender equality. The application of the gender test is geared towards the establishment of the extent to which law or policy is contributing to the reduction of existing inequalities between women and men in all their diversity or how it is being ensured that the realised equality is not being reduced.<sup>70</sup> More recently, in 2023, the 'policy compas' (*beleidskompas*) was added to this, which is a kind of checklist for civil servants and legal draftsmen to use when

<sup>68</sup> Centraal Bureau voor de Statistiek, 'Emancipatie Monitor 2022' (2022) <<https://open.overheid.nl/documenten/ronl-1969906c352a2bbe91978c144f976ae885bb28a9/pdf#:~:text=De%20Emancipatiemonitor%20komt%20sinds%202000,tussen%20mannen%20en%20vrouwen%20af%3F>> accessed 19 February 2024

<sup>69</sup> Ministry of Education, Culture and Science, 'Knowledge centre for policy and regulations: Effects on gender equality' (2021) <<https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/integraal-afwegingskader-voor-beleid-en-regelgeving/verplichte-kwaliteitseisen/effecten-op-gendergelijkheid>> accessed 19 February 2023

<sup>70</sup> Emancipatienota 2022-2025, p. 11-12



developing new policies and laws. As a part of the checklist, the ‘gender test’ to consider is more explicated in terms of the different steps to take in charting gender impacts of policies and laws. While the gender test as such is a compulsory part of the assessment to be made, there is no obligation to report on its results. Thus, it is not possible to check to what extent, how and in what cases it has been applied so far, if at all.<sup>71</sup> Because the IAK obliges to many other assessments by policymakers, some of which do have a mandatory reporting obligation, policymakers most likely rarely use the gender impact assessment.<sup>72</sup>

Noteworthy is that in recent years there has been a particular interest in enhancing gender mainstreaming in Dutch foreign affairs and in the development of a Feminist Foreign Affairs policy. Rather in-depth analyses have been made to the extent gender mainstreaming has been applied in Dutch external affairs, what problematic issues arise in this context and how it could be enhanced.<sup>73</sup> This has led many Dutch NGOs to call upon the government to also implement the feminist foreign approach in the Netherlands itself and to better ‘practice what you preach’ domestically in the domain of gender and lhbtqi+ emancipation.<sup>74</sup> They have also pointed to the Netherlands seemingly regarding gender equality above all as an export product (i.e. considered in foreign policy, less so in domestic policy).<sup>75</sup>

#### *Training and awareness-raising*

Among various government bodies awareness raising approaches are used to draw more attention to gender inequalities. Printed materials are distributed, and workshops are being held by the Ministry of Defence and the Ministry of Justice.<sup>76</sup> The Directorate of Emancipation has developed several audio-visual resources for the national government, municipalities, and companies to avoid asking for a person’s gender when it is not necessary. Furthermore, gender equality training is offered to employees of the government. However, most employees do not participate in this training. Gender is still seen as a part of diversity programmes or assertiveness training, specifically for women leaders. These trainings are thus not fully accepted or integrated within the organisational structures in the Netherlands.

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<sup>71</sup> Kamerstuk 30 420, nr. 352. <https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/beleidskompas> en <https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/beleidskompas/achtergrond-beleidskompas/verplichte-kwaliteitseisen/effecten-op-gendergelijkheid> accessed 7 June 2024

<sup>72</sup> EIGE Europa, ‘Gender-Mainstreaming Netherlands’ (EIGE Europa, 2021) <[https://eige.europa.eu/gendermainstreaming/countries/netherlands?language\\_content\\_entity=en](https://eige.europa.eu/gendermainstreaming/countries/netherlands?language_content_entity=en)> accessed 7 June, 2024

<sup>73</sup> S. Ivens and B. van Paassen (2021), Study on Feminist Foreign Policy, Ecorys study performed for the Dutch Ministry of Foreign Affairs; Directie Internationaal Onderzoek en Beleidsevaluatie, “IOB Evaluation: Gender Mainstreaming in the Dutch Ministry of Foreign Affairs: Beyond ‘Add Women and Stir’?” (Ministry of Foreign Affairs 2021) p. 1-89. <<https://open.overheid.nl/documenten/ronl-3f7b2b9b-78ad-490b-8988-ad44b0acb030/pdf>> accessed June 26, 2024

<sup>74</sup> Dutch CEDAW Network, report 2023

<sup>75</sup> S. Ivens and B. van Paassen (2021), p. 27-28

<sup>76</sup> EIGE Europa, ‘Gender-Mainstreaming Netherlands’ (EIGE Europa, 2021) <[https://eige.europa.eu/gendermainstreaming/countries/netherlands?language\\_content\\_entity=en](https://eige.europa.eu/gendermainstreaming/countries/netherlands?language_content_entity=en)> accessed 7 June, 2024

Atria offers specific trainings regarding the assessment of gender impacts of laws and policies, which are deemed effective.<sup>77</sup> After the training people are able to apply knowledge and instruments about gender within their field to improve policy making, test (un)intended consequences of gender inequality, and take a gender-sensitive perspective when looking at current policy themes. The NIHR may also offer such trainings. Yet, the question how to embed such trainings more structurally in the ongoing training of civil servants and legal draftsmen is to be considered further. One could think in this regard of integrating the gender tests into the (compulsory) trainings offered by the Dutch Academy for Civil Servants and the Academy for Legislation. What is also not clear, is to what extent mutual learning is being facilitated in the performance of gender tests, in trainings, via networks or platforms or otherwise.

### *Gender budgeting*

There is no legal obligation in place in the Netherlands to undertake gender budgeting as a strategy, causing it to basically remain an unknown concept in ministerial budgets. This despite the fact that the Visitation Committee Emancipation recommended it already in 2007 to further investigate and develop the use of the instrument of Gender Budget Analysis, also with a view to reinforce the monitoring of the emancipation process.

### *Gender auditing*

Atria annually produces a monitor on the effects on gender equality of certain policies presented within the national and departmental budgets and the National Court of Auditors sometimes does preliminary gender audits.<sup>78</sup> In the framework of the Feminist Foreign Policy that is being developed, the Minister of Foreign Affairs has recognised that the performance of gender audits is an important instrument to establish to what extent policy, working methods, systems and procedures, human and financial resources of the ministry contribute to the promotion of gender equality and women's rights and that such an audit was soon to be carried out.<sup>79</sup>

### Effectiveness studies and concerns

Dutch evaluations of gender mainstreaming and of the use of the tool of gender impact assessment do not show a rosy picture. While early evaluations emphasised its potential as a contributor to the development of gender mainstreaming<sup>80</sup> and for professionalising policies regarding emancipation

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<sup>77</sup> Atria, "Training Oog Voor Gender" (*Atria*, November 8, 2021) <<https://atria.nl/agenda/training-oog-voor-gender/>> accessed February 27, 2024; Women Inc., "LOKET Inc. Workshops, Keynotes En Advies Diversiteit & Inclusie" (*WOMEN Inc.*, March 4, 2022) <<https://www.womeninc.nl/training-en-advies>> accessed February 27, 2024

<sup>78</sup> OECD, *Gender Budgeting in OECD Countries 2023* (OECD publishing 2023) <<http://dx.doi.org/10.1787/647d546b-en>> accessed February 28, 2024

<sup>79</sup> Beleidsreactie - IOB Evaluatie Gender Mainstreaming in the Ministry of Foreign Affairs, 29-9-2021, <https://www.iob-evaluatie.nl/publicaties/beleidsreacties/2021/09/28/beleidsreactie-gender-mainstreaming> accessed 25 June 2024

<sup>80</sup> C. Roggeband and M. Verloo, 'Evaluating Gender Impact Assessment in the Netherlands (1994–2004): A Political Process Approach' (2006) 34 *Policy & Politics*, p. 615

and making them more gender-sensitive,<sup>81</sup> this has not materialised to a satisfactory degree as yet. This is recognised also by the government itself, as expressed in the latest Emancipation Note 2022-2025.<sup>82</sup> Therein, the responsible Minister of OCW held that ‘in practice the gender test is still not always applied, there is no reporting on it in parliamentary documents. The latter is moreover not obligatory, but I deem it desirable because of transparency.’<sup>83</sup> The Minister promised to investigate how during this government period mainstreaming can be enhanced nationwide and to better monitor the actual application of the gender test and to discuss with fellow-political leaders how they assess in new policies to the impacts of other forms of systemic inequality. The consistent application of the gender test is a precondition for the realisation of the emancipation aims and the SDGs.<sup>84</sup> The Minister has also commissioned a study into the helpful and obstructing factors for the implementation of gender mainstreaming in the Netherlands, results of which are expected in mid-2024.<sup>85</sup> So far, no concrete actions for improvement have been put forward.

From the most recent shadow report of the Dutch CEDAW Network on the implementation of CEDAW,<sup>86</sup> criticism emerged that

“the government continues to employ gender-neutral policies. Despite the Committee’s repeated recommendations (CEDAW/C/NLD/CO/5, para. 19, CEDAW/C/NLD/CO/6, para. 16-(a-f)), a gender assessment framework is still lacking or invisible, as are gender budgeting and other gender mainstreaming instruments. NGOs/CSOs have the impression that gender expertise at several ministries has diminished in recent years and that the national machinery is weakening. Gender assessments in policy papers are not visible, because the inclusion of “gender” in the integral assessment framework (IAK) is not mandatory.[...] Although the COVID-19 pandemic has affected women in a variety of ways, all policy measures have remained largely gender-blind, except for some ad-hoc measures regarding domestic violence. The NGOs/CSOs suggest requesting that the government describe the effectiveness of the present state of the national machinery and how it guarantees gender mainstreaming in general policy and national recovery plans, and in their implementation.”<sup>87</sup>

In addition to that, it has also highlighted the difficulties civil servants face in addressing intersectional forms of discrimination, both at the local and national level. The Labour Market Discrimination Action Plan thus hardly contains any measures to combat intersectional discrimination of black, migrant and refugee women or LGBTI women.<sup>88</sup>

The research looking into gender mainstreaming in foreign policy has also highlighted weaknesses and deficiencies in its domestic application,<sup>89</sup> under reference to the equal opportunities policy review

<sup>81</sup> M. Verloo and C. Roggeband, “Gender Impact Assessment: The Development of a New Instrument in the Netherlands” (1996) 14 Impact Assessment, p. 3

<sup>82</sup> This conclusion was also drawn already in 2018 Regioplan report (2018)

<sup>83</sup> Emancipatie Nota, 2022-2025

<sup>84</sup> Emancipatie Nota 2022-2025

<sup>85</sup> Voortgangsrapportage Emancipatie 2022-2023, p. 5.

<sup>86</sup> Dutch CEDAW Network, Women’s rights beyond gender-neutrality: in words and in action, 2021. The report was signed by 75 organisations

<sup>87</sup> Ibid, p. 2

<sup>88</sup> Ibid, p. 2-3

<sup>89</sup> S. Ivens and B. van Paassen (2021), Study on Feminist Foreign Policy, Ecorys study performed for the Dutch Ministry of Foreign Affairs

that was commissioned by the Ministry of OCW in 2018.<sup>90</sup> The conclusion in these reports has been that despite efforts, various ministries did not yet give enough consideration to gender, that a government-wide approach was lacking, and that often also the gender perspective is not considered in the whole policy cycle. Underlying reasons for this have been said to be: lack of political commitment, resources and clout for gender mainstreaming.<sup>91</sup> The 2018 policy review showed that gender-sensitive regular policy is realised in some domains (e.g. health), but still falling short in others, such as social safety, but also economic affairs, climate, finance and defence. It also stated that in a decentralised policy area and without any specific tools for promoting gender-sensitive policies, it has proven particularly difficult to encourage local and national parties to develop gender-sensitive safety policies. There is no comprehensive, central government-wide vision on this issue (safety), nor do we have any understanding of what works and what support local authorities need. Experiences with gender stereotyping in education have been similar. Gender mainstreaming alone does not yet carry enough weight to get the actors moving.<sup>92</sup>

Conducted interviews with civil servants have confirmed this picture, it being highlighted that support and collaboration with other ministries depend on individual relationships and it also being problematic that structures are frequently changed or eroded. Several ministries have also deliberately opted for gender-neutral policy. OCW's coordinating role and efforts to make various policy areas gender-sensitive would only pay off if sufficient resources, capacity, specialist guidance (including monitoring) and political weight are given to emancipation and gender mainstreaming within OCW-DE and other ministries. Political commitment and close collaboration with other ministries have been crucial for achieving recent successes such as the introduction of partner leave and the women in senior management quota.<sup>93</sup> Suggestions put forward in these interviews have also been to place responsibility for coordination directly with the Prime Minister/the Ministry of General Affairs and to include the need for gender and diversity explicitly in government policy and in the coalition agreement.<sup>94</sup>

#### **4. To what extent does the social and political context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality in legal frameworks?**

In the historical account of the Dutch emancipation policy that Atria established in 2017, it has been highlighted in particular that in Dutch politics through time a shared goal of emancipation policy has been lacking, induced also by a political system that is built on coalitions.<sup>95</sup> This has complicated the effective gender mainstreaming of laws and policies, as seen here above already, but which has

<sup>90</sup> H. Harthoorn, M. de Weerd, J. Klaver, 'Beleidsdoorlichting Emancipatiebeleid (artikel 25 begroting OCW), Regioplan, study performed for the Ministry of OCW, (2018), <https://www.rijksbegroting.nl/9350000/1/j9vvihminjsow0h/vl1e17ruv6yf> accessed 25 June 2024

<sup>91</sup> Ecorys report (2021) p. 27-28.

<sup>92</sup> Regioplan report (2018)

<sup>93</sup> S. Ivens and B. van Paassen (2021), Study on Feminist Foreign Policy, Ecorys study performed for the Dutch Ministry of Foreign Affairs, p. 27-28

<sup>94</sup> Ecorys report (2021), p. 27-28

<sup>95</sup> A. van Doorne-Huiskes et. al (2017), p. 246

become also very visible for example in the domain of violence against girls and women in relation to which the Netherlands has been criticised for its gender neutral policy conducted since 2000.<sup>96</sup> There has also been a - too simple - presumption that interventions in certain areas would lead to changes both in the institutional and the cultural dimension and thereby change women's individual capacities.<sup>97</sup> With the Balkenende IV government, women's rights and gender equality thus regained importance reflected within the policy note 'Our Common Concern' of October 2007.<sup>98</sup> This note appeared a month after the emancipation policy for the years 2008-2011 'Meer kansen voor vrouwen' (More opportunities for women). It identified the following priorities: the post-primary education for girls, sexual and reproductive health and rights, time-saving infrastructure for women, property and inheritance rights for women, formal employment for women and equal opportunities on the labour market, participation and representation of women in politics and government and combating violence against women.

The complication of mainstreaming gender equality has also been said to ensue from the ideal and 'doctrine' of free choice that has become a mantra and a guideline in Dutch emancipation policy.<sup>99</sup> As Schippers has argued, choices of individuals always get shape within an institutional context of societal givens and political starting points and in that sense they are never free; the given institutional order may represent the world of the self-evidence, but this is certainly not neutral. There are historically anchored political choices that underlie it but because these often remain implicit the policy seemingly is neutral.<sup>100</sup> The emphasis on free choice therewith functions as a political legitimization to keep the world and the existing orderings in terms of gender relations predominantly the way they are. While free choice sounds tolerant and liberal, it implies that the old is being kept very much in place.<sup>101</sup>

Other research confirms that beyond the specific policies that the Netherlands has in place to increase gender equality, combat violence and to stimulate women's labour market participation, national policies are not only seen as gender neutral but there also being a presumption that claims of men and women do not have to be gender-specific and do not conflict.<sup>102</sup> The Netherlands wants men and women to be considered as equal and by using the gender-neutral approach, the government may think that non-differentiation between men and women stimulates equality.<sup>103</sup> Another specific contextual factor constitutes the fact that traditional gender norms are still prevalent

<sup>96</sup> Further on this, the VAW case study here below.

<sup>97</sup> *Kamerstukken* 131975, 2009 nr. 3

<sup>98</sup> *Kamerstukken* 111245, 2007

<sup>99</sup> *Ibid*, p. 248

<sup>100</sup> J. Schippers, 'Emancipatiebeleid tussen geleefde droom en onvoltooide daad', *Tijdschrift voor Genderstudies*, (2017), 20(2), p. 141-146

<sup>101</sup> A. van Doorne-Huiskes et. al (2017), p. 248

<sup>102</sup> M. Verloo and C. Roggeband, "Gender Impact Assessment: The Development of a New Instrument in the Netherlands" (1996) 14 *Impact Assessment*, p. 3; M.L.P. Loenen and H.M.T. Holtmaat, 'The Netherlands, European Equality Law Review' (2016) 2, p.117-120; J. Goldschmidt, 'Anti-Discrimination Law In The Netherlands: A Specific Legal Patchwork, Normative System And Institutional Structure' in *Taking Employment Discrimination Seriously: Chinese and European Perspectives* (2009) p. 239-259

<sup>103</sup> *Ibid*, p. 3. "In the Netherlands-as probably elsewhere-policies at the national level are seen as gender-neutral; it is presupposed that needs and claims of men and women are not gender-specific and do not conflict."



in the Netherlands.<sup>104</sup> Dutch children are still exposed to gender stereotypes in their formative years, which causes traditional gender norms to persist, but also the traditional male-breadwinner model still dominates. Men still work three times more often full-time than women do and it is still considered normal for the man to earn the main income in a relationship.<sup>105</sup> This research even shows that heterosexual relationships are less happy when the man earns less than the woman.<sup>106</sup> A majority of people still thinks that mothers should not work more than three days in a week, even though women generally have a higher educational level than men.<sup>107</sup> Even though the Netherlands is trying to encourage women to work more, men are not (sufficiently) encouraged to take on more household duties, resulting in the maintenance of traditional gender norms.<sup>108</sup> Societal and political discussions thus also frequently focus on the choices women make, while neglecting the fact that men have a role and responsibility as well.<sup>109</sup> This reinforces traditional gender roles and places an unfair burden on women. Moreover, taking care of children or providing elderly care is generally not considered 'real' work, despite the intensive time and energy it requires. As a result, the unequal distribution of unpaid work between women and men remains invisible and unaddressed. One of the most telling ways in which the government has addressed the issue is through the campaign geared exclusively to women: '*meer werken, laat het merken!*' (work more, let them know!).<sup>110</sup> This approach can be qualified as a 'fixing the women' approach, without addressing the existing system that hampers in many ways women's paid work.

Interestingly, women in the Netherlands are taking up most informal care in comparison to men, as well as care for the home and children.<sup>111</sup> This is being reinforced in crisis situations. After the 2008

<sup>104</sup> H. Mars, I. Ceelen and A. Renckens, 'Ervaringen, gedrag en genderopvattingen van mannen in Nederland' (Atria, 2022) <<https://prod-cdn.atria.nl/wp-content/uploads/2022/11/16201215/IMAGES-literatuuronderzoekNL.pdf>> accessed 20 February 2024; Emancipatiemonitor 2022, Centraal Bureau Statistiek, 2022

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Emancipation Monitor 2022, Centraal Bureau voor de Statistiek (2022)

<sup>108</sup> H. Mars, I. Ceelen and A. Renckens, 'Ervaringen, gedrag en genderopvattingen van mannen in Nederland' (Atria, 2022) <https://prod-cdn.atria.nl/wp-content/uploads/2022/11/16201215/IMAGES-literatuuronderzoekNL.pdf> accessed 20 February 2024

<sup>109</sup> 'Onze deeltijd decadentie is het ultieme Nederlandse taboe', S. Schimmelpennick, De Volkskrant, 24 November 2023

<sup>110</sup> 'Ministerie lanceert campagne om meer uren werken te stimuleren', Potentieel Pakken, <<https://www.hetpotentieelpakken.nl/ministerie-lanceert-campagne-om-meer-uren-werken-te-stimuleren/>> Accessed 7 June 2024

<sup>111</sup> Volksgezondheid en Zorg, 'Participatie | Mantelzorg' (Vzinfo.nl, 6 December 2023) <https://www.vzinfo.nl/participatie/mantelzorg> accessed 26 June 2024

M.A. Erkes and B. Hewitt, 'Part-time work strategies of women and men of childbearing age in the Netherlands and Australia' in H. Nicolaisen, H.C. Kavli, and R.S. Jensen (eds), *Dualisation of Part-Time Work: The Development of Labour Market Insiders and Outsiders* (Policy Press, Bristol 2019); A.M. de Pleijt and J. de Groot, 'Vrouwen minder vaak economisch zelfstandig door verdeling zorgtaken' (2022) 107 Economisch Statistische Berichten, p. 295

Radboud University Nijmegen, 'Mantelzorg moeilijk te combineren met werk' (Radboud University Nijmegen, [2024] <https://www.ru.nl/onderzoek/onderzoeksnieuws/mantelzorg-moeilijk-te-combineren-met-werk> accessed 1 July 2024



economic crisis, the Dutch government has thus slowly moved from the classical welfare-state to a 'participation society'. This meant, specifically through the decentralisation of care for e.g. elderly and the WMO-law, that there was now an increased expectation for Dutch citizens to take up care tasks formerly done or paid for by the state.<sup>112</sup> Consequently, the inequalities in care responsibilities between men and women continue to exist.<sup>113</sup> Next to this, research conducted on the COVID-19 pandemic shows that 57% of mothers reported having less free time, in comparison to 36% of fathers.<sup>114</sup> 60% percent of respondents has taken up more care duties since the COVID-19 pandemic lockdowns started.<sup>115</sup>

More generally, the approach of the Netherlands towards gender equality has been qualified as one focused on 'getting women on board' and not on focussing on the underlying gender (power) hierarchies. Gender issues are seen as women's issues and therefore the emphasis was placed more so on women and less on issues of gender inequality as a whole. This perspective has also been coupled with an instrumentalist argument, stating that ensuring women's rights is good for the economy, for inclusive decision-making and more stable societies. While this might be good for society, it may not be good for women; perceiving gender inequality as a women's problem and merely fixing it by fixing the women is not a solution for the underlying gender hierarchies.<sup>116</sup>

A clear systemic view on concrete gendered cultural patterns and social inequalities is missing. The concept of gender seems to be a black box whose specific contents remain vague. Explicit attention for the societal impact on inequalities and the persistence of gender norms is needed within the formulation of policies and measures to bring about transformative change.<sup>117</sup>

Lastly, specifically when it comes to laws on the subject of property and the matrimonial property law, gender plays a role. Traditional legal concepts and practices can include a gender bias, in which e.g. the care work that women do for families is not rewarded equally. Although formally equal treatment is aimed for, sometimes this is only a 'paper-tiger'.<sup>118</sup>

<sup>112</sup> V. Lub and M. Uytterlinde, 'Evaluating State-Promoted Civic Engagement and Participation of Vulnerable Groups: The Paradoxical Policies of the Social Support Act in the Netherlands' (2012) 41 *Journal of Social Policy*, p. 373

<sup>113</sup> I. Verhoeven and E. Tonkens, 'Talking Active Citizenship: Framing Welfare State Reform in England and the Netherlands' (2013) 12 *Social Policy and Society*, p. 415

<sup>114</sup> M. Yerkes, S. André, J. Besamusca, C. Remery, R. van der Zwan, P. Kruyen, & P. de Beer, 'Werkende ouders in tijden van Corona. Meer Maar Ook Minder Genderongelijkheid' (Policy Brief, 2020) [https://www.researchgate.net/publication/344422674\\_Werkende\\_ouders\\_in\\_tijden\\_van\\_Corona\\_Meer\\_Maar\\_Ook\\_Min-der\\_Genderongelijkheid](https://www.researchgate.net/publication/344422674_Werkende_ouders_in_tijden_van_Corona_Meer_Maar_Ook_Min-der_Genderongelijkheid) accessed 15 January 2023.

<sup>115</sup> *Ibid.*, p. 5

<sup>116</sup> See De directie Internationaal Onderzoek en Beleidsevaluatie, "Gender Sense & Sensitivity; Policy Evaluation on Women's Rights and Gender Equality (2007-2014)" (Ministry of Foreign Affairs of the Netherlands 2015)

IOB rapport Gender Mainstreaming beleid, Inspectie Ontwikkelingssamenwerking en Beleidsevaluatie, 27 October 2021

<sup>117</sup> Cf M. Steketee and others, 'Preventie van Intergenerationeel Geweld Nederland en Eu' (*Verwey-Jonker*, March 2016) <[https://www.verwey-jonker.nl/wp-content/uploads/2020/07/5218\\_Preventie\\_intergenerationeel\\_geweld\\_Nederland\\_EU.pdf](https://www.verwey-jonker.nl/wp-content/uploads/2020/07/5218_Preventie_intergenerationeel_geweld_Nederland_EU.pdf)> accessed 23 February 2024

<sup>118</sup> R. Holtmaat, I. de Hondt, 'Emancipatie-effectrapportage inzake basisstelsel huwelijksvermogensrecht' (2001) 41 *Nederlands Juristenblad*. See also Lünnehan (1999), *ibid.* n 26

**5. Does the identified law or policy embrace gender-neutral or gender-sensitive language?**

The general approach at the policy as well as at the executive level in the Netherlands is to formulate everything in a gender-neutral way. This is confirmed in the official 'Guidelines for regulation', which state that indications of persons need to be gender-neutral, if possible.<sup>119</sup> Within this formulation, it is possible to act gender sensitively when policy- and lawmakers are aware of the relevance of gender related factors. However, so far it seems that the use of gender-sensitive language has gained (very) little attention in emancipation and gender mainstreaming policy and actions.

**6. Are there any specific legal mechanisms or provisions that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?**

It follows already from the previous answers that specific legal mechanisms or provisions to ensure the accountability of law- and policymakers in preventing gendered law-making are lacking.<sup>120</sup> The incorporation of gender considerations in law- and policymaking have been seen to be largely optional and without legal obligation and by consequence heavily dependent on individual commitments and efforts. There are no explicit positive or negative incentives to ensure that gender issues are systematically addressed, nor are there robust accountability measures to enforce the political agreements and policy actions related to gender mainstreaming. Consequently, the commitment to addressing gender inequality and implementing gender mainstreaming has been low and less explicit and largely inconsistent, reflecting a broader governmental reluctance to prioritise these issues.<sup>121</sup> There is also less explicit commitment from Dutch political leaders than in many other EU-countries.<sup>122</sup>

**7. Can technology and data-driven approaches be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilising technology for this purpose?**

Technology and data-driven approaches are not yet used by the Netherlands to identify and rectify gender biases in law- and policymaking (processes) as such. Mostly there is the recognition that the use of algorithms can have negative impacts in job selection and

<sup>119</sup> Point 3.8 of the Aanwijzingen voor de regelgeving, <<https://www.kcbr.nl/beleid-en-regelgeving-ontwikkelen/aanwijzingen-voor-de-regelgeving/hoofdstuk-3-aspecten-van-vormgeving/ss-31-algemene-terminologische-punten/aanwijzing-38-sekseneutrale-persoonsaanduidingen>> accessed 25 June 2024; Cf Steketeer M and others, 'Preventie van Intergenerationeel Geweld Nederland en Eu' (*Verwey-Jonker*, March 2016)

<sup>120</sup> Cf also J. Outshoorn, 'Een onbevredigende studie van het Nederlandse emancipatiebeleid', *Beleid en Maatschappij*, (2018) (3)

<sup>121</sup> M. Verloo, 'Making women count in the Netherlands' in: *Making Women Count* (Routledge, 2018) p. 49-75

<sup>122</sup> IOB Evaluation (2015) p. 69

recruitment, both by the government and other institutions. Women Inc for example has researched the potential of Artificial Intelligence to increase equality in the labour market by interviewing HR data specialists and experts within the field of AI.<sup>123</sup>

However, in the Emancipation Note 2022-2025, it is observed that the Ministry of OCW has commissioned a research into the risks and chances for lhbtq+ equality of the use of algorithms in different domains, and its policy is to be further guided by the outcomes and recommendations of this research. This research, however, has focused not on gender equality as such and it does not make an explicit link with the problem of gendered law- and policymaking as such.<sup>124</sup> Dutch academic research may be relevant for this purpose; Leiden University researches the benefits of using automated text analysis of policy-related documentation in political research.<sup>125</sup> Computers have the ability to read thousands of documents a day, something a human cannot. Being able to analyse more documents when researching a policy or law, can lead to more in depth answers to questions previously unanswerable. This research could also be applicable to analysing gender law/policymaking.

While AI has the potential to reduce biases, when used incorrectly it has the potential to precisely do the opposite. To prevent this, the team creating the algorithms should be interdisciplinary and diverse in social characteristics and perspectives. The government should invest in further research of the use of AI to increase gender equality, build a legal framework and monitor the outcomes.<sup>126</sup>

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<sup>123</sup> Women Inc, 'AI, Gender en de Arbeidsmarkt: Verkennend onderzoek naar de kansen en risico's van Artificial Intelligence voor vrouwen op de arbeidsmarkt' (*openoverheid*, 2021) <<https://open.overheid.nl/documenten/ronl-3d971a1a-ba16-4c56-ba1a-40f0f05989fd/pdf>> accessed at 23 February 2024

<sup>124</sup> Movisie, 'Kunstmatige intelligentie en lhbtq+ emancipatie. Een verkenning van kansen en risico's, stakeholders en mogelijke interventies in vier maatschappelijke deelgebieden' (January 2024) <<https://www.movisie.nl/publicatie/kunstmatige-intelligentie-lhbtq-emancipatie>> accessed 25 June 2024

<sup>125</sup> H. de Vos, "Automated Text Analysis of Policy-Related Documentation" (*Leiden University*) <<https://www.universiteitleiden.nl/en/research/research-projects/data-science-research-programme/automated-text-analysis-of-policy-related-documentation>> accessed February 27, 2024

<sup>126</sup> Cf J. Gerards and R. Xenidis, 'Algorithmic Discrimination in Europe: Challenges and Opportunities for Gender Equality and Non-Discrimination Law, EELN report, 2021, Office of the Publications of the EU, Luxembourg

## B. Violence against women and girls

1. **How is the problem of VAW framed in your national legislation; what are the underlying assumptions? Is it recognised as a form of discrimination in your domestic legislation? And what societal and political factors have shaped this framing?**

The history behind the Netherlands and the Violence Against Women (VAW) law has been described by Atria.<sup>127</sup> At the start of the 21st century, the Netherlands lost a leading position in the field of gender equality. Whilst the World Conference on Women in Beijing in 1995 and the resolution of the European Parliament about violence against women in 1997 both were in favour of gender-sensitive policies, the government of the Netherlands was not. Instead, a gender-neutral approach was taken. In the Policy plan of 2002,<sup>128</sup> the victim and perpetrator of violence were described in a gender-neutral manner, perhaps to be more inclusive towards violence against men. Hereby, violence against women was seen more broadly as domestic violence. This approach was heavily criticised because it did not consider the gendered power dynamics and the disproportionate chance of victimisation of women and girls. The gender-neutral policy approach neglects the relationship between gender and violence according to the UN-Women's Convention (CEDAW). This gender-neutral framing is due to the assumption that not differentiating between men and women leads to more equal outcomes.<sup>129</sup> Both men and women are seen as individuals who are free to make their own decision and have the same agency. However, this view ignores the societal, political, and cultural conditions which influence the way men and women make decisions and the chances they get. By not looking through a gender-sensitive lens, underlying causes can be overlooked. It is not clear to what extent violence against women qualifies as discrimination under Dutch equal treatment law.<sup>130</sup>

The policy plan was revised in 2008 and acknowledged that the majority of the victims of domestic violence were female. However, there were still no specific measures in place to prevent this violence against women. The Ministry of OCW commissioned research about the gender-sensitivity within Dutch policy. This research showed that the gender-neutral

<sup>127</sup> Atria, 'Hoe Nederland geweld tegen vrouwen aanpakt' (Atria, 2023) <<https://atria.nl/nieuws-publicaties/geweld-tegen-vrouwen/hoenederlands-beleid-geweld-tegen-vrouwen-aanpakt/>> accessed 20 February 2024

<sup>128</sup> Atria, 'Hoe Nederlands beleid geweld tegen vrouwen aanpakt' (Atria.nl, 5 February 2021) <https://atria.nl/nieuws-publicaties/geweld-tegen-vrouwen/hoenederlands-beleid-geweld-tegen-vrouwen-aanpakt/#:~:text=In%20het%20nieuwe%20beleidsplan%20van,%20huiselijk%20geweld%20te%20gebruiken> accessed 26 June 2024

<sup>129</sup> Steketee M and others, 'Preventie van Intergenerationeel Geweld Nederland En Eu' (Verwey-Jonker, March 2016) <[https://www.verwey-jonker.nl/wp-content/uploads/2020/07/5218\\_Preventie\\_intergenerationeel\\_geweld\\_Nederland\\_EU.pdf](https://www.verwey-jonker.nl/wp-content/uploads/2020/07/5218_Preventie_intergenerationeel_geweld_Nederland_EU.pdf)> accessed 23 February 2024

<sup>130</sup> L. Sosa and S. de Vido, *Criminalisation of Gender-Based Violence Against Women in European States, Including ICT-Facilitated Violence* (Luxembourg: Publications Office of the EU, 2021) 47



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approach is not inherently bad, but it has to be combined with gender-sensitive action.<sup>131</sup> This however requires policy makers, intervention developers and implementers to be aware of and to take into account the relevance of gender-related factors, which was not always the case. In addition to the above, three causes were identified for this.

The first one concerns resistance against the gender-sensitive approach.<sup>132</sup> The findings suggested that people feel like they have to choose between two sides: a side seeing domestic violence as the oppression of women, and a side seeing domestic violence as mutual violence with the possibility of violence from either partner regardless of gender. Because these two sides were seen as separate, people thought the gender-sensitive approach and a systematic approach with more attention for victim and perpetrator could not go together. The gender-sensitive approach was seen as a one-sided approach focussed on women.<sup>133</sup> Secondly, generally the idea prevailed that the emancipation of Dutch women was complete, making the gender-sensitive approach seem redundant. The research report from OCW only mentions power dynamics and stereotypes as a theoretical cause of domestic violence, lacking actual research and monitoring on these power differences and attitudes towards women in situations of domestic violence.<sup>134</sup> Because of this, the policy makers, intervention developers and implementers lack knowledge on the importance of gender in these cases. Lastly, the report concludes, while the gender-neutral framing of policies is open to a gender-sensitive interpretation, it does not promote it.<sup>135</sup> It can make it seem like the social reality itself is gender-neutral and sending a contradictory message: we choose a gender-neutral approach, but you have to interpret and act gender-sensitively.

The research appears to have had no impact; the gender perspective remained absent in the subsequent policy plans. Policy-makers wanted to show the relationship between gender, ethnicity and the possibility of being a victim of domestic violence by focussing on the effect between women of an ethnic minority group and the amount of violence they experienced. This, however, led to stigmatisation because the approach to violence against women was gender-neutral, but only acknowledged gendered factors when the women were of non-western migration backgrounds. It evoked the impression that violence against women is only gender-related when it happens in non-Dutch cultural groups. More recent research, of 2023, shows there is improvement in the development of gender-

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<sup>131</sup> K.B.M. de Vaan, M.M. de Boer & M.C. Vanoni, 'Genderscan aanpak huiselijk geweld' (Regioplan Beleidsonderzoek, 2013) <<https://www.regioplan.nl/wp-content/uploads/data/file/rapporten-2400-2499/2435-Genderscan-aanpak-huiselijk-geweld.pdf>> accessed 20 February 2024

<sup>132</sup> K.B.M. de Vaan, M.M. de Boer & M.C. Vanoni, 'Genderscan aanpak huiselijk geweld' (Regioplan Beleidsonderzoek, 2013) <<https://www.regioplan.nl/wp-content/uploads/data/file/rapporten-2400-2499/2435-Genderscan-aanpak-huiselijk-geweld.pdf>> accessed 20 February 2024

<sup>133</sup> Ibid

<sup>134</sup> Ibid

<sup>135</sup> Ibid



sensitive policy to combat VAW in the Netherlands.<sup>136</sup> In 2020 the Group of Experts on Action against Violence Against Women and Domestic Violence (GREVIO), a body of independent experts who monitor the implementation of the Istanbul Convention, criticised the gender-neutral policy in the Netherlands. This critique led to more attention for gender-sensitivity in policymaking in the Netherlands, however, gender-sensitivity is not yet sufficiently present in the implementation and execution of Dutch policies.

#### *Caribbean municipalities: BES-Islands*

There are some challenges for Dutch Caribbean islands of Bonaire, Sint Eustatius, and Saba, specifically in the realm of gender-based violence. Despite the adoption of supportive legislation such as the Social Support Act (2015) and the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, high rates of domestic violence, including serious recidivism rates among perpetrators, persist.<sup>137</sup> Additionally, there is a lack of comprehensive data on gender-based violence in these municipalities. This is further complicated by issues of poverty and inadequate housing.<sup>138</sup> The constitutional restructuring that has designated these islands as *special municipalities* of the Netherlands has not sufficiently addressed these disparities. This has led to ongoing concerns about the consistent implementation of gender equality measures across the Dutch Caribbean.

## 2. To what extent do the laws and policies in your country adopt the transformative approach set out in the Istanbul Convention or that is similar to the IC?<sup>139</sup> Where do you locate the VAW legislation of your country in the Gender Equality Continuum?

The Netherlands signed the Istanbul Convention in 2011 and ratified it in 2015. This Convention concerns preventing and combating violence against women and domestic violence. Netherland's

<sup>136</sup> S. Bouma and G. Waltz, 'Naar een gendersensitieve aanpak van partnergeweld: Gemeentelijke perspectieven' (Verwonderzoek, 2023) <<https://publicaties.mensenrechten.nl/publicatie/776f0f4d-28d0-4ae5-8790-c69d48cfa7ef>> accessed 20 February 2024

<sup>137</sup> Ministerie van Volksgezondheid, Welzijn en Sport, 'Inventariserend Onderzoek Maatregelen Huiselijk Geweld en Kindermishandeling BES-eilanden' (Den Haag, 2016)

<sup>138</sup> United Nations, *Concluding Observations on the Sixth Periodic Report of the Netherlands* (24 November 2016)

<sup>139</sup> See in particular: Article 3 –Definitions For the purpose of this Convention: a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

From the preamble: "Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women; Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".



ratification and the efforts in its implementation are welcomed by GREVIO, but they have identified a number of issues which require further action.<sup>140</sup> The Netherlands has to:

- enhance the application of a gendered perspective when making and implementing policies, including the policy on domestic violence;
- ensure this is done without discrimination on any grounds listed in Article 4, paragraph 3;
- ensure stable and sustainable funding levels with separate budget and funding lines for all policies/measures which are part of the comprehensive and coordinated approach to combating violence against women and domestic violence;
- assign the role of co-ordinating body to institutionalised entities to ensure coordination and implementation of policies/measures, to prevent and combat all VAW, and to independently monitor and evaluate these policies/measures;
- introduce data categories with information of all relevant actors, on the gender and age of the victim and the perpetrator, their relationship, type of violence and the geographical location;
- introduce systematic, mandatory and gender specific in-service training on all VAW for all women and girls who are victims of violence;
- provide more shelters and specialist women's support services with a gendered approach;
- align with the requirements of the Istanbul convention on the regime of temporary restraining orders and monitor its effectiveness;
- review criminal offences of: psychological and sexual violence, sexual harassment, forced marriage and female genital mutilation.

GREVIO identified additional areas where the Netherlands has to improve in order to fully comply with the obligation of the convention. The Netherlands should encourage victims to report violence and research the consequences of diverting cases away from the criminal justice system on both recidivism rates and deterrence. Besides that, there is also a need for recognition, encouragement, and support for women's non-governmental organisations which are active in preventing/combating VAW, particularly black, migrant and refugee women's NGOs. Lastly, the Netherlands needs to provide practical facilitation of women's access to gender-specific support services for victims in cases of VAW.

Considering the Netherlands has a lot of areas to improve their VAW law and does not yet fully comply with the obligation of the Istanbul Convention, this country does not adopt the transformative approach all too well. However, it is important to note that there are some changes in the Dutch legal

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<sup>140</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Netherlands' (2020) <<https://rm.coe.int/grevio-report-on-netherlands/1680997253>> accessed 6 February 2024

system which have not been included in the report by GREVIO as it was last reviewed per 2020. An important example of this is the law that will go into effect per July 1st, 2024, the new Sexual Crimes Act.<sup>141</sup> Under the following question, more details will be given.

**3. Does your national law put lack of consent at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?**

The law does mention consent as the centre of the definition of sexual violence.<sup>142</sup> The revised law proposal in 2021 states that “all forms of sex without consent are considered to be rape, including when it cannot be proven that force or threats have been used. It will become obligatory under criminal law to verify if a person consents to a sexual act.”

Consent is the main factor here because it does not matter if there is no proof of force or threats: if there is no consent it is considered rape. In the Netherlands, rape and assault have been criminalized since the introduction of the Criminal Code in Article 242 and Article 246, respectively. The current descriptions of these offences are as follows.

Article 242 Sr/Criminal Code: “Anyone who, by violence or any other factual circumstance or threat of violence or any other factual circumstance, forces someone to undergo acts that consist of or include the sexual penetration of the body, shall be punished as guilty of rape with a prison sentence of up to twelve years or a fine of the fifth category.”

Article 246 Sr/Criminal Code: “Anyone who, by violence or any other factual circumstance or threat of violence or any other factual circumstance, forces someone to perform or endure indecent acts shall be punished as guilty of indecent assault with a prison sentence of up to eight years or a fine of the fifth category.”

From July 1, 2024, victims of assault and rape can file a report if it was clear that they did not want to have sex. This is a result of the new Sexual Crimes Act. Additionally, public sexual harassment and sending sexually explicit messages to children (sexting) will also be punishable offenses. Under the new Sexual Crimes Act, victims can report assault and rape in more situations. The new law removes the requirement to prove coercion to demonstrate rape or assault. It is punishable if it was

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<sup>141</sup> Wet van 20 maart 2024 tot wijziging van het Wetboek van Strafrecht en andere wetten in verband met de modernisering van de strafbaarstelling van verschillende vormen van seksueel grensoverschrijdend gedrag (Wet seksuele misdrijven), Stb. 2024, nr. 59

<sup>142</sup> M. Vegter, ‘Country report Gender equality: How are EU rules transposed into national law?’ (Directorate-General for Justice and Consumers, 2023) <<https://www.equalitylaw.eu/downloads/5992-netherlands-country-report-gender-equality-2023>> accessed 20 February 2023; J. Keiler, ‘From Coercion to Consent: Dutch Rape Law Reform and the Complexities of Consent’ (2024) *Maastricht Journal of European and Comparative Law*; K. Lindenberg, ‘Verkrachting, Aanranding en de Bescherming van de Seksuele Integriteit: Moet Nederland ook naar een “Nein Heißt Nein”?’ in E. Gritter (ed), *Modern Strafrecht – Bijdragen aan de Landelijke Strafrechtdag 2017* (Deventer: Kluwer, 2019)

clear that the other person did not want to have sex, but someone proceeded anyway. If there is evidence of coercion, the perpetrator can receive a harsher penalty.

The new law distinguishes between intent and negligence in cases of assault and rape. In both intent and negligence cases, there was sexual contact while one person did not want it, and there were clear signals indicating this, which the perpetrator noticed or should have noticed. The difference between intent and negligence lies in the perpetrator's mindset. In negligence, the perpetrator wrongly assumes that the other person wants sexual contact, despite signals indicating otherwise. Intent occurs when the perpetrator knows the other person does not want sexual contact or is aware of that possibility but proceeds anyway. In cases of qualified intentional assault and rape, the perpetrator uses coercion in the unwanted sexual contact.

**4. To what extent are the laws in your country sensitive to the intersectional dimension of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)**

GREVIO applauds the Netherlands on its research on diverse intersectional problems regarding the victimisation of violence.<sup>143</sup> It is important to research various social groups like women with a disability and illegal refugees who are female. At policy level, however, there still has to be improvement in the protection of women belonging to these social groups. Intersectionality has to be considered in the making of measures and policies on VAW.

GREVIO also mentions that the Netherlands tends to culturalize violence. Violence against black women and female migrants or refugees is seen as a cultural problem which needs a gender and culturally sensitive approach, but violence against Dutch nationals women does not.<sup>144</sup> Sexual violence is also often portrayed differently when it occurs in 'higher' classes of society. In these circles, such incidents are frequently downplayed or framed in a way that emphasises consensual and liberated sexual behaviours rather than coercion or violence. This can be seen in the way some dismissive narratives emerge around fraternity scandals or elite social groups, where the behaviour is often trivialised as a youthful indiscretion or as part of a liberated sexual culture.<sup>145</sup> In contrast, when similar acts of sexual violence occur within other contexts, particularly within minority or lower socio-economic groups, they are more likely to be condemned outright and linked to cultural or moral

<sup>143</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Netherlands' (2020) <<https://rm.coe.int/grevio-report-on-netherlands/1680997253>> accessed 6 February 2024

<sup>144</sup> R. Römken, 'De Keulse Kwestie: Over de Culturalisering van Geweld en Genderongelijkheid' (2015) 11(3) *Sociologie* 565; M.M.T. Verloo and C.M. Roggeband, 'Nederlandse Vrouwen Zijn Geëmancipeerd, Allochtone Vrouwen Zijn een Probleem: De Ontwikkeling van Beleidskaders over Gender en Migratie in Nederland (1995-2005)', (2006) 13 *Migrantenstudies* nr. 4; *Kamerstukken* 1336594Min OCW, 'Emancipatienota 2018-2021, PRINCIPES IN PRAKTIJK', Brief 29 Maart 2023

<sup>145</sup> 'Corpsleden Die Vrouwen 'Sperma-Emmers' Noemden Niet Vervolgd' NOS (2 August 2024); "Studenten Die Bangalijs Maken Niet Geroyeerd, Wel (Tot 1,5 Jaar) Geschorst: 'Leren van je Fouten'" BN De Stem (14 April 2024); AA Boswell and JZ Spade, 'Fraternities And Collegiate Rape Culture' (1996) 10(2) *Gender & Society* 133; KN Jozkowski and JD Wiersma-Mosley, 'The Greek System: How Gender Inequality and Class Privilege Perpetuate Rape Culture' (2017) 66(1) *Family Relations* 89

deficiencies. This discrepancy in portrayal reflects a broader societal hypocrisy, where the same behaviour is judged differently depending on the perceived social status and cultural background of the perpetrators.

Policy to prevent violence against women took on a culturally specific character in the 21st century. In an attempt to be "inclusive" and "intersectional," policymakers began to distinguish between different ethnic minority groups and the extent to which they experienced violence.<sup>146</sup> This was intended to demonstrate the relationship between gender, ethnicity, and potential victimisation. Although the government aimed to address the undeniable presence of violence against women within these minority groups, it inadvertently led to stigmatisation. The approach to combating violence against women was gender-neutral. However, the government decided to register cases of domestic violence involving individuals with a non-Western migration background in a gender-specific manner.<sup>147</sup> This ethnic profiling placed people with a non-Dutch background in a separate category. This creates a misleading impression, suggesting that violence against women is only gender-related in "non-Dutch" cultural groups. Violence against "Dutch" women is perceived as an individual incident, while violence against women with a non-Dutch background is seen as culturally specific.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?**

To achieve transformative change, the government should prioritise gender equality in development of its policies and make sure the impacts of these efforts are sustainable.<sup>148</sup> To realise this sustainability, it is important to address the imbalances in power relations between men and women and highlight the invisible structures and norms behind these inequalities. The gender-sensitivity approach is very important in this respect because it takes into account the causes and the context of violence and considers/highlights gender related factors like power dynamics, prejudices and stereotypes.

As seen already, the government of the Netherlands still takes a very gender-neutral approach to policymaking without sufficient attention for gender-sensitivity.<sup>149</sup> Research also shows that within

<sup>146</sup> Atria, 'Hoe Nederland geweld tegen vrouwen aanpakt' (Atria, 2023) <<https://atria.nl/nieuws-publicaties/geweld-tegen-vrouwen/hoe-nederlands-beleid-geweld-tegen-vrouwen-aanpakt/>> accessed 20 February 2024

<sup>147</sup> Atria (2023)

<sup>148</sup> Jenny Hedman, Lisa Williams & Laura McDonald, 'What is transformative change for gender equality and how do we achieve it?' (OECD) <<https://oecd-development-matters.org/2022/05/30/what-is-transformative-change-for-gender-equality-and-how-do-we-achieve-it/>> accessed 20 February 2023

<sup>149</sup> College voor de Rechten van de Mens, 'Gendersensitieve aanpak nog onvoldoende aanwezig in bestaand beleid, gemeenten en Rijksoverheid aan zet' (*mensenrechten*, 2023) <



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the municipalities gender-sensitivity is not automatically taken into account and regional policy lacks the gender perspective.<sup>150</sup> The advice based on this research is: municipalities should prioritise and operationalise gender-sensitivity in policymaking and stimulate and facilitate knowledge and expertise about gender sensitivity among policy officials and implementers. The government should prioritise and operationalise gender-sensitivity in future scenarios, for example in national action plans. To truly achieve transformative equality, the Netherlands has to pay more attention to gender-sensitivity in order to highlight existing power relationships between men and women and the invisible structures and norms behind gender inequalities.

The Dutch CEDAW Network has also highly criticised the lack of a gender-sensitive approach, specifically the lack of an underlying comprehensive gender-specific policy analysis of domestic violence. This lack also negatively affects cooperation between chain partners (prevention, formal/informal support, services, aftercare, criminal law). It has also emphasised the need for strong national coordination mechanisms to ensure that national, regional and local policies are in accordance with and reinforce each other. The persistent lack of national guidance and authority to enforce policies has also been said to hinder the systematic and disaggregated data collection on different forms of violence. Furthermore, the lack of an intersectional approach in the policies on domestic violence is noted, and white women being essentially neglected in policy measures on harmful practices. This is considered to reinforce existing stereotypes and prejudices.<sup>151</sup>

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards VAW as contained in the current legal and policy framework from a transformative equality perspective?**

The applied gender-neutral approach fails to understand that girls and women suffer from specific security and safety concerns and that there is a power dimension to this. As regards the intersectional dimension of GBV, it has appeared that there is still a lot of room for improved development and application, as current approaches had unintended and counterproductive – stigmatizing – effects.

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<https://www.mensenrechten.nl/actueel/nieuws/2023/09/20/gendersensitieve-aanpak-nog-onvoldoende-aanwezig-in-bestaand-beleid-gemeenten-en-rijksoverheid-aan-zet> accessed 20 February 2023

<sup>150</sup> S Bouma, G Waltz, 'Naar een gendersensitieve aanpak van partnergeweld: Gemeentelijke perspectieven' (*Verwonderzoek*, 2023) <<https://publicaties.mensenrechten.nl/publicatie/776f0f4d-28d0-4ae5-8790-c69d48cfa7ef>> accessed 20 February 2024

<sup>151</sup> Dutch CEDAW Network, 'Women's Rights Beyond Gender Neutrality: In Words and in Action: Dutch Shadow Report 2021 for 'List of Issues Prior to Reporting' (CEDAW Network, June 2021) [https://www.vn-vrouwenverdrag.nl/wp-content/uploads/Shadow\\_report\\_Dutch\\_CEDAW\\_Network\\_incl\\_references-05June2021.pdf](https://www.vn-vrouwenverdrag.nl/wp-content/uploads/Shadow_report_Dutch_CEDAW_Network_incl_references-05June2021.pdf) accessed 20 February 2024, p 4-5



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## C. Women in leadership

- 1. How is the problem of women's representation in the public and the business spheres framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging the gendered nature of underrepresentation and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.**

In the shadow report the Dutch CEDAW Network of NGO bodies submitted in 2021, it has been concluded that the progress with regard to women's representation in decision-making positions in the Netherlands within various dimensions including politics, science and business, is still slow.<sup>152</sup> An important reason for this slow progress in the last decades lies in the Dutch regulatory approach towards the promotion of women both in the public and the private spheres.

Promoting women's representation in the public sphere is until this day still tackled only by a voluntary and self-regulatory approach. There is thus no legislation that imposes any form of positive action or quota to bring this about. This regards leadership in political parties, candidate lists for national, regional and local elections as well as other public authorities. The Framework Act on Advisory Bodies merely encourages gender balance in the composition of advisory bodies.<sup>153</sup> Only two political parties adopted measures - quota rules and a zipper system - to promote gender balance. In 2019, the target figure was set to achieve a gender balance between 40% and 60% in political representation and public service, but not with any supporting legal rules to achieve that. The main tools to achieve that were geared towards inclusive selection (procedures), active recruitment of possible female candidates and working on solid equipment for the political office and inclusiveness of political culture.<sup>154</sup> In setting out this target figure, there has been no reference as such to the root causes for women's exclusion. Yet, the option of moving forward with a more stringent legal approach and modification of the Election law to this purpose is also left open.<sup>155</sup>

In the Strategic Human Resources Plan of the National Government 2025,<sup>156</sup> an inclusive working environment with diverse teams has been made an important focus and the ministries have signed the Diversity Charter and the Charter Talent to the Top. The Diversity Charter was set up by the SER in 2015 and requires participating companies and (semi) public institutions to establish their own diversity and inclusion goals and plan, which they commit to annually report on.<sup>157</sup> According to the Charter form the "usefulness and necessity of a diverse staff are linked to strategic objectives. Our organisation sees the added value of diversity and inclusion for achieving the organisational goals." As such, it is not expressly linked to the underlying gendered nature of underrepresentation, gendered power hierarchies and eradication of gender stereotyping. The Charter Talent to the Top

<sup>152</sup> Dutch CEDAW Network (2021)

<sup>153</sup> Article 12(3)

<sup>154</sup> Letter of the Minister of Interior Affairs to the Parliament, *Kamerstukken* 2018-2019, 30420 nr. 328

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> SER, 'Diversiteit in de top: Tijd voor Versnelling' (Ser-advies, 2019) <https://www.ser.nl/-/media/ser/downloads/adviezen/2019/diversiteit-in-de-top-publieksversie.pdf> accessed 20 February 2024



is a foundation that is geared already for 25 years towards making senior management of companies more inclusive and that aims to promote gender and cultural diversity. On its website, it links the necessity of diversity and inclusion also not as such to the the eradication of gendered power hierarchies, but it underscores primarily the economic rationale, stating that “Developments in society as well as academic research show that organisations achieve excellent business results thanks to improving their D&I. For example, employees are more engaged, companies enjoy an increase in turnover and profits, they innovate more and their teams are more productive.”<sup>158</sup>

The approach of the Netherlands towards a gender balanced company boards was for a long time also based on self-regulation, building on the Dutch Corporate Governance Code (Code Tabaksblatt) as well as the mentioned Charter Talent to the Top and Diversity Charter. This self-regulatory approach achieved only slow and limited progress, however.<sup>159</sup> While self-regulation can lead to progress in this domain, it entails some conditions such as that all relevant actors take ownership of the problem, that the public sector sets a good example and that the media highlight the importance of this gender balance.<sup>160</sup> These factors were not present within the Netherlands. The choice of the Netherlands to stick with the self-regulatory approach can be traced back to the balancing act between the freedom of enterprise and protection of ownership vis-a-vis the principle of equality and social justice, the type of welfare state, cultural views on masculinity/femininity and political system/preferences.<sup>161</sup>

However, on January 1, 2014, a temporary legal measure was introduced that aimed at having at least 30% of women in company boards by the end of 2015.<sup>162</sup> The legal history does not give many clues about the reasons for its introduction. What is clear, though, is that it resulted from an amendment that was proposed by some members of parliament and that originally it was intended to include the target figures in the aforementioned Code Tabaksblatt. The explanation supporting the amendment referred to both the emancipatory and economic rationales for including it, and to the bad position of the Netherlands vis-a-vis other countries in this respect.<sup>163</sup> However, the law did

<sup>158</sup> Ibid.

<sup>159</sup> S. Krusinga, L. Lennarts and L. Senden, ‘Vrouwen Naar de Top: Van Symboolwetgeving Naar Een Aanpak Die Wél Werkt. Een Rechtsvergelijkende Beschouwing over de Vraag Hoe m/v-Diversiteit Kan Worden Gerealiseerd in de Top van Het Nederlands Bedrijfsleven’ (2016) 21 *Nederlands Juristenblad*

<sup>160</sup> See L. Senden and S. Krusinga, ‘Gender-balanced company boards in Europe’, European Equality Law Network report, EC, Luxembourg, Publications Office of the EU, 2017

<sup>161</sup> Krusinga, Lennarts and Senden(2016); L. Senden, Getting Women on Company Boards in the EU: A Tale of Power-Balancing in Three Acts, in: N. Bodiřoga-Vukobrat, S. Rodin, G. Sander, *New Europe - Old Values? Reform and Perseverance*, Springer 2015, p. 77-95

<sup>162</sup> In the Wet Bestuur en Toezicht, which is a private law and not part of public equal treatment law. See in more detail Krusinga, Lennarts and Senden (2016); S.A. Krusinga and L. Senden, “Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change,” in: C. Seierstad, P. Gabaldon, H. Mensi-Klarbach, *Gender Diversity in the Boardroom* (Springer International Publishing 2017) <[http://dx.doi.org/10.1007/978-3-319-56142-4\\_8](http://dx.doi.org/10.1007/978-3-319-56142-4_8)> accessed June 10, 2024

<sup>163</sup> L. Lennarts, Meer vrouwen in de bestuurskamer via Boek 2 B? Over streefcijfers, quota en de beperkingen van de wetgeving, in: Bulten, Perquin-Deelen, Sinninghe Damsté, Bakker, *Diversiteit. Een multidisciplinaire terreinverkenning*, Wolters Kluwer, 2020, p. 159

not provide for any sanctions when companies did not achieve this goal: they merely had to provide an explanation for their failing (comply/apply or explain approach).<sup>164</sup> Not surprisingly, this legal measure had only very limited effect by the time of its expiration, but in the law that was set for the next four years the Dutch legislator still did not see the need for strict quotas with sanctions for non-compliance. Instead, the same self-regulatory approach of a soft quota of 30% women within the board of directors and the supervisory board of companies was adopted. This measure was targeted at so-called 'larger' Naamloze Vennootschappen (NV) (a public limited company) and Besloten Vennootschappen (BV) (a private company with limited liability) and not at large foundations (stichting), associations (vereniging) or cooperatives (coöperatie).<sup>165</sup> The law does not explicitly distinguish between public and private companies, but in practice is aimed at companies in the private or semi-public sector. In the ministries, there are currently 44% women in the leadership roles, and 39% in the semi-public sector.<sup>166</sup> Also the Dutch legal approach has fallen short partly because of the reluctance within politics to combine the target with effective monitoring and compliance mechanisms such as sanctions.<sup>167</sup>

Slowly society and business became convinced of the necessity of gender quota because the share of women in leadership positions in the Netherlands has not increased much over the years.<sup>168</sup> The focus on gender equality leads to more people recognising the capacities of women as equal to or useful as the capacities of men. Because the general gender ideologies in the Netherlands have become more egalitarian, discrimination and gender stereotyping have become less acceptable. From both the perspective of optimal use of people's talent and the social justice perspective, this recognition resulted in a need for change.<sup>169</sup>

As of 1 January 2022, a new law was thus enacted with more stringent quota rules and target figures, which will be in force for 8 years and evaluated after 5 years. The SER has played an important role in creating support for this more forceful approach, which is indicative of the companies' increased support for realising change in this regard.<sup>170</sup> This new law provides a 'grow-in quotum' rule, meaning that with every new board seat to be filled, big stock-exchange companies have to work towards

<sup>164</sup> See in detail M. Lückerath-Rovers, Een analyse van 'past toe of leg uit' van het streefcijfergetal bij Nederlandse beursvennootschappen, in: Bulten, Perquin-Deelen, Sinnighe Damsté, Bakker, Diversiteit. Een multidisciplinaire terreinverkenning, Wolters Kluwer, 2020, p. 217

<sup>165</sup> S. Krusinga and L. Senden, 'Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change,' in: C. Seierstad, P. Gabaldon, H. Mensi-Klarbach, *Gender Diversity in the Boardroom* (Springer International Publishing 2017) [http://dx.doi.org/10.1007/978-3-319-56142-4\\_8](http://dx.doi.org/10.1007/978-3-319-56142-4_8) accessed 10 June 2024

<sup>166</sup> Gender Diversiteit in de Overheid, accessed 26 June 2024, available at <https://www.genderdiversiteitindeoverheid.nl>

<sup>167</sup> Ibid.

<sup>168</sup> A. Merens and J. Iedema, 'Verschillende Wegen Naar Leidinggeven' (Sociaal en Cultureel Planbureau, June 2020) <https://www.scp.nl/publicaties/publicaties/2020/06/25/verschillende-wegen-naar-leidinggeven> accessed 27 February 2024

<sup>169</sup> L. Blommaert et al, 'Vrouwen in Leidinggevende Functies' (2019) 94 *Mens & Maatschappij*, p. 29

<sup>170</sup> Wet van 29 september 2021 tot wijziging van Boek 2 van het Burgerlijk Wetboek in verband met het evenwichtiger maken van de verhouding tussen het aantal mannen en vrouwen in het bestuur en de raad van commissarissen van grote naamloze en besloten vennootschappen (Art. 2:142b BW), Staatsblad 2021, 495

realising minimum  $\frac{1}{3}$  of female and  $\frac{1}{3}$  male board members. This comes now with a compliance mechanism; appointment of a member not in line with the law's conditions will make that appointment invalid.<sup>171</sup> Other large partnership companies are obligated to set 'suitable' and 'ambitious' targets for their executive board, supervisory board and 'senior management', this however is not defined by the law.<sup>172</sup> But reporting and transparency rules have also been established, for which the SER has been established as the responsible monitoring body. It now has started to publish the first reporting results in its 'Diversity Portal', set up for this purpose.<sup>173</sup> The SER has very recently published its first SER Monitor Gender Balance in Dutch Companies since the introduction of this law.<sup>174</sup>

**2. More specifically, are the laws and policies recognising the underlying causes of underrepresentation of women in leadership positions, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?**

As previously mentioned, quotas have only been introduced for the private sector, but are not used within the public sector.<sup>175</sup> In doing so, the private sector is held to a higher standard than the government itself. This indicates a lack of awareness or at least recognition of the relevance of the ongoing gender stereotyping within politics and the disadvantages women experience within politics. This gender stereotyping also reflects very much in online hate speech and violence, which affects female politicians to a (much) larger extent than men.<sup>176</sup> This creates an important disincentive for women to enter politics or is a reason to leave it. The government does seem to be aware of this problem, but does not act upon it legally so far.

In the evaluation report of the Dutch emancipation policy of 2018, the discussion of the intervention logic and theory behind the policy in the domain of women to the top does not mention the need to eradicate gender stereotyping and the problem of gendered power hierarchies.<sup>177</sup> Some years later, in the explanatory memorandum of the new quota law that was enacted in 2022,<sup>178</sup> it was held that the Netherlands needs all talent for development and secondly states that everyone should have equal opportunities to develop their talents and show their capacities regardless of gender or cultural

<sup>171</sup> Ibid.

<sup>172</sup> Art. 2:276 BW

<sup>173</sup> SER, 'Diversiteitsportaal' <<https://www.ser.nl/nl/thema/diversiteitsportaal>> accessed 20 February 2024

<sup>174</sup> Ibid.

<sup>175</sup> S.A. Krusinga and L. Senden, "Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change," in: C. Seierstad, P. Gabaldon and H. Mensi-Klarbach, *Gender Diversity in the Boardroom* (Springer International Publishing 2017) <[http://dx.doi.org/10.1007/978-3-319-56142-4\\_8](http://dx.doi.org/10.1007/978-3-319-56142-4_8)> accessed June 10, 2024

<sup>176</sup> Women in politics and in the public discourse: What role can national Parliaments play in combating the increasing level of harassment and hate speech towards female politicians and parliamentarians? Background document for the European Conference of Presidents of Parliament (2019) <http://www.assembly.coe.int/LifeRay/APCE/pdf/ConfPres/2019Strasbourg/20191024-WomenPolitics-EN.pdf> accessed 1 July 2024.

<sup>177</sup> Regioplan *report*, 2018, p. 44

<sup>178</sup> <https://zoek.officielebekendmakingen.nl/dossier/kst-35628-3.html>



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background. This is a human rights approach to promoting gender equality; everyone should get equal chances because we are all human. The cabinet also recognised that gender stereotypes cause women with the same capacities as men to have unequal opportunities.<sup>179</sup> Yet, the primary concern that is mentioned is that having more women on company boards is good from the perspective of decision-making and business. This focus is also reflected in the fact that the quota and target rules have been introduced as part of private, company law and not within the public law realm of equality law. The explanatory memorandum<sup>180</sup> of this law also emphasises that an objective determination of the quality of a candidate is not possible. This is because of (unconscious) prejudices towards certain groups and because of the homophily principle which entails that people have a preference for people who are similar to them. Both of these mechanisms ensure the reproduction of gender inequality and to counter this the quota has been introduced.

The SER emphasised in the report “Diversity at the top. Time for acceleration” the need for gender and cultural diversity in leadership positions.<sup>181</sup> The claim is made that a lot of potential talent is being wasted because of persisting gender inequalities, which hurt the economy as well as the society as a whole. In this report stereotyping and prejudices are recognised as problems keeping women from making it to the top.

Both in the public and private sphere, the initiatives taken do not seem as such to question the notion of leadership itself and how a different, more inclusive and gender-sensitive conception of what good leadership is could contribute to change. The emphasis is rather laid on the necessity of ensuring inclusive and gender-sensitive recruitment procedures and training.<sup>182</sup>

### 3. Are there specific provisions within the laws and policies that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies’ leadership and that you think could be seen as a good/best practice?

As seen, there are no specific laws in the Netherlands to promote the number of women politicians and within public service. The soft policy measures the government has been developing do not as such challenge traditional notions of leadership, but changing the recruitment procedures and

<sup>179</sup> C.F. Perquin-Deelen, *Biases in de Boardroom en de Raadkamer, Serie vanwege het Van der Heijdeninstituut nr. 160*(Deventer: Kluwer, 2019) and M.C.L. van den Brink, L. Blommaert et al., *Black Box tussen Aanbod, Werving en Selectie van Vrouwen. Onderzoek naar Genderpraktijken in de Benoemingen voor Leden van RvB’s en RvC’s in het Bedrijfsleven* (Nijmegen: Radboud Universiteit Nijmegen, Faculteit der Sociale Wetenschappen i.s.m. KBA Nijmegen, 2016) <https://zoek.officielebekendmakingen.nl/dossier/kst-35628-3.html> accessed 20 February 2024

<sup>180</sup> See also, E. Jongen et al, ‘Vrouwen aan de top, Het Aandeel Vrouwen aan de Top van het Bedrijfsleven Blijft Achter bij het Streefcijfer. Wat zijn de Oorzaken, Gevolgen en Beleidsopties?’ August 2019, Kamerstukken II, vergaderjaar 2019/2020, 30 420, nr. 330 [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2020Z15311&did=2020D3283](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2020Z15311&did=2020D3283) Accessed 25 June 2024

<sup>181</sup> ER, ‘Diversiteit in de top: Tijd voor versnelling’ (SER-advies, 2019) <https://www.ser.nl/-/media/ser/downloads/adviezen/2019/diversiteit-in-de-top-publieksversie.pdf> accessed 20 February 2024

<sup>182</sup> Officiële Bekendmakingen, <<https://zoek.officielebekendmakingen.nl/dossier/kst-35628-3.html>>accessed 20 February 2024

conditions so as to make them more inclusive and gender-sensitive might have such effects on the longer term, when properly and consistently done and implemented in organisational policies.

An example of a good practice are public awareness-raising initiatives, such as the campaign ‘Stem op een Vrouw’ (Vote for a Woman) which encourages people to strategically vote for female candidates placed at the lower end of the list.<sup>183</sup> The campaign raised awareness for diversity and has proven to be effective.<sup>184</sup> The former Minister of internal affairs in The Netherlands, in 2018, pledged to initiate a dialogue on gender diversity between the leaders of political parties.

In the private sphere, the quota law enacted in 2022 does not deal with the notion of leadership as such. In the implementation of the law and with a view to realising its objectives, the SER has developed sets of guidelines, suggestions and tools that can be helpful for this.<sup>185</sup> It also offers a platform for knowledge exchange and dialogue. While the SER does not seem to focus on the notion of leadership as such and its discussion, impliedly its manifold support actions may contribute to this.<sup>186</sup>

#### **4. What aspects are left untouched in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?**

An important criticism from the perspective of transformative equality has been voiced by the Dutch CEDAW Network, and therewith by multiple NGO’s, which concerns the fact that the new quota law also introduces a minimum percentage/quota of seats for men.<sup>187</sup> As such, one can say that this law is not recognisant of the fact that it is women’s underrepresentation that is the central problem that needs to be addressed, because of historical and societal gender stereotyping that has led to their exclusion of power and decision-making positions.

The fact that there are no legal rules in place at all for promoting gender balance in the public sphere (except for a very limited one for public advisory bodies) also demonstrates a lack of recognition of women’s more difficult access to power positions because of such reasons and the resistance and violence they experience when engaging in such positions. The governmental approach also lacks awareness of the importance of the public sector showing commitment to transformative structural change and of leading the private sector by example.

Another crucial element that is missing in the Dutch approach concerns intersectionality. This has also been criticised in the mentioned report, highlighting the government’s lack “to increase women’s representation in all their diversity (incl. black, migrant, refugee, disabled, LBTI) in political and public life, particularly in local government, academia and the foreign service in all parts of its Kingdom.”<sup>188</sup> Even more so, it has been held in this report that “[a]s underscored by CEDAW

<sup>183</sup> Stem op een vrouw, <https://stemopeenvrouw.com/> accessed 26 June 2024

<sup>184</sup> B. Kotevska and V. Pavlou, ‘Promotion of gender balance in political decision-making’ European Equality Law Network (Luxembourg: Publications Office of the European Union, 2023) p. 115

<sup>185</sup> ‘Diversiteitsportaal’, SER <https://www.ser.nl/nl/thema/diversiteitsportaal/helpdesk/tips#personeel-hr> accessed 20 February 2024

<sup>186</sup> Ibid.

<sup>187</sup> Dutch CEDAW Network report (2021), p. 7

<sup>188</sup> Ibid.



(CEDAW/C/NLD/CO/6, para. 18) and GREVIO, government policies and measures taken in recent years have structurally undermined the sustainable involvement of black, migrant and refugee women's organisations in policy processes. Undermining measures include cuts at all levels, the abolition of support measures for specific target groups, decentralisation, threshold criteria with an exclusionary effect, and project-based rather than organisation-based subsidies. These factors make it difficult to maintain continuity and meaningfully participate."<sup>189</sup> Importantly so, the quota law of 2022 does not address this particular issue and cultural diversity has been left to being promoted only by soft law measures and policies.

**5. What effects (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?**

The new quota law is an important step forward as the use of quota will lead to more women in leadership positions on company boards. This is a good approach to bring about transformative change because research has shown that women are more likely to be promoted into leadership positions when there is more diversity among the people already in those positions. The evaluation of females by males is positively impacted and the preference to hire other men is negatively impacted when there is more gender diversity at the top.<sup>190</sup> This way, gender quota can also contribute to transforming norms about good leadership.

However, the way in which quota rules are framed matters. By focusing only on the underrepresentation of women, it can be seen as merely a women's problem and putting emphasis on women having to prove their competence, while the credential of men remains unchallenged.<sup>191</sup> By introducing also a minimum quota for men, it is suggested that their underrepresentation is (equally) problematic as that of women. This is what has been done in the Netherlands. In the literature, it has been suggested that instead of adding this minimum quota for men, it may be better to frame ceiling quotas for men.<sup>192</sup> Such quotas would focus on the overrepresentation of "mediocre" men. This change in framing could neutralise the overly masculinized environment facilitating better representation of men and women.<sup>193</sup>

Overall, we may conclude that from a gender transformative perspective the impact is still limited, also because of the absence of an intersectional approach and of a legally obliging public sector

<sup>189</sup> Ibid., p. 3

<sup>190</sup> J.N. Baron, B.S. Mittman and A.E. Newman, "Targets of Opportunity: Organizational and Environmental Determinants of Gender Integration within the California Civil Service, 1979-1985" (1991) 96 *American Journal of Sociology*, p. 1362; P.N. Cohen and M.L. Huffman, 'Working for the Woman? Female Managers and the Gender Wage Gap' (2007) 72 *American Sociological Review*, p. 681; AAUW, 'Barriers and Bias: the status of women in leadership' (AAUW, 2016) <<https://files.eric.ed.gov/fulltext/ED585546.pdf>> accessed 23 February 2024

<sup>191</sup> R. Murray, "Quotas for Men: Reframing Gender Quotas as a Means of Improving Representation for All" (2014) 108 *American Political Science Review*, p. 520

<sup>192</sup> Murray (2014)

<sup>193</sup> Ibid



approach. In addition to what has been observed already above, the current public sector approach does also very little also to combat the misogyny, hate speech and online violence that women encounter (much) more often than men in politics, and which has great impact on women's entry and leaving public office. Creating a safe space for women in power positions is a precondition for their inclusion and empowerment and this requires much more efforts and stringent approaches than currently exist.

At a more fundamental level, because of the identified limits and gender-neutral/equal framing of the 2022 quota law, one may even raise the question to what extent the existing approach towards addressing women's underrepresentation in power positions is still very much reflective of the protection of the white male's privileged position in power in the Netherlands.

Considering the overall Dutch approach towards gendered law- and policymaking and gender mainstreaming, there is still too little (explicit) recognition of structural root causes of inequality and gender ideologies that need remedying and warrant specific actions for specific women groups only. Furthermore, that the Netherlands now seems to be pressing for more far-reaching gender mainstreaming and gender-sensitive change in its Feminist Foreign Affairs policy than the government does in its domestic policies, can be considered misplaced.

## 4.3 Poland

### A. General Framework

#### 1. Recognition of gendered law and policymaking

Gendered law/policymaking is recognized as a problem in Poland. The basic principle of the constitutional order is the principle of equality, and the law generally prohibits discrimination. There are no regulations that would legally discriminate against women. Most national regulations are gender-blind (commercial law, criminal law, etc.), and in situations where the gender of the addressees is distinguished, gender-neutral legislation (accommodating) is adopted. Law is gender blind in relation to a gender other than male and female. The functioning of the law and its effects (law in action) are recognized as such, which puts men in a better position. The law is also blind when it comes to the integration of foreigners. However, in practice, especially at the level of local government, there is a strong focus on the situation of women.

The problem of changes in the law that would take into account the specific situation of women is recognized by NGOs (especially women's organizations), as well as academia. Many studies are being written, of an academic nature, but also journalistic or popular science, reports to show the inequality in the situation of men and women allowed by the law. At the central level, recognition of the need to ensure equal treatment (not just on the basis of gender) can be seen in the appointment of the Government Plenipotentiary for Equal Treatment and the Ministry for Equal Treatment.

#### 2. Key actors and stakeholders

At the time of providing the answer, there was a change of power in Poland and the formation of a new government. It is worth noting, as both the election campaign of the parties currently in power strongly emphasised the need for greater inclusion of women in professional, social and political life. The first reflection of these demands is the establishment of **the Ministry for Equal Treatment**. The Ministry's tasks and priorities are in the process of being shaped (as of 17.12.2023).

The performance of tasks concerning the implementation of the principle of equal treatment has so far been entrusted to **the Government Plenipotentiary for Equal Treatment**<sup>194</sup>.

The tasks of the Plenipotentiary include the implementation of the Government's policy on the principle of equal treatment. The tasks of the Plenipotentiary include in particular:

- 1) drafting and issuing opinions on draft legislation with regard to the principle of equal treatment;
- 2) Conducting analyses and evaluations of legal solutions in terms of respecting the principle of equal treatment, as well as submitting motions to relevant bodies to issue or amend legal acts in the area of the Plenipotentiary's responsibilities;
- 3) Undertaking activities aimed at elimination or reduction of consequences arising from violation of the principle of equal treatment;
- 4) Analysing and assessing the legal and social situation in the field of equal treatment and initiating, implementing, coordinating or monitoring activities aimed at ensuring equal treatment, as well as protection against discrimination;
- 5) Monitoring the situation with regard to compliance with the principle of equal treatment;

<sup>194</sup> Article 18 the Act on the implementation of certain provisions of the European Union on equal treatment, 2010, Official Journal 2023, item 970.

- 6) Promoting, disseminating and advocating for equal treatment;
- 7) Cooperation with national social organisations, including trade unions and employers' organisations.

The tasks of the Plenipotentiary also include: 1) cooperation in matters related to equal treatment and counteracting discrimination with other countries, international and foreign organisations and institutions, 2) cooperation in preparing reports on the implementation of international agreements binding the Republic of Poland on the principle of equal treatment and counteracting discrimination, 3) presenting opinions on the possibility of the Republic of Poland's accession to international agreements on the principle of equal treatment and counteracting discrimination - in cooperation with relevant ministers.

The Plenipotentiary may, with the approval of the Prime Minister, submit, for consideration by the Council of Ministers, draft government documents prepared by the Plenipotentiary resulting from the Plenipotentiary's scope of action, including programmes for the principle of equal treatment and counteracting discrimination. The Plenipotentiary may initiate, implement, coordinate or monitor programmes for the principle of equal treatment and counteracting violations of the principle of equal treatment, in cooperation with relevant ministers<sup>195</sup>.

The principal task of the Plenipotentiary is to implement the Plan. The National Action Program for Equal Treatment 2022-2030<sup>196</sup>.

The National Action Program was established in accordance with the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment. The programme covers anti-discrimination policy, social security, labour, education, health, awareness-building, access to goods and services, data collection, research and coordination.

The previous National Action Program was in force for the period 2013-2016, which, following amendments made by the special Inter-Ministerial Monitoring Team of the National Action Program on Equal Treatment (Międzyresortowy Zespół Monitorujący Krajowy Program Działań na Rzecz Równego Traktowania), as well as an external contractor, was also in force for the period 2017-2018<sup>197</sup>.

The program consists of seven priorities broken down into tasks and task indicators. The baseline was mostly based on the data from the beginning of the program. These are:

I. Anti-discrimination policy - preparation of a list of legislative and system changes leading to the modification of the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment. The objective of improving the quality of institutions is mainly the collection of data on unequal treatment, strengthening the position of provincial attorneys, and monitoring the number of proceedings before courts. Priority given to improving institutions.

II. Labor and social security - increasing the participation of people with caring responsibilities in the labour market through the dissemination of flexible forms of work, increasing the number of childcare places for children up to 3 years of age, creating places in public institutions for breastfeeding mothers and the arrival of a child with a parent who is an employee; promotion of active fatherhood and women in decision-making positions; an application for measuring pay gap available on the

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<sup>195</sup> Article 21 of the Act on the implementation of certain provisions of the European Union on equal treatment, 2010, Official Journal 2023, item 970.

<sup>196</sup> Resolution of the Council of Ministers, 2022, Monitor Polski item 640.

<sup>197</sup> Polskie Radio, 'Rząd zajmie się uchwałą antydyskryminacyjną. Ta polityka będzie kontynuowana' (Polskie Radio, 18 maja 2022) <https://polskieradio24.pl/5/1222/artykul/2964639.rzad-zajmie-sie-uchwala-antydyskryminacyjna-ta-polityka-bedzie-kontynuowana> accessed 24 June 2024.

Ministry's website<sup>198</sup>; educational activities, for example, a training program for the exam for members of supervisory bodies dedicated to women. The priority focused on improving the situation of women.

III. Education - inclusive education regardless of gender, age, ethnicity, and sexual orientation - mainly includes promotional activities. The priority aims to improve institutions.

IV. Health-improving access to health services for people at risk of exclusion. Priority given to improving institutions.

V. Access to goods and services: improving access to public services. Not reported to women.

VI. Awareness building increases knowledge of stereotypes, prejudice, and discrimination. Conduct awareness-raising activities targeting the general public, demonstrating the dignity of the person and sensitizing them to the phenomenon of physical, psychological, and economic violence, particularly against women, children, the elderly, and people with disabilities. Promoting equal treatment in sports and sporting events. Priority given to improving institutions.

VII. Data collection, research reports, and analytical and survey research on the implementation of the principle of equal treatment and non-discrimination in Poland. Priority given to improving institutions.

VIII Coordination: inclusion of equality policy in the course of cooperation of government administration with non-governmental organizations, social partners, and other stakeholders in shaping and monitoring equality policy. Priority aimed at improving institutions.

The problem so far is the low effectiveness of the plan, the low impact of the Plenipotentiary on transformative law-making. Funding of the Plenipotentiary's activities is also a question.

At the provincial level, there are **equal treatment plenipotentiaries** attached to provincial governors (voivodes). Similar plenipotentiaries have been appointed in several cities (i. e. Plenipotentiary for Equal Treatment in the Municipality of Poświętne<sup>199</sup>).

**Women's Councils** and **Equal Treatment Councils** are established in many local authorities. The Councils function as expert bodies and their task is to support decision-makers in the implementation of equality policies. Currently there are 27 Women's Councils, which mainly deal with women's rights and bring women together, and 6 Equal Treatment Councils (i. e. Gdańska Rada ds. Równego Traktowania or Pomorski Zespół do spraw Kobiet<sup>200</sup>). It should be noted that local women's councils perform mainly affirmative roles, do not give opinions on local laws, do not have a budget and their members are not remunerated. Few local governments (e.g. in Gdańsk, Gdański Fundusz Równości 2022<sup>201</sup> create equality funds targeted at citizens and NGOs for activities promoting equality in the local environment. The amount of funding varies from 700 PLN to 7000 PLN. Another trend in local government is the adoption of the European Charter for Equality of Women and Men in Local Life (CEMR). Currently, Poznań and Warsaw are signatories to the Charter, but the adopted Equality Action Plan mainly focuses on actions promoting equality rather than introducing hard solutions, e.g. gender budgeting or quotas in municipal companies. At the level of bottom-up measures: business

<sup>198</sup> Ministerstwo Rodziny i Polityki Społecznej, 'Aplikacja do mierzenia nierówności płacowych' (Gov.pl, 24 June 2024) <https://www.gov.pl/web/rodzina/aplikacja-do-mierzenia-nerownosci-placowych> accessed 24 June 2024.

<sup>199</sup> Gmina Poświętne, 'Równe Traktowanie' (Biuletyn Informacji Publicznej, 24 June 2024) <https://poswi-etne.bip-e.pl/pos/rowne-traktowanie/23070,ROWNE-TRAKTOWANIE.html> accessed 24 June 2024.

<sup>200</sup> Urząd Marszałkowski Województwa Pomorskiego, 'Pomorski Zespół do Spraw Kobiet' (Biuletyn Informacji Publicznej, 24 June 2024) <https://bip.pomorskie.eu/m,561,pomorski-zespol-do-spraw-kobiet.html> accessed 24 June 2024.

<sup>201</sup> Miasto Gdańsk, 'Strona główna' (Gdańsk.pl, 24 June 2024) <https://www.gdansk.pl> accessed 24 June 2024.

and public institutions, including municipalities, sign up to the Diversity Charter as a declaration of care for equality developed by the NGO Forum for Responsible Business. Currently, 330 businesses and public institutions including local authorities have signed the Charter.

At the central level, the main body for equal treatment is **the Ombudsman**. The scope of the Ombudsman's activities concerning the implementation of the principle of equal treatment includes:

- 1) promoting, analysing, monitoring and supporting the equal treatment of all persons;
- 2) conducting independent research on discrimination;
- 3) drafting and issuing independent reports and making recommendations on discrimination problems<sup>202</sup>.

The Ombudsman also receives complaints from citizens, including about discrimination. The Ombudsman's activities can be assessed as effective.

### Parliamentary body

Poland has a long tradition of parliamentary women's groups. Both in the pre-communist period - in the Second Polish Republic (1918-45) - and in the communist period - in the People's Republic of Poland (1945-1989) - and now in the Republic of Poland, there are Women's Groups. There have been four such groups in the Sejm (2019-23): the Parliamentary Group of Women, the Parliamentary Group on the Situation of Women in the Labour Market, the Parliamentary Group on Women's Sports, and the Parliamentary Group on Women's Rights - with the latter two having numerous meetings dedicated to issues such as the situation of LGBTQI+ persons, the rights of women after the tightening of anti-abortion laws, reproductive rights or violence against women.

### Consultation with civil society

Draft legislation should be consulted by society; unfortunately, over the last eight years, consultations have often been facade or omitted altogether. However, it should be emphasised that there is a strong and very active non-governmental sector in Poland. For example: changes to the electoral system were introduced as a result of an initiative by the Women's Congress (an association working for, among other things, real equality between women and men (equality of rights, opportunities and possibilities).

## 3. Addressing gendered law and policymaking

Unfortunately, **no measures or instruments** to address or prevent gendered law/policymaking have been developed so far. Legislation is not examined in terms of its impact on gender. There are also no methodologically structured, regularly conducted statistical studies that address gendered law/policymaking. There is no gender budgeting or accountability mechanism in Poland.

At the stage of drafting laws, it is a constant practice to check the compliance of the draft law with EU law<sup>203</sup>. A bill is attached with an explanatory memorandum, which should present the anticipated social, economic, financial and legal effects and include a statement on the compliance of the draft law with EU law or a statement that the subject of the proposed regulation is not covered by European Union law<sup>204</sup>.

<sup>202</sup> Article 17b, Ombudsman Act 1987, Official Journal 2023, item 1058.

<sup>203</sup> Paweł Kuczma, *Procedure for examining the compliance of a draft law with EU law* (Wrocław 2015).

<sup>204</sup> art. 34 of the Standing Orders of the Sejm of the Republic of Poland, Resolution of the Sejm of 7 December 2023, Monitor Polski 2023, item 1360.



If a draft law is subject to public consultation, there is an opportunity for NGOs to comment. The Ombudsman may point out the harmfulness of the gendered law, which is, however, not binding. If a provision is unconstitutional, he can apply to the Constitutional Court. The right to give an opinion on draft legislation is statutorily entrusted to the Plenipotentiary. An opinion does not influence the legislative process.

The Ministry of Labour, Family and Social Policy has prepared a wage gap calculator in the form of a Wage Inequality Measurement Application dedicated to businesses and employers.

### Successful examples of interventions:

The ruling of the CJEU<sup>205</sup>, which resulted in a change in the law and the establishment of a uniform retirement age for judges (regardless of gender).

In December, the ECtHR issued two judgments. The first indicated that the lack of normalization of the legal status of non-heteronormative relationships<sup>206</sup>. The second emphasises that the current ban on abortion<sup>207</sup> is incompatible with the ECHR. In view of the aforementioned, changes in Polish law are expected (judgments are not yet final).

Also, the 2023 parliamentary elections showed that society considers the creation of a more inclusive society as a member of the European Union as one of its priorities. Even the artificial Law and Justice government included a significant number of women.

### Training and awareness-raising

Two sectors should be noted in this area:

- societal institutions (NGOs), which are very active in Poland (efficient influence on defining problems and increasing awareness of them) - reports, promotion of data and good practices in media or social media;
- academics (research, dissemination via conferences, gender studies on some faculties, but underestimated at law faculties (need to be changed by intersectional research and studies).

As already stated, the NGO sector in Poland is highly developed, only selected actors are presented below.

In Poland, a popular initiative is the signing of the Charter of Diversity by companies, initiated by the NGO - **Responsible Business Forum**. The Diversity Charter in Europe (EC, EU Platform of Diversity Charters) is a network of national and regional organizations, brought together under the Diversity Charter Platform at the European Commission's Directorate General for Justice and Consumers. Currently, Diversity Charters are in operation in 26 European countries. Currently in Poland 315 companies have signed the Diversity Charter.

The Diversity Charter is a short document that details the main commitments to creating and accepting diversity in the workplace. The Charter can be signed by any firm or institution regardless of its size. The Charter represents a commitment to the basic principles of equality and respect for diversity of all people in the work environment, regardless of gender, age, disability, ethnicity, religion or sexual orientation.

<sup>205</sup> Judgment of the Court (Grand Chamber) of 5 November 2019, European Commission v Republic of Poland, C-192/18, ECLI:EU:C:2019:924.

<sup>206</sup> Przybyzewska and others v Poland, Applications nos 11454/17 and 9 others, Judgment of 12 December 2023.

<sup>207</sup> M.L. v Poland, Application no. 40119/21, Judgment of 14 December 2023.



An analysis of individual signatories to the charter would make it possible to determine which of them introduced quotas<sup>208</sup>.

The Women's Congress, also known as the Kongres Kobiet, was established in June 2009 as a social movement aimed at politically and socially empowering women in Poland. Currently, it has representatives in 30 regions of Poland and has approximately 5,000 members, primarily women. One of the demands of the First Congress of Polish Women, which took place on June 20-21, 2009, under the slogan "20 years of transformation 1989-2009," was to achieve gender equality in politics through the introduction of gender parity on electoral lists. At the initiative of the Women's Congress Association, a civilian law project was created, known as the "quota law," which was submitted to the Polish Sejm on December 21, 2009. The law came into force on January 5, 2011. The Congress, in collaboration with the business and social environment, analyzes the situation of women, particularly with regards to the gender pay gap and the situation of women in the labour market, as well as their participation in decision-making processes. Minister for Equality was a member of the association. Many women politicians on local and central were from Congress.

**30% Club Poland** is active in Poland. Club want to achieve "no all-male boards by 2025 and to increase the share of women on boards to 20% by 2025 and eventually to at least 30% by 2030"<sup>209</sup>. The Club is engaged in:

- 1) providing information and help to improve diversity and inclusion at all levels.
- 2) presenting in the media voice in the public debate on the role of women in business.
- 3) staging events to evolve thinking around the issue of diversity.
- 4) speaking at conferences, universities and various events on diversity and inclusion.
- 5) creating, promoting and building on research, in order to help institutions direct their energiestoward activities that make a difference in driving change.

Awareness-raising, training initiatives are taken, for example, by: Stowarzyszenie Aktywne Kobiety<sup>210</sup>, Ośrodek Informacji Środowisk Kobiety<sup>211</sup>, Centrum Praw Kobiet<sup>212</sup>.

### Gender statistics

Gender appears as a sociological variable in the statistical data on central<sup>213</sup> and local level (Local Data Bank<sup>214</sup>). We do not have regular statistics on violence against women, unpaid domestic and

<sup>208</sup> Odpowiedzialny Biznes, 'Sygnatariusze Karty Różnorodności' (Odpowiedzialny Biznes) <https://odpowiedzialnybiznes.pl/karta-roznorodnosci/sygnatariusze-karty/> accessed 24 June 2024.

<sup>209</sup> 30% Club Poland, 'Home' (30% Club Poland) <https://30percentclub.org/chapters/poland/> accessed 24 June 2024.

<sup>210</sup> 'Aktywne Kobiety' (Aktywne Kobiety) <http://aktywnekobiety.org.pl/> accessed 24 June 2024.

<sup>211</sup> OSKA - Ośrodek Informacji Środowisk Kobietych' (Eurodesk Poland) <https://www.eurodesk.pl/organizacje/oska-osrodek-informacji-srodowisk-kobietych> accessed 24 June 2024.

<sup>212</sup> 'Akademia Mocy Kobiet' (Centrum Praw Kobiet) <https://cpk.org.pl/szkolenia/akademia-mocy-kobiet/> accessed 24 June 2024.

<sup>213</sup> 'Poland on the way to SDGs: Report 2023 - Women on the way to sustainable development' (Statistics Poland, 2023) [https://stat.gov.pl/en/topics/other-studies/other-aggregated-studies/poland-on-the-way-to-sdgs-report-2023-women-on-the-way-to-sustainable-development-26\\_4.html](https://stat.gov.pl/en/topics/other-studies/other-aggregated-studies/poland-on-the-way-to-sdgs-report-2023-women-on-the-way-to-sustainable-development-26_4.html) accessed 24 June 2024.

<sup>214</sup> 'Bank Danych Lokalnych' (Statistics Poland, bez daty) <https://bdl.stat.gov.pl/bdl/start> accessed 24 June 2024.

care work<sup>215</sup>. However, since Poland is preparing a Voluntary National Review on the achieving of the SDG 2030 targets, including goal 5, more and more statistical studies are taking into account the situation of women<sup>216</sup>. The latest report focuses on gender issues including; Health and lifestyle, education, economic activity, participation in decision-making, quality of life in old age<sup>217</sup>.

## Monitoring progress

### 1) Institutional level

According to the law, **the Ombudsman** provides annually:

- 1) information on the activities carried out in the field of equal treatment and their results;
- 2) information on observance of the principle of equal treatment in the Republic of Poland, prepared in particular on the basis of research conducted;
- 3) conclusions and recommendations on actions to be taken to ensure compliance with the principle of equal treatment<sup>218</sup>.

Unfortunately, in practice, reports are not published every year. The reliability of monitoring depends on the attitude of the Ombudsman. For example, the previous Ombudsman, Professor Adam Bodnar, was more active in this sphere<sup>219</sup>.

**The Plenipotentiary for Equal Treatment** prepares and submits to the Council of Ministers, by 31 March each year, a report for the previous calendar year containing:

- 1) information on the activities carried out in the field of equal treatment and their results;
- 2) conclusions and recommendations on actions to be taken to ensure compliance with the principle of equal treatment;
- 3) a report on the implementation of the National Action Programme on Equal Treatment.

### 2) Social activity

An interesting initiative that does not stem from legal obligations was the adoption by **the Supervisory Board of the Warsaw Stock Exchange** of Resolution No. 13/1834/2021 of 29.03.2021 "Best Practices for Companies Listed on the WSE 2021". According to the Resolution "*The company should have a diversity policy for the board of directors and the board of supervisory board, adopted by the supervisory board or the general meeting, respectively. The diversity policy shall specify the objectives and criteria for diversity, among others, in such areas such as gender, field of education, specialized knowledge, age and professional experience, as well as indicating when and how to monitor the implementation of these goals. In terms of gender diversity, the condition for*

<sup>215</sup> 'Gender Equality' (Sustainable Development Goals Poland) <https://sdg.gov.pl/en/gender-equality/> accessed 24 June 2024.

<sup>216</sup> National Report 2018, Implementation of the Sustainable Goals in Poland, Monitoring realizacji Agendy 2030, 2018, <https://www.gov.pl/web/rozwoj-technologie/monitoring-realizacji-agendy-2030> accessed 24 June 2024; Statistics Poland, *Report 2021 Poland on the way to SDGs. Inclusive economic growth* (Statistics Poland, 2021) <https://raportsdg.stat.gov.pl/2021/en/wlaczeniespoleczne.html> accessed 24 June 2024; GUS (Statistics Poland), *Report 2022 Poland on the way to SDGs Environmentally sustainable development* (Statistics Poland, 2022) <https://raportsdg.stat.gov.pl/en/index.html> accessed 24 June 2024.

<sup>217</sup> Statistics Poland, *Report SDG 2023, Women on the way to sustainable development* (Statistics Poland, 2023) <https://raportsdg.stat.gov.pl/en/> accessed 24 June 2024.

<sup>218</sup> Article 19(1), Ombudsman Act 1987, Dz.U. 2023, item 1058.

<sup>219</sup> Rzecznik Praw Obywatelskich (RPO), *Ochrona przed dyskryminacją w Polsce* (RPO) [https://bip.brpo.gov.pl/sites/default/files/Ochrona\\_przed\\_dyskryminacja\\_w\\_Polsce.pdf](https://bip.brpo.gov.pl/sites/default/files/Ochrona_przed_dyskryminacja_w_Polsce.pdf) accessed 24 June 2024.

ensuring the diversity of the company's bodies is that the minority participation in a given body at a level of not less than 30%”.

It is a soft solution - no negative consequences of non-compliance. Exchange publishes reports on women's participation in companies<sup>220</sup>.

**The Responsible Business Forum** produces annual reports on good practices introduced by companies operating in the Polish market. In the report from 2021, 283 companies participated and 1,677 good practices were presented. The number of good human rights practices increased significantly (from 55 in 2020 to 102 in 2021). Among the reported practices clearly dominate the category: women in business<sup>221</sup>. In the new 2022 report, the number of good practices has increased to 1,705, including 282 in the area of human rights (including 32 practices in the category 'Women in Business'<sup>222</sup>).

The tool is optional and relies on recognising positive actions.

#### 4. Social and political context

Relevant influence of **cultural context** and **history** on the shape of current law - building the perception of a woman as a mother, a parent, a guardian of the family hearth, what is deeply connected with religion and the cult of Mary as a strong feature characterising Catholicism in Poland. During the struggle for independence in the 20th (1918-20) century and the reconstruction of a free Poland (1990s) very mention of women's rights inevitably ended with a reminder not to downplay the historical significance of the moment, because the nation's fate was at stake. Therefore, any attempt by women to free themselves from traditional family dependence was perceived as a betrayal of the nation, because when the fate of the nation is at stake, women must support men. The idea of fighting for the homeland, and not dealing with women's rights, became the basis of the cultural model of the Polish woman as a heroic, steadfast figure, and above all, the mother of Poles, the mother of future insurgents – sacrificing herself for the rebirth of Poland. The myth of the Polish mother, created during the period of loss of independence, still functions today as a person who can meet the most difficult requirements posed by social, political and historical reality; reconciling her aspirations with the needs of the community, doing this in the spirit of sacrifice for the homeland and family. There is a lack of role models for women as equal partners (they are supposed to be primarily a support). Despite the evolutionary progress of women's professional activation in the 20th century through increasing access to education and professional work, the actual influence on the creation of gender policy or legal frameworks was symbolic.

Another important factor influencing the emancipation of women was the legal abortion on social grounds that had been legal since the second half of the 1950s (the so-called right to terminate pregnancy). Then, in connection with the change of the political system, the so-called abortion compromise (permissibility of abortion only in strictly defined cases of a medical nature or in connection with a criminal offence) was adopted in 1993, which was further significantly restricted

<sup>220</sup> GPW (Warsaw Stock Exchange), *Kobiety w radach nadzorczych spółek publicznych – pokonywanie barier* (GPW) [https://www.gpw.pl/biblioteka-gpw-wiecej?gpwl\\_id=66&title=Kobiety+w+radach+nadzorczych+sp%C3%B3%C5%82ek+publicznych+%E2%80%93+pokonywanie+barier](https://www.gpw.pl/biblioteka-gpw-wiecej?gpwl_id=66&title=Kobiety+w+radach+nadzorczych+sp%C3%B3%C5%82ek+publicznych+%E2%80%93+pokonywanie+barier) accessed 24 June 2024.

<sup>221</sup> Odpowiedzialny Biznes, *Raport 2021* (Odpowiedzialny Biznes, 2022) <https://odpowiedzialnybiznes.pl/wp-content/uploads/2022/05/Raport2021.pdf> accessed 24 June 2024.

<sup>222</sup> Odpowiedzialny Biznes, *FOB Raport 2022* (Odpowiedzialny Biznes, 2023) [https://odpowiedzialnybiznes.pl/wpcontent/uploads/2023/04/FOB\\_Raport2022.pdf](https://odpowiedzialnybiznes.pl/wpcontent/uploads/2023/04/FOB_Raport2022.pdf) accessed 24 June 2024.

by a ruling of the Constitutional Court in 2020. In Poland, after the post-1990 political transformation, there was a retreat from values considered to be left-wing (liberal) towards right-wing - conservative values, supported by the high institutional position of the Catholic Church in Poland. This was also influenced by the widespread real respect/prestige for the 'Polish' Pope John Paul II in the 1990s. The justification for such attitudes was the role that the institutional church had played in the struggle for Polish independence and the building of national identity and sovereignty since the 19th century. Since the 1960s, the fear of so-called 'strong women', 'liberated women', entrepreneurial business-women, with a career outside the home, endowed with power and self-confidence stemming from material and professional position, has been pointed to as a factor jeopardising women's emancipation in both the private and public spheres<sup>223</sup>.

### 5. Gender-neutral and gender-sensitive language

Gender neutral language is used. For example, according to the announcement of the Minister of the Family, Labour and Social Policy on the classification of professions and specialities for the needs of the labour market and the scope of its application<sup>224</sup>, it was assumed that professions have no gender - the traditional masculine names of professions used in the classification and the feminine ones only in professions clearly dominated by women should not affect the classification of persons. Throughout the classification, the only occupation using the female form is nursing. Because of political change of in Poland in October 2023 the new government created the position of **Ministry for Equal Treatment**, Politicians consistently use feminatives in public statements.<sup>225</sup> This raised great hopes for a real change in the approach to gender equality in policy.

### 6. Accountability and the prevention of gendered law-making

Not applicable.

### 7. Technology and gender biases in law and policymaking

Digital data, especially in the context of AI development is unfortunately not subject to regulation or institutional studies. We do not conduct analyses that clarify whether women or men are subject to discrimination in digital resources.

<sup>223</sup> Magdalena Dąbrowska, 'Mój brzuch, moje garsonki. Wizerunki kobiet w polskiej prasie codziennej początku lat dziewięćdziesiątych XX wieku' [in:] P. Perkowski, T. Stegner (eds.), *Kobieta i media. Studia z dziejów emancypacji kobiet*, (Gdańsk, 2009) p. 239.

<sup>224</sup> Ministerstwo Rodziny, Pracy i Polityki Społecznej, *Obwieszczenie w sprawie jednolitego tekstu rozporządzenia Ministra Pracy i Polityki Społecznej w sprawie klasyfikacji zawodów i specjalności na potrzeby rynku pracy oraz zakresu jej stosowania*, Journal of Laws 2018, item 227, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180000227/O/D20180227.pdf> accessed 24 June 2024.

<sup>225</sup> Nouns in the feminine form. The Polish language has a masculine and feminine form for the same profession, such as lekarz (male doctor) and lekarka (female doctor). So far, in most cases, only the masculine forms have been used.



Technology can better identify existing inequalities. Unfortunately, on the other hand, the application of law on the basis of algorithms may lead to discrimination. In Poland, we do not yet have examples of the use of technology and data-driven approaches in the discussed scope.



## B. Violence against women and girls

### 1. Framing VAW in domestic law

Violence against women is treated as a form of discrimination in the Polish legal system. VAW is treated as a problem at both the law-making and policy-making levels. However, it should be emphasised that the focus is on domestic violence (until recently referred to as family violence.) The change in terminology was done to highlight the focus on the victim of violence rather than on family dysfunction). As a result of GREVIO's recommendation and the Ombudsman's pressure, domestic violence includes, in addition to the spouse, also the former spouse, former partner or any other person in a present or past enduring emotional or physical relationship regardless of cohabitation and housekeeping<sup>226</sup>.

It is recognised that violence against women (not only domestic violence) constitutes discrimination and is the result of stereotypes (the vast majority of people affected by domestic violence are women (100,417 compared to 23,832 men and 43,809 children according to the GREVIO report). However, the legislation is gender-neutral, covering physical violence, sexual violence, psychological violence, also cyberbullying. The jurisprudence also includes economic violence.

Poland has implemented Directive 2012/29/EU of the European Parliament and of the Council, is a party to CEDAW and ratified the Istanbul Convention on 27 April 2015. At the national level, matters related to combating violence (in general, not only VAW) are regulated in the Criminal Code (e.g. harassment (offline and online) was separately criminalised in 2011), primarily in the Act of 29 July 2005 on Counteracting Domestic Violence<sup>227</sup>. In 1998, a mechanism for a coordinated, multi-sectoral and inter-institutional response to domestic violence was established (Blue Card Procedure).

The procedure is implemented by "municipal interdisciplinary teams", composed of representatives of public institutions (police, social welfare services, the health sector, the education system, alcohol problem-solving committees) and civil society organisations. When domestic violence is suspected, authorised persons initiate the procedure using a standard form, which is sent to the municipal interdisciplinary team. The team is then responsible for organising an interview with the victim in order to propose a so-called assistance plan, including support and protection measures. As part of the Blue Cards procedure, a social worker cooperates with the victim of domestic violence. The police in particular work with the perpetrator. Additional forms of action have also been introduced, i.e. psychological-therapeutic and corrective-educational programmes, the aim of which is to stop the person using domestic violence from continuing to use violence and to develop the skills of self-control and non-violent problem-solving. Women exposed to domestic violence can benefit from accommodation in various types of facilities: "specialist support centres for victims of domestic violence", "homes for mothers with children and pregnant women" and, in some cases, in local social welfare units (crisis intervention centres and support centres).

Pursuant to the Article 10(1) of the Act on Counteracting Domestic Violence, the Council of Ministers prepares the Government Programme on Counteracting Domestic Violence specifying detailed activities in the field of: 1) providing protection and assistance to persons experiencing domestic violence; 2) correctional-educational programmes for persons using domestic violence and psychological-therapeutic programmes for persons using domestic violence; 3) raising public awareness of the causes and consequences of domestic violence and promoting non-violent

<sup>226</sup> Rzecznik Praw Obywatelskich (RPO), *RAPORT GREVIO PL* (RPO, 2022) [https://bip.brpo.gov.pl/sites/default/files/2022-02/RAPORT\\_GREVIO\\_PL.pdf](https://bip.brpo.gov.pl/sites/default/files/2022-02/RAPORT_GREVIO_PL.pdf) accessed 24 June 2024.

<sup>227</sup> Journal of Laws 2005 No. 180 item 1493 (as amended).

parenting methods; disseminating information on the possibilities and forms of providing assistance to both persons experiencing domestic violence and persons using domestic violence. The current programme was adopted for the period 2024-2030<sup>228</sup>.

The responsible authority for the policy to combat domestic violence is primarily the minister responsible for social security, and to some extent also the Prosecutor General. At the central level, the Monitoring Team for Counteracting Domestic Violence was established as a consultative and advisory body of the minister competent for social security. For the implementation of the Programme, a National Coordinator for the Implementation of the Government Programme for Counteracting Domestic Violence and Provincial Coordinators were appointed.

Local authorities have been involved in the activities to fight domestic violence. In 2021, 1151 diagnoses were developed, however, according to the GREVIO report, some local governments however take measures that are not based on current needs. The majority of municipal and district governments develop and implement municipal/district programmes against domestic violence. In 2019, local authorities (voivodeships, districts and municipalities) carried out 1,007 campaigns to raise awareness of domestic violence and inform residents about available services.

The coordinating institution, designated by the Polish authorities under Article 10 of the Convention, is the minister responsible for social security. From December 2020, the tasks related to the prevention of domestic violence are carried out by the Office of the Plenipotentiary for Equal Treatment.

A key factor influencing policy and legislative performance, are international obligations (primarily the Istanbul Convention), as well as NGOs' activity.

## 2. Istanbul Convention and a transformative approach to VAW

The ratification of the Istanbul Convention (despite the fact that it caused a lot of controversy from conservative groups and even it was announced that Poland wanted to withdraw from the Convention) resulted in the introduction of solutions required by the Convention. However, there remain spheres that need to be adapted, as GREVIO points out in the report.

The Istanbul Convention has resulted in the introduction of, inter alia, a change in the procedure for initiating proceedings in the case of rape (now an act prosecuted ex officio), a reduction in the number of statements required from victims ('one-time interview of a rape victim'), a special procedure for interviewing sexually abused persons (Article 56) a 24-hour helpline for persons experiencing violence (Article 24 of the Convention), the institution of immediate isolation of the perpetrator of domestic violence (Article 52). In addition, the amendment to the Act on Counteracting Domestic Violence, which came into force on 22 June 2023, also expands the existing forms of domestic violence to include two further forms, i.e. economic violence and cyber violence, as well as the scope of the Act's scope of subject application.

It should be emphasised that the law and policies in the area in review are primarily concerned with domestic violence and are neutral (aimed at all victims of violence). This refers not only to the language used in the law and the solutions adopted, but also to the practice, for example, few centres offer services exclusively to female victims of violence and their children and based on a woman-centred approach, while other centres accept both female and male victims of domestic violence and operate on a gender-neutral approach. The only group that has been treated separately is children.

<sup>228</sup>Mazovian Voivodship Administration in Warsaw, *Rządowy program przeciwdziałania przemoc domowej na lata 2024-2030* (Mazovian Voivodship Administration in Warsaw, 2024) <https://www.gov.pl/web/uw-mazowiecki/rzadowy-program-przeciwdzialania-przemocy-domowej-na-lata-2024-2030> accessed 24 June 2024.

### 3. Lack of consent

Lack of consent is a key premise for the prosecution of sex crimes. However, disagreement is understood as lack of resistance. According to the Commissioner for Human Rights, "The definition of rape adopted in Polish legislation, and with it other sexual crimes (Article 197 of the Criminal Code), is an expression of the theory of sexual freedom, which emphasizes the necessity of expressing opposition to unwanted sexual behavior. Modern human rights standards, by contrast, speak here of the theory of sexual autonomy, which emphasizes informed consent, free from coercion, fear and confusion. In light of the theory of sexual freedom used in the Criminal Code, the perpetrator's action is not a crime if the refusal to engage in sexual activity was too vague or obvious, which is when there is no apparent resistance by the victim to the perpetrator's behavior. If the perpetrator does not bring the victim to sexual intercourse by violence, threat or deception, then even if the victim did not consent to sexual intercourse, the act does not constitute an offense under Article 197 § 1 of the Penal Code.". The Commissioner for Human Rights, in consultation with NGOs, has prepared a report "FOR Consent". It consists of sharing on a website answers to questions about consent in intimate relationships, how a postulated change in the law would work in interpersonal situations, statistics on rape or correcting harmful stereotypes<sup>229</sup>.

In 2015, commissioned by the Government Plenipotentiary for Equal Treatment, a Procedure for dealing with a person who has experienced sexual violence was developed<sup>230</sup>.

### 4. Intersectional dimension

These issues are inadequately regulated. There are, however, isolated examples that recognise intersectional discrimination, e.g. efforts have been made to empower women and girls from the Roma community independently, through education and other initiatives such as the recruitment of Roma school assistants. Migrants remain in a difficult situation, concerning the procedure for residence permits as well as migrant women's access to social services, which depends on their residence status. Separate treatment is given to Ukrainians mainly women, who are in Poland due to the Russian aggression against Ukraine (24.02.22). They have free access to the labour market - possible employment without an additional work permit, the right to do business under simplified conditions, free accommodation for 120 days under the '40+' programme, free housing for vulnerable groups, including families with many children, persons with disabilities, pensioners, pregnant women and mothers with children. In addition, they have access to free public health care and education and social benefits for parents, carers.

### 5. Untouched aspects

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<sup>229</sup> Rzecznik Praw Obywatelskich (RPO), *Za zgodą RPO do premiera o zmianę przepisów w sprawie gwałtu* (Rzecznik Praw Obywatelskich) <https://bip.brpo.gov.pl/pl/content/za-zgoda-rpo-do-premiera-o-zmiane-przepisow-w-sprawie-gwaltu> accessed 24 June 2024; Instytut Wymiaru Sprawiedliwości (Institute of Justice), *2024\_PrawoKiK\_Ujęcie przestępstwa zgwałcenia w wybranych krajach europejskich* (Instytut Wymiaru Sprawiedliwości, 2024) [https://iws.gov.pl/wp-content/uploads/2024/03/2024\\_PrawoKiK\\_Ujęcie\\_przestępstwa\\_zgwałcenia\\_w\\_wybranych\\_krajach\\_europejskich.pdf](https://iws.gov.pl/wp-content/uploads/2024/03/2024_PrawoKiK_Ujęcie_przestępstwa_zgwałcenia_w_wybranych_krajach_europejskich.pdf) accessed 24 June 2024.

<sup>230</sup> Policja, *Procedura postępowania z osobą, która doświadczyła przemocy seksualnej* (Policja) <https://isp.policja.pl/isp/aktualnosci/7554.Procedura-postepowania-z-osoba-ktora-doswiadczyła-przemocy-seksualnej.html> accessed 24 June 2024.

Under Polish law, it is considered rape to bring about sexual intercourse by violence, unlawful threats, or deception. Women's organizations and the Left parliamentary club has submitted a draft amendment to the definition of rape (Parliamentary draft No. 1091, submitted in March 2021) that would recognize sexual contact without obtaining informed and voluntary consent as rape. Consent for sex cannot be implicit, and failure to object is not consent. According to this new law, intercourse without explicit consent can be considered a crime. The lack of a provision in Polish law that recognizes sexual intercourse without explicit consent as rape undermines the basic human rights of victims of sexual violence. It causes sentences for rape to be suspended, and women are blamed for what happened, and their testimony is undermined. The current law in Poland in practice recognizes that rape occurs when there is violence. This definition excludes, among other things, rape in situations where non-consent was not given due to fear or "obligation" in permanent relationships. And also when a person could not refuse intercourse for other reasons (for example, because he was asleep or unconscious)<sup>231</sup>.

Most of the measures taken relate to domestic violence, there is a need to develop a comprehensive and multi-year strategy against gender-based violence, addressing all manifestations of violence in the public and private spheres.

Current solutions do not take into account the specific situation of groups of women exposed to multiple discrimination: migrant women, women of Roma origin, elderly women, non-heteronormative women, women with disabilities.

The problem is the lack of comprehensive statistics and research on the problem of violence against women and domestic violence. The current arrangements do not allow for the assessment on an annual basis of, inter alia, the total number of female victims of acts of particular types of violence in close relationships (i.e. physical, psychological, sexual and economic) committed by men, or the number of homicides where the victim was a woman and the perpetrator was her partner/husband. In this field, a lot of research is carried out by academic institutions and non-governmental organisations<sup>232</sup>.

## 6. Transformative equality perspective

Positive aspects are the strengthening of legal protection by, among other things, changing the mode of prosecution of the crime of rape; the creation of better forms of support for victims of violence (mainly domestic); increasing public awareness of the existing problem and activating grassroots initiatives<sup>233</sup>.

<sup>231</sup> Rzecznik Praw Obywatelskich (RPO), *RPO - Przeciwdziałanie przemocy w rodzinie. Program Schmidt - odpowiedź* (Rzecznik Praw Obywatelskich) <https://bip.brpo.gov.pl/pl/content/rpo-przeciwdzialanie-przemocy-rodzina-program-schmidt-odpowiedz> accessed 24 June 2024.

<sup>232</sup> Ewa Lisowska, *Przemoc ekonomiczna wobec kobiet* (2013); Witold Klaus, 'Przemoc wobec migrantek przymusowych w Polsce – charakterystyka zjawiska' [in:] W. Klaus (ed.), *Bezpieczny dom* (2014); Joanna Piotrowska, Alina Synakiewicz, *Dość milczenia. Przemoc seksualna wobec kobiet i problem gwałtu w Polsce* (2011); Joanna Różyńska, *Przemoc wobec kobiet w rodzinie. Niezbędnik pracownika socjalnego* (2007); Barbara Kijewska, *Analiza zjawiska przemocy wobec polityków na polskim Twitterze* (2022); Monika Wilanowska, *Niebieskie Karty a bezpieczeństwo w rodzinie. Założenia, statystyki, perspektywy* (2019).

<sup>233</sup> Instytut Wymiaru Sprawiedliwości, *Przemoc domowa w świetle danych statystycznych i procedury "Niebieskiej Karty"* (Instytut Wymiaru Sprawiedliwości, 2022) [https://iws.gov.pl/wp-content/uploads/2022/11/IWS\\_Ostaszewski-P.\\_Przemoc-domowa-w-switle-danych-statystycznych-procedury-Niebieskiej-Karty\\_.pdf](https://iws.gov.pl/wp-content/uploads/2022/11/IWS_Ostaszewski-P._Przemoc-domowa-w-switle-danych-statystycznych-procedury-Niebieskiej-Karty_.pdf) accessed 24 June 2024.

Unfortunately, the level of public awareness is still insufficient. 'Blue Line' statistics show that 30,000 women in Poland are victims of rape every year. Police data indicate around 600 cases. This means that the vast majority of women do not report rape<sup>234</sup>.

The lack of awareness among state entities, including the judiciary, regarding the consideration of mitigating circumstances for perpetrators during legal proceedings, such as the circumstances surrounding the rape, including the victim's attire, the influence of alcohol, and the location, is a significant issue. It is crucial to address the prevailing misogynistic arguments that perpetuate this lack of awareness.

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<sup>234</sup> Mateusz Mikowski, 'Adwokat: po zmianie prawa każdy seks będzie potencjalnym przestępstwem', *Rzeczpospolita*, 13 March 2024.



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## C. Women in Leadership

Women's representation in the public and the business spheres

Despite a significant change in the current government's perception of the problem of low representation of women in public institutions and company management boards, stereotypes still dominate. This can be seen, for example, in state owned companies, where men still dominate management bodies despite major post-election personnel changes.

From 2010, the performance of tasks related to the implementation of the principle of equal treatment was entrusted to the Government Plenipotentiary for Equal Treatment,<sup>235</sup> whose main task from 2022 is to implement the National Action Program for Equality Treatment 2022-2030.<sup>236</sup>

The National Action Program covers anti-discrimination policy, social security, labour, education, health, awareness-building, access to goods and services, data collection, research and coordination. Previous National Action Program was in force for the period 2013-2016. The assessment of the plan implementation demonstrated low effectiveness of the plan so far, the limited influence of the Plenipotentiary on the creation of transformative law and low budgeting of her activities.

### 1. Underlying causes of underrepresentation of women in leadership position

Many legal acts in Poland refer to equal treatment in their preambles, but gender is only one of many factors that may constitute a manifestation of discrimination. But the Introduction to National Action Program for Equality Treatment 2022-2030 contains the following preamble:

“Equality between women and men is enshrined in the treaties of the European Union (hereinafter referred to as “EU”) as a fundamental right. The Polish state ensures equality between women and men within the national legal system in accordance with international human rights treaties and within the framework of the fundamental values and principles of the European Union. For these reasons, expressions containing the term gender will be interpreted in the National Action Program for Equal Treatment in the light of equality between women and men in accordance with Art. 8 of the Treaty on the Functioning of the European Union and will also include women and men as well as girls and boys. The consistent use of the term gender is intended to ensure the coherence of the document and to exclude possible interpretation doubts in the future, as the proposed terminology is consistent with the language of primary law of the European Union. Also in the Polish legal order only this term is used.”.

### 2. Social and political factors

In the period of 2017–2018, the National Action Program for Equal Treatment for 2013–2016 (NAPET 2013–2016) was subject to double evaluation both by a special Interministerial Team Monitoring the National Action Program for Equal Treatment and by an external contractor under the project entitled "Development and implementation of a coherent system for monitoring gender equality and a model of cross-sectoral cooperation for gender equality", co-financed by the European Union from the European Social Fund under the Knowledge Education Development Operational Program for 2014-2020 (NAPET evaluation study 2013–2016).

<sup>235</sup> Article 18, Act of 3 December 2010 on the implementation of certain European Union provisions in the field of equal treatment, consolidated text: Official Journal 2023, item 970.

<sup>236</sup> Resolution of the Council of Ministers of May 24, 2022, Monitor Polski, item 640.

The conducted evaluations indicated, among others, that the NAPET 2013–2016 was an important instrument in the implementation of the equal treatment policy in Poland. It created an opportunity for a comprehensive assessment of the current state of compliance with the principle of equal treatment. The short - three-year - time perspective of the NAPET 2013–2016 allowed only for the indication of potentially priority areas of action and for the identification of activities that should be of a continuous nature.

The NAPET 2013–2016 was also of a strategic nature, especially in the context of current demographic trends, and was a part of a broad approach to anti-discrimination issues undertaken in legislation at the national and EU level. The program also involved various public entities and NGOs, which increased the chances of taking into account activities in the field of equal treatment in relation to various groups exposed to discrimination in Poland. Additionally, the evaluation carried out by the Monitoring Team emphasized the broad intra-administrative impact in education process of public administration employees.

As part of the NAPET 2013–2016 evaluation study, some conclusions and recommendations were presented:

— conclusion 1: unequal treatment and discrimination occur among various social groups exposed to discrimination (e.g. due to gender, age, disability, sexual orientation, belonging to a national or ethnic minority) and in many fields (e.g. education, health), therefore, wide-ranging actions should be taken,

— conclusion 2: Polish society is characterized by low social awareness of equal treatment, therefore activities should be carried out to build social awareness, e.g. by implementing social campaigns, awareness-raising and educational activities,

— conclusion 3: equal treatment requires a solid legal basis, therefore an in-depth and comprehensive analysis of the applicable law should be carried out,

— conclusion 4: effective implementation of the NAPET 2013-2016 requires monitoring and regular assessment, financing of activities should be ensured,

— conclusion 5: basic and most popular information and materials should be available in foreign languages, understandable to the largest groups of foreigners in Poland.

The arguments referring to the principles of both social justice and economic efficiency, justifying the increase of the role of women in management and supervisory bodies of companies were described in the Polish legal and economic literature quite well. Similarly, barriers for women of boards have been identified quite well and supported by scientific research. There are also studies that clearly show that it is gender and not competences that determine the choices of company's statutory bodies ("symbolic treatment of women" L. Bogdanowicz and K.A. Farrell, P.L. Hersch).

In Polish legal literature (A. Kidyba and M. Dumkiewicz ), the discussion on ensuring gender parity in listed companies took place after the Commission's proposal was formulated in 2011-2013. In the resolution of December 19, 2012 Polish Parliament found the draft directive inconsistent with the principle of subsidiarity. Also citing the principle of proportionality, it was pointed out that "the proposed draft directive has nothing to do with the actual promotion of gender equality (...) but constitutes a serious interference in economic and social relations, without a full analysis of the existing status quo." A potential violation of the principle of contractual freedom based on the constitutional principle of economic freedom was also pointed out (M. Romanowski).

It shows that in Poland there is a serious risk that the introduction of a uniform binding measure in the form of quotas in the situation of generally low social acceptance for quotas, may turn out to be only an artificial and symbolic action<sup>237</sup>.

### 3. Untouched aspects

“Gender test” for all laws and regulations seems to be useful tool for ensuring an assessment on their gender impact and gender perspective in work on budgets (Belgian and Dutch examples). Completely absent in Poland.

<sup>237</sup> Leszek Bohdanowicz, 'Kobiety w radach nadzorczych i zarządach spółek. Polskie i światowe tendencje i wyzwania', *ORGANIZACJA I KIEROWANIE* (2011) No. 3, p. 179 and literature on the subject cited there; Kathleen .A. Farrell, Philip L. Hersch, 'Additions to corporate boards: the effect of gender', *Journal of Corporate Finance* (2005) 1-2; Statistics Poland, *Decyzyjność i zarządzanie* [https://raportsdg.stat.gov.pl/Decyzyjnosc\\_i\\_zarzadzanie.html](https://raportsdg.stat.gov.pl/Decyzyjnosc_i_zarzadzanie.html) accessed 24 June 2024; Eurostat, *SDG 5.6 - Women in decision-making positions in the European Union* [https://ec.europa.eu/eurostat/data-browser/view/sdg\\_05\\_60/default/table?lang=en&category=sdg.sdg\\_05](https://ec.europa.eu/eurostat/data-browser/view/sdg_05_60/default/table?lang=en&category=sdg.sdg_05) accessed 24 June 2024; Report 'Rynek pracy zyskuje twarz kobiety', *Dziennik Gazeta Prawna*, 8 March 2023, nr 47, D4 - "The labor market is gaining a woman's face"; Sejm of the 7th term, *Resolution on the recognition of the draft directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies whose shares are listed on the stock exchange and the relevant measures as incompatible with the principle of subsidiarity*, Sejm document no. 1003; Andrzej Kidyba, Małgorzata Dumkiewicz, 'Dyrektywa Parlamentu Europejskiego i Rady w sprawie poprawy równowagi płci wśród dyrektorów niewykonawczych spółek, których akcje są notowane na giełdzie, i odnośnych środków - analiza projektu', *Przegląd Prawa Handlowego* 03/2013, p. 6; Michał Romanowski, 'Czy prawo powinno wymuszać udział kobiet w radach i zarządach spółek?', *Monitor Prawa Handlowego* 2011, no. 2, pp. 19 et seq.

## 4.4 South-Africa

### A. General Framework

- 1. Is gendered law/policymaking recognized as a problem in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?**

The Constitution of the Republic of South Africa, 1996, that was adopted after the first all-inclusive democratic elections of 1994, makes provisions for non-discrimination on the basis of gender amongst other identities and social positions. In the preamble of the Constitution there is a goal to “establish a society based on democratic values, social justice and fundamental human rights” where “every citizen is equally protected by law” (Constitution of the Republic of South Africa, 1996: 1). Furthermore, in chapter 2 of the Constitution there is an even more direct Equality clause that stipulates that “everyone is equal before the law and has the right to protection” and that “the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth” (Constitution of the Republic of South Africa, 1996: 7).

The establishment of the Constitution and the equality clause that is outlined in the document is the foundation on which gender equality legislation is built on. In order to understand the progressive gender legislations that form part of the South African legal landscape, one has to understand that the foundations are the Constitution of the republic. Since 1996, South Africa has created progressive gender legislation, like the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, that was geared towards the creation of equality, including gender equality in post-apartheid South Africa. This means that gender wise, post-apartheid South Africa is more gender inclusive legislatively than the country has ever been historically. As the country marks 30 years of democracy in 2024, women are more represented in different spheres of South Africa society than ever before and this is due to the implementation of legislation that has forced companies, organisations and branches of the government to explicitly show gender equality.

The creation of legislation that is geared towards the promotion of equality and the prevention of unfair discrimination has entailed that there are more women participating in South African society post-1994. The increase in women’s presence and participation in boardrooms, civil society organisations, and government can be directly linked to the creation of post-1994 policies. The creation of policy has enabled a shake-up of those in power and leadership positions in South Africa society, but the question that remains is whether the creation of legislation is enough to change society. This question is important because although there has been great strides in enabling women to participate in different sectors of South African society since the dawn of democracy, it remains so that women still face discrimination because of their gender in the workplace. Statistics South Africa (2021) reported that the South African labour market remains favourable to men at the expense of women and that black women are the most vulnerable with the highest unemployment rate in the country. Once employed, women, are faced with discrimination in the workplace. For example, there has been an increase of women, including black women, in the professoriate of many universities in South Africa, but many experience structural and interpersonal discrimination both because of their gender and sometimes their race (Mkhize, 2024; Mdlenleni, Mandyoli, and Frantz, 2021). Here then

we see that not only are women struggling to find employment compared to men, when they do find employment, they have to deal with gender discrimination.

Generally, gendered law and policymaking processes are primarily recognized by civil society organisations (CSOs), researchers/academics, social justice advocates and by some party politicians and members of Parliament who seek to change laws and policies. An illustration is provided by Fourie, who argues that democracy, social justice, freedom, and human rights are important principles to consider when shaping the future of labour law. They specifically highlight the need for a new framework that prioritizes the labour and welfare of women in the economy. While the South African government has regulations in place for domestic workers, there are challenges in enforcing them and ensuring equality. Domestic workers have some level of protection, but waste pickers and informal traders, who work independently without a clear employer-employee relationship, are not covered by existing labour and social protection measures. This group requires unique solutions as the regulation of waste pickers and informal traders in South Africa is disorganized and lacks comprehensive and consistent legislation (2018).

However, whilst gaps exist in the law in terms of gender, the major issue is that the laws and policies that are in place and which are transformative and progressive are not implemented.

In the South African context, issues with exploitative laws and policies are addressed through *parliamentary processes* including when Parliament calls for submissions on Bills (proposing new draft legislation), amendments to legislation or reviews on the implementation of legislation or government departments' performance in respect of the implementation of laws and performance of their duties and roles. The *courts* are also used as an avenue for changing and developing exploitative gender laws or for ensuring that transformative laws are upheld. The courts also have the power to develop the law.

**2. Who are the key actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.) involved in de-gendering law- and policy making in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?**

These include:

*CSOs and Community Based Organisations (CBOs)* through advocacy and activism for legal and social change.

*Lawyers* engage in strategic impact litigation that changes and develops exploitative laws. These lawyers are often based at non-profit law centres dedicated to advancing human rights through litigation and other policy and legal interventions.

*Government departments* (Ministers) by introducing new bills to Parliament.

The *judiciary* (the courts) by hearing, deciding and executing judgments that advance gender equality by developing laws and applying laws.

*Parliament* through the law-making process and process to amend and review laws and policies developments from laws.



*Researchers/academics* through research that contributes to an evidence based for legal and policy advocacy and litigation.

*Funders*: national and international but primarily international who provide grants to CSOs, academics and government to roll-out gender progressive projects.

More specifically, there is the *Commission for Gender Equality (CGE)*. The CGE is an institution established in terms of chapter 9 of the Constitution. It has a constitutional mandate to promote respect for gender equality, and the protection, development, and attainment of gender equality. The CGE's main power and function (as provided for in the CGE Act 39 of 1996) is to evaluate and monitor gender equality :

“monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that they promote and protect gender equality; public education and information; reviewing existing and upcoming legislation from a gender perspective; investigating inequality; commissioning research and making recommendations to Parliament or other authorities; investigating complaints on any gender-related issue and monitoring and reporting on South Africa’s compliance with international conventions.”<sup>238</sup>

The CGE has since its inception been critiqued by the State and CSOs for being dysfunctional and ineffective in fulfilling its constitutional mandate - and for failing to advance gender equality within the organisation itself.<sup>239</sup> On the other hand, the CGE has fared well in some respects. For example, since the CGE investigated the complaint submitted by Sonke Gender Justice and the Democratic Rights and Governance Unit (UCT) on the slow pace of gender transformation in the judiciary, women’s representation in the judiciary has increased. Presently, women make up approximately forty-four percent of the judiciary which is the highest representation of women in the history of the South African superior courts. Whilst representation has improved and the CGE’s work can be attributed to this development, women judges are under-represented at the level of judicial leadership.<sup>240</sup> The Commission reports to the Parliamentary Portfolio Committee on Women, Children, Youth and Persons with Disabilities who have the responsibility of overseeing the work of the CGE.<sup>241</sup>

There are also the *parliamentary portfolio committees*, which review and monitor the performance of government departments and hold them accountable. These committees are responsible for considering Bills introduced by government departments and private members. This process includes committees receiving submissions from members of the public on legislative matters. For

<sup>238</sup> See: <https://cge.org.za/mandate/> for a full description of the powers, functions and duties of the CGE.

<sup>239</sup> See: <https://cge.org.za/wp-content/uploads/2021/01/20-years-of-gender-on-the-agenda-reviewing-the-work-and-contribution-of-the-commission-for-gender-equality-in-south-africa-2017.pdf>; <https://www.news24.com/citypress/voices/editorial-shame-on-the-cge-for-failing-women-leaders-20230625> and <https://genderjustice.org.za/news-item/civil-society-demands-an-effective-commission-for-gender-equality/>

<sup>240</sup> [https://www.judiciary.org.za/images/news/2023/Judicial\\_Education\\_Newsletter\\_-\\_18th\\_Edition.pdf](https://www.judiciary.org.za/images/news/2023/Judicial_Education_Newsletter_-_18th_Edition.pdf).

<sup>241</sup> See: <https://pmg.org.za/committee-meeting/30491/>.

example, civil society organisations make submissions on the Department of Justice’s implementation of the Domestic Violence Act or an amendment to the Act.<sup>242</sup>

CSOs monitor the state’s performance in terms of developing and implementing laws and policies and hold them to account through advocacy, media and communications, and through making submissions to parliamentary committees.

The *judiciary and courts* play a critical role in preventing and addressing gendered law and policy making through their role of developing the law to align with the BOR of Constitution. The courts have handed down several gender transformative judgments relevant to gender equality. However, the courts have also handed down judgments which are gender exploitative despite the fact that these judgements were handed down after the interim and final Constitutions came into operation. See the Appendix for examples.

**3. What specific measures or instruments have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA), and who was involved in their adoption, implementation, and monitoring? Are there studies or evidence on the effectiveness of tools or measures in your country aimed at preventing or addressing gendered law/policymaking? Can you also give some successful examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?**

*Public sector laws and policies:*

The purpose of laws and regulations are designed to strengthen the voice, agency, and decision-making power of women. The goal is to advance gender equality and give women the tools they need to fully engage in all facets of society. The overarching objective is to build a more just and equitable society for everyone, regardless of gender.

What we see as important laws and regulations pertaining to gender-based violence, decision-making, and representation of women in South African society include the following, but are not only limited to:<sup>243</sup>

**The Constitution of the Republic of South Africa, 1996:** This is the supreme law of the country and provides for the promotion of gender equality and the protection of women’s rights.

Effectiveness measured in promoting women in terms of the Constitution of the Republic of South Africa, 1996 can be measured in several ways, including representation, access to resources, economic empowerment, gender-based violence and the legal framework as demonstrated in the graph below. Overall, the effectiveness of promoting women in South Africa can be measured through a combination of these factors, as well as other indicators that reflect women’s social, political, and economic empowerment.

<sup>242</sup> See <https://www.parliament.gov.za/role-of-parliamentary-committee> for a full description of the powers and duties of these committees and the structure of these committees in Parliament.

<sup>243</sup> See for table overview, Appendix B. This table also includes indication of the stakeholders of each law.



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Representation	Access to resources	Economic empowerment	Gender-based violence	Legal framework
Women's representation in government, private sector, and civil society indicates progress towards gender equality, as measured by data in parliament, cabinet, and decision-making bodies.	Access to education, healthcare is crucial for women's participation in public life, promoting gender equality.	Economic empowerment is crucial for women's social and political empowerment; effectiveness measured through labour force participation, entrepreneurship, and finance access.	South Africa's gender-based violence undermines women's participation and human rights; effectiveness can be measured through data and government response.	South Africa's Constitution and laws promote gender equality, with effectiveness measured through data on implementation and enforcement.

**The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000:** This legislation makes it illegal to unfairly discriminate against people based on their gender and promotes equality. The PEPUDA is a South African legislation aimed at promoting equality and preventing discrimination in all spheres of society, including the workplace. The Act prohibits unfair discrimination based on race, gender, sexual orientation, age, religion, and other grounds. In terms of promoting women, PEPUDA has been effective in addressing the historical inequalities faced by women in the workplace. In pre-1994 South Africa women were not represented in many government and corporate structures, and their inclusion in the post-1994 era has meant that they have to deal with discriminatory practices. The Act makes it illegal to discriminate against women in recruitment, promotion, training, and other employment-related matters. It also provides for affirmative action measures to redress the imbalances created by past discrimination, such as setting targets for the advancement of women in the workplace.

Overall, while there is still much work to be done to promote gender equality in the workplace, PEPUDA has been effective in addressing some of the systemic barriers faced by women. Its impact can be seen in the increased representation of women in senior positions and the greater awareness of gender discrimination. Here the effectiveness of the law cannot be denied, and must be further championed.

The effectiveness of PEPUDA in promoting women can be measured by looking at the following indicators:

Representation	Complaints	Awareness
The Act boosts women's representation in senior management and boards, as reported by the Commission for Employment Equity.	PEPUDA legalizes workplace discrimination for women, enabling them to file complaints with the Equality Court or Human Rights	PEPUDA raises awareness of gender discrimination and promotes women in the workplace through policies, procedures, and employee training programs.

	Commission, assessing the Act's effectiveness.	
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*Private sector: laws and policies*

Gender-related concerns in the private sector are governed by the following legislation in South Africa:

**Employment Equity Act (EEA) 55 of 1998:** The Equal Employment Opportunity Act (EEA) aims to advance equal opportunities and fair treatment for workers in the workplace, including the eradication of unlawful discrimination based on gender. The EEA aims to promote equal opportunities and fair treatment for all employees in South Africa, with a specific focus on addressing historic inequalities and discrimination faced by designated groups, including women. The history of apartheid, where citizens were divided by race through law meant that people had access to employment through racial classification. This has meant that in the post-apartheid era, there has been a need to undo the apartheid structures and create ways where employment discrimination does not take place. Rectifying past injustices in employment has been a challenge, because of skills shortage on the one hand, and also of refusal to change on another. Overall, the effectiveness of the EEA in promoting women can be measured by the extent to which it is resulting in increased representation, pay equity, recruitment and promotion, and training and development opportunities for women in the South African workforce.

The effectiveness of the EEA in promoting women can be measured by analyzing a range of quantitative and qualitative indicators, including:

Representation	Pay equity	Recruitment and promotion	Training and development
The EEA mandates employers to set targets for women's representation at all levels, and report progress. The effectiveness of promoting women is measured by leadership positions and workforce representation.	The EEA mandates employers to provide equal pay for equal work, and measures its effectiveness by examining the gender pay gap's narrowing or widening over time.	The EEA mandates employers to ensure fair recruitment and promotion processes, assessing effectiveness by examining women's hiring and promotion proportions and addressing potential biases.	The EEA mandates employer training and development for designated groups, including women, to promote career advancement and assess their effectiveness.

**Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 4 of 2000:** This act prohibits unfair discrimination based on gender, among other grounds, and promotes equality in all spheres of life. Overall, measuring the effectiveness of PEPUDA 4 in promoting women requires a multifaceted approach that considers a range of indicators related to representation, pay and

benefits, policies and practices, and complaints and grievances. When measuring effectiveness in promoting women, some key indicators could include:

Representation	Salary and benefits	Policies and practices	Complaints and grievances
The percentage of women in leadership positions, on boards, and in other decision-making roles within organizations or institutions. This can provide insight into the extent to which women are being given equal opportunities for career progression and decision-making power.	The gender pay gap and differences in benefits packages may indicate instances of discrimination against women in the workplace.	The existence and implementation of policies that promote gender equality, such as flexible working arrangements and parental leave, can be an important measure of an organization's commitment to promoting women in the workplace.	Tracking the number and nature of complaints related to discrimination against women can provide insight into the extent to which discrimination is occurring and whether existing policies and practices are effective in addressing it.

**Basic Conditions of Employment Act (BCEA) 75 of 1997:** The BCEA gives effect to the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment. In terms of promoting women, the basic conditions of employment includes provisions relating to equal pay, equal treatment, and parental leave. The effectiveness of the BCEA in promoting women can be measured by looking at the extent to which these provisions are being implemented in practice. This can be assessed through various means, such as surveys of employers and employees, inspections by labour inspectors, and complaints received by the Department of Labour. Overall, the BCEA has played an important role in promoting women in South Africa by setting out minimum standards for working conditions and prohibiting discrimination on the grounds of sex. However, there is still much to be done to ensure that these provisions are being implemented effectively and that women are able to access equal opportunities in the workplace.

Equal Pay	Equal Treatment	Parental Leave
BCEA mandates equal pay for equal value work; ensuring women receive equal pay as men.	The BCEA provides for maternity leave, which entitles female employees to four consecutive months of unpaid leave when they have a child. The Act also provides for parental leave, which allows male and female employees to take up to 10 consecutive days of unpaid leave	The BCEA grants maternity and parental leave to female employees, granting four months and 10 days unpaid leave for childbirth or adoption.



	when their child is born or when they adopt a child.	
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**4. To what extent does the social and political context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality in legal frameworks?**

After the Constitution came into operation in 1993 (the Interim Constitution which was later made final in 1996) several of the colonial and apartheid statutes were overturned and amended in accordance with the Bill of Rights of the Constitution (BOR) which sets out fundamental human rights which all persons living in South Africa are entitled to including the right to equality and non-discrimination on the grounds of gender, sex, pregnancy, sexual orientation, race and other grounds (Section 9 of the BOR). The BOR further vests all persons living in South Africa with the right to freedom from violence from public and private sources including the right not to be treated in a cruel, inhuman and degrading manner (Section 12 of the BOR).

As indicated above and in terms of what follows in this response, many of the laws applicable to GBV/VAW and women’s representation in leadership are transformative but remain paperbound. Despite these laws, South Africa has of the highest VAW statistics in the world, the increased representation of women in leadership is slow and women’s meaningful representation in leadership continues to be questionable. Further, South African society is deeply patriarchal with high levels of poverty, unemployment and issues with access to education. Conservative religious and cultural views and attitudes towards women continue to afford women lower status in the social hierarchy with White men occupying the higher levels of the hierarchy and black women occupying the lower ends of the hierarchy. Government role-players and representatives tasked with implementing gender transformative laws, are not immune to these social issues, and this contributes to poor implementation. Whilst laws and policies are progressive, there is a disconnect between the law and women’s status and rights in practice.

**5. Does the identified law or policy embrace gender-neutral or gender-sensitive language?**

Both gender neutral language and gender sensitive language is identifiable in applicable statutes. The Criminal Law (Sexual Offences and Related Matters) Amendment Act of 32 of 2007 (2007 SOA) for example recognises that women and men can be victims and perpetrators of sexual offences but it specifically states that women and children are particularly vulnerable to sexual offences. Similarly, women and men can be victims of domestic violence in terms of the Domestic Violence Act 116 of 1998, as amended (DVA), but the Act recognises that the victims of domestic violence are of the most vulnerable members of society recognising that women and children are the majority of the victims of domestic violence in South Africa. Section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) expressly forbids unfair discrimination on the



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grounds of gender in terms of for example, prohibiting GBV, systemic inequality which hampers women's and access to opportunities because of gendered division of labour. PEPUDA thus recognises that women have and continue to be at the receiving end of gender inequality.

**6. Are there any specific legal mechanisms or provisions that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?**

The South African Parliament is intended to be a 'People's Parliament'. This means that South Africans/society/community members can contribute to the decisions that Parliament takes by making written submissions to Parliament or by making verbal submissions during parliamentary processes i.e. during sittings of Parliamentary Portfolio Committees when government departments introduce Bills to Parliament. Members of CSO's have however voiced that they do not believe that committee members take their submissions seriously enough to bring about necessary change to advance gender equity through legislation. Often, the uneven or inconsistent implementation of laws have been highlighted.

**7. Can technology and data-driven approaches be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilizing technology for this purpose?**

GBV statistics produced by the South African Police Service, research institutions, CSOs and the academy continues to be used and shows that VAW is prevalent in South Africa. The SAPS statistics generally shows lower statistics than those produced by non-governmental researchers because of poor recording of incidences including on the SAPS domestic violence register. Nonetheless, the publicization of these statistics has proven the need for the State to prevent and address VAW. This has led to State and CSO interventions and programmes to reduce VAW and draw attention to how laws and policies need to be changed or better implemented to reduce VAW.

Technology and data driven approaches for identifying and rectifying gender bias in laws and policies has not been introduced and implemented to date. A lack of funding or poor budgeting on the part of the State could be part of the reason for why steps have not been taken in this direction. Funding for GBV prevention and support services in itself remains an issue in South Africa resulting in, for example, domestic violence survivors being turned away when seeking services support at shelters because of a lack of funding for the set-up of more shelters and the provision of services at shelters in terms of the daily costs of a bed.<sup>244</sup>

<sup>244</sup> See <https://mg.co.za/thought-leader/opinion/2022-11-24-digital-technologies-can-help-combat-gender-based-violence/> which discusses ways in which technology is under-used and the purposes it can serve.

## B. Violence against women and girls

### 1. How is the problem of VAW framed in your national legislation; what are the underlying assumptions? Is it recognised as a form of discrimination in your domestic legislation? And what societal and political factors have shaped this framing?

A narrow definition of VAW has been adopted which defines violence as physical, sexual, mental, psychological, economic and financial abuse, and sexual harassment and harassment. It does not include the broader meaning of violence which recognises systemic and structural violence or violence. The traditional meaning of VAW also excludes violence against transgender women.

South Africa has passed several statutes, promulgated several policies, amended several statutes, set up gender and human rights institutions to prevent and address VAW. VAW is essentially framed as a human rights issue and the coming into operation of the BOR in the Constitution has mandated a human rights response and approach to preventing VAW.

In this section, only the most applicable statutes, policies and institutions have been included.

#### Laws

**The Constitution of the Republic of South Africa, 1996 (the Constitution):** It dictates how the state must be governed, protects democratic principles and the human rights of all people living in South Africa.<sup>245</sup> The Constitution is supreme law in South Africa. Any laws (and practices) which are inconsistent with the Constitution are invalid, unenforceable, and unconstitutional. Section 1 of the Constitution sets out its founding values. These values include human dignity, the achievement of equality, the advancement of freedoms and human rights, and non-sexism and non-racialism, all of which are applicable to VAW.

Section 9 of the Bill of Rights (BOR) of the Constitution obligates the State to promote the achievement of equality, including gender equality, by taking legislative and other measures to protect women as a group of people who have and continue to be disadvantaged by unfair discrimination. To this end, the State has passed statutes, have adopted policies and has set-up the institutions to uphold the principles and values of the Constitution.

Section 10 of the BOR provides that all persons living in South Africa have the right to human dignity and the right to have their dignity respected and protected. This right, like the right to equality, is a cornerstone right in the Constitution which cannot be divorced from any of the other rights in the Constitution. It is of paramount importance in any analysis of VAW because it recognizes that VAW undermines women's sense of their self-worth.

Further, section 12 of the Constitution prohibits VAW and unfair discrimination on the basis of gender and sex. Due to the fact that gender and sex are listed grounds on which discrimination is prohibited, such discrimination is automatically classified as unfair. The same applies to violence against

<sup>245</sup> Parliamentary Monitoring Group 'Central Tenets of Government' available at <https://pmg.org.za/page/central-tenets> (accessed on 1 June 2022).

persons on the basis of sexual orientation. Gender identity is not listed as a ground in section 9 of the BOR but such discrimination is nonetheless provided and can be proven to be unfair in court.

**PEPUDA** was enacted to enforce the Constitution and to provide an accessible mechanism for addressing contraventions of the fundamental rights provided in the Constitution including the rights to gender equality, human dignity and women's freedom from violence. The Equality Court, set up in terms of section 16 of PEPUDA, is the mechanism through which rights contraventions are addressed. In cases where an Equality Court finds that unfair discrimination has taken place, the court has a wide range of remedies available to it ranging from an unconditional apology to the issue declaratory order for payment of damages.

Section 6 of PEPUDA classifies VAW as a form of unfair discrimination. It prohibits unfair discrimination on the ground of gender and it specifically lists gender-based violence as a form of unfair discrimination. PEPUDA's approach to VAW is further evident in section 28. It provides that in circumstances where the prosecution proves that the commission of a criminal offence in a criminal case was motivated by unfair discrimination on the ground of gender, such discrimination must be regarded as an aggravating factor for purposes of sentencing.

**Employment Equity Act 55 of 1998, as amended (EEA) and the Codes of Good Practice.** The EEA was enacted to aid the constitutional commitment to equality and eliminating unfair discrimination, in the workplace setting. Sexual harassment constitutes a form of VAW for purposes of this response because it involves the use of sexual violence against women and transgender women in the workplace. Acts of sexual harassment as per the EEA can range from touching to rape. Section 6(3) of the EEA expressly classifies harassment of an employee as a form of unfair discrimination which is prohibited on any one, or a combination of grounds of unfair discrimination listed in sub-section (1) of the Act. These grounds include gender, sex, sexual orientation, pregnancy, marital status, and family responsibility.

**The Domestic Violence Act (DVA), 1998.** The DVA offers victims of domestic violence a civil remedy for domestic violence in the form of a protection order which is meant to deter future acts of domestic violence. In circumstances where a perpetrator of domestic violence contravenes a condition in a protection order, the matter enters the ambit of criminal law in terms of which the perpetrator can be liable for a fine or imprisonment. The Act was enacted to provide maximum legal protection from domestic violence for women and children, which it acknowledges to be vulnerable members of society. It seeks to advance the constitutional rights to equality, including gender equality, and the right to freedom and security of the person. The Act further recognises that domestic violence is a women's issue in that it highlights its international obligation to end VAW in terms of the Convention on the Elimination of all Forms of Violence against Women (CEDAW). The DVA does not expressly state that domestic violence is a form or manifestation of unfair discrimination. It does nonetheless acknowledge that it is an inequality and women's human rights issue which makes its approach similar to all of the other statutes discussed above which expressly identified domestic violence as a form of unfair discrimination.

Gender-based violence is a huge problem in South Africa, with some scholars like Gqola (2021) describing South African society as a female fear factor, and Govender (2023) calling the abuse of women in the country a pandemic. The creation of an act that specifically speaks to domestic violence should already alert us to the grave nature of the problem. The domestic violence act was created in 1998 but it has not quelled the high numbers of domestic abuse reported, indeed during the outbreak of COVID-19 Dlamini (2020) wrote about the ways that gender-based violence was a twin pandemic to COVID-19 as numbers of reported gender-based violence cases increased during the COVID-19 years as women were forced to stay in doors with abusive partners. Overall, the effectiveness of the Domestic Violence Act, 1998 has been positive in promoting women's rights and protecting them from domestic violence. However, there is still a long way to go to eliminate gender-based violence entirely, and further efforts are required to ensure the law's proper implementation and enforcement.

The effectiveness of this act in promoting women can be measured in various ways:

Increase in reporting and prosecution	Accessibility to legal remedies	Awareness campaigns	Support services
The Act increases domestic violence reporting, promotes prosecution, punishment, and deterrence.	The Act empowers women with legal remedies, empowering them to report violence.	Act promotes awareness campaigns on domestic violence, changing attitudes and encouraging victims to speak out.	Act creates domestic violence support services, including legal aid, counseling, and shelters, helping women break abusive relationships.

**The Code of Good Practice on the Integration of Employment Equity into Human Resource Policies (GN 1358 of 2005)** provides substance to protection against discrimination in the workplace.

**The 2007 Sexual Offences Act (SOA).** This Act criminalises the commission of several sexual acts committed with a complainant without sexual consent. Persons convicted of sexual offences in terms of the 2007 SOA are liable for a fine or imprisonment. The 2007 SOA was enacted to afford survivors of sexual violence with better legal protection and rights than afforded to them in terms of the previous Sexual Offences Act 23 of 1957 (1957 SOA)<sup>246</sup> including through improved service delivery to alleviate secondary victimisation and secondary trauma. The Act brought about several changes that has enabled the State to take a more gender transformative approach to VAW. For example, the Act extended the definition of rape to include forced sexual penetration of the mouth, anus and any

<sup>246</sup> The Sexual Offences Act 23 of 1957 has not been repealed in its entirety. Some of its provisions are still in operation such as provisions relating to the criminalisation of sex work in South Africa.



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other body part, and amended the rules of evidence to not permit the court to draw negative inferences from delayed reporting and previous inconsistent statements.

In terms of the statutes approach to VAW, it acknowledges that women and children are vulnerable to sexual offences and notes the disadvantageous impact that VAW has on these vulnerable groups. Similar to the DVA, the 2007 SOA seeks to advance the constitutional rights to equality, privacy, dignity, and the right to freedom and security of the person including the right to be free from all forms of violence. The Act further recognises that domestic violence is a women’s issue in that it highlights its international obligation to end VAW in terms of CEDAW. The Act does not expressly state that sexual violence is a form or manifestation of unfair discrimination. It does nonetheless acknowledge that it is an inequality issue that adversely affects women’s human rights.

**The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.** This act criminalizes various forms of sexual offenses, including rape, sexual assault, and sexual harassment.

Overall, the criminal law and sexual offences act is an important piece of legislation that has played a significant role in promoting the rights of women in South Africa. While there are still significant challenges to be overcome, the law has helped to create a supportive environment for women who have experienced sexual offences and has helped to increase awareness and understanding of these issues in the wider community.

The CLSO Act has been praised for its effectiveness in promoting women and protecting their rights. Some of the key ways in which the law has had a positive impact on women in South Africa include:

Increased reporting of sexual offences	Greater awareness and understanding of sexual offences	Improved access to justice	Harsher punishments for offenders
The CLSO Act promotes a safer environment for women reporting sexual offenses, requiring special measures, intermediaries, and closed-circuit television for protection and assistance.	The CLSO Act raises awareness of sexual offences in South Africa, educates on rights, and provides legal remedies.	The CLSO Act enhances women’s access to justice by establishing Sexual Offences Courts, providing a sensitive and supportive environment.	The CLSO Act increases punishments for sexual offences, including life imprisonment and increased minimum sentences for assault and statutory rape.

**The Protection from Harassment Act 17 of 2011 (PHA).** The PHA was passed into law with a view to extending the protection offered by the DVA to persons who cannot use the DVA for protection from harassment because they are not considered to share a domestic relationship with their abusers. The PHA and the DVA are distinguishable from each other in terms of the kind of abuse

these statutes seek to prevent and address in that the PHA exclusively prohibits harassment with a view to preventing harm which is physical, psychological, mental or economic in nature. Similar to the DVA, this Act does not directly and expressly classify harassment as a form of unfair discrimination. It does however identify the constitutional rights to human dignity, equality, privacy and freedom from violence as applicable to preventing and addressing harassment. This Act does so, however, whilst simultaneously failing to acknowledge that harassment is a gender and women's rights issue.

**The Code on the Prevention and Elimination of Harassment in the Workplace (GNR 1890 of 2022)** was promulgated to provide step-by-step guidance to employers on how to handle sexual harassment in the workplace and its promulgation is indicative of the State taking sexual harassment in the workplace seriously and attempting to prevent and address it effectively. Clause 1.3 of the Code enjoins employers to develop and implement policies, practices and procedures that will create workplaces that are free from harassment and where all employees respect their colleagues rights to dignity, equality and privacy.

### *Policies*

#### **National Strategic Plan on Gender Based Violence and Femicide, 2020-2030 (The NSP)**

South Africa's National Strategic Plan on Gender Based Violence and Femicide, 2020-2030 (The NSP) has put in place measures, processes and tools that are employed to prevent, address and monitor gendered law and policy making. The NSP was developed with a view to providing a 'multi-sectoral, coherent strategic policy and programming framework to ensure a coordinated national response' to GBV and femicide with a focus on VAW. Part of the purpose of the NSP was to amend laws and policies and improve the Criminal Justice System (CJS) response to GBV survivors.

The Plan was produced by the Interim Gender-based Violence and Femicide Steering Committee (IGBVF-SC) comprised of government and CSO representatives. The programmes developed by the Plan are implemented by government and CSOs. The National Council of Gender-Based Violence and Femicide is the custodian of the NSP whilst the secretariat is responsible for driving technical support for its roll out.

The NSP has created a monitoring and evaluation framework which aligns with the Department of Planning, Monitoring and Evaluation's Monitoring and Evaluation Plan. This approach to monitoring and evaluation is intended to ensure integration into government department's annual performance plans, strategic plans, and integrated developmental plans. The implementation of the Plan is meant to be monitored through annual review processes of the latter departmental plans and will be reviewed every five years. The NSP is accordingly due for review this year. It is impossible to measure the effectiveness of the NSP comprehensively at this stage as its five year review is planned to take place in this year. Nonetheless, the State reports the implementation of several new interventions since the Plan came into operation in 2020 including law reform and support for one-stop GBV care centres which provide essential services to GBV survivors. During the 2024 State of the Nation Address, President Ramaphosa reported increased GBV prosecutions and convictions, increased funding and distribution of funding to CSOs through the Private Sector GBVF Response Fund which

was created through the NSP, and the amendment of several laws governing GBV to improve the State's response to GBV, and survivors protection and accessibility to support and services. The best way of evaluating the effectiveness of the NSP would be to obtain feedback from CSOs and service beneficiaries.<sup>247</sup>

The NSP basically identifies gender norms, gender discrimination, and patriarchy as the key drivers of GBV and femicide, and acknowledges the need for men to transform in order to eliminate GBV. Its guiding principles for implementing its programmes to eliminate GBV include utilising gender responsive and gender transformative approaches taking into account gender differences and inequality, an intersectionality approach acknowledging the importance of placing the experiences of the most marginalised women at the centre of approach to implementing its programmes. The NSP classifies the most marginalised women in relation to their sexual orientation, gender identity, race, class, nationality, disability and age. Another notable feature of the NSP's framing of VAW is that it identifies men and boys as a target group for the roll-out of the Plan's programmes. This acknowledgment is important for including men and boys as part of a holistic approach to preventing VAW. This approach has been lacking in gender transformative work in several programmes and projects historically in South Africa.

It further uses a human rights-based approach as a conceptual framework for ensuring that human rights are reflected in national development frameworks and policies. This entails that women's constitutional rights to human dignity, equality and freedom from violence are paramount to the Plans development of policies.

**National Development Plan: Vision 2030 (NDP).** The NDP is the State's plan for eliminating poverty and reducing inequality by 2023. Part of its vision for 2030 is a country in which women are safe, protected from violence, and where the right to equality is respected.

The Plan acknowledges that GBV is unacceptably high in South Africa and that it is a barrier to women and girls achieving their potential in their social and productive lives. It importantly, like the other laws and policies explored in this section, recognises that GBV denies women and girls the opportunity to achieve the rights to equality and freedom as encapsulated in the Constitution. Part of the Plan's conceptual approach towards reducing GBV is aimed at transformation to tackle inequities and vulnerabilities through changes to laws and policies. It highlights the importance of improving the effectiveness of the criminal justice system with a view to better protecting and serving the most vulnerable member of society, including women.

All of the laws, policies and institutions identified in this section have come about in response to GBV prevalence in South Africa and as a means of addressing unfair discrimination against women and

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<sup>247</sup> See: <https://www.stateofthenation.gov.za/priorities/making-communities-safer/gender-based-violence>

the persistent culture of VAW created by European imperialism and apartheid. The BOR has played a critical role in changing and developing VAW laws and policies to align with it with the gendered violence and other forms of maltreatment that women are subjected to on a daily basis in South Africa. The BOR and the statutes discussed in this section thus attempt to provide a human rights response to VAW. It must however be noted again that while most of the current laws and policies dealing with VAW are gender transformative in nature, they remain paperbound for the most part.

Feminist scholars, gender activists, and civil society organisation have all spoken out against the levels of gender-based violence and femicide in South African society. Despite the legislation against violence, this remains a big problem (Matzopoulos et al., 2019). Feminist scholar Gqola (2021) has written extensively about gender based-violence in South Africa and theorises that South African society is a laboratory of fear for women in an aptly titled book, the *female fear factory*. Govender (2023) has called the high levels of gender-based violence in South Africa an increasing pandemic citing the staggering 10 818 rape cases that were reported in the first quarter of the year in 2022. The sexual violence towards women perpetrated by men is a huge problem in South African society, where scholars like Gqola (2015) have written informatively in a contextualising study of rape focusing on location, culture, social attitudes, challenges, and the history of rape in the body named *rape: a South African nightmare* book. A book that is written for the South African public audience but backed up with academic rigour and structure to get the point across about the problem of sexual violence in South Africa. Here then we see that South African society has a serious problem of gender inequality and of gender-based violence, and the legislation that has been created in the democratic era has been necessary to bring about an end of gender inequality and gender violence in the country.

However, the legislation that has been created has not had the effect of doing away with gender inequality, or stopped gender-based violence, indeed, even with the different legislation in place, there has been an increase in gender-based violence and femicide, and gender discrimination continues in different sectors of society. While we must point to the limits of the law, and speak to the ways that policies must be improved and then strategise on their future implementation, we cannot refute the importance of having these policies and the impact they have had, even with the challenges that have been experienced.

**2. To what extent do the laws and policies in your country adopt the transformative approach set out in the Istanbul Convention or that is similar to the IC?<sup>248</sup> Where do you locate the VAW legislation of your country in the Gender Equality Continuum?**

<sup>248</sup> See in particular: Article 3 –Definitions For the purpose of this Convention: a “violence against ” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

From the preamble: "Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women; Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as



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Refer to section 9 and 12 of the Constitution discussed above. VAW legislation and policies are transformative in South Africa but the central issue that is hampering the realisation of these laws and policies to improve women's lived realities by reducing VAW is the lack of implementation of these laws and policies by the State and society (all people living in South Africa).

**3. Does your national law put lack of consent at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?**

The 2007 SOA places consent at the centre of the definition of sexual violence. The Act defines 'consent as voluntary and uncoerced agreement'. The Act provides that the absence of consent can be communicated verbally, through body language or any other means that indicates a lack of consent. Consent is absent in the following circumstances:

- where the complainant agreed to a sexual act in coercive circumstances, where the complainant agreed to the sexual act because of fear of repercussions.
- where the complainant agreed to a sexual act unknowingly.
- where a person commits a sexual act with the complainant whilst intoxicated, under the influence of drugs or alcohol.
- where a person commits a sexual act with the complainant whilst the complainant is sleeping or unconscious.
- where a person commits a sexual act with the complainant with a mental disability.

The capacity to consent to a sexual act is governed in accordance with the age of the complainant. A child under the age of twelve can never consent to a sexual act whilst the age of 16 is the age of sexual consent. Committing a sexual act with a child aged 12 to 16 is classified as a sexual offence irrespective of whether the child consented to the act and irrespective of whether the act involved sexual penetration.

**4. To what extent are the laws in your country sensitive to the intersectional dimension of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)**

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gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".



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The Constitution makes provision for the recognition of multiple grounds of discrimination i.e. on the grounds of gender, sex and sexual orientation or any other unlisted grounds. Furthermore, the rights in the Constitution are all interrelated and interconnected. The success of a case brought before the Equality Court (set-up in terms of PEPUDA), and the Constitutional Court depends on how the cases are presented to the court and the quality of the legal representation in human rights cases. In criminal cases involving GBV such as murder, rape, assault, assault with intent to do grievous bodily harm etc., the severity of a sentence is directly influenced by the aggravating factors raised by the prosecution. In cases involving hate crimes committed against transgender women or lesbians for example, it is essential for a prosecutor to raise 'hatred' as a motive for the crime. Failing to put this evidence before a court could result in the hate motivating the crime going unnoticed.

The State frames GBV services generally, i.e. these general services target women in general not necessarily undocumented migrants, sex workers or women with disabilities. This entails that these services are not necessarily sensitive to the needs and realities of groups of women who face intersecting consequences. For example, sex workers and undocumented migrants who experience GBV may reluctantly access services or refrain from accessing services for fear of being reported to authorities which could result in undocumented migrant being forced to return to their birth countries and sex workers being identified as sex workers by police officers who can profile, arrest, and harass sex workers.

Some CSOs and CBOs do however provide targeted, specialised and sensitised services to marginalised women who are GBV survivors. For example, the CSO, the Sex Workers Education and Advocacy Taskforce provides counselling services, legal advice and health support and referrals for health services. Triangle Project, also a CSO, provides similar services to transgender women who are survivors or hate based violence.

The President Ramaphosa has signed the Hate Crimes and Hate Speech Bil into law, which aims to provide the enforcement of measures against hate crimes and hate speech.<sup>249</sup>

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?**

- Long-term, ongoing, monitored and evaluated training and capacity building for criminal justice system (CJS) role-players in and service providers to shift gender inequitable mindsets to improve compliance with legal duties and to give effect to quality support services for GBV complainants.
- Improved and consistently utilised disciplinary procedures for CJS role-players and service providers who fail to fulfil their legal duties and fail to meet the standard of services provided for in the Services Charter for Victims of Crime.<sup>250</sup>

<sup>249</sup> Mambaonline (2024) 'President Cyril Ramaphosa signs Hate Crimes and Hate Speech Bill', Mambaonline, 9 May. Available at: <https://www.mambaonline.com/2024/05/09/president-cyril-ramaphosa-signs-hate-crimes-and-hate-speech-bill/> (Accessed: 1 July 2024)

<sup>250</sup> See [https://www.npa.gov.za/sites/default/files/resources/public\\_awareness/victims\\_charter.pdf](https://www.npa.gov.za/sites/default/files/resources/public_awareness/victims_charter.pdf)

- Inclusion of gender, sexuality and social context content in primary, secondary and tertiary level education.
- Compulsory training programmes through professional bodies regulating prosecutors, judicial officers, private attorneys and advocates, medical doctors, nurses and others who provide services to GBV survivors to ensure services that gender and sexuality sensitive.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards VAW as contained in the current legal and policy framework from a transformative equality perspective?**

There are no issues with the framing of VAW or the approach to VAW taken in the current legal and policy framework when all of the statutes and policies considered collectively. Overall, the human rights approach to VAW is dominant in all of the statutes and policies with a focus on the rights to equality and freedom from violence. Overwhelmingly, the framework shows an acknowledgment of women's vulnerability to violence and some of the statutes and policies acknowledge the impact of VAW on women. The NSP expressly and directly adopts an intersectionality approach. As discussed in the response to question 4 above, the Constitution's recognition of discrimination on multiple grounds allows for a recognition that women's vulnerability to VAW can be based on one or more than one ground of unfair discrimination or oppression. Further, the Constitution's acknowledgment that human rights are interrelated and interconnected in itself lends itself to an intersectionality approach.

Nonetheless, when the courts make a ruling on VAW, the prosecutor or defence attorney must ensure that the compounded impact of the intersection discrimination is acknowledged through a harsher sentence, heftier fine or compensation, or other appropriate legal remedy or relief.<sup>251</sup>

The framing of VAW as a human rights issue has been beneficial in that it designates VAW as a legal issue and as a serious issue on the social level, for which legal accountability will ensue including punishment as serious as limiting the freedom of perpetrators in the ambit of criminal law i.e. imprisonment. In addition, classifying women as a group of people who are marginalised and vulnerable to violence, is a recognition of women's history of oppression, ongoing unfair discrimination which manifest in the form of VAW and other oppressive acts, and their heightened and continuous exposure to the risk of VAW in the various spheres of their lives. Some human rights and VAW activists oppose using the terms 'vulnerable' or 'victim' for VAW survivors, but in conducting a legal analysis it can be difficult to use terms such as 'marginalised' and 'survivor' because it simply does not fit the context in which the terms are meant to be used.

Despite this, VAW remains prevalent in South Africa, the State fails to invest sufficient funding into prevention and responding to GBV, and quality service provision for VAW survivors remains inconsistent and contributes to re-traumatisation and secondary victimisation.

<sup>251</sup> See the cases in Appendix B.

## C. Women in leadership

- 1. How is the problem of women's representation in the public and the business spheres framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging the gendered nature of underrepresentation and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.**

Participation in politics, including active involvement of women, is not just a basic right but also crucial for the progress of society. However, it is disheartening to observe the persistent underrepresentation of women as voters, political leaders, and elected officials worldwide, despite making up over half of the global population. In South Africa, there has been noticeable progress in women's political engagement since the abolition of apartheid. The government and various organizations in the country have been striving to promote gender equality in decision-making roles. President Cyril Ramaphosa's commendable decision to appoint women to half of the national Cabinet positions is a significant step forward in this regard. Nonetheless, it is important to acknowledge that obstacles and challenges persistently restrict women's political participation. Cultural beliefs and stereotypes surrounding women's leadership abilities continue to be major hurdles. These hindrances can vary based on factors like socio-economic development, culture, and political systems in different regions (Ofusori, 2021).

### *Recognition by the government*

The growth of women's involvement in politics, national legislatures, and municipal councils in South Africa (SA) has been acknowledged, leading to discussions in political and academic circles. Scholars and analysts in the field of politics have explored several factors that influence women's representation. Among these factors, the connection between gender quota laws and an increase in the number of women in positions of power has emerged as one of the most significant (Myeni, 2014). According to Panday (2008), the endurance of women's economic and social empowerment relies on the extent to which they are integrated into the political decision-making process.

**The Employment Equity Act 55 of 1998 (EEA)** the Act aims to eliminate unfair discrimination in the workplace. It promotes equal opportunities for designated groups, including women, persons with disabilities, and persons belonging to historically disadvantaged racial and ethnic groups. The affirmative action measures provided for in section 6 of the EEA are designed to ensure that suitably qualified people from designated groups, namely women, black people and people with disabilities, have equal employment opportunities. Employers are required to adopt measures to identify and eliminate the barriers that impede employment opportunities for women and make reasonable accommodation for women to ensure that they enjoy equal opportunities in the workplace. These measures include setting targets for the representation of women in senior and middle management positions, mentoring and coaching programs, and training and development initiatives. Section 6 of the EEA further prohibits unfair discrimination on the basis of pregnancy and family responsibility. The EEA does not directly acknowledge the gendered nature of the under-representation of women in the public and private spheres but does so indirectly in its preamble by recognizing that

employment and occupational disparities are a consequence of apartheid and other discriminatory practices and laws.

In terms of promoting women, the EEA has been effective in bringing about positive change in the workplace. According to the latest annual report on employment equity in South Africa, the representation of women in top management positions increased from 22.4% in 2016 to 23.3% in 2018, indicating progress in achieving gender equality in the workplace. However, there is still a long way to go, as women remain significantly underrepresented in senior leadership positions in many organizations. Overall, the Employment Equity Act has been instrumental in creating greater awareness of the need to promote gender equality in the workplace, and in driving employers to take active steps to address gender imbalances. While progress has been made, continued efforts are needed to ensure that women are given equal opportunities to advance and succeed in their careers.

In 2000, South Africa developed the **National Policy Framework on Gender Equality and Women's Empowerment**, with input from various stakeholders. This framework aims to promote gender equality and empower women in the workplace and in decision-making positions. One of the aims of the NPF are to increase the representation of women managers in positions in senior government posts and other public and private institutions. Again, the NPF does not directly refer to the gendered nature of the under-representation of women in the public and private spheres, but links women's status to historical gender discrimination and marginalization faced by women and puts in place measures to advance equal rights and opportunities for women. Additionally, both this framework and the **Gender Policy Framework for Local Government** aimed to ensure the appointment of Gender Focal Points at all levels of government. These frameworks are based on the 1996 Constitution, gender theories, and international and regional instruments that South Africa has signed. However, the absence of quotas in the Constitution for women's representation in elected public bodies, as well as the lack of legal quotas for national or provincial elections, makes it challenging to enforce adherence to these frameworks. As a result, the focus has been more on descriptive representation of women as a group, rather than individual empowerment (Myeni, 2014).

The effectiveness of the NPF can be measured by assessing the progress made in promoting women in various sectors of society.

Political representation	Economic empowerment	Education
The policy framework aimed to increase women's political representation, with South African parliament's representation rising from 27.7% in 2000 to 42.5% in 2019, demonstrating its effectiveness.	The policy framework aimed to provide women with equal opportunities in the economic sector. According to the World Bank, the female labour force participation rate in South Africa increased from 51.9% in 2000 to 55.4% in 2020. Additionally, the gender wage gap has decreased from 35.6% in 2000 to 26.3% in 2020. These indicators show that the policy framework has been successful in	The policy framework in South Africa has improved girls' education access, with a 96.8% primary school enrollment rate in 2018, reducing the gender literacy gap and promoting girls' education.

<p>promoting women's economic empowerment.</p>	
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**PEPUDA** aims to promote equality and prevent unfair discrimination in all spheres of society, including the workplace. Section 8 of PEPUDA expressly forbids unfair discrimination on the grounds of gender. The prohibition of unfair discrimination includes systemic inequality which hampers women's access to opportunities because of gendered division of labour. PEPUDA does not directly refer to the gendered nature of the under-representation of women in the public and private spheres but it expressly acknowledges, in section 4, the existence of systemic discrimination and inequalities in respect of gender as a result of past and present discrimination brought about by colonisation, apartheid, and patriarchy. The Act prohibits unfair discrimination based on gender, sex, sexual orientation, pregnancy, marital status race, and other grounds. This Act makes it illegal to discriminate against women in recruitment, promotion, training, and other employment-related matters. It also provides for affirmative action measures to redress the imbalances created by past discrimination, such as setting targets for the advancement of women in the workplace.

Section 195 of the **Constitution** mandates a public administration that is broadly representative of the South African population. It further calls for 'employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.' The Constitution thus draws a direct link between poor representation of the country's population in public administration and South Africa's unjust past. This provision applies to the under-representation of women in the public sphere as a consequence of the country's unjust past which promoted gender inequality. Further, section 174 is applicable to women's representation in decision making positions in the public sphere in that it identifies '[t]he need for the judiciary to reflect broadly the racial and gender composition of South Africa' and make sit mandatory for this to be taken into account when judicial officers are appointed. This provision speaks to the importance of women's equitable representation and diversity on the bench. The judiciary is thus obligated to ensure that women are equitably represented on the bench as a decision making authority.

**The Women Empowerment and Gender Equality Bill, 2013:** This bill seeks to promote gender equality and empower women in various spheres of life, including education, employment, and decision-making. Overall, the effectiveness of The Women Empowerment and Gender Equality Bill, 2013 in promoting women can be measured through various indicators related to gender parity in governance and decision-making, access to education and healthcare, workplace discrimination, and economic empowerment. However, it is important to note that these measures could be impacted by various social, economic, and political factors as well. The Women Empowerment and Gender Equality Bill, 2013 in promoting women has these indicators of potential effectiveness in its implementation:



Representation in government	Workplace discrimination complaints	Access to education and healthcare	Gender pay gap
The bill aims for gender parity in government, promoting women's participation in decision-making and assessing its success.	Effective bill reduces workplace discrimination complaints for women.	The bill addresses women's healthcare, education, and economic empowerment, potentially improving access to these services.	If the bill has been effective, there should be a decrease in gender pay gaps between men and women.

The purpose of the laws and policies set out in this section are designed to strengthen the voice, agency, and decision-making power of women. The goal is to advance gender equality and give women the tools they need to fully engage in all facets of society. These laws and policies include measures that support women's political involvement, guarantee equal access to education, and career opportunities. The overarching objective is to build a more just and equitable society for everyone, regardless of gender. Collectively, all these laws and policies can be classified as gender transformative. They specifically target improving women's representation in decision-making, access to opportunities and gender equity as a means of redress for historic and ongoing unfair discrimination against women in the public and private sectors.

**2. More specifically, are the laws and policies recognising the underlying causes of underrepresentation of women in leadership position, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?**

Whilst the preamble to PEPUDA does not expressly state that patriarchy is an underlying cause of the underrepresentation of women in leadership, it acknowledges that patriarchy has caused social and economic inequalities, including systemic inequalities, and needs to be eradicated in the interest of consolidating democracy.

The preamble to the EEA attributes disparities in the national labour market and occupation to apartheid and other discriminatory laws and practices. It does not specifically mention equitable representation of women in leadership, but its preamble must be read with the purpose of the Act and the other provisions of the EEA which calls for equitable representation of designated groups, including women, in the workplace. (See sections 2 and 15 of the EEA).

The NPF makes a more direct link between patriarchy and its impact on the workplace in its problem statement by stating that the 'historical legacy of patriarchy influenced essential informal and formal human relationships with a marked impact at the workplace.' This provision must be understood in

light of its goal to increase the number of women managers in positions in senior government posts and other public and private institutions.

Finally, the preamble to the Constitution and its founding provisions recognise injustices of South Africa's colonial and apartheid past which drives the present need for equality and non-sexism in all laws and practices.

**3. Are there specific provisions within the laws and policies that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies' leadership and that you think could be seen as a good/best practice?**

None of the laws and policies discussed here above directly and expressly address these issues. Discussions in different fora and contexts may, however, touch upon these issues.

A high-level dialogue was thus held in Johannesburg, bringing together women business leaders, entrepreneurs, women associations, and social and economic experts. The event, hosted by UN Women South Africa Multi-Country Office and Motseng Investment Holdings, aimed to discuss strategies for achieving gender equality, promoting women-centered economic growth, and reaching the Sustainable Development Goals (SDGs) in South Africa. The dialogue provided an opportunity to engage with Trudi Makhaya, the recently appointed Presidential Economic Advisor, and Phumzile Langeni, the Presidential Special Envoy on Investment. Key topics of discussion included dismantling discriminatory norms and stereotypes, improving women's access to both public and private procurement, and supporting diverse business models and sectors. The importance of job creation and the inclusion of black women in the economy were also emphasized. The Chair of the UN Global Compact highlighted the importance of prioritizing the basic needs of people and supporting businesses owned by women. Moving forward, UN Women will continue to facilitate engagements to enhance knowledge on women's economic participation and promote inclusive economic growth that reflects gender equality commitments (United Nations Entity for Gender Equality and the Empowerment of Women, 2020).

Numerous banks in South Africa have also affirmed that they have eliminated discrimination by altering their educational standards and societal attitudes towards women. As a result, highly qualified and talented women can now be found working alongside their male counterparts in positions such as actuaries, chartered accountants, economists, business administrators, and senior managers. Nevertheless, these women face significant obstacles when it comes to reaching top management positions. Consequently, women only hold 1.6 percent of all board directorships and occupy a mere 4 percent of executive positions in South Africa's banking sector, as stated in the Banking Survey Report of 2004. Additionally, according to Catalyst (2004) and Bennett (2002), women only account for 6 percent of all executive directors' positions in Johannesburg Stock Exchange (JSE) listed companies throughout South Africa.

Epstein (2002) considers the importance of female waged employment for social welfare as an important aspect of macroeconomic policy. It becomes crucial to incorporate a gender perspective

into the design of effective macroeconomic policy, particularly for employment targeting monetary policy. To achieve this, the central bank has the option to develop asset-based reserve requirements that facilitate the generation of more female employment. Similarly, the central bank can also offer preferential access to the discount window for financial institutions that invest in or lend to organizations that prioritize the creation of more and better employment opportunities for women. Notably, even in the absence of prior recognition of the significance of women's wage employment, an employment targeting central bank operating in these contexts is likely to independently recognize the importance of using a gender lens in macroeconomic policy to successfully fulfill its employment generation objectives. Therefore, it is possible that there is a barrier limiting the progress of female managers in South African banks, preventing them from reaching top management positions.

#### 4. How has this framing of the problem come about; what societal and political factors shaped it?

The framing of the issue of women's unequal representation in the public and private sectors as a human rights issue is a result of:

- South Africa's history of European imperialism and apartheid which denied certain groups of persons living in South Africa equal rights;
- The impact of unequal rights on ALL women (including lesbians and transgender women) which resulted in and continues to deny women equal opportunities; and
- The subsequent coming into operation of the Constitution which promotes equal human rights for all and seeks to advance the rights of ALL women and as a marginalised groups who often experience unfair discrimination on one or more grounds such as sex, gender, sexual orientation and race.

Ongoing advocacy by CSOs and messaging through media and communications continues to highlight issues with women's unequal and meaningful representation in the public and private sector and in leadership positions within these sectors.

Other contextual factors emerge from the following developments. The ANC Women's League (ANCWL) took political action in the early 1990s to advocate for a candidate quota in order to improve the representation of women in politics. This had an effect on making structural changes that favored women in local politics (Meintjes, 1998; Hassim, 2006). These changes shifted the blame for women's under-representation from women themselves to the political elites, who were tasked with developing new strategies and principles. According to Hassim (2006), the candidate quota was seen as a way to quickly increase women's political representation by addressing the immediate problem within traditional electoral processes. As a result, it led to reforms in candidate selection methods. However, these specific claims related to gender had negative consequences and a bitter outcome for women, as only the ANC implemented a gender quota. In the 2011 election, the percentage of women councillors in the ANC decreased to 44% from 46% in 2006 (Morna et al, 2011).

The participation of women in Southern African Development Countries (SADC) is predominantly constrained or prevented by political, socio-economic, and cultural barriers. These barriers primarily

stem from an entrenched patriarchal system where males have control over family matters and decision-making. Additionally, various socio-economic factors contribute to the under-representation of women across all SADC countries. These factors include a lack of confidence in participating in party politics beyond voting, limited time availability due to women's reproductive roles, insufficient skills, and a lack of financial resources (Sadie, 2005).

Myeni (2014) argues that educational curricula should be revised to emphasize the importance of women's involvement in development at all levels. The mass media should assist policymakers and administrators in recognizing the significance of gender inequality and work towards empowering women to assert themselves as equal partners to men in all sectors. Since women's presence in legislative and executive bodies depends on their participation and representation in political parties, it is necessary for South African political parties to take the initiative in expanding female representation. All political parties should adopt the use of quotas for women, a practice already established in countries like Germany, Sweden, Norway, and Denmark (Ballington, 1998). The commitment of political leaders at all levels to gender equality, as well as the adoption and implementation of existing and future reforms, is crucial in addressing the under-representation of women in decision-making processes.

According to Miroux (2011) several countries, including Brazil, China, Ghana, India, the Republic of Korea, the Philippines, Rwanda, and South Africa, have implemented policies to integrate women and promote gender equality in their science, technology, and innovation (STI) systems. These policies can focus on specific issues or use various strategies to harmonize results across sectors. For example, in South Africa, the Research and Development Strategy aims to increase the representation and retention of women and individuals from marginalized communities in science. A committee within the National Advisory Council on Innovation oversees the implementation of this objective. South Africa's policy is interconnected with other gender equality promoting policies and aligned with the country's national gender machinery for a coordinated approach to achieving gender equality in STI. The European Commission's Strategy (ECS) for equality between women and men (2010-2015) is an example of a policy that recognizes the linkages between gender equality, economic growth, and sustainable development. It aims to integrate gender equality dimensions into the Europe 2020 Strategy beyond concrete actions.

There are also initiatives that involve grassroots participants as partners instead of targets. By enhancing their capacities, these participants can ensure the sustainability and growth of the project even after its completion. An example is ProLinNova, a South African NGO that promotes farmer-led approaches to ecologically oriented agriculture and natural resources management. Some organizations also advocate for relevant policies and programs at national, regional, and global levels or share their projects and lessons learned with other regions or countries. The key is to ensure that experiences at the local level are incorporated into national policies and programming (Miroux, 2011).

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?**

Improved and consistent monitoring of the representation of ALL women in the private and public sectors and reporting slow progress or unequal representation to the CGE and Equality Courts to mandate compliance. Whilst women may be represented equitably or the increased representation of women in these sectors may be visible, it appears that meaningful representation is lacking in certain public and private sector organisations. Women appear to be more easily appointed in positions at the lower ends of the hierarchies in employment structures. It further appears that women are not able to contribute meaningfully to decision-making because of patriarchy and dominant and accepted gender norms and roles. Hence, women are not truly able to take up leadership positions and truly lead in the public and private sectors.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?**

**EEA**

The EEA has been effective in bringing about positive change in the workplace. The Act requires employers to implement affirmative action measures to promote the representation of women in all levels and occupations within the organisations. These measures include setting targets for the representation of women in senior and middle management positions, mentoring and coaching programs, and training and development initiatives. According to the latest annual report on employment equity in South Africa, the representation of women in top management positions increased from 22.4% in 2016 to 23.3% in 2018, indicating progress in achieving gender equality in the workplace. However, there is still a long way to go, as women remain significantly underrepresented in senior leadership positions in many organisations.

Overall, the EEA has been instrumental in creating greater awareness of the need to promote gender equality in the workplace, and in driving employers to take active steps to address gender imbalances. While progress has been made, continued efforts are needed to ensure that women are given equal opportunities to advance and succeed in their careers.

**PEPUDA**

PEPUDA has been effective in addressing the historical inequalities faced by women in the workplace. The Act has contributed to an increase in the representation of women in senior management positions and on boards of directors. This can be seen in various reports published by organizations like the Commission for Employment Equity, which tracks the representation of women and other historically disadvantaged groups in the workplace.

The Act has contributed to raising awareness of gender discrimination and the need to promote women in the workplace. The Act requires employers to develop policies and procedures to prevent discrimination and promote equality. This has led to the development of training programs and workshops aimed at educating employees on their rights and responsibilities. Overall, while there is still much work to be done to promote gender equality in the workplace, PEPUDA has been effective in addressing some of the systemic barriers faced by women.

**The NPF**



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The effectiveness of this policy framework can be measured by assessing the progress made in promoting women in various sectors of society. According to data from the Inter-Parliamentary Union, the representation of women in the South African Parliament has increased from 27.7% in 2000 to 42.5% in 2019. This indicates that the policy framework has been effective in achieving its goal of increasing political representation of women.

The private sector has been slow to implement policies aimed at promoting gender equality. There is a significant gender gap in representation at senior levels. For example, a 2019 study by the Businesswomen's Association of South Africa found that women make up just 28% of executive managers and 15% of CEOs in the private sector. There is a growing recognition among businesses that promoting gender equality is not only a matter of social justice, but also a strategic imperative for competitiveness and productivity. Some companies have introduced policies such as gender quotas for recruitment and promotion, flexible work arrangements, and gender-sensitive training and development programs. Overall, while there have been some positive developments in promoting gender equality within the private sector in South Africa, more needs to be done to ensure that policies are effectively implemented and that women are given equal opportunities to succeed in the workplace.

## The Constitution

Due to the fact that the Constitution underpins all of the legislative and policy measures put in place to increase women's representation in leadership positions and advance gender equity in workplaces, the effectiveness of all of the statutes and policies discussed in this section is attributed to the Constitution.

In concluding this section, some progress has been made in relation to the promotion of gender equality in the public sector, such as the appointment of the first female chief justice and the adoption of gender quotas in some government departments. Importantly, there has been a visible increase in the representation of women in some decision-making positions such as women's representation in the judiciary. As stated earlier in this questionnaire, women currently make up approximately 44% of the judiciary which is the highest representation of women in the history of the South African superior courts. However, challenges remain, including under-representation of women in senior management positions in the judiciary. In the private sector, there is a gender gap in representation at senior levels, with women facing limited leadership opportunities. While some companies have introduced policies to promote gender equality, more needs to be done to ensure effective implementation and equal opportunities for women.

## 4.5 Spain

### A. General Framework

1. Is gendered law/policymaking recognized as a problem in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?

The problem of gendered law and policymaking is recognised by different actors in Spain: the legislator, gender machinery, academia, trade unions and women’s organisations.

Already in 2004, Spain adopted legislation regarding violence against women which raised the question of problems that had to be addressed from a gendered perspective.<sup>252</sup> Following the Beijing Platform of Action and the introduction of gender mainstreaming in EU policymaking, the **Law on Effective Equality** between men and women of 2007<sup>253</sup> was approved in Spain. It introduced the obligation of integrating the principles of equal treatment and equal opportunities between women and men in the interpretation and application of legal norms (Article 4), and in the action of all public organs (Article 15), supported by the introduction of electoral quotas, and quotas on company boards (but not in cabinets/ministries).

Twelve years after the approval of Organic Law 3/2007, the government realised that inequalities persisted in labour conditions among men and women and that the previous law didn’t bring about the improvements foreseen. As a result, Royal Decree 6/2019<sup>254</sup> was adopted to introduce “*ad hoc* corrections in labour regulations” in various areas (equality plans, pay equality, parental leaves, the substitution of maternity and paternity leave with a single birth-related leave, and the right to an adapted working schedule for workers with caring duties). According to the Spanish expert of the EELN (European Equality Law Network), these innovations were limited and insufficient to ensure a more effective protection against gender discrimination in employment and occupation.<sup>255</sup> The

<sup>252</sup> Organic Law 1/2004 on Measures of Comprehensive protection against Gender Violence, 28 December 2004 (*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*). <https://www.boe.es/eli/es/lo/2004/12/28/1/con>. This law covered only some forms of intimate partner violence.

<sup>253</sup> Organic Law 3/2007 on Effective Equality between Women and Men (*Ley Orgánica 3/2007 para la igualdad efectiva de mujeres y hombres*), 22 March 2007. [www.boe.es/buscar/doc.php?id=BOE-A-2007-6115](http://www.boe.es/buscar/doc.php?id=BOE-A-2007-6115)

<sup>254</sup> Royal Decree 6/2019 on urgent measures for ensuring equal treatment and opportunities for women and men in employment and occupation (*Real Decreto-ley 6/2019 de medidas urgentes para garantía de la igualdad de trato y de oportunidades entre mujeres y hombres en el empleo y la ocupación*), 1 March 2019, <https://www.boe.es/buscar/doc.php?id=BOE-A-2019-3244>. This reform was further developed by another two Royal Decrees in 2020, regarding equality plans and pay equality, whose implementation has been fostered not only by the Ministries or the Institute for Women, but notably by trade unions. Royal Decree 901/2020 regulating equality plans and their registration and amending Royal Decree 713/2010, of 28 May 2010, on the registration and deposit of labour agreements and collective bargaining agreements, 13 October 2020, [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-12214](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-12214), and Royal Decree 902/2020 on equal pay for women and men, 13 October 2020, [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-12215](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-12215).

<sup>255</sup> Amparo Ballester Pastor, ‘Spain approves the Royal Decree 6/2019, of 01 March 2019, of urgent measures to guarantee equality of treatment and opportunities between women and men in employment and occupation’. Flash report for the European network of legal experts in gender equality and non-discrimination, 18 March

Preamble of the text frames the measures as essential for a democratic society, and it argues that women are faced with the challenge of the Industrial Revolution 4.0, and the gender gap in the fields of science and technology, which are the most remunerated ones. Therefore, it is argued that the State should remove obstacles in accessing those more remunerated posts. This problematisation, for example, assumes that women should aim at occupying male jobs, but does not question the lesser value attached to feminised jobs and sectors, to what extent they are considered productive, and the very notion of productivity.

However, this piece of legislation also contained important measures. For example, the Spanish **birth-related leave** system (which includes maternity and paternity leave) can be considered one of the most gender-transformative policies in this field. Established as an individual and non-transferable right for both parents (regardless of their sex), the leave “necessarily affects the gendered division of family responsibility”,<sup>256</sup> therefore, it tackles those gendered power hierarchies that REWIRING aims at transforming.

In the context of **work and labor**, the requirements for companies to have gender equality plans and gender equality measures in place or hire women (%) in order to be able to win public contracts with the public administration should be mentioned.<sup>257</sup> Alongside, two other measures have a positive impact on gender equality. First, the increase of the minimum interprofessional salary<sup>258</sup>, which had positive effects on working women, despite the rise of inflation. Second, the reform of the labour market aimed at limiting temporary employment<sup>259</sup>, which also had a positive impact on female occupation, although the gender gap in part-time contracts and fixed-term contracts has not been solved.<sup>260</sup>

2019 <https://www.equalitylaw.eu/downloads/4865-spain-spain-approves-the-royal-decree-6-2019-of-01-march-2019-of-urgent-measures-to-guarantee-equality-of-treatment-and-opportunities-between-women-and-men-in-employment-and-occupation-pdf-104-kb>

<sup>256</sup> Dolores Morondo Taramundi, ‘Country Report. Gender equality. Spain 2023’ (European network of legal experts in gender equality and non-discrimination, European Commission). <https://www.equalitylaw.eu/downloads/6012-spain-country-report-gender-equality-2023>

<sup>257</sup> Royal Decree 6/2019 on urgent measures for ensuring equal treatment and opportunities for women and men in employment and occupation, n 3.

<sup>258</sup> Confederación sindical de Comisiones Obreras (CCOO) (2022). ‘Igualdad salarial ya’ (Equal pay now). Available at: <https://www.ccoo.es/76c5b5ec2de4237255da2ecd9da0e499000001.pdf>

<sup>259</sup> Royal Decree-law 32/2021 on urgent measures for the labour reform, the stability of employment and the transformation of the labour market, 28 December 2021 (*Real Decreto-ley 32/2021 de medidas urgentes para la reforma laboral, la garantía de la estabilidad en el empleo y la transformación del mercado de trabajo*). <https://www.boe.es/eli/es/rdl/2021/12/28/32/con>. See Helferrich & Irigoien (2022). New frontiers for collective bargaining: building capacities to bargain in changing workplaces. ETUC. [https://www.etuc.org/sites/default/files/page/file/2022-12/New%20frontiers%20for%20collecting%20bargaining\\_report\\_Equal%20Pay\\_web.pdf](https://www.etuc.org/sites/default/files/page/file/2022-12/New%20frontiers%20for%20collecting%20bargaining_report_Equal%20Pay_web.pdf)

<sup>260</sup> Confederación sindical de Comisiones Obreras (CCOO, ‘Un año de reforma laboral’ (2023) 52 Acción sindical confederal 7. <https://www.ccoo.es/5f0dec4a04b7884575e3831bbdc00b95000001.pdf>

In terms of **reproductive rights**, the latest reform adopted with Organic Law 1/2023 frames sexual and reproductive health as a human right, in light of international human rights law standards.<sup>261</sup> It establishes that public authorities have the duty to guarantee their exercise in public health centres, and to prevent territorial inequities across Autonomous Communities concerning access to reproductive and sexual health services. This duty is accompanied by the prohibition of harassment in the centres where abortion is performed, and the modification of some aspects related to the exercise of conscientious objection in hospitals. The law removed some requirements previously set to access voluntary termination of pregnancy (the 3-days reflection period, and the obligation to receive information on resources and benefits available in case of continuing the pregnancy). Moreover, girls between 16 and 18 years old, and women with disability no longer need the consent from their parents/guardians to access the abortion procedure. A gender and anti-discrimination perspective is applied, ensuring that all persons regardless of nationality, administrative situation, and age are guaranteed the rights enshrined in the reform. An intersectional perspective is also applied, ensuring that women with disabilities and trans persons are guaranteed their freedom to make choices on their sexual and reproductive health. The law aims at making this right effective also by incorporating specific education modules on sexual and reproductive health in primary and secondary school. The law tackles sexist roles by promoting co-responsibility in contraception, through commercialisation of male contraceptives and research. Lastly, the reform introduced three new types of leave for menstruation, pregnancy termination, and a special leave for pregnant women from the first day of the thirty-ninth week of pregnancy.

The issue of gendered law-making regarding gender-based violence and political representation will be addressed below in part B and C.

**2. Who are the key actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.) involved in de-gendering law- and policymaking in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?**

Developments in gender equality at **European and international level** (Beijing Platform) influenced the adoption of equality policies in Spain and the introduction of a gender machinery in the country. Under socialist governments, the **Women’s Institute** was created (1983), followed by the creation of regional institutes. At the state level, the **Equality Policies General Secretariat** (2004) and the **Ministry of Equality** (2008) were introduced.

A recent example of the positive **influence of EU law and jurisprudence** in Spain is the ratification of the ILO Convention 189 on domestic workers’ rights in 2022, following the ECJ case *CJ v. TGSS*. The Court of Justice of the European Union found that the Spanish legislation on this sector constituted indirect discrimination based on sex and encouraged the government to take action

<sup>261</sup> Organic Law 1/2023 on sexual and reproductive health and the voluntary termination of pregnancy, 28 February 2023 (*Ley Orgánica 1/2023 por la que se modifica la Ley Orgánica 2/2010, de 3 de marzo, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo*). <https://www.boe.es/eli/es/lo/2023/02/28/1>



following the claims domestic workers' organisations had been making. Similarly, another ECJ case led to the reformulation of a pension supplement originally intended as 'women-only'.<sup>262</sup>

An important role in de-gendering law in recent times has been played by the gender machinery in Spain. This is composed of the **Ministry of Equality**, and the various structures depending on it, such as the **State Secretary** for Equality and the Eradication of Violence Against Women, the **Women's Institute** (gender equality body), and the **Government Delegate for Gender-based Violence**.

The **Ministry of Equality**, a position held by a member of the left-populist party Podemos until the 2023 elections, has supported several law reforms in the domains of gender-based violence and consent (*Ley Solo sí es sí*, more details below),<sup>263</sup> the law on trans and LGTBI rights (*Ley Trans*),<sup>264</sup> new rights on sexual and reproductive health (including the menstrual leave),<sup>265</sup> the new comprehensive law for equal treatment and non-discrimination,<sup>266</sup> equal pay,<sup>267</sup> and changes in the equality plans regulation.<sup>268</sup>

The **Government Delegate** for Gender-based violence has also played a role in collecting data and producing statistics,<sup>269</sup> launching awareness-raising campaigns, and coordinating actions on this issue at the governmental level.

The **Women's Institute** is an autonomous gender equality body, dependent on the Ministry of Equality. The latter decides its strategic direction and is competent to nominate its Director and

<sup>262</sup> Dolores Morondo Taramundi, 'New pension supplement to reduce the gender gap'. Flash report for the European Equality Law Network, 12 February 2021. <https://www.equalitylaw.eu/downloads/5353-spain-new-pension-supplement-to-reduce-the-gender-gap-96-kb>

<sup>263</sup> Organic Law 10/2022 of comprehensive guarantee of sexual freedom (*Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual*), 6 September 2022, <https://www.boe.es/eli/es/lo/2022/09/06/10/con>

<sup>264</sup> Law 4/2023 for the real and effective equality of trans persons and of guarantee of the rights of LGTBI persons (*Ley 4/2023 para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI*), 28 February 2023. <https://www.boe.es/eli/es/l/2023/02/28/4>

<sup>265</sup> Organic Law 1/2023 modifying Organic Law 2/2010 on sexual and reproductive health and voluntary termination of pregnancy (*Ley Orgánica 1/2023 por la que se modifica la Ley Orgánica 2/2010 de salud sexual y reproductiva y de la interrupción voluntaria del embarazo*), 3 March 2023. <https://www.boe.es/eli/es/lo/2023/02/28/1/con> ; Dolores Morondo Taramundi, 'The introduction of rights regarding menstrual health in Spain' (2023) European Equality Law Review 10.

<sup>266</sup> Organic law 15/2022 for equal treatment and non discrimination (*Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación*), 12 July 2022. <https://www.boe.es/eli/es/l/2022/07/12/15/con>

<sup>267</sup> Royal Decree 902/2020 on equal pay between men and women (*Real Decreto 902/2020 de igualdad retributiva entre mujeres y hombres*), 13 October 2020. <https://www.boe.es/eli/es/rd/2020/10/13/902/con>

<sup>268</sup> Royal Decree 901/2020 regulating equality plans and their registration (*Real Decreto 901/2020, de 13 de octubre, por el que se regulan los planes de igualdad y su registro y se modifica el Real Decreto 713/2010 sobre registro y depósito de convenios y acuerdos colectivos de trabajo*), 28 May 2020. <https://www.boe.es/eli/es/rd/2020/10/13/901/con>

<sup>269</sup> Recently they have improved the way of collecting data, for example, of gender-based murders, by including not only the situations covered by the Organic Law 1/2004 (violence by partners or ex-partners), but also other murders perpetrated by men against women for gender reasons, in compliance with the Istanbul Convention. See the methodological notes of the Government Delegate for GBV at this link: [https://violenciagenero.igualdad.gob.es/violenciaEnCifras/victimiasMortales/notas\\_metodologicas/notas\\_metodologicas.htm](https://violenciagenero.igualdad.gob.es/violenciaEnCifras/victimiasMortales/notas_metodologicas/notas_metodologicas.htm)



monitor and assess its activities. The Institute provides information on resources at the local level or the level of the Autonomous Communities, as well as running a documentation centre. It also funds initiatives on the various thematic areas of its remit. Due to the de-centralised nature of social policies in Spain, the Institute's activities are coordinated at the regional level, through regional Women's Institutes.<sup>270</sup> Historically, the creation of the Institute was supported by women's movements and socialist feminists. However, it has lost this connection with social movements and become more institutionalised throughout the years. Currently, the Institute's tasks include the collection of information, preparation of reports, studies, and recommendations and their dissemination. It carries out statistical analyses in collaboration with the National Institute for Statistics. Upon request by Parliament, Ministries, or other authorities, it provides recommendations on issues related to gender equality. Moreover, the Institute is in charge of activities of promotion, prevention, and awareness-raising. Lastly, it runs the Women's Image Observatory, which collects complaints and monitors sexist content in advertising, media and the internet.

Moreover, a specific figure of public servant has been introduced in different public administrations and structures (e.g. municipalities, social services, etc.). The '**equality agent**' is in charge of coordinating gender equality laws/plans/policies (LO 3/2007) but often, also of training of the rest of the staff. However, this figure would need to be reinforced and clearer requirements should be established.

Historically, **political parties** also played a role in de-gendering law. The political ideology of the **party in office** (socialist) was relevant in the approval of key legislation in the domain of gender equality and LGBTQIA+ rights.<sup>271</sup> Conversely, the outbreak of the economic crisis and the change to a conservative government in 2011 had an impact on the strength of gender machinery: budget cuts and restructuring led to the downgrading of the Women's Institute and elimination of the Equality Ministry, turned into a State Secretariat for Equality within the Ministry of Health, Social Policy and Equality, which was subsequently merged with the Social Services one.<sup>272</sup>

During these early developments of equality policies, it is argued that **trade unions and political parties** played a greater role in elaborating gender-related claims,<sup>273</sup> whereas the feminist movement was quite "skeptical of the institutional arena",<sup>274</sup> and preferred to focus on specific topics, like

<sup>270</sup> Also at the local (sub-regional) level, the "women's houses" (*casas de las mujeres*) created by women's organisations and sometimes in collaboration with municipalities, play a role in local gender policies and de-gendering local regulations and public policies (for example, pushing for gender perspective in urbanism or public transportation, or gender budgeting in municipalities).

<sup>271</sup> Alba Alonso, 'Las políticas de género en España: Retrocesos y resistencias en tiempos de austeridad' (2015) 32 *Ex-Aequo* 33; Emanuela Lombardo, 'The Spanish Gender Regime in the EU Context: Changes and Struggles in Times of Austerity' (2017) 24 *Gender, Work & Organization* 20.

<sup>272</sup> Emanuela Lombardo, 'The Spanish gender regime', 27.

<sup>273</sup> Sara Clavero, 'Gender democracy in Spain: undemocratic compliance and the domestication of European law' in Yvonne Galligan (ed.), *States of Democracy: Gender Politics and the European Union* (London: Routledge, 2015) 137–51.

<sup>274</sup> Alba Alonso, 'Thriving or Dividing? The Women's Movement and the Independence Referenda in Scotland and Catalonia' (2018) 14 *Politics & Gender* 476; Dolores Morondo Taramundi, 'Gender machineries vs. feminist movements? Collective political subjectivity in the time of passive revolution' (2016) 28 *Gender and Education* 376.

struggles against anti-abortion reform (2014) and cuts on shelters for victims of GBV (at regional and then national level).

**Trade unions**, in particular, have lobbied to advance legislation on gender equality at work, the gender pay gap and equal pay. Attention to equal pay for work of equal value has increased recently, with the adoption of new legislation that reinforces employers' obligations (RD 6/2019, RD 901/2020, RD 902/2020). Moreover, trade unions are responsible for launching nation-wide awareness raising campaigns, training on gender equality plans, annual reports on equal pay and gender pay gap, as well as guidelines.<sup>275</sup>

At the end of 1980s, **political parties** (socialist PSOE and leftist Izquierda Unida) adopted the first quotas of women in party leading positions and electoral lists. In 2000 they presented a proposal to reform the national electoral system, which was then accomplished by the Law on Effective Equality 3/2007.<sup>276</sup> Female party members had their voice privileged, whereas the voices of feminists and experts were scarcely considered in policy documents.<sup>277</sup>

With the adoption of austerity measures after the economic crisis in 2008, **feminists** both within trade unions and social movements acquired a much more important role. They criticised the gendered aspects of the Labour Reform of 2012 and its impact on women.<sup>278</sup> A platform of feminists and disability rights advocates criticised the cuts in the Dependency Law, pointing out that the GIA (gender impact assessment) carried out on the state's budget law did not consider the impact of budget on the redistribution of care.<sup>279</sup> As Lombardo argued, austerity measures led feminist organisations to "intensify their transnational mobilization strategies", for example by increased participation in the UN shadow reports (from 17 organisations in 2008 to 277 in 2013). Based on the 2008-2013 report, the UN has criticised the Spanish government for the negative changes in gender equality policies. Important strikes led by the feminist movements in 2018 and 2019 also pushed for political reforms on the legal response to VAW.<sup>280</sup>

More recently, criticism has been directed at the recovery plan adopted in the post-COVID crisis. In particular, various CSOs have argued that funding has been mostly targeted to foster male-dominated sectors, and measures targeting structural gender issues have been non-existent.<sup>281</sup>

The **Spanish Academia** has also been involved in the critique against gendered laws and policies in several domains, including gender-based violence<sup>282</sup>, and political participation,<sup>283</sup> among others. Spanish scholars participated in two early research projects on gender and policy funded by the EU

<sup>275</sup> Helferrich & Irigoien, 'New frontiers', p. 67.

<sup>276</sup> Lombardo, 'Gender inequality in politics', 82.

<sup>277</sup> Ibid. 87.

<sup>278</sup> Lombardo, 'The Spanish gender regime', 26.

<sup>279</sup> Ibid.

<sup>280</sup> See below question n. 6.

<sup>281</sup> Roberto Cibir, Elena Ghidoni, Iratxe Aristegui-Fradua et al. 'RESISTIRE D2.2 Summary report on mapping cycle' (2022) Zenodo.

<sup>282</sup> Encarna Bodelón, *Violencia de género y las respuestas de los sistemas penales* (Ediciones Didot 2012); Noelia Igareda, *Las controversias sobre la Ley del "Sí es sí" sobre violencia sexual* (2023) 18 Política Criminal 564.

<sup>283</sup> Blanca Rodríguez Ruiz and Ruth Rubio-Marín, 'De paridad, igualdad y representación en el Estado democrático' (2007) 81 *Revista española de derecho constitucional* 115; Ruth M Mestre i Mestre, 'La ciudadanía de las mujeres: el espacio de las necesidades a la luz del derecho antidiscriminatorio y la participación política' (2011) 45 *Anales de la Cátedra Francisco Suárez* 147.

(the MAGEEQ Project on ‘Policy Frames and Implementation Problems: The Case of Gender Mainstreaming’, and the QUING project on intersectionality)<sup>284</sup>. Recently, greater attention has been devoted to **gender equality in universities** (gender equality plans and measures to target gender-based violence).<sup>285</sup>

3. **What specific measures or instruments have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA),<sup>3</sup> and who was involved in their adoption, implementation, and monitoring? Are there studies or evidence on the effectiveness of tools or measures in your country aimed at preventing or addressing gendered law/policymaking? Can you also give some successful examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?**

As to the state’s administration, Law 3/2007 introduced the **Strategic Plan on Equal opportunities** (Article 17), an **Interministerial Commission on Equality** with a coordination role (Article 76), the **gender impact assessment reports** (which had been already introduced by Law 30/2003, but were now made mandatory also for projects with social and economic relevance, Article 19), and the **periodic reports or evaluation on the effectiveness** of equality measures (Article 18).

Previously, in 1983, the **Women’s Institute** was created, by the initiative of the socialist party,<sup>286</sup> and early Autonomic Statutes in the 80s included competencies on gender equality policies, envisaging a multi-level framework where regional governments took the lead in promoting equality, before the Law on Effective equality was approved at national level.<sup>287</sup>

The I **Strategic Plan**, approved already in 2007, wasn’t submitted for thorough monitoring and evaluation, also due to the change in the government, and the economic crisis.<sup>288</sup> As a result, the II Plan (2014-2016) wasn’t based on a correct evaluation and diagnosis of the previous Plan. The evaluation of this second plan was published by the Women’s Institute.<sup>289</sup> The III Plan (2022-2025)

<sup>284</sup> María Bustelo, ‘Spain’ (2009) 11 International Feminist Journal of Politics 530.

<sup>285</sup> Several research projects at EU level are focusing on these issues. For example, [GEARING ROLES](#), [UNISAFE](#), [MINDtheGEPs](#) and others. Among others, see Rebecca Tildesley, Emanuela Lombardo & Tània Verge, ‘Power Struggles in the Implementation of Gender Equality Policies: The Politics of Resistance and Counter-resistance in Universities’ (2022) 18 Politics & Gender 879. Tània Verge, ‘Gender equality policy and universities: Feminist strategic alliances to re-gender the curriculum’ (2021) 42 Journal of Women, Politics & Policy 191.

<sup>286</sup> Celia Valiente, ‘The power of persuasion: The Instituto de la Mujer in Spain’ in Dorothy McBride Stetson and Amy Mazur (eds), *Comparative state feminism* (Thousand Oaks - California: Sage, 1995) 221-236. Available at [https://e-archivo.uc3m.es/bitstream/handle/10016/4314/power\\_valiente\\_CSF\\_1995.pdf?sequence=1&isAllowed=y](https://e-archivo.uc3m.es/bitstream/handle/10016/4314/power_valiente_CSF_1995.pdf?sequence=1&isAllowed=y)

<sup>287</sup> Alonso, ‘Las políticas de género en España’.

<sup>288</sup> Isabel M Martínez Lozano, ‘Plan estratégico de igualdad de oportunidades, informe periodífico y estadísticas. La transversalidad en las políticas públicas’ in Asunción Ventura Franch and Santiago García Campá (eds) *El derecho a la igualdad efectiva de mujeres y hombres. Una evaluación del primer decenio de la ley orgánica 3/2007* (Thomson Reuters Aranzadi, 2018) 368.

<sup>289</sup> Instituto de las Mujeres, ‘Informe Final de Ejecución y Evaluación del Plan Estratégico de Igualdad de Oportunidades 2014-2016 (PEIO)’ Available at



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was approved only in 2022. The lack of continuity between plans, and the inconsistency in their design, monitoring, and evaluation are negative signs that hamper their effectiveness.

The following sections will delve specifically on gender-impact assessments and gender budgeting, ex-post evaluation, training and awareness raising, and statistics.

**a. Gender impact assessment and gender budgeting**

The **Equality Law 3/2007** sets a legal obligation to undertake an ex-ante gender impact assessment when drafting laws and policies. It states that ‘bills of a general nature and plans with particular economic, social, cultural and artistic relevance submitted to the Council of Ministers for approval, must include a report on their gender impact’ (Article 19). The Law on Effective Equality explicitly recognised that “political decisions that, in principle, are not sexist, may have a different impact on women and men, even though this consequence was not foreseen or desired”. This legislation also instructs the government to implement the Law on Gender Impact Assessment (GIA) of regulatory provisions<sup>290</sup>.

In 2005, the Women’s Institute prepared a guide for elaborating GIAs. At the State level, the ministry departments are in charge of the impact assessment process (both the ex-ante and ex-post evaluation), and the elaboration of the report. For this purpose, Law 3/2007 foresaw the creation of **Equality Units** within the departments. Equality units collect information, support the ministry in the elaboration of the GIA, prepare studies, etc. Surprisingly, this specific task of support to elaborate the GIA does not appear in Royal Decree 259/2019, which recently regulated the remits of Equality Units.<sup>291</sup> Despite being included in the legal framework, the GIAs are **not implemented in an effective way**.<sup>292</sup> The most detailed GIAs available are those related to laws on the state’s budget, but reports on other legislations are very superficial and lack a real evaluation of impact and analysis of relevant data.

A study commissioned by the Women’s Institute to LikAdi in 2016 analysed the GIA reports submitted in Spain from 2003 until 2016.<sup>293</sup> According to this study, 91,53% of the bills included a GIA report, however, **most of them (81,66%) did not recognise a connection between the law’s objectives and gender equality, therefore sidelining gender mainstreaming**. As to the content of these reports, they usually don’t include information on the situation of women and men, it is

[https://www.inmujeres.gob.es/areasTematicas/AreaPlanificacionEvaluacion/docs/PlanesEstrategicos/Informe\\_evaluacion\\_y\\_ejecucion\\_PEIO\\_2014\\_2016\\_v.19.01.pdf](https://www.inmujeres.gob.es/areasTematicas/AreaPlanificacionEvaluacion/docs/PlanesEstrategicos/Informe_evaluacion_y_ejecucion_PEIO_2014_2016_v.19.01.pdf)

<sup>290</sup> Law 30/2003 on measures to incorporate the gender impact assessment in norms elaborated by the Government (*Ley 30/2003 sobre medidas para incorporar la valoración del impacto de género en las disposiciones normativas que elabore el Gobierno*), 13 October 2003, <https://www.boe.es/buscar/act.php?id=BOE-A-2003-18920>

<sup>291</sup> Royal Decree 259/2019 regulating Equality Units of the State General Administration (*Real Decreto 259/2019 por el que se regulan las Unidades de Igualdad de la Administración General del Estado*), 12 April 2019. 2019 <https://www.boe.es/eli/es/rd/2019/04/12/259>

<sup>292</sup> Dolores Canals Ametller, ‘Género y normas’ in Dolores Canals Ametller (ed.), *La evaluación de impacto normativo por razón de género* (Madrid: CEPC, 2020) 17. The GIAs are available at the webpage <https://transparencia.gob.es>. (Publicidad Activa > Normativa y Otras disposiciones > Normas en tramitación).

<sup>293</sup> LikAdi, ‘Informes de Impacto de Género que Acompañan a los Proyectos Normativos desde la Aprobación De La Ley 20/2003 Año 2015-2016’, September 2016. Available at <https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1696.pdf>



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unclear whether this is due to the lack of data, indicators, and statistics.<sup>294</sup> Overall, the **technical quality of the reports is low**. An improvement in form and content of these reports was noticed from 2017, probably due to the effect of judgements delivered on the topic. Nonetheless, most of the reports that found an impact on equality concerned ministries in the social fields, showing the difficulty of mainstreaming gender in other sectors.<sup>295</sup> In 2017, a New Royal Decree 931/2017 substituted the previous legislation on **impact assessment reports** (*memoria de análisis de impacto normativo*).<sup>296</sup> This Royal Decree contained measures on the Regulatory Impact Analysis Report of laws, royal decree laws, legislative royal decrees, and regulatory proposals, including the “ex-ante” gender impact assessment report that accompanies the General State Budget Bill (GSBB). The gender impact analysis is also applicable to draft plans of special economic, social, cultural, and artistic relevance, and to the calls for selective tests to access public employment (Third Additional Provision). As to the gender impact assessment of budgets (**gender budgeting**), article 37.2 of the General Budgetary Law 47/2003 has been modified to include the submission of the gender impact report alongside the Draft General State Budget.<sup>297</sup>

Very few judgements have been delivered on the application of Law 3/2007 and in general, the courts sideline the control of compliance with the GIA requirement. As Canals pointed out, **judgements of the Supreme Court** could have an impact on the improvement of GIA in Spain, although until now, it has not dedicated particular attention to gender impact assessments, but mostly to economic impact assessments. While its decisions are more rigorous on economic impact, the court has never criticised the insufficient documentation or absence of GIA in the lawmaking process.<sup>298</sup> Only in one case, the court has declared null a decree for lack of GIA.

The GIAs are conceived as mere formal requirements, they don’t provide information or data on specific equality domains. Their lack of effectiveness and low quality might be connected to the lack of knowledge and training of the staff in charge of such evaluations, or resistance to change (by courts) or both.<sup>299</sup> It should also be noted that laws promoted by the Parliamentary groups (not by the Government) were not subjected to the Law on Gender Impact Assessment.

<sup>294</sup> Dolores Canals Ametller, ‘La evaluación de impacto por razón de género en los procesos normativos de competencia del Estado’ in Dolores Canals Ametller, (ed) *La evaluación de impacto normativo por razón de género*, 91.

<sup>295</sup> Ibid., 97.

<sup>296</sup> Royal Decree 931/2017 which regulates the report on the normative impact analysis (*Real Decreto 931/2017 por el que se regula la Memoria del Análisis de Impacto Normativo*), 27 October 2017. <https://www.boe.es/eli/es/rd/2017/10/27/931/con>

<sup>297</sup> Latest report available is from 2023. Ministry of Equality (2023) ‘Informe de impacto de género del Proyecto de Ley de Presupuestos Generales del Estado para 2023’. <https://www.sepg.pap.hacienda.gob.es/sitios/sepg/es-ES/Presupuestos/InformesImpacto/IAPGE2023/Documents/Informe%20Impacto%20Genero%20PGE%2023.pdf>

<sup>298</sup> Dolores Canals Ametller, ‘La evaluación de impacto por razón de género en los procesos normativos de competencia del Estado’, 100, 104.

<sup>299</sup> Ibid, 115.



In 2017, an **Office for Normative Quality** (*Oficina de Coordinación y Calidad Normativa*) was set up<sup>300</sup> and has the competence to evaluate the normative impact reports submitted for each bill (these reports include the GIA).

### b. Ex-post policy evaluation

Equality Law 3/2007 introduced ex-post evaluation through the submission of **bi-annual reports on the effective implementation of its provisions** (*informe periódico*).<sup>301</sup> The Women's Institute is tasked with drafting these reports, and it has done so for the years 2007-2009 (submitted in 2010). The third and last report submitted to date covers 2012-2013. This report reflects more on the Strategic Plan for Equal Opportunities and the actions to be implemented in the period 2014-2016. These are generally a collection of reforms adopted and statistical data on different domains of gender equality. The Institute is also tasked with elaborating reports on the implementation of the EU Directives on gender equality.

In general, ex-post evaluation (Article 25 Law 40/2015, further developed in Royal Decree 286/2017 on Normative Evaluation)<sup>302</sup> is still a **pending task** in the Spanish system. The Annual Normative Plan identifies the norms that will be submitted to ex-post evaluation of the results of their application. One of the criteria for selection is the gender impact (Art. 3.1.g). The evaluation is limited to the norms approved by the General Administration of the State, not the Parliament, and it lacks specification of the time frame and criteria to be used. As a result, the evaluations available online are formalistic analyses of whether the norms foreseen in the Annual Normative Plan (PAN - *Plan Anual Normativo*) were finally approved or not, without any real evaluation of their efficiency, efficacy etc.<sup>303</sup>

The **evaluation of public policies** of the general administration of the state has been recently regulated in the Spanish Recovery Plan.<sup>304</sup> This law emphasises that evaluation has an “integral and transversal dimension to all sectors” and “deepens the evaluation of real impact that policies could have on citizens’ wellbeing and the exercise of their rights” (Preamble). This Law created the **State**

<sup>300</sup> Royal Decree 1081/2017 establishing the functioning of the Office of Coordination and Normative Quality (*Real Decreto 1081/2017, de 29 de diciembre, por el que se establece el régimen de funcionamiento de la Oficina de Coordinación y Calidad Normativa*), 29 December 2017, <https://www.boe.es/eli/es/rd/2017/12/29/1081>

<sup>301</sup> Royal Decree 1729/2007 on the elaboration of the periodic report related to the effectiveness of the principle of equality between women and men (*Real Decreto 1729/2007 por el que se regula la elaboración del Informe Periódico, relativo a la efectividad del principio de Igualdad entre mujeres y hombres*), 21 December 2008. <https://www.boe.es/eli/es/rd/2007/12/21/1729>

<sup>302</sup> Royal Decree 286/2017 on regulation of the Annual Normative Plan and the Annual Report on Normative Evaluation of the General Administration of the State (*Real Decreto 286/2017 por el que se regulan el Plan Anual Normativo y el Informe Anual de Evaluación Normativa de la Administración General del Estado y se crea la Junta de Planificación y Evaluación Normativa*), 24 March 2017, <https://www.boe.es/eli/es/rd/2017/03/24/286/con>

<sup>303</sup> Federico De Montalvo Jääskeläinen, ‘Evaluación de un lustro de evaluación ex post de las normas’ (2023) 115 *Revista de las Cortes Generales* 191.

<sup>304</sup> Law 27/2022 on the institutionalisation of the evaluation of public policies within the General Administration of the State (*Ley 27/2022 de institucionalización de la evaluación de políticas públicas en la Administración General del Estado*), 20 December 2022. <https://www.boe.es/eli/es/l/2022/12/20/27>

**Agency for the Evaluation of Public Policies**, to ensure homogeneity in evaluation and the creation of a system of common indicators. While gender appears as an indicator to consider in the design of policies (Article 6, 13), and their evaluation (Article 8), it is not included in the guidelines published on their website.<sup>305</sup>

In general, instruments for the implementation of gender mainstreaming like **gender budgeting, policy evaluation, and GIAs**, have been first introduced and better developed at the regional level rather than the national one. The Basque Country, Andalusia, and Catalonia are identified as leading examples.<sup>306</sup> In some regional laws, feminists have pushed for a minimal % of the budget to be allocated to gender equality and the gender equality bodies (for example, the last Basque Gender Equality Law Reform). However, their evaluation practices are usually quite formal, legalistic, or limited to inclusive language, as well as incomplete and generally not aimed at actually changing the organisational structures and culture of the administration.<sup>307</sup> Access to the reports is also very difficult, therefore preventing their assessment. Budget laws are usually the ones where GIAs are more developed, detailed and specialised.<sup>308</sup> A common aspect among the Regions where GIAs are less formalistic is the presence of a de-centralised system of evaluation, with collaboration or supervision by a body specialised in gender equality.<sup>309</sup> There is, nonetheless, the tendency of public administration to **consider gender equality relevant only in specific policy domains, whereas others are supposedly neutral** to gender.

### c. Training and awareness-raising

The Law on Effective Equality provides that the General Administration of the State fosters training on gender equality for public personnel both in the access to public employment as well as along the career (art. 51.c). To this end, the state will provide training on equal treatment and equal opportunities and on the prevention of gender-based violence and these contents should be included in the admission tests to (art. 61).

The National Institute of Public Administration (Instituto Nacional de Administración Pública - INAP), the government's leading civil service training school in Spain, provides a 'Training Plan on Equality and Non-Discrimination 2023-24' which covers Equal treatment and non-discrimination in the broad sense, including equality between women and men and the prevention of violence against women.<sup>310</sup>

<sup>305</sup> <https://funcionpublica.hacienda.gob.es/evaluacion-politicas-publicas/Guias-evaluacion.html>

<sup>306</sup> Eva Alfama and Alba Alonso, 'Las políticas de género en la Administración Pública. Una Introducción' (2015) 8 *Revista Vasca de Gestión de Personas y Organizaciones Públicas* 24; Alba Alonso, 'Las políticas de género en España'.

<sup>307</sup> Alba Nogueira López, 'La evaluación de impacto de género. ¿Rutina o gafas lilas?' en Dolores Canals Ametller (ed), *La evaluación de impacto normativo por razón de género* (Madrid:CEPC, 2020) 323.

<sup>308</sup> *Ibid.*, 325.

<sup>309</sup> *Ibid.*, 332.

<sup>310</sup> INAP 'II Plan de formación en igualdad y no discriminación del INAP 2023-2024'. <https://www.inap.es/documents/10136/1818260/II+Plan+Igualdad+INAP+2023-2024.pdf/bf6f3dee-d82a-98ac-6d4e-0bb81ef5dde4>

It is open to the participation of public employees from the different public administrations. Training is therefore available for all categories of staff, but it is not mandatory.<sup>311</sup>

The **Third Strategic Plan for the Effective Equality of Women and Men 2022-2025** includes **training for all public personnel** on gender-sensitive public policies.<sup>312</sup> The plan includes measures like 1) the evaluation and improvement of the training programmes of the **State General Administration** (including those of the INAP), from a gender and intersectional perspective; 2) guaranteeing the qualification of the staff involved in applying equality policies; including the study and application of the principle of equality in the admission tests and promotion process. As to the **detection of GBV** and the improvement of services to victims, the Plan includes a specific objective regarding the training on early detection of gender-based violence, directed to primary and hospital care staff, social services, education centres, and consular services. Specific training on GBV is also foreseen for institutional actors involved in the protection of women's rights. The Plan also includes raising awareness at societal level on sexist violence from a gender, intersectional and human rights perspective. Another area of training and awareness raising is **research**, in particular the training on gender biases for staff involved in the evaluation processes. The Women's Institute is responsible for the training of the Equality Units within the Ministries, particularly on the implementation of gender budgeting, the incorporation of a gender perspective in public tendering, grants and agreements, in the selection and promotion of public personnel, in the drafting of GIAs. It also supports the State General Administration in the incorporation of inclusive language. In this regard, the Spanish Federation of Associations of the Higher Bodies of the State Civil Administration (FEDECA) contributes to writing **guides on the use of non-sexist language**.<sup>313</sup>

As to training, the Women's Institute organises both online and in-person courses on gender equality. It runs a platform<sup>314</sup> of online courses on gender equality that offers support to **companies and HR departments** (e.g. for the implementation of gender equality plans and measures), support for the development of collective agreements, training for **state security forces, social servants, professionals** involved in the legal field, etc.

In 2021, the Institute financed training activities and violence prevention campaigns, scholarships for postgraduate students in gender studies, and activities related to equality of feminism (conferences, exhibitions, awards, etc.), and the 'Equality in the Company' label.

Other bodies are involved in awareness-raising on specific gender equality issues. For example, the Government Delegate for Gender-based violence is responsible for awareness raising initiatives on the topic of its remit.

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<sup>311</sup> Due to the decentralised nature of the Spanish administrative system, attention needs to be paid to the training offered by the Autonomous Communities, through their own Public Administration Institutes.

<sup>312</sup> Women's Institute and Ministry of Equality, 'III Strategic Plan for Effective Equality of Women and Men 2022-2025'.

<https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1824.pdf>

<sup>313</sup> Higher Bodies of the State Civil Administration (2019) Guide on the use of non-sexist language "...porque lo que no se nombra no se ve..." LENGUAJE NO SEXISTA Y DENOMINACIÓN CUERPOS A1 EN LA AGE ([fedeca.es](http://fedeca.es))

<sup>314</sup> <https://escuelavirtualigualdad.es/>

Since 2018, mandatory training on gender equality has been introduced in the judiciary.<sup>315</sup>

#### d. Gender statistics

Currently, the Women’s Institute in collaboration with the **National Institute for Statistics** collects sex-disaggregated data on eight topics: employment; wages income, and social cohesion; health; education; work and family balance; science, technology, and information society; power and decision-making, and crime and violence.<sup>316</sup> Data on other aspects covered by the equality Directives are not currently collected (e.g. access to goods and services, social security, occupational pension schemes or compliance and enforcement aspects of the directives). Moreover, surveys do not analyse the causes of inequality or the forms and scope of discrimination.

#### 4. To what extent does the social and political context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality in legal frameworks?

These are the main social and political factors that played a role in gendered law and policymaking in Spain:<sup>317</sup>

- The influence of European and international policies, particularly the introduction of gender mainstreaming (Beijing Platform, EU policies);
- The influence of political party ideology: left-wing governments during early 2000 adopted key legislations towards the implementation of gender mainstreaming (e.g. Law 3/2007), including the creation of the institutional structures that would facilitate de-gendering policymaking (e.g. the Equality Units, the Women’s Institute at national and regional levels, etc.). More recently, progressists/left coalition governments have also implemented gender transformative policies (mentioned above).
- the economic crisis and the austerity policies imposed by the EU had a negative impact on the gender institutional structure (downgrading gender machinery, abolition of equality specific ministry/secretariat in 2011), on gender policies (through budget cuts and the adoption of conservative policies), on the lack of gender perspective in anti-crisis measure, and the dismantling of the welfare state. Similarly, the covid-19 crisis has had negative effects on

<sup>315</sup> Organic Law 5/2018 that reforms Organic Law 6/1985 on the Judiciary, on urgent measures in the aplicaciones of the State Pact on gender based violence, 28 December 2018 (*Ley Orgánica 5/2018 de reforma de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, sobre medidas urgentes en aplicación del Pacto de Estado en materia de violencia de género*). <https://www.boe.es/eli/es/lo/2018/12/28/5>

<sup>316</sup> Latest data are summarised in the report Women’s Institute, ‘Main statistical indicators of equality’, February 2023. available at: [https://www.inmujeres.gob.es/MujerCifras/Informes/Docs/principales\\_indicadores\\_2023.pdf](https://www.inmujeres.gob.es/MujerCifras/Informes/Docs/principales_indicadores_2023.pdf). See also ‘Mujeres y Hombres en España’ (Women and Men in Spain), statistical series and summary reports. [https://www.ine.es/ss/Satellite?L=es\\_ES&c=INEPublicacion\\_C&cid=1259924822888&p=1254735110672&pa\\_gename=ProductosYServicios%2FPYSLayout&param1=PYSDetalleGratis](https://www.ine.es/ss/Satellite?L=es_ES&c=INEPublicacion_C&cid=1259924822888&p=1254735110672&pa_gename=ProductosYServicios%2FPYSLayout&param1=PYSDetalleGratis)

<sup>317</sup> Alonso, ‘Las políticas de género en España’; Lombardo, ‘The Spanish Gender Regime’; Lombardo, ‘Gender Inequality in Policies’; María Bustelo, ‘Three decades of state feminism and gender equality policies in multi-governed Spain’ (2016) 74 *Sex Roles* 107.

gender equality, with some differences between covid-19 policy responses and the measures contained in the recovery plan. The former have been able to prevent and protect women from the worst consequences, in terms of job losses (e.g. income retention scheme), and provided a swift response to some gender issues (e.g. urgent measures on gender-based violence during the pandemic). On the contrary, the recovery plan was less gender-transformative, with regard to key structural issues like the care gap.

**5. Does the identified law or policy embrace gender-neutral or gender-sensitive language?**

The Law on Effective Equality 3/2007 refers to the “less represented sex”, thus adopting a symmetric or neutral wording. However, it should be considered gender-sensitive, in that it identifies the domains and mechanisms that affect gender equality.

Similarly, the gender perspective is understood by the judiciary as the approach that takes into account the historic subordination of women. In its emerging doctrine on ‘gender adjudication’, the Supreme Court recalls that Article 4 of the Law 3/2007 on Effective Equality requires that the principle of equality be integrated into the interpretation and application of legal norms and that Article 15 of the same law establishes the mainstreaming of the principle of equal treatment and equal opportunities between women and men in the activity of all the organs of the State.<sup>318</sup>

**6. Are there any specific legal mechanisms or provisions that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?**

See answers to Question n. 3 above.

**7. Can technology and data-driven approaches be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilizing technology for this purpose?**

No examples of this kind.

<sup>318</sup> Judgment of the Supreme Court, of 14 October 2020, Appeal No. 2753/2018, ECLI:ES:TS:2020:3486.



## B. Violence against women and girls

### 1. How is the problem of VAW framed in your national legislation?

Spain does not have a single approach to the regulation of VAW, though it can be considered that the general conception of VAW in the different pieces of legislation is in line with international standards and, at least since the beginning of legislation dealing with the matter specifically<sup>319</sup>, **it has been considered a form of discrimination and a violation of women's and girls' human rights**. Both the legislation that adopted asymmetrical measures against gender-based violence<sup>320</sup> and those reforms that have used symmetrical approaches to violence against women<sup>321</sup> have made reference to international standards such as the CEDAW, the UN Declaration on the elimination of violence against women, the Resolutions of the International Summit in Beijing and, after its ratification, to the Istanbul Convention.

Current framing of violence against women has been shaped both by feminist demands from groups in civil society, a growing concern especially regarding the high numbers of women killed by partners or ex-partners (lately this concern has comprised also the growing number of children killed by ex-partners to harm their mother), and international commitments.

The shaping of legislation on VAW has also been controversial. The Organic Law 1/2004, which contained asymmetrical criminal provisions, was challenged before the Constitutional Court.<sup>322</sup> In its ruling, the Court upheld the norm and stated that the kind of aggressions it contemplates (committed by men against women that are or have been their sentimental couples) has greater legal "disvalue" that needs to be compensated with aggravated response, because they correspond to a type of violence that is a manifestation of discrimination, the situation of inequality and the power relations of men over women. According to the Constitutional Court, it is not reprehensible that the legislator considers that an aggression involves greater damage when the aggressor acts according to a cultural pattern - gender inequality in couples - that causes serious damage to their victims, and thus, consciously and objectively, gives to his behaviour an added effect to the very use of violence.

<sup>319</sup> There is a history of legislation on some VAW issues, especially through criminal law, that has followed a similar development as we might find in other European countries: with a central role given to "honour" up to the mid 20th century and moving on later on to personal freedom or bodily integrity as the main issue at stake, and finally connecting sexual violence to discrimination.

<sup>320</sup> Organic Law 1/2004 on Comprehensive Protection Measures against Gender Violence, 28 December 2004, <https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760>. This law introduced in the Criminal Code some provisions to punish behaviour which would not be considered under criminal law (maltreatment without injuries and non-serious injuries, minor threats and coercion without violence) whenever the victim is or has been the wife or partner of the aggressor.

<sup>321</sup> The Criminal Code was reformed in 2010 to meet international requirements and introduced a (symmetrical) general aggravating circumstance when the crime was committed on grounds that are racist, anti-Semitic or any other discrimination regarding ideology, religion or belief of the victim, ethnic origin, race or nation to which they belong, sex, sexual orientation or identity, illness or disability (Article 22.4). In 2015, following Spain's ratification of the Istanbul Convention, "on grounds of gender" was added to the aggravating circumstance in Article 22.4 . Organic Law 10/1995 of the Criminal Code, 23 November 1995, <https://www.boe.es/eli/es/lo/1995/11/23/10/con>.

<sup>322</sup> Judgement of the Constitutional Court 59/2008, of 14 May 2008 ECLI: ES:TC:2008:59.

Except for those provisions introduced by the Organic Law 1/2004, which would not be criminal if they were not connected to gender-based violence, all other forms of violence against women (murder, rape, serious injuries, harassment) are symmetrical and they have to be examined together with the equally symmetrical aggravating circumstance of discriminatory grounds in Article 22.4.

**2. To what extent do the laws and policies in your country adopt the transformative approach set out in the Istanbul Convention or that is similar to the IC?<sup>323</sup> Where do you locate the VAW legislation of your country in the Gender Equality Continuum?**

The idea that VAW is intimately linked to inequality between men and women, to the historical exclusion of women from access to rights, freedom and security, and the patriarchal gendered roles that underlie and support discrimination is reflected in the Spanish legislation. The structural character and pervasiveness of VAW - including sexual violence which is considered, in the Preamble of the Organic Law 10/2022 one of the most common and hidden violations of human rights which occur in the Spanish society - has led to development of “**comprehensive**” **approaches**, that is, laws and policy packages which deal with the matter of VAW in a transversal way across policy fields, sectors, levels of competences, etc. (i.e. education, ). The comprehensive approach also comprises preventive measures, as well as measures destined to assist and support victims.

In terms of the Gender Equality Continuum, Spanish legislation is Gender Aware and transformative, though there are gaps and serious issues regarding effectiveness.

**3. Does your national law put lack of consent at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?**

Spanish legislation was reformed in September 2022, by the adoption of the Organic Law for the Comprehensive Guarantee of Sexual Freedom 10/2022,<sup>324</sup> popularly known as “Only yes is yes”

<sup>323</sup> See in particular: Article 3 –Definitions For the purpose of this Convention: a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

From the preamble: "Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women; Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

<sup>324</sup> Organic Law 10/2022 of comprehensive guarantee of sexual freedom (*Ley Orgánica 10/2022 de garantía integral de la libertad sexual*), 6 September 2022, <https://www.boe.es/buscar/pdf/2022/BOE-A-2022-14630-consolidado.pdf>

Law. This reform introduced the definition of sexual violence of Art. 36 IC. Most notably, the Law eliminated the distinction between sexual abuse and sexual aggression in the Criminal Code, introducing a single crime of sexual aggression based on **lack of “affirmative consent”**. Initially the reform eliminated also the **elements of physical violence or intimidation** in the definition of the crime, but these **were reintroduced in a counter-reform in 2023**.<sup>325</sup>

**4. To what extent are the laws in your country sensitive to the intersectional dimension of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)**

Intersectionality as such has entered only very recently in Spanish legislation, in the horizontal anti-discrimination legislation of 2022.<sup>326</sup>

However, attention to intersectional dimensions of GBV was already present in the State Pact Against Gender Violence. The Pact, adopted by the Parliament in 2017, involved the Government, the General Administration of the State, Autonomous Communities and the local authorities. It contemplated 290 measures distributed in 10 sections (*ejes*). The Pact took into account specific intersections. For example, in Section 3 (Improvement of assistance, support and protection to victims) there is a specific sub-section (3.7) with 7 measures regarding women and girls with **functional diversity or disabilities**. Disability is expressly mentioned in another 5 measures throughout the document (regarding for example the elaboration of public campaigns and materials, the training of first-contact staff dealing the GBV to be able to provide information adapted to women with disabilities, the data collection for the monitoring of GBV, etc.). The other important intersection in the Pact is **age**, mostly drawing attention to the specific situation of girls (children and adolescents), which has its own section (no. 4), but also with some measures specifically mentioning older women. Measures for older women are associated, under the label **“vulnerable groups”**, with other intersections that have received less attention: migrant women (in 2 measures), women from ethnic minorities (in 1 measure) and Roma women (in 1 measure). There are also 2 measures directed to improve awareness and prevention in the framework of international cooperation, which target refugee camps.

As it can be seen, the **attention to intersectionality** in equality policies (not to mention other policy fields) **is fragmented and scarce**. This has been noted by international reports: for example, in its latest Concluding Observations on Spain, the CEDAW Committee expresses its concern by the lack of effective application of the principle of intersectionality to ensure gender equality to women victims of intersectional discrimination.<sup>327</sup>

<sup>325</sup> Dolores Morondo Taramundi (2023) Counter-reforming sexual aggressions in Spain, European network of legal experts in gender equality and non-discrimination, <https://www.equalitylaw.eu/downloads/5852-spain-counter-reforming-sexual-aggressions-in-spain>.

<sup>326</sup> Law 15/2022 on equal treatment and non-discrimination (*Ley 15/2022 integral para la igualdad de trato y la no discriminación*), 12 July 2022, <https://www.boe.es/buscar/act.php?id=BOE-A-2022-11589>.

<sup>327</sup> CEDAW Committee, Concluding observations on the ninth periodic report of Spain, 30 May 2023, <https://www.igualdad.gob.es/wp-content/uploads/InformeCEDAW.pdf>.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?**

Notwithstanding important progress in legislative measures regarding VAW, there are still a number of issues that need to be addressed in order to unfold their transformative potential.

A first issue, raised also by several reports and documents such as the GREVIO report on Spain<sup>328</sup> or some of the Decisions of the CEDAW that have condemned Spain on various accounts<sup>329</sup>, is the **training of legal operators and in general professionals dealing with victims of VAW**. Notwithstanding the fact that both the Organic Law 1/2004 against gender violence and the Organic Law 10/2022 for the guarantee of sexual freedom have comprehensive approaches and thus integrate a wide array of measures, including training and awareness for a wide range of professionals, including judges, this has not translated into clear improvement. Furthermore, there have been cases where both social services and judicial instances have shown resistance to legislative changes with little or no action taken against them.<sup>330</sup>

A second issue which hinders transformative potential is the **persistence of stereotypes regarding VAW** which trample the effectiveness of the law.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards VAW as contained in the current legal and policy framework from a transformative equality perspective?**

As stated before, the **comprehensive or “integral” approach in the legal and policy responses to VAW** can be considered a good practice, in line with the international commitments at the UN and the CoE. A useful tool to this end has been the so-called State Pact against Gender Violence (*Pacto de Estado contra la violencia de género*). Following its adoption by the Spanish Parliament in 2017, the Government approved a Royal Decree Law in 2018 to implement its 290 measures.<sup>331</sup> In 2023, 65% of the actions had been completed and another 30% was in progress. The Minister of Equality has called on political parties to renew the Pact in order to expand its scope to forms of VAW that were not included in the Organic Law 1/2004, and improve its implementation and funding.

In the last years **gender adjudication** (judging with a gender perspective) has started to emerge, particularly in higher courts (Supreme Court, Constitutional Court), especially in cases of GBV. This doctrine is based on Art. 4 of Organic Law 3/2007, which states that “equal treatment and equal opportunities between women and men is an informing principle of the legal order and, as such, must be integrated and observed in the interpretation and application of legal norms”. The Supreme

<sup>328</sup> GREVIO Baseline Evaluation Report for Spain, October 2020, <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f>.

<sup>329</sup> CEDAW Committee, Decision of 16 July 2014, Communication No. 47/2012 *González Carreño v. Spain*; CEDAW Committee, Decision 28 February 2020, Communication No. 138/2018 *S.F.M. v. Spain*.

<sup>330</sup> There are, for example, several cases where social services and family courts have applied the so-called “parental alienation syndrome”, even after it was finally forbidden by law.

<sup>331</sup> Royal Decree Law 9/2018 on Urgent Measures for the Development of the State Agreement against Gender-Based Violence (*Real Decreto-ley 9/2018 de medidas urgentes para el desarrollo del Pacto de Estado contra la violencia de género*), 3 August 2018. [www.boe.es/diario\\_boe/txt.php?id=BOE-A-2018-11135](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-11135).

Court has followed this indication, for example, in the interpretation of the aggravating circumstance of “discrimination on grounds of gender” in the adjudication of cases of sexual violence. The Supreme Court has argued that the foundation for the aggravating circumstance of gender rests on the greater criminal reproach that the perpetrator merits for committing the offence motivated by a feeling of superiority over the victim, or as a means to demonstrate that he considers her a being that must be dominated.<sup>332</sup> This aggravating factor will be applied when the behaviour of the man tries to establish or maintain a situation of domination over the woman, placing her in a role of inferiority and subordination in the relationship, with a serious breach of her right to equality, freedom and due respect as a human being.<sup>333</sup>

Finally, it is important to note that progress in the legal and policy response to VAW is possible not only through the **coordination of different institutional actors and public administrations** (including public services, police and judiciary), but also through the **involvement of women’s organisations and feminist groups** (e.g. feminist strikes in 2018 and 2019, and the feminist protest sparked by a notorious gang-rape case in 2016).

Following a very productive legislature 2020-2023 with a significant participation of feminist groups and movements, there is however concern on how **resistance and anti-feminist backlash** have emerged against the transformative potential of the new laws.<sup>334</sup> The political violence against feminist politicians and the strength of far-right and conservative media have conditioned the politics of the new government, in search of a more institutional profile, less associated with “radical” feminist groups. Resistances have also emerged in the judiciary and other professional groups dealing with victims (such as social services).

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<sup>332</sup> ECLI:ES:TS:2018:3757

<sup>333</sup> ECLI:ES:TS:2020:2904

<sup>334</sup> In some autonomous communities where the conservative party governs with the far-right party, the idea of “gender based violence” has been put into question and regional laws and policies on gender based violence have been derogated or radically transformed into “family protection” mechanisms.



## C. Women in leadership

1. **How is the problem of women's representation in the public and the business spheres framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging the gendered nature of underrepresentation and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.**

As to the public sector, women's underrepresentation in politics is framed as an issue of real or *de facto* equality and democracy (Law 3/2007, para III). Gender equality scholars have criticised how political institutions frame the problem of gender equality as one of **women's quantitative underrepresentation** in political institutions, focusing on how to increase their numerical presence, rather than on a "thorough diagnosis of the nature of the problem".<sup>335</sup> Arguments in favour of increased representation usually point to democracy and equality. At times, policies connected the problem to structural inequalities and inequalities in the labour market, but the **sexual division of labour** is less often mentioned as a source of the issue (mostly by feminists and gender experts). Similarly, specific manifestations of patriarchy, such as violence against female politicians, which hinders women's political representation,<sup>336</sup> is usually neglected. As a result of this framing, the main policy solutions focused on quotas, rather than changes in the sexual division of labour, and the creation of 'velvet triangles of empowerment' (between femocrats and feminist movements). As Lombardo pointed out, both the problem and the solution focused on women as 'problem-holders' and depicted them as a homogeneous category. Moreover, policies adopt a 'utilitarian frame'; instead of acknowledging political under-representation as a problem *per se*, they justify the need to increase female participation based on socio-political benefits.

Regarding the private sector, the soft quota approach taken in 2007 was a compromise solution following the **business sector's strong opposition** to quotas.<sup>337</sup> The Law's preamble expresses the rationale of **social justice**, and a desire to incorporate **corporate social responsibility** and "ensure that the prevailing criterion in the appointment of board members is talent and professional performance, for the process can only be impartial if sex is not an obstacle in such nominations". According to Mateos de Cabo and others,<sup>338</sup> the rationale behind the soft quota was to "influence informal institutions by stimulating companies to evaluate the potential existence of gender bias in their selection processes (usually characterised by selecting board members from informal networks through opaque procedures)". By self-correcting their selection processes, companies would avoid government's efforts to adopt more binding solutions. This effort to keep the State outside of companies **reproduces the public vs private division** that tolerates gender inequality in the private sector. Other efforts to dismantle gender gaps in companies include the adoption of **gender equality plans**, which should detect gaps in representation and put in place measures to correct them. However, they are often adopted in a void and formalistic way, thus, they are not effective.

<sup>335</sup> Emanuela Lombardo, 'Gender Inequality in Politics' (2008) 10 *International Feminist Journal of Politics* 84.

<sup>336</sup> *Ibid.* 85.

<sup>337</sup> Ruth Mateos de Cabo, Siri Terjesen, Lorenzo Escot and Ricardo Gimeno, 'Do 'soft law' board gender quotas work? Evidence from a natural experiment' (2019) 37 *European Management Journal* 611.

<sup>338</sup> *Ibid.*

Often the focus on training and mentoring programmes for female employees to improve their career development is based on an **individualistic understanding of the problem** that identifies the source of it in women’s lack of managerial skills. This framing risks overshadowing the structural barriers that women face in access, promotion, etc. It also reinforces gender stereotypes about male and female attitudes to management, to team working, risk aversion, etc. In this sense, better work-like balance schemes that support caring duties, flexibility and the availability of affordable public (child)care services would be beneficial to support female employment and a gender balance in management positions.

As to the “business case” approach, which seeks to support changes in organisational culture by presenting gender diversity as a booster for productivity, it buys into stereotypes about masculine and feminine managerial styles. Accordingly, feminine leadership is presented as a more effective, responsible and justice-oriented organisational approach.<sup>339</sup> Such styles are presented as inner characteristics of the sexes, therefore reinforcing the essentialist understanding of gender as an individual attitude, rather than an issue of power imbalances.

**2. More specifically, are the laws and policies recognising the underlying causes of underrepresentation of women in leadership position, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?**

As to the public sector, Law 3/2007 does not adopt the concept of quota, but rather ‘**gender balance**’ or balanced representation. This choice was made to gain the approval of the conservative Popular Party, but eventually it wasn’t enough as the latter abstained from voting. Back then, women’s organisations sought to problematize male dominance, biased practices and patriarchal structures, but their frames eventually were marginalised, as the debate was monopolised by political parties.<sup>340</sup> As to the private sector, Law 3/2007 framed the issue of underrepresentation as one of **lack of impartiality** in candidates’ selection. Indeed, it emphasised that the principle of gender balance in company boards aimed at prioritising talent and professional achievement as expressions of impartiality, since ‘sex cannot be an obstacle’ (para IV). In doing so, the law doesn’t recognise the root causes of underrepresentation beyond biases in selection committees (e.g. sexual division of labour, care duties, gender-based violence, etc.). Similarly, royal decree 901/2020 does not contain any specific reference to the definition of good leadership, except for the Annex 2.V, where it asks whether the plan “includes corrective measures for the evaluation of job posts to ensure a neutral system of professional classification, free of gender biases”. Reference to gender bias in evaluation of job posts is also contained in the royal decree 902/2020 on equal pay, which recognises the issue of undervalued feminised jobs and the need to introduce criteria of adequacy, completeness, and objectivity (Article 4.4).

**3. Are there specific provisions within the laws and policies that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies’ leadership and that you think could be seen as a good/best practice?**

<sup>339</sup> Candela Teijeiro Franch, ‘Liderazgo femenino y políticas de igualdad laboral hacia un modelo más equilibrado de relaciones laborales’ in Mercedes Alcañiz Moscardó (ed.) *Investigació i gènere a la Universitat Jaume I* (Universitat Jaume I 2020).

<sup>340</sup> Lombardo and Verge, ‘Cuotas de género en política y economía’, p. 314.



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Laws and policies on **corporate boards** do not generally foresee measures specifically directed at challenging traditional leadership. Most initiatives are taken by individual companies, some of which are awarded with the Gender Equality Label (*DIE -Distintivo Igualdad en la Empresa*) by the Women's Institute.<sup>341</sup> Among the good practices detected, there were:

- "Blind cv" for the improvement of the transparency in internal promotion. It has been considered as a good practice to guarantee career development without gender biases. It is not clear how this 'neutral' or blind approach would correct the effects of unpaid care labour.
- Female leadership programme
- Promotion of co-responsibility: the enterprise offers male employees 15 days additional paternity leave, entirely covered by the company (this was prior to the new legislation on birth-related leave, entered into force in 2021).
- Training and awareness raising to counteract masculine culture in the workplace (especially directed to HR staff, new hires, managers and team leaders, legal representatives of employees). In the submitted report, it is argued that this action increased the presence of women in the workforce.

Some of the initiatives reflect a 'fixing the women' approach. Namely, mentoring programmes and training directed towards female managers to improve their leadership skills usually do not question the leadership model of reference. For example, the 'Talentia 360' programme, directed at women in executive positions, teaches female leaders how to manage time efficiently, manage stress and reach a balance between personal and professional life, as part of the training module on conciliation. Over the past three editions of this programme, 40% of participants were promoted, according to the Women's Institute.<sup>342</sup> This and other good practices are collected by the Women's institute in specific publications.<sup>343</sup>

<sup>341</sup> The DIE is an excellence award that, from the perspective of the corporate image, shows that the company is committed to gender equality. In some circumstances, the DIE is taken into account in public tendering. Moreover, companies awarded with the label become part of a network where they can share good practices and experiences related to gender equality in labour relations. Several criteria are considered for evaluating the proposals, among these, the presence of women in different decision-making positions in the company, and their presence in highly technological, technical and scientific posts. See the Royal Decree 1615/2009 regulating the award and use of the "Equality Label in Enterprise" (*Real Decreto 1615/2009 por el que se regula la concesión y utilización del distintivo «Igualdad en la Empresa»*), 26 October 2009. <https://www.boe.es/eli/es/rd/2009/10/26/1615>. The companies awarded with this label are currently 143 (last call was in 2020). Instituto de la Mujer (2017) *Guía de Buenas Prácticas "Medidas Más Eficaces Para La Igualdad De Oportunidades Entre Mujeres Y Hombres"*. Available at: [https://www.igualdadenlaempresa.es/recursos/monograficos/docs/BBPP\\_mejores\\_medidas\\_para\\_igualdad.pdf](https://www.igualdadenlaempresa.es/recursos/monograficos/docs/BBPP_mejores_medidas_para_igualdad.pdf)

<sup>342</sup> [https://www.igualdadenlaempresa.es/promocion/mas-mujeres/docs/4\\_PDD.pdf](https://www.igualdadenlaempresa.es/promocion/mas-mujeres/docs/4_PDD.pdf)

<sup>343</sup> Instituto de las Mujeres (2020) Buenas prácticas para la atracción y retención de talento y la promoción profesional con perspectiva de género. <https://www.igualdadenlaempresa.es/promocion/mas-mujeres/docs/InformeBBPPTalento.pdf>; Instituto de las Mujeres (2020). 10 AÑOS DEL DISTINTIVO "IGUALDAD EN LA EMPRESA". AVANCES EN IGUALDAD. [https://www.igualdadenlaempresa.es/recursos/estudiosMonografia/docs/10\\_anos\\_distintivo\\_igualdad\\_Empresa.pdf](https://www.igualdadenlaempresa.es/recursos/estudiosMonografia/docs/10_anos_distintivo_igualdad_Empresa.pdf)

Over the past few years, **CEOE** - one of the main employer’s associations- has launched different **programmes to promote female leadership**. Two of these initiatives target women holding intermediate positions or management roles, where the company commits to promote them to higher positions (namely, the “**Promociona**” Programme for key executive women, and the “**Progres**a” Programme, for intermediate roles). Along this line, in 2023, CEOE launched a “Proactiva” Project, focused on promoting leadership among young females with a high potential at the beginning of their professional experience.

The third project - “Chicas Imparables” (Unstoppable Girls) is directed to young girls aged 16-17 and seeks to foster leadership at early ages, when the definition of roles can bring them to choose traditionally female professions.<sup>344</sup> Data on the effectiveness of these programmes was not found.

Other initiatives include: the **50a50 network**: a non-profit association arising from the Woman, Company and Economy Observatory (ODEE in its Catalan initials) of the Barcelona Chamber of Commerce and founded in the year 2017. It is made up of more than a hundred women in business, directorial, pre directorial and entrepreneurial roles, and it works as a pressure group to bring forward the compliance of SDG5 of the 2030 Agenda of the United Nations. 50a50 works towards placing value on female talent and achieving 50% female representation in decision-making roles within institutions, agencies and companies.<sup>345</sup>

**Trade unions** also took initiatives to de-bias job classifications. Even though these are strictly related to equal pay, and not to leadership, they are good examples of strategies to make visible gender biases and stereotypes in the evaluation systems. For example, trade unions adopted specific tools such as the ‘pay register tool’, that helps systematise the pay systems and segregate information by sex; and the ‘job assessment tool’, which explicitly **includes characteristics that are often neglected when assessing tasks performed by women** (e.g. thoroughness, attention to detail, emotional charge).<sup>346</sup>

An example of **good practice in the judiciary** is one of the measures contained in the II Equality Plan,<sup>347</sup> which encourages to **consider the value of care work in the assessment of merits** for

<sup>344</sup> Raúl Sánchez, Ana Ordaz, Victòria Oliveres, Cristina G Bolinches, ‘Los estereotipos de género se mantienen en las profesiones: mujeres a cuidados y hombres a trabajos manuales’, *Eldiario.es* (6 March 2023) [https://www.eldiario.es/economia/estereotipos-genero-mantienen-profesiones-mujeres-cuidados-hombres-trabajos-manuales\\_1\\_10009449.html](https://www.eldiario.es/economia/estereotipos-genero-mantienen-profesiones-mujeres-cuidados-hombres-trabajos-manuales_1_10009449.html) ; ‘CEOE lanza la nueva edición de sus programas de liderazgo femenino: Proyecto Promociona y Proyecto Progresa’ (CEOE, 18 January 2022) <https://www.ceoe.es/es/ceoe-news/formacion/ceoe-lanza-la-nueva-edicion-de-sus-programas-de-liderazgo-femenino-proyecto> ; ‘CEOE lanza el Proyecto Proactiva, un nuevo programa de liderazgo femenino para jóvenes en el inicio de su vida profesional’ (CEOE, 6 September 2023) <https://www.ceoe.es/es/ceoe-news/formacion/ceoe-lanza-el-proyecto-proactiva-un-nuevo-programa-de-liderazgo-femenino-para> .

<sup>345</sup> <https://www.50a50.org/es/donde-hacemos-lobby/>

<sup>346</sup> Helferrich & Irigoien, ‘New frontiers’, p. 66.

<sup>347</sup> Council of the Judiciary (Consejo General del Poder Judicial) (2020). “II Plan de Igualdad de la Carrera Judicial”, Madrid: Comisión de Igualdad, pp.80. Available at: <https://www.poderjudicial.es/stfls/CGPJ/COMISI%C3%93N%20DE%20IGUALDAD/20201016%20Plan%20de%20igualdad%20de%20la%20Carrera%20Judicial.pdf>



accessing discretionary positions (the highest ones) and to establish **positive actions to achieve the 40% target among the highest positions.**

#### 4. How has this framing of the problem come about; what societal and political factors shaped it?

In the **public sector**, the early adoption of voluntary positive action measures by political parties led to the progressive feminization of institutions. The initiative was led by left-wing political parties since 1980 (thanks to the initiative of feminist members, and their collaborations with women’s movement and women’s politicians in Europe). This factor, coupled with the effects of the proportional electoral system and the close lists, allowed the effective implementation of quotas.<sup>348</sup> In the meantime, gender parity in politics gained momentum also at international (UN) and European level (EU), and this also played a role in Spain, as parity was associated with the quality of democracy in the Law 3/2007 on Effective Equality.

In the **private sector**, the main political actors in the debate over gender quotas were the socialist party -PSOE, which defended the measure for reasons of justice and equality, and the conservative PP, which opposed it as a restriction on the freedom of companies and an attack against the principle of merit. Spain’s two most representative business organizations (CEOE and Cepyme), opposed the quotas as an infringement of the meritocratic principle and a threat to competitiveness. Such business organizations also embraced a ‘low supply’ argument (there are no qualified women wishing to compete for board positions). Most women directors also disagreed with quotas, fearing that their merits would be questioned. Instead, they pushed for state incentives, and measures to further women’s qualifications and work-life balance. However, after witnessing the failure of the soft-quota policy, women entrepreneurs changed their opinions and started supporting the introduction of positive actions in the field.<sup>349</sup> Other factors that influenced the debate were the **absence of visible gender champions and the lack of coordination among feminist actors.** From 2011, the election of the Popular Party (right-wing) government led to a shift in the focus of measures, mostly dedicated to leadership programmes and training (e.g. the “Promociona” program), and the establishment of women’s networks and mentoring programs.

The current government led by the Socialist Party (PSOE) has proposed a **draft Equal Representation Law** that would transpose the Directive on corporate gender balance<sup>350</sup>. The draft law was welcomed by the Spanish federation that represents female executives, professionals, and entrepreneurs (Fedep), but the then member of the coalition government, the Podemos party (holding the Equality Ministry), considered the measure as inadequate, as it focuses solely on privileged women at the top of the pyramid.

<sup>348</sup> Lombardo and Verge, ‘Cuotas de género en política y economía’, p. 312.

<sup>349</sup> Tania Verge and Emanuela Lombardo, ‘The contentious politics of policy failure: The case of corporate board gender quotas in Spain’ (2021) 36 Public Policy and Administration 232.

<sup>350</sup> Draft of Organic Law on equal representation between women and men in decision-making bodies. Available [here: https://www.mpr.gob.es/servicios/participacion/Documents/Anteproyecto%20de%20Ley%20Org%C3%A1nica%20de%20representaci%C3%B3n%20paritaria%20de%20mujeres%20y%20hombres%20en%20%C3%B3rganos%20de%20decisi%C3%B3n.pdf](https://www.mpr.gob.es/servicios/participacion/Documents/Anteproyecto%20de%20Ley%20Org%C3%A1nica%20de%20representaci%C3%B3n%20paritaria%20de%20mujeres%20y%20hombres%20en%20%C3%B3rganos%20de%20decisi%C3%B3n.pdf) . The draft law includes quotas in politics, constitutional bodies, jury bodies and professional associations.



**From a historical perspective**, arguments have shifted from an early mix of the ‘business case’ and social justice (socialist government) to passive resistance to implementation, enacted under the populist governments since 2011. Passive resistance included non-compliance with reporting obligations, the adoption of the ‘diversity frame’ instead of ‘gender’ (suggested to ‘depolarise’ the debate), the ineffective application of the priority in tendering,<sup>351</sup> and the discursive shift to the supply-side assumptions and subsequent adoption of leadership programmes.<sup>352</sup> Some of these instances persist nowadays.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?**

In general, the legal and policy approach has been soft with regard to the selection mechanisms and how they reproduce male privilege in the assessment of profiles for leadership positions within the public and private domains. While the new Bill on Equal Representation foresees the review of the selection process in those companies that do not achieve the 40% target, the current policies do not foster a re-evaluation of how and which competencies are evaluated, and how gendered norms and the unequal distribution of care can impact that evaluation.

Both the institutional and public discourse about female representation in enterprises focuses on managerial positions and board of directors, and often neglects the issue of women’s presence (and permanence) in the labour market.<sup>353</sup> As a result, quota systems look at the leadership positions at the ‘top of the pyramid’, leaving unproblematised how women are represented **at the bottom or basis of the pyramid**.

As to the private sector, the main issues with the current Spanish gender board system are that measures are voluntary, non-enforceable, and no sanctions are foreseen in case of non-compliance. This should change if the Draft Equal Representation Law is approved in the future.

Another issue is that quota systems are mainly directed to large companies (listed companies and public interest entities), **leaving outside the small and medium enterprises** that constitute the majority of the Spanish enterprises (99,8%).<sup>354</sup> According to the UN Global Compact, only 12% (almost 10% less than the previous year) of Spanish companies affirm that the higher position of their organisation is occupied by a woman (13% of companies, 11% of SMEs).<sup>355</sup> 39% of managers of Spanish SMEs that joined the Global Compact proclaimed their commitment and accountability with regard to gender representation. Only 15% of these managers established a public objective for female representation in the board of directors; 20% of them set an objective for the executive

<sup>351</sup> Mateos de Cabo et al., ‘Do ‘soft law’ board gender quotas work?’.

<sup>352</sup> Verge and Lombardo, ‘The contentious politics of policy failure’.

<sup>353</sup> See for example, the annual reports of the Association YoNoRenuncio (I do not give up) to promote effective WLB, <https://yonorenuncio.com/>.

<sup>354</sup> Ministry of Industry, Commerce and Turism. *Cyfras PYME*, September 2023. Available at: [https://industria.gob.es/es-es/estadisticas/Cifras\\_PYME/CifrasPYME-septiembre2023.pdf](https://industria.gob.es/es-es/estadisticas/Cifras_PYME/CifrasPYME-septiembre2023.pdf)

<sup>355</sup> Pacto Mundial de la ONU en España (2023) Comunicando el Progreso 2022. Renovando las reglas del reporte empresarial. Available at: [https://www.pactomundial.org/biblioteca/comunicando\\_el\\_progreso\\_2022\\_informe\\_sostenibilidad\\_empresarial/#descargar\\_frm](https://www.pactomundial.org/biblioteca/comunicando_el_progreso_2022_informe_sostenibilidad_empresarial/#descargar_frm)

positions, and 22% for the intermediate positions. These last two percentages are higher compared to big companies adhering to the Global Compact.

**6. What effects (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?**

Two effects are observed that hinder the transformative potential of these laws and policies. First, the focus on training and mentoring women keeps framing the issue as one of women's lack of skills, instead of dismantling the male standard of leadership. The current framework also invisibilizes the impact of unpaid care labour on women's career prospects. It also shifts the focus away from the selection practices and selection bodies that are ultimately responsible for reproducing male leadership standards. Finally, there is the issue of sexual violence and harassment on grounds of sex in the labour market, on which there is very little data and very few cases where women have been effectively protected.

## 4.6 UK

### A. General Framework

#### 4. Is gendered law/policymaking recognised as a problem in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?

Although the consensus appears to be that considerable progress in gender equality has been made in the UK in the last decades, there is a growing body of academic literature recognising gendered law-making and policy-making as a problem, both historically and at present. Unsurprisingly, the gendered nature of policy-making is more acutely present in areas of social policy around the work-family axis, where the heteronormative ideal of a family unit comprising a main (male) earner and a main (female) carer continues to reproduce a gendered division of labour that contributed, and continues to contribute, to economic inequalities between women and men.<sup>356</sup> Additionally, it has been pointed out that Brexit poses a new risk of rolling back some gender equality gains, especially around class-based policies (i.e. ‘policies which seek to address inequalities that stem from the sexual division of labour, such as those based on state-funded childcare or pensions’).<sup>357</sup> A further important dimension of the issue is the nature of parliament itself as a potentially gendered workplace, both in terms of the formal rules regulating parliamentary work and in terms of the informal practices around conduct and perceptions of political competence.<sup>358</sup>

Key institutional actors are becoming acutely aware of this latter issue and of the need for gender sensitive democratic institutions. The Women and Equalities Committee (of the House of Commons – see more on its mandate and role below) has recently published a comprehensive report on the need for a gender sensitive House of Commons.<sup>359</sup> The report acknowledges the considerable progress towards making the House of Commons more gender and diversity sensitive, but it also highlights the need for further reforms and urges the House of Commons to better understand the needs, personal experiences and views of women MPs, as well as to revive and maintain an institutional focus on gender and diversity sensitivity. The report includes a number of key recommendations across five key areas: equal representation; support for Members of Parliament (MPs) who are parents, carers, disabled or have long-term health conditions; a gender and diversity sensitive working environment; and transforming culture and behaviour in order to address bullying, harassment, and sexual misconduct.<sup>360</sup>

The prominent position of parliamentary Committees in the institutional set-up of the British system puts the Women and Equalities Committee in good stead to influence law-making and policy-making

<sup>356</sup> J. Chanfreau, “The Persistence in Gendering: Work-Family Policy in Britain since Beveridge”, *Journal of Social Policy* (2023), 52, 4, 981–998.

<sup>357</sup> A. Sanders and J. Flavell (2023) The direction of gender equality policy in Britain post-Brexit: towards a masculinised Westminster model, *Journal of European Public Policy*, 30:11, 2303-2325, 2308 DOI: 10.1080/13501763.2023.2200820

<sup>358</sup> J. Erikson and C. Josefsson, “The Parliament as a Gendered Workplace: How to Research Legislators’ (UN)Equal Opportunities to Represent”, *Parliamentary Affairs* (2022) 75, 20–38, 22.

<sup>359</sup> See generally: House of Commons Women and Equalities Committee, ‘Equality in the heart of democracy: A gender sensitive House of Commons’, Fifth Report of Session 2021–22, 2 March 2022.

<sup>360</sup> Women and Equalities Committee, “Equality in the heart of democracy”, pp. 3-4.

at the highest level, with an expectation from the government to issue a formal responses<sup>361</sup> to the Committee’s Reports and recommendations.<sup>362</sup> The work of other institutional actors mandated to uphold and enforce equality law, such as the Equality and Human Rights commission (EHRC – for more on the mandate and role of the ECHR, see below), also contributes to the political recognition of gendered law-making and policy-making as an ongoing problem, despite the undeniable progress. It is important to note that both the work of the Women and Equalities Committee and that of the EHRC spans across all policy domains (employment and labour market, leadership and public institutions, family and caring, Covid-19 crisis, etc), which allows them to identify the multifaceted nature of the problem.

However, it is difficult to assess whether the institutional / political recognition of the problem translates into concrete action at the level of law-making. While select committees are influential, the government often appears to ignore advice and policy recommendations from these actors. The Women and Equalities Committee, for instance, has publicly expressed its disappointment on the government’s refusal to follow its recommendations and commit to a new strategy in schools on issues of sexual harassment and gender-based violence that was specifically aimed at engaging boys and young men.<sup>363</sup>

Perhaps the best indicator of whether and how successfully recognition of the problem leads to concrete action is the recent Open House report, commissioned by the All Party Parliamentary Group on Women in Parliament.<sup>364</sup> The Open House report is an audit of the UK House of Commons in relation to the recommendations made in 11 other reports, dating from 2014 to 2023, which aim to improve gender diversity in Parliament, support women MPs, and highlight international best practice.<sup>365</sup> Out of a total of 36 recommendations that these 11 reports have made, only 4 have been

<sup>361</sup> See Erskine May: Parliamentary Practice, 38:54: “In whatever form they are made, replies are normally expected by all committees engaged in scrutinising government activity and are requested if they are not forthcoming.” Regarding the timeframe for government responses, the Osmotherly Rules (Departmental evidence and response to select committees: guidance, 17 October 2014) in para 68 set out the following: “Departments should aim to provide the considered Government response to both Commons and Lords Select Committee Reports within two months of their publication. Where a report is complex or technical in its nature, or is dependent on other reports and / or external events, the response may require longer. In such cases, the Committee should be kept informed on the response timetable, through the measures set out below. For Joint Committees, the two month timetable should apply, unless longer is agreed with the Committee” (available at: <https://www.gov.uk/government/publications/departmental-evidence-and-response-to-select-committees-guidance>).

<sup>362</sup> See: Women and Equalities Committee, “Equality in the heart of democracy: A gender sensitive House of Commons: responses to the Committee’s fifth report of session 2021-22”, 17 June 2022.

<sup>363</sup> Women and Equalities Committee, “Government ignores calls for sex education targeted at boys to tackle harassment”, 17 November 2023 (available at: <https://committees.parliament.uk/committee/328/women-and-equalities-committee/news/198514/government-ignores-calls-for-sex-education-targeted-at-boys-to-tackle-harassment/>).

<sup>364</sup> M. Cowper-Coles and Z. Asunramu, Open House: Where Next for Gender Equality in Parliament?, All Party Parliamentary Group on Women in Parliament, September 2023.

<sup>365</sup> M. Cowper-Coles and Z. Asunramu, Open House, p. 7. The 11 reports audited in the Open House report are: 1. All Party Parliamentary Group Women in Parliament (2014) Improving Parliament: Creating a Better and More Representative House (available at: <https://issuu.com/appgwinp/docs/appg-report-online-final/1>). 2. Childs, S. (2016) The Good Parliament (available at: <http://www.bristol.ac.uk/mediabrary/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20Report.pdf>). 3. Gender-sensitive parliament audit panel to the House of Commons Commission and the House of Lords Commission & IPU (2018) UK



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largely met and a further 20 only partially met.<sup>366</sup> Against this backdrop, the Open House report makes further concrete recommendations on how to improve participation, infrastructure, culture, and women’s substantive representation.<sup>367</sup>

Overall, it is possible to discern a growing appreciation of the need to consider a gender dimension in law and policy-making both from the perspective of general law (i.e. rules around the state and composition of Parliament that impact on women’s input into law) and gender-specific law (i.e. laws which specifically address gender-differences), and both on a national and on an international level. Insofar as central government institutions are concerned, this appreciation appears to be linked to an awareness of – and, presumably, reliance on – hard data on gender gaps from international organisations, including the World Economic Forum and UN Women.<sup>368</sup> The use of such statistics in parliamentary debates on gender equality is, perhaps, an indication that gendered law and policy-making starts being recognised as an ‘objective’ problem that cuts across political or ideological divisions. To take a recent example, Lord Benyon, Minister of State for the Conservative government, responded to comments and questions<sup>369</sup> regarding the government’s White Paper *International Development in a contested world*<sup>370</sup> by quoting data from UN Women suggesting that women’s

Gender-Sensitive Parliament Audit 2018 (available at: <https://www.parliament.uk/globalassets/documents/lords-information-office/uk-parliament-gendersensitive-parliament-audit-report-digital.pdf>). 4. Women and Equalities Committee (2022) Equality in the heart of democracy: A gender sensitive House of Commons (available at: <https://committees.parliament.uk/publications/9008/documents/159011/default/>). 5. Smith, J. and Childs, S. (2021) The Remotely Representative House: Lesson Learning from the Hybrid Parliament (available at: <https://centenaryaction.org.uk/publications/remotely-representative-parliament-lesson-learning-from-the-hybrid-parliament/>). 6. Shepherd, A., Ville, L., Marren, C., Whitelock-Gibbs, A. and Bazeley, A. (2023) A House for Everyone: A Case for Modernising Parliament, The Fawcett Society (available at: <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=0ebb1e86-c3f9-4e41-8bc5-740cee1181cc>). 7. Inter-Parliamentary Union (2016) Sexism, harassment and violence against women parliamentarians (available at: <https://www.ipu.org/resources/publications/issue-briefs/2016-10/sexism-harassment-and-violence-against-women-parliamentarians>). 8. Inter-Parliamentary Union (2017) Plan of action for gender-sensitive parliaments (available at: <https://www.ipu.org/resources/publications/reference/2016-07/planaction-gender-sensitive-parliaments>). 9. Childs, S. (2020) Gender Sensitising Parliaments Guidelines: Standards and a Checklist for Parliamentary Change, Commonwealth Women Parliamentarians and Commonwealth Parliamentary Association (available at: <https://www.cpahq.org/media/s20j1lws/cwp-gender-sensitizingguidelines.pdf>). 10. OSCE/ODIHR (2021) Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region (available at: [https://www.osce.org/files/f/documents/3/b/506885\\_2.pdf](https://www.osce.org/files/f/documents/3/b/506885_2.pdf)). 11. Smith, J. (2022) Effective and Inclusive Parliaments, Commonwealth Parliamentary Association (available at: <https://www.ukcpa.org/media/4661/effective-andinclusive-parliaments-final.pdf>).

<sup>366</sup> M. Cowper-Coles and Z. Asunramu, Open House, p. 8.

<sup>367</sup> M. Cowper-Coles and Z. Asunramu, Open House, pp. 8-11.

<sup>368</sup> See for instance C. Brader, “International Women’s Day 2022: gender gaps across the world”, House of Lords library, 4 March 2022 (available at: <https://lordslibrary.parliament.uk/international-womens-day-2022-gender-gaps-across-the-world/>).

<sup>369</sup> UK Parliament Hansard, Gender Equality: Volume 835, column 745, Wednesday 24 January 2024 (available at: <https://hansard.parliament.uk/Lords/2024-01-24/debates/B2DBEDD7-FB8A-44AE-82F0-1497EF44E8E1/GenderEquality>).

<sup>370</sup> Foreign Commonwealth & Development Office, “International development in a contested world: ending extreme poverty and tackling climate change, a white paper on international development”, 20 November 2023 (available at: <https://www.gov.uk/government/publications/international-development-in-a-contested-world-ending-extreme-poverty-and-tackling-climate-change>).



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participation in peace processes increases the probability of a peace agreement lasting at least two years by 20 percent, and the probability of a peace agreement lasting 15 years by 35 percent.<sup>371</sup>

Brief background on UK gender equality law:

In the absence of a written codified Constitution, the legislative framework governing equality in the United Kingdom is primarily embodied in the Human Rights Act 1998 (hereinafter HRA 1998) and the Equality Act 2010 (hereinafter EA 2010). The HRA 1998 partially incorporates the European Convention on Human Rights into domestic law and, by so doing, gives Article 14 ECHR quasi-constitutional force: public authorities can only act contrary to that provision if required by primary law to do so, with a very strong interpretive obligation applying to the courts in their interpretation of such legislation, while the devolved Parliaments in Scotland, Wales and Northern Ireland may not pass legislation incompatible with the Convention, nor may their Governments act incompatibly with Convention rights.<sup>372</sup>

The EA 2010 primarily covers England and Wales,<sup>373</sup> and Scotland (save for provisions relating to dwelling houses or family property),<sup>374</sup> with only three provisions applying to Northern Ireland.<sup>375</sup> However, positive duties on local authorities apply differently across England, Scotland and Wales. In Scotland, the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 delineate the parameters of equality law. The Equality Act (2010) supersedes numerous preceding legislation, articulating nine protected characteristics that constitute the bases for unlawful discrimination in the UK: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or (no-)Belief, Sex, and Sexual Orientation.

**5. Who are the key actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.) involved in de-gendering law- and policy making in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?**

**Institutional level – central administration**

Women and Equalities Committee (<https://committees.parliament.uk/committee/328/women-and-equalities-committee/>) examines the work of the Government Equalities Office (GEO). It holds Government to account on equality law and policy, including the Equality Act 2010 and cross Government activity on equalities. It also scrutinises the Equality and Human Rights Commission. A significant part of the work of the Committee is to launch inquiries on topics and issues within its

<sup>371</sup> UN Women, 'Women's Participation and a Better Understanding of the Political', in *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council resolution 1325*, 2015 (available at: <https://wps.unwomen.org/index.html>).

<sup>372</sup> R. Horton, "Country Report – United Kingdom: Gender Equality - How are EU rules transposed into national law?" (2022), European Network of Legal Experts in Gender Equality and Non-Discrimination, Directorate-General for Justice and Consumers.

<sup>373</sup> S. 217(1), Equality Act 2010.

<sup>374</sup> S. 217(2), Equality Act 2010.

<sup>375</sup> S. 217(3), Equality Act 2010. The provisions are those concerning offshore work, an amendment to the Sex Discrimination (Election Candidates) Act 2002 concerning a sunset clause and the (not yet in force at the time of writing in June 2024) Abolition of presumption of advancement.



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remit. Such inquiries give the Committee an opportunity to consider oral and written evidence by experts and stakeholders and they usually result in the publication of a report.<sup>376</sup>

The Government Equalities Office (<https://www.gov.uk/government/organisations/government-equalities-office>) leads work on policy relating to women, sexual orientation and transgender equality. It is responsible for a range of equalities legislation and it works together with the Equality Hub (<https://www.gov.uk/government/organisations/the-equality-hub>). The latter focuses on gender equality, LGBT rights, as well as disability and ethnicity, and the overall framework of equality legislation for the UK.

The Equality and Human Rights Commission (EHRC - <https://www.equalityhumanrights.com/>) is the UK's independent equality and human rights regulator. It contributes to enforcing and upholding equality and human rights laws, including the Equality Act 2010. It is the first port of call for policy makers, public sector bodies and businesses who require authoritative guidance on equality and human rights law.

The Judicial Appointments Commission (JAC - <https://judicialappointments.gov.uk/about-the-jac/>) selects candidates for judicial office in England and Wales, and for some tribunals with UK-wide powers. While JAC selects candidates solely on merit, it encourages strong, diverse candidates to apply, especially from the four groups (including women) that are underrepresented in the judiciary. JAC regularly reviews and improves its selection processes, and it has a Diversity Strategy (<https://judicialappointments.gov.uk/diversity-strategy-including-outreach/>) that sets out how it will attract candidates from underrepresented groups and prepare them for judicial appointment, how it will make sure that selection processes are fair and non-discriminatory, and how it will undertake targeted outreach.

- 6. What specific measures or instruments have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA),<sup>3</sup> and who was involved in their adoption, implementation, and monitoring? Are there studies or evidence on the effectiveness of tools or measures in your country aimed at preventing or addressing gendered law/policymaking? Can you also give some successful examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?**

**Public sector:**<sup>377</sup>

Since the mid-1990s, the use of all-women shortlists or similar policies in general, local, and European elections by some political parties has been a constant, if somewhat divisive, feature of attempts to achieve gender balance in elected public offices in the UK. In the absence of any statutory provisions at the time, all-women shortlists were introduced for the first time by the Labour Party in selecting candidates for the 1997 General Election. The practice was successfully challenged before an employment tribunal<sup>378</sup> as a breach of the Sex Discrimination Act 1975, which included a prohibition of sex discrimination by bodies or authorities conferring authorisation or qualification needed for engagement in a particular profession or trade. The tribunal held that the

<sup>376</sup> The reports of the Women and Equalities Committee on gender equality issues are available at: <https://committees.parliament.uk/committee/328/women-and-equalities-committee/publications/reports-responses/?SearchTerm=gender&DateFrom=&DateTo=&SessionId=>

<sup>377</sup> Some of this information is also included Deliverable D2.1 on “voluntary targets”.

<sup>378</sup> *Jepson and Dyas-Elliott v the Labour Party and others* [1996] IRLR 166.



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selection of parliamentary candidates amounted to such an authorisation to “work” as a Member of Parliament. All-women shortlists were temporarily discontinued after this judgment, but the women candidates already selected retained their position. In response to the Jepson judgment the Labour government enacted the Sex Discrimination (Election Candidates) Act 2002 to amend the Sex Discrimination Act 1975 and allow political parties to use positive action, including all-women shortlists, in the selection of candidates. The Act included a sunset clause with an initial expiration date of 2015, but this has now been extended to the end 2030 by the Equality Act 2010 (section 105).

The **effectiveness** of policies and initiatives to address gender inequalities is usually measured against the backdrop of data directly related to the outcome(s). For instance, as in other countries, there is strong evidence from the literature in the UK to suggest that there is a link between the increase in the numbers of women’s MPs and the use of positive action in the selection of party candidates,<sup>379</sup> based on the numbers of elected MPs in general elections.<sup>380</sup>

There is no evidence that bodies in the public sector have themselves adopted any specific tools (e.g. designed by EIGE) to measure the effectiveness of measures and instruments intended to address or prevent gendered law and policy making. Nonetheless, looking at the legal and broader institutional developments over the last few decades through the lens of the Gender Equality Continuum Tool (GECT) it is possible to identify the legal framework and the institutional / policy environment as accommodating.

Specifically insofar as progress in Parliament itself as an institution is concerned, the Open House report cites three major developments since 2014: the establishment, on a permanent basis, of the Women and Equalities Committee; the setting up of the Independent Complaints and Grievance Scheme for reporting and holding perpetrators accountable for abuse, harassment and bullying; and the introduction and expansion of the proxy voting scheme for MPs on baby leave, and additional Independent Parliamentary Standards Authority funding for staff to cover MPs constituency work while caring for a new-born.<sup>381</sup> It is apparent, however, that several tools or instruments that have been adopted in other jurisdictions are still not being utilised in the UK parliamentary framework. According to the Open House report, for instance, the training provision to Members of Parliament and their staff<sup>382</sup> does not include training on leadership, public speaking, media training, parliamentary procedure, gender sensitivity, gender budgeting or gender-sensitive public consultations and media interviews.<sup>383</sup> Although training and expertise on gender budgeting and mainstreaming is prominent in the international best practice literature, this is not provided or clearly signposted in the House of Commons. Accordingly, one of the key recommendations is to increase substantive representation of women in the House of Commons is to introduce – and potentially make mandatory – training in gender analysis, gender budgeting and mainstreaming, gender impact

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<sup>379</sup> Sarah Childs (ed), *Women and British Party Politics*, 2008, p. 134; Dennis Kavanagh and David Butler, *The British General Election of 2005*, 2005, p. 153

<sup>380</sup> See also [https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14\\_7fzkkfp](https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14_7fzkkfp)

<sup>381</sup> M. Cowper-Coles and Z. Asunramu, *Open House*, p. 10.

<sup>382</sup> The training is led by the Members’ Services Team – typically induction training is offered post-election with ongoing training/support offered according to the concerns identified by MPs. See M. Cowper-Coles and Z. Asunramu, *Open House*, p. 17.

<sup>383</sup> M. Cowper-Coles and Z. Asunramu, *Open House*, pp. 17-18.

assessments, gender-sensitive public consultations, unconscious bias and equality legislation for all Members of Parliament and staff.<sup>384</sup>

This is not to suggest, of course, that the overall trajectory is not one of progress towards more gender equal institutions. Consistent historical evidence suggests that legislative developments intended to increase protection for gender equality have typically had a discernible positive impact in the UK. The adoption of the Equal Pay Act of 1970 and the Sex Discrimination Act of 1975, for instance, generated a 19% increase in women’s earnings, and 17% in women’s employment rates.<sup>385</sup> By the same token, the enactment of legislation specifically addressing gender discrimination in employment decreased the gender wage gap by 19 per cent.<sup>386</sup> The recent Gender Pay Gap reporting obligations introduced in 2017-2018 for employers with 250 or more employees, who are required annually to publish data on the gender pay gap within their organisations, appear to have had similarly positive effects in revealing the persistently gendered nature of pay structures across the labour market. In 2022/23, 79% of reporting employers stated that median hourly pay was higher for men than for women in their organisation, while 13% of employers stated median hourly pay was higher for women. 8% stated that median hourly pay was the same for women as for men.<sup>387</sup> The Gender Pay Gap reporting obligations were suspended during the Covid-19 crisis.

**Private sector:**

Apart from codes of practice at the level of enterprise that individual companies may adopt voluntarily, the last couple of decades have seen the emergence of sectoral instruments on gender equality. Two prominent examples are the Tech Talent Charter in the STEM industries and Athena Swan in the higher education sector.

The **Tech Talent Charter** (TTC) is a government-supported, industry-led membership group that brings together 700+ Signatory organisations and equips them with the networks and resources to drive their diversity and inclusion efforts (<https://www.techtalentcharter.co.uk/home>). The TTC was created in 2015 to address the UK’s tech talent shortage and diversity problem through collective action. Joining the TTC is predicated on four commitments:

- People (Senior Signatory who will be the senior sponsor of any TTC work; Principal Contact who will work with the TTC on a regular basis; Data Contact who will have the responsibility to submit annual diversity data).
- Plan (employers – plan to improve inclusion, including adopting inclusive recruitment and promotion processes and practices to support the development and retention of a diverse workforce; consultants / recruiters / other partners –plan to work with employers/clients and underrepresented groups to improve their inclusion and diversity in tech and provide support to adopt inclusive recruitment and promotion processes and practices).
- Practice (share best and worse practices).
- Data (report organisation's employment diversity data).

<sup>384</sup> M. Cowper-Coles and Z. Asunramu, Open House, p. 61.

<sup>385</sup> Zabalza, A., & Tzannatos, Z. (1985). The effect of Britain’s anti-discriminatory legislation on relative pay and employment. *Economic Journal*, 95(379), 679–699. In: *Equality within our life time* (2023).

<sup>386</sup> Beller, A. H. (1980). The effect of economic conditions on the success of equal employment opportunity laws: An application to the sex differential in earnings. *Review of Economics and Statistics*, 379–387; Zabalza, A., & Tzannatos, Z. (1985). The effect of Britain’s anti-discriminatory legislation on relative pay and employment. *Economic Journal*, 95(379), 679–699; in: *Equality within our life time* (2023).

<sup>387</sup> House of Commons Library, Research Briefing, ‘The Gender Pay Gap’, 8 January 2024 (available at: <https://commonslibrary.parliament.uk/research-briefings/sn07068/>).



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The **Athena Swan Charter** (<https://www.advance-he.ac.uk/equality-charters/athena-swan-charter#whatis>) is a framework which is used across the globe to support and transform gender equality within higher education (HE) and research. Established in 2005 to encourage and recognise commitment to advancing the careers of women in STEMM employment, the Charter is now being used across the globe to address gender equality more broadly, and not just barriers to progression that affect women. The Athena Swan Charter helps institutions to meet equality legislation requirements, as well as the requirements and expectations of some funders and research councils. It uses a targeted self-assessment framework to support applicants identify areas for positive action, as well as recognise and share good practice. It also supports the promotion of inclusive working practices that can increase the retention of valued academics and professional and support staff, demonstrating an institution's commitment to an equitable working environment.

**7. To what extent does the social and political context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality in legal frameworks?<sup>388</sup>**

Social and political context appears to play a significant role in attitudes towards gendered policy and law-making in the UK. According to Campbell and Shorrocks, women have historically been more likely to support parties of the right than men, due to their greater religiosity and lower exposure to the social institutions of the left.<sup>389</sup> Given that parties on the right of the political spectrum have typically been more sceptical, if not outright hostile, towards proactive gender equality policies, it is unsurprising that progress has been slow. It is quite telling that, although the first woman cabinet minister was appointed by a Labour government in 1929, it took until 1997 for more than two women to serve as cabinet ministers simultaneously, again in another Labour government.<sup>390</sup>

The Labour victory in the 1997 general elections marked a shift in the way the political system began to acknowledge both the extent of the problem and the need to resolve it. Labour's political commitment to address the underrepresentation of women in Parliament through all-women shortlists was a major factor in doubling the proportion of women MPs from only 9% to 18%.<sup>391</sup> Since the early to mid-2000s, all major political parties are, in principle, committed to improving gender balance in law and policy-making, although this commitment does not always translate into concrete results. Even with political parties now endorsing policies and practices designed to address gender inequalities in representation,<sup>392</sup> the effectiveness of such policies and practices is often undermined due to structural barriers. A characteristic example is the considerable difference in the gender balance of Labour and Conservative Members of Parliament. Both parties have adopted similar policies to improve women's representation from 2005 onwards (all-women shortlist, A-list etc), but

<sup>388</sup> Some of this information is also included in Deliverable D2.1.

<sup>389</sup> R. Campbell and R. Shorrocks, "The Evolution of the Gender Gap", *British Social Attitudes* 40, September 2023 (available at: <https://natcen.ac.uk/publications/bsa-40-evolution-gender-gap>).

<sup>390</sup> Watson C, Uberoi E, Mutebi N, Bolton P, Danechi S, "Women in Politics and Public Life", Research Briefing, 2 March 2021, (available at: [commonslibrary.parliament.uk/research-briefings/sn01250](https://commonslibrary.parliament.uk/research-briefings/sn01250))

<sup>391</sup> J. Pannell and F. Baker, "Gender Balance in Politics", Institute for Government, 1 March 2024 (available at: [https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14\\_7fzkkfp](https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14_7fzkkfp)).

<sup>392</sup> R. Kelly and I. White, "All Women Shortlists", House of Commons Briefing Paper, 5057, 7 March 2016, pp. 15 et seq.



the Conservative party has been far less effective, as their women candidates are consistently nominated in less promising constituencies.<sup>393</sup>

On an experiential level, the accounts of senior women politicians on the persistence of gender stereotypes in the way they are perceived are illuminating. Jacqui Smith's account (<https://www.instituteforgovernment.org.uk/ministers-reflect/jacqui-smith>) is particularly interesting, as she was the first woman to serve as home secretary (minister for internal affairs) and she was in charge at the time of the 7/7 terrorist attacks.<sup>394</sup> The following quote is particularly telling: "The thing that people most often said to me about my public performance that weekend was 'You appeared... you seemed very calm and reassuring.' Now there is a certain subtext there, which is 'You were the first female home secretary and [...] we partly thought you would go in, there would be a terror attack and you'd come out shouting 'I can't manage it, bring a man in'." <sup>395</sup> As this does not appear to be a singular experience,<sup>396</sup> it is probably not a coincidence that four out of the subsequent eight home secretaries were women.

## 8. Does the identified law or policy embrace gender-neutral or gender-sensitive language?

The incorporation of gender-neutral language in UK laws and policies is, in principle, intended to reflect an underlying commitment to promoting substantive gender equality. Gender neutral language in the drafting of legislation has been government policy in the UK since 2007,<sup>397</sup> with the Office of the Parliamentary Counsel and the Government Legal Department producing a guide to gender-neutral legal drafting for UK legal professionals.<sup>398</sup>

The most obvious example of the use of gender-neutral language is the text of UK equality law itself, with the Equality Act 2010 using non-gendered formulations to define key concepts. The definition of direct discrimination is a good example of this choice of linguistic neutrality: "*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*" [emphasis added].<sup>399</sup>

Another obvious example comes in the form of efforts to recognise and include non-binary individuals in the equality legal framework. For the purposes of the Equality Act 2010, a person's legal sex is their biological sex as recorded on their birth certificate, with a trans person able to change their legal

<sup>393</sup> Wäckerle, J. (2022). Parity or patriarchy? The nomination of female candidates in British politics. *Party Politics*, 28(1), 10-23. <https://doi.org/10.1177/1354068820977242>

<sup>394</sup> On the 7 July 2005 terrorist attacks in London see BBC, "7 July London bombings: What happened that day?", 3 July 2015 (available at: <https://www.bbc.co.uk/news/uk-33253598>).

<sup>395</sup> N. Hughes and P. Riddell, "Ministers Reflect: Jacqui Smith", Institute for Government, 2 June 2016, pp. 12-13 (available at: <https://www.instituteforgovernment.org.uk/sites/default/files/2022-11/jacqui-smith-ministers-reflect.pdf>).

<sup>396</sup> See also accounts from Margaret Beckett and Jo Swinson in J. Pannell and F. Baker, "Gender Balance in Politics" (available at: [https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14\\_7fzkkfp](https://www.instituteforgovernment.org.uk/explainer/gender-balance-politics#footnoteref14_7fzkkfp)).

<sup>397</sup> D. Bailey, "Breaking Down Gender Stereotypes in Legal Writing", Civil Service Blog, 10 January 2020 (available at: <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/>).

<sup>398</sup> Available at: <https://www.interlawdiversityforum.org/guide-to-gender-neutral-drafting>.

<sup>399</sup> Section 13 (1), Equality Act 2010.

sex by obtaining a Gender Recognition Certificate.<sup>400</sup> In a 2016 report the Women and Equalities Committee called on the Government to consider creating a legal category for persons with non-binary gender identity.<sup>401</sup> The Committee recommended to amend the protected characteristic in respect of trans people under the Equality Act to that of “gender identity”, as this would improve the law by bringing the language in the Act up to date, rendering it compliant with Council of Europe Resolution 2048. At the same time, it would make it significantly clearer that protection is afforded to anyone who might experience discrimination because of their gender identity. Recent changes to the process of obtaining Gender Recognition Certificates aim to make the process more inclusive of non-binary and gender-diverse individuals.

Another example is the Domestic Abuse Act 2021 (DAA 2021),<sup>402</sup> which uses gender neutral language in response to points raised in the public consultation suggesting that male victims of domestic violence are often disbelieved and dismissed when attempting to report domestic abuse, for example to the police. This is because men and boys are stereotyped as the perpetrator of the abuse. The guidance to the DAA 2021 sets out that anyone can be a victim of domestic abuse, including men and boys and the particular barriers and impacts that male victims of domestic abuse may experience.<sup>403</sup> The DAA 2021 represents a significant advancement in addressing domestic abuse by officially defining the crime in a modern context. However, it is doubtful whether the justice system’s response can be truly transformative without acknowledging the often-gendered nature of domestic abuse, which is necessary in order to dispel stereotypes about female victims and ensure equitable treatment within the justice system.<sup>404</sup>

Similarly, in the field of work-life balance, the Independent Parliamentary Standards Authority (ISPA) is using neutral language in its guidance to Members of Parliament seeking shared parental leave arrangements.<sup>405</sup>

Gender sensitive language, on the other hand, seems to be gaining traction and coming onto the radar of policy-makers. According to the Open House report, one of the outstanding key gender equality recommendations to the House of Commons is to conduct an inquiry into the gender sensitivity of parliamentary rituals, practices, ceremonies and language to improve transparency, with recommendations on where changes need to be made to make Parliament more inclusive.<sup>406</sup> There is also awareness that gender-sensitivity per se must be understood intersectionally.<sup>407</sup>

<sup>400</sup> Equality and Human Rights Commission, “Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment exceptions”, April 2022, p. 5 (available at: <https://www.equalityhumanrights.com/sites/default/files/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exceptions.pdf>).

<sup>401</sup> Women and Equalities Committee, Transgender Equality, 14 January 2016, HC 390 2015-2016, para 31 [available at: <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>].

<sup>402</sup> Available at: <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted> (accessed 23 December 2023).

<sup>403</sup> UK Home Office, “Domestic Abuse Act 2021 statutory guidance consultation: government response”, 13 April 2023, para 16 (available at: <https://www.gov.uk/government/consultations/domestic-abuse-act-statutory-guidance/outcome/domestic-abuse-act-2021-statutory-guidance-consultation-government-response-accessible>).

<sup>404</sup> Kofo Boboye, ‘A gender-neutral law for gender-based violence?’ LSE Law Review Blog, 21 March 2023 <<https://blog.lselawreview.com/2023/03/gender-neutral-law-gender-based-violence#1>> accessed 23 December 2023.

<sup>405</sup> Women and Equalities Committee, “Equality in the Heart of Democracy”, Appendix 5, p. xix.

<sup>406</sup> M. Cowper-Coles and Z. Asunramu, Open House, p. 10.

<sup>407</sup> House of Commons Women and Equalities Committee, “Equality in the heart of democracy”, p. 6.

The limits in the use of gender neutral language in the drafting of legislation have been tested recently in the context of the Ministerial and Other Maternity Allowances Bill,<sup>408</sup> intended to allow Ministers to take paid maternity leave while remaining in government, which eventually became an Act of Parliament on 1 March 2021.<sup>409</sup> During the legislative process, significant concerns were raised in both Houses of Parliament (House of Commons and House of Lords) about the Bill's use of gender-neutral language in the context of pregnancy and childbirth. In response to these concerns, the Bill was amended so that gender-neutral nouns (e.g. “person”) were replaced with gendered ones (e.g. “mother” and “expectant mother”).<sup>410</sup>

**9. Are there any specific legal mechanisms or provisions that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?**

There does not appear to be any direct accountability mechanism that would prevent gendered law-making in the UK, other than the statutory prohibition of gender discrimination. Even at the level of the House of Commons, where several bodies are carrying out important work on gender equality (for instance, the Cultural Transformation Team and the House of Commons Inclusion and Diversity Team, as well as relevant select committees), there is little oversight or accountability for the work which is being done.<sup>411</sup> It should be noted that government Ministers, as well as Ministers of the devolved administrations, are bound by the Public Sector Equality Duty (PSED), but the PSED was not designed (and has not operated) as a direct accountability mechanism for individual public officials.<sup>412</sup>

Parliamentary committees, such as the Women and Equalities Committee, play a role in scrutinising government policy and legislation to ensure that it promotes gender equality. These committees may hold inquiries and make recommendations to address gendered issues, but they do not hold individual policy-makers accountable for potentially contributing to gendered law-making or policy-making. The Equality and Human Rights Commission (EHRC) has the mandate to enforce the Equality Act 2010 and has unique powers to investigate when the law is not followed, including the power to take legal action. However, these powers do not extend to holding individual law or policy-makers accountable for gendered law-making.

An important component of the UK equality law system is the Public Sector Equality Duty (PSED).<sup>413</sup> Part of the Equality Act 2010, the PSED requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different groups, including between men and women. They must consider and keep reviewing how

<sup>408</sup> For additional context around the Bill, see C. Rhodes, D. Ferguson and B. Franci-Devine, “Ministerial and other Maternity Allowances Bill 2019-2021”, Research Briefing, 12 March 2021 (available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-9133/>).

<sup>409</sup> Ministerial and Other Maternity Allowances Act 2021 (available at: <https://www.legislation.gov.uk/ukpga/2021/5/contents>).

<sup>410</sup> See the Statement made on 23 May 2022 by Mark Spencer, Lord President of the Council and Leader of the House of Commons (available at: <https://questions-statements.parliament.uk/written-statements/detail/2022-05-23/hcws47>).

<sup>411</sup> M. Cowper-Coles and Z. Asunramu, Open House, p. 29, with the authors of the report also recommending the establishment of a body with a broader remit and held to a higher level of accountability to oversee this work.

<sup>412</sup> See generally S. Fredman, The Public Sector Equality Duty, *Industrial Law Journal*, Volume 40, Issue 4, December 2011, Pages 405–427, <https://doi.org/10.1093/indlaw/dwr019>.

<sup>413</sup> Section 149, Equality Act 2010.



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they are promoting equality in decision-making, internal and external policies, procuring goods and services, the services they provide, recruitment, promotion, and performance management of employees. Again, the PSED has not been enforced as an accountability mechanism for gendered law-making and it is doubtful whether such a route would be accepted as part of the duty.

**10. Can technology and data-driven approaches be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilizing technology for this purpose?**

There is no evidence that technology is being currently used in the UK to identify and rectify gender biases in law and policies. However, there appears to be some awareness of the possibilities that such technology holds in reports commissioned by the House of Commons<sup>414</sup> and by the government.<sup>415</sup>

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<sup>414</sup> The report uses the example of the Uber Eats delivery company in the UK, which uses facial recognition technology to verify the identity of workers at the start of shifts. The report points out that concerns have been raised regarding the performance of these systems in relation to people from minority ethnic groups, including ethnic minority women. See also Joy Buolamwini, Timnit Gebru, “Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification”, Proceedings of Machine Learning Research, Vol 81, 2018 (cited in the report).

<sup>415</sup> Department for Science, Innovation and Technology, “Report: Enabling responsible access to demographic data to make AI systems fairer”, 14 June 2023 (available at: <https://www.gov.uk/government/publications/enabling-responsible-access-to-demographic-data-to-make-ai-systems-fairer/report-enabling-responsible-access-to-demographic-data-to-make-ai-systems-fairer>). One of the examples presented in the report is that of NamSor, a commercial product which uses machine learning to infer ethnicity and gender from first names and surnames. Namsor SAS, the company who owns the product, suggests it can be used to measure gender or ethnic biases in AI-driven processes, and they offer a range of tools to suit different customers, including API documentation, CSV and Excel files analysis, and developer tools.

## B. Violence against women and girls

### 7. How is the problem of VAW framed in your national legislation; what are the underlying assumptions? Is it recognised as a form of discrimination in your domestic legislation? And what societal and political factors have shaped this framing?

The framing of the problem of violence against women and girls (VAWG), which is the term of preference in UK national law, should now be seen through the lens of its recognition by the government as a national threat alongside terrorism and serious and organised crime.<sup>416</sup> This recognition has prompted the first national strategic threat risk assessment of VAWG, aiming to provide a better understanding of the influences and levers that contribute to VAWG being a national threat.<sup>417</sup> It has also prompted the UN Special Rapporteur on violence against women and girls to urge the UK government to take urgent action to end all forms of violence against women and girls.<sup>418</sup>

In general, the UK has a robust legal framework for the protection from VAWG using both civil discrimination and criminal legislation. The Equality Act 2010 includes provisions related to gender-based violence, such as the prohibition of harassment because of sex<sup>419</sup> and of sexual harassment.<sup>420</sup> In principle, this includes protection from intersectional discrimination and harassment, with some recognition that different identity characteristics, such as race, ethnicity, socio-economic status, or disability, can intersect, leading to unique experiences of violence. Legislation and policies are increasingly addressing the intersecting forms of discrimination that women may face.

An indication of how far this basic protection can extend relates to the regulation of third-party harassment. After a ruling from the Equal Opportunities Commission in 2007, sexual harassment law (predating the Equality Act 2010) was amended to offer protection against harassment by customers, clients, and other third parties, rather than simply supervisors and coworkers. The Equality Act 2010 included this but was subsequently amended to remove the provision on employer liability for third-party harassment. However, an amendment to the Equality Act 2010 has now been enacted and will enter into force in October 2024. While a specific statutory provision creating secondary liability for harassment by third parties has not been reintroduced, the Worker Protection (Amendment of

<sup>416</sup> UK Home Office, Strategic Policing Requirement 2023, 20 February 2023 (available at: <https://www.gov.uk/government/publications/strategic-policing-requirement-2023>).

<sup>417</sup> National Police Chiefs' Council (NPCC), Violence Against Women and Girls: Strategic Threat Risk Assessment 2023, 05/2023 (available at: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/our-work/vawg/violence-against-women-and-girls---strategic-threat-risk-assessment-2023.pdf>).

<sup>418</sup> United Nations Office of the High Commissioner for Human Rights, Press release, 21 February 2024 (available at: <https://www.ohchr.org/en/press-releases/2024/02/no-time-lose-uk-declares-violence-against-women-national-threat-un-expert>).

<sup>419</sup> Section 26 (1) and (5), Equality Act 2010.

<sup>420</sup> Section 26 (3), Equality Act 2010.



Equality Act 2010) Act 2023<sup>421</sup> has introduced a stronger positive employer duty to prevent sexual harassment of employees, requiring employers to take reasonable steps to prevent sexual harassment of their employees in the course of their employment.<sup>422</sup>

This baseline legal protection under civil law is complemented by legislation such as the Domestic Abuse Act 2021,<sup>423</sup> the Voyeurism (Offences) Act 2019,<sup>424</sup> the Police, Crime, Sentencing and Courts Act 2022<sup>425</sup>, the Health and Care Act 2022,<sup>426</sup> the Marriage and Civil Partnership (Minimum Age) Act 2022,<sup>427</sup> and the Protection from Sex-based Harassment in Public Act 2023.<sup>428</sup> These laws attempt to tackle current and emerging forms of VAWG, including domestic violence, coercive control, economic violence, forced marriage, female genital mutilation (FGM), digitally facilitated violence, and stalking - amongst others.<sup>429</sup> As noted by the UN Special Rapporteur on VAWG, “the UK is also leading on a number of other innovative legislative processes, including with the introduction of laws that criminalize coercive control and economic violence in domestic abuse cases; non-fatal strangulation; female genital mutilation, and honour based killings”.<sup>430</sup> The Special Rapporteur also points to the forthcoming national review of pornography as an important step in recognising its impact on VAWG, and notes that the UK’s recent ratification of the Istanbul Convention offers an important opportunity to continue to consolidate its engagement on VAWG, provided that it invests in comprehensive data collection, implementation, and monitoring of its commitments under the Istanbul Convention.

The current framing of VAWG is arguably shaped by two significant socio-political factors. The first is the emerging gender divide in young people’s attitudes to masculinity and women’s equality.<sup>431</sup> The second is the polarisation of the current discourse around sex, gender, and gender identities.

<sup>421</sup> Available at: <https://www.legislation.gov.uk/ukpga/2023/51/contents>.

<sup>422</sup> See James Hand, ‘Liability for harassment by third parties in the Equality Act 2010,’ UK Labour Law Blog, 13 April 2023 (available at <https://uklabourlawblog.com/>).

<sup>423</sup> Available at: <https://www.legislation.gov.uk/ukpga/2021/17/contents>.

<sup>424</sup> Available at: <https://www.legislation.gov.uk/ukpga/2019/2>.

<sup>425</sup> Available at: <https://www.legislation.gov.uk/ukpga/2022/32/contents>.

<sup>426</sup> Available at: <https://www.legislation.gov.uk/ukpga/2022/31/contents>.

<sup>427</sup> Available at: <https://www.legislation.gov.uk/ukpga/2022/28>.

<sup>428</sup> Available at: <https://www.legislation.gov.uk/ukpga/2023/47/contents>. The Act, which came into force in September 2023, makes provision about causing intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person’s sex, and for connected purposes.

<sup>429</sup> UN Special Rapporteur on violence against women and girls, Official visit to the United Kingdom of Great Britain and Northern Ireland 12 - 21 February 2024, Summary of Preliminary Findings and Observations, 21 February 2024, p. 2 (available at: <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240221-eom-statement-uk-sr-vawg.pdf>).

<sup>430</sup> UN Special Rapporteur on violence against women and girls, Summary of Preliminary Findings and Observations, p. 2.

<sup>431</sup> King’s College News Centre, ‘Masculinity and women’s equality: study finds emerging gender divide in young people’s attitudes’, 1 February 2024 (available at: <https://www.kcl.ac.uk/news/masculinity-and-womens-equality-study-finds-emerging-gender-divide-in-young-peoples-attitudes>). See also B. Duffy, R. Campbell and G. Skinner, ‘Emerging tensions? How younger generations are dividing on masculinity and gender equality’, February 2024 (available at: <https://www.kcl.ac.uk/policy-institute/assets/emerging-tensions.pdf>).

The social and political debates have come to a critical point, with some women's organisations suggesting that biological sex is excluded from conversations on gender.<sup>432</sup> There is also a strand of academic literature reporting negative outcomes for women, as a result of this polarisation, ranging from cutting off funding from NGOs aiming to maintain women-only spaces,<sup>433</sup> the termination of contracts of employment,<sup>434</sup> and the blurred lines between critical speech and transphobia in relation to debates around women-only spaces.<sup>435</sup> Perhaps the most obvious recent example of the polarisation in the discourse and of its impact on the framing of VAWG is the controversy around the UN Special Rapporteur on Violence against women and girls, Reem Alsalem, after her visit to the UK.<sup>436</sup>

**8. To what extent do the laws and policies in your country adopt the transformative approach set out in the Istanbul Convention or that is similar to the IC?<sup>437</sup> Where do you locate the VAW legislation of your country in the Gender Equality Continuum?**

On a general note, while UK anti-discrimination law is on its surface gender-neutral, it addresses problems that affect women more than men. From this perspective, the approach of UK criminal law to aspects of violence against women, including image-based abuse (e.g. upskirting and revenge porn), female genital mutilation (FGM), and forced marriage, help to change underlying gender norms and transform gender dynamics within (parts of) British society.

As mentioned, the UK ratified the Istanbul Convention as recently as November 2022. The UN Special Rapporteur is keen to point out that the successful implementation of the Convention in the UK is predicated on it investing in comprehensive data collection, implementation, and monitoring of its commitments under the Istanbul Convention.<sup>438</sup> This does not appear to be a particularly likely

<sup>432</sup> Women's Resource Centre, 'WRC Statement on women-only services and sex-based rights' (available at: <https://www.wrc.org.uk/blog/wrc-statement-on-women-only-services-and-sex-based-rights>).

<sup>433</sup> Holly Lawford-Smith, *Gender-critical feminism* (Oxford University Press, 2022) 139; Callie H. Burt 'Feminist Lesbians as Anti-Trans Villains: A Comment on Worthen and Elaboration' (2023) 27 *Sexuality & Culture*, 161.

<sup>434</sup> *Forstater v CGD Europe and Others* [2021] United Kingdom Employment Appeal Tribunal UKEAT/0105/20/JOJ.

<sup>435</sup> A. Sullivan and S. Todd (eds), *Sex and Gender: A Contemporary Reader*, Taylor & Francis, 2023.

<sup>436</sup> See Association for Women's Rights in Development (AWID), 'There Is No Place for Anti-Trans Agendas in the UN', 18 May 2023 (available at: <https://www.awid.org/news-and-analysis/there-no-place-anti-trans-agendas-un>); and see for the counter argument: Vancouver Rape Relief, 'Let the UN Special Rapporteur on VAWG Deliver her Mandate: An Open Letter', 20 June 2023 (available at: <https://rapereliefshelter.bc.ca/an-open-letter-let-the-un-special-rapporteur-on-vawg-deliver-her-mandate/>).

<sup>437</sup> See in particular: Article 3 –Definitions For the purpose of this Convention: a "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

From the preamble: "Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women; Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

<sup>438</sup> UN Special Rapporteur on violence against women and girls, Summary of Preliminary Findings and Observations, p. 3.

scenario, given that all stakeholders the Special Rapporteur interviewed recognised the grossly inadequate investment in prevention activities, particularly in schools, within the wider public, and in terms of work with perpetrators.<sup>439</sup> It is also notable that, when ratifying the Istanbul Convention, the Government made a reservation for article 59, which sets out state obligations to provide protection to migrant women. As noted by Amnesty International, by doing so the Government seems to be acting against one of the main principles of the convention which requires countries to implement its provisions without discrimination on any grounds, to ensure no one is left behind.<sup>440</sup>

**9. Does your national law put lack of consent at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?**

Sexual Offences Act 2003:<sup>441</sup>

“Part 1 makes new provision about sexual offences. It covers the non-consensual offences of rape, assault by penetration, sexual assault and causing a person to engage in sexual activity without consent. It defines “consent” and “sexual” and sets out evidential and conclusive presumptions about consent. It covers child sex offences and offences involving an abuse of a position of trust towards a child. Familial child sex offences and offences involving adult relatives are provided for, as are offences designed to give protection to persons with a mental disorder. The age of a “child” in the Protection of Children Act 1978 has been amended to 18, and defences are provided for in limited cases where the child is 16 or over and the defendant is the child’s partner. A limited defence is also introduced to the offence of “making” an indecent photograph or pseudo-photograph of a child where the purpose of the “making” is to combat crime. This Part also covers offences relating to prostitution, child pornography, and trafficking. It provides for preparatory offences, such as administering a substance with intent to commit a sexual offence, and a number of miscellaneous offences, such as voyeurism and intercourse with an animal. Section 72 provides that there is extra-territorial jurisdiction for many acts which, if committed in England and Wales or Northern Ireland, would amount to offences under Part 1 committed against a child under 16 or (in the case of Northern Ireland) under 17. The Part extends to England and Wales and some provisions also extend to Northern Ireland.

Part 2 contains measures for protecting the public from sexual harm. Part 1 of the Sex Offenders Act 1997 has been re-enacted with a number of amendments. A notification order enabling the notification requirements to be applied to offenders with convictions abroad has been created. Sex offender orders (s.2 of Crime and Disorder Act 1998) and restraining orders (s.5 of Sex Offenders Act 1997) have been combined into a new civil preventative order – a sexual offences prevention order. Risk of sexual harm orders, specifically designed to protect children from sexual harm, have been created, as have foreign travel orders, which can be used to prevent an offender with a conviction for a sex offence against a child from travelling to countries where he is at risk of abusing

<sup>439</sup> Ibid.

<sup>440</sup> Amnesty International UK, ‘UK: Istanbul Convention finally comes into force - but the Government stops short of protecting all women’ 1 November 2022, < <https://www.amnesty.org.uk/press-releases/uk-istanbul-convention-finally-comes-force-government-stops-short-protecting-all#:~:text=Ear-lier%20this%20year%20the%20UK%20ratified%20the%20Istanbul%20Convention%2C%20which,provide%20protection%20to%20migrant%20.>> accessed 23 December 2023.

<sup>441</sup> Sexual Offences Act 2003, Explanatory Notes (available at: [https://www.legislation.gov.uk/ukpga/2003/42/notes#:~:text=It%20covers%20the%20non%2Dconsensual,and%20conclusive%20presumptions%20about%20consent\).](https://www.legislation.gov.uk/ukpga/2003/42/notes#:~:text=It%20covers%20the%20non%2Dconsensual,and%20conclusive%20presumptions%20about%20consent).)

children. Part 2 extends to England and Wales and Northern Ireland, and, save for Schedule 4 and the risk of sexual harm orders, to Scotland.<sup>442</sup>

Part 3 contains general provisions relating to the Act, including minor and consequential amendments and commencement provisions.”

According to the UN Special Rapporteur, the most alarming VAWG-related data emerging from the UK is in relation to rape.<sup>443</sup> The Special Rapporteur does recognise that the introduction of Operation Soteria Bluestone by the Home Office and the National Police Chiefs’ Council,<sup>444</sup> which aims to change the focus of criminal investigation to the perpetrator rather than the victim, represents an important step in the right direction to prevent the re-traumatisation of women and girls. But she also highlights the need for sustained investment of resources and training, as well as accountability for police forces that fail to implement the new policy.<sup>445</sup>

With regard to consent specifically, the current UK legal framework, as it stands, utilises a model that accepts *implied* consent, focusing on the *absence* of a clear refusal.<sup>446</sup> This places an unfair burden on the victim to demonstrate the lack of consent, which effectively places the victim on trial. This approach to consent perpetuates harmful gender stereotypes, as it is premised on an assumption that men are always the initiators of sexual activity and that women are passive recipients who must say “no”. This places a disproportionate burden on women to communicate their lack of consent. In order to address this gap, an “affirmative consent campaign has been launched, which is a request to the UK government to implement the affirmative consent model for sexual relations into UK legislation regarding criminal sexual offences.

The affirmative consent model requires explicit, voluntary, and enthusiastic agreement at every stage of intimate interaction. Unlike the implied consent approach, affirmative consent serves as a proactive measure, shifting the focus from the absence of a “no” to the presence of an unequivocal “yes,” ensuring all parties involved actively express and confirm their willingness to participate. By shifting the narrative from *what is not objected* to explicitly acknowledging *what is voluntarily agreed upon*, an affirmative consent model establishes a more robust foundation for promoting healthy relationships, mutual respect, and protection for survivors in legal proceedings. In recent years, there has been a growing recognition of the need to address these issues related to sexual assault and misconduct and countries such as Australia, Spain, Canada, and Denmark are but a few of the countries that have adopted affirmative consent models.<sup>447</sup>

It is worth noting in this connection that the Domestic Violence Act 2021 in its section 71 clarifies the law by restating the broad legal principle that a person cannot consent to actual bodily harm or to

<sup>442</sup> Guidance on Part 2 of the Sexual Offences Act 2003 (available at: <https://www.gov.uk/government/publications/guidance-on-part-2-of-the-sexual-offences-act-2003>).

<sup>443</sup> UN Special Rapporteur on violence against women and girls, Summary of Preliminary Findings and Observations, p. 10.

<sup>444</sup> For information see <https://www.npcc.police.uk/our-work/violence-against-women-and-girls/operation-soteria/>.

<sup>445</sup> Ibid.

<sup>446</sup> See the webpage of the affirmative consent campaign: <https://righttoequality.org/campaign/affirmative-consent/>.

<sup>447</sup> Ibid.



other more serious injury or, by extension, to their own death.<sup>448</sup> This legal principle was established in the case of *R v Brown*.<sup>449</sup>

**10. To what extent are the laws in your country sensitive to the intersectional dimension of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)**

The UK legal framework has made efforts to address the intersectional dimension of gender-based violence, recognising that individuals may face unique forms of discrimination and violence due to the intersection of multiple factors such as race, ethnicity, sex, socio-economic status, disability, and gender. Despite these efforts, significant gaps in legal protection remain. It should be noted that the Equality Act 2010 includes a separate definition of “combined discrimination” (s. 14), which however is designed to cover direct discrimination and does not directly relate to harassment or sexual harassment and which, most importantly, is not currently in force. In practice, the onus for intersectional protection from GBV appears to lie with statutory bodies and civil society organisations. In this context, a recent report by the Domestic Abuse Commissioner<sup>450</sup> reveals the particular challenges that migrant victims of domestic abuse face.<sup>451</sup> The report recognises that “immigration abuse” is a form of coercion and control by abusers, who take advantage of the migrant victims’ fear that reporting the abuse to the police could result in information being passed on to immigration enforcement.<sup>452</sup> In addition to that, one of the most important findings of the report was that some of the most vulnerable domestic abuse victims are being forced to stay with their abusers or face homelessness and destitution because they can’t access public funds to flee.<sup>453</sup> The report makes concrete recommendations to the government on the need for increased dedicated funding and better data-sharing, among others.<sup>454</sup>

**11. What aspects are left untouched in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?**

While the steps described above indicate a growing sensitivity to the intersectional dimension of gender-based violence in the UK, challenges and gaps still exist. Ongoing efforts are needed to

<sup>448</sup> See Home Office Policy Paper, “Consent to serious harm for sexual gratification not a defence”, 3 January 2024 (available at: <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/consent-to-serious-harm-for-sexual-gratification-not-a-defence>).

<sup>449</sup> *R v. Brown* [1993] 2 W.L.R. 556.

<sup>450</sup> The Domestic Abuse Commissioner was set up by the Domestic Abuse Act, which created legal duties for public sector bodies to cooperate with the Commissioner and to respond to any recommendations made. This enables the Commissioner to drive forward change and hold local agencies and national government to account for their role in responding to domestic abuse. For more information see: <https://domesticabusecommissioner.uk/>.

<sup>451</sup> Domestic Abuse Commissioner, “Safety Before Status”, October 2021 (available at: <https://domesticabusecommissioner.uk/wp-content/uploads/2021/10/Safety-Before-Status-Report-2021.pdf>).

<sup>452</sup> Domestic Abuse Commissioner, “Migrant victims forced to stay with abusers or face destitution because they can’t access public funds”, Press Release, 20 October 2021 (available at: <https://domesticabusecommissioner.uk/migrant-victims-forced-to-stay-with-abusers-or-face-destitution-because-they-cant-access-public-funds/>).

<sup>453</sup> *Ibid.*

<sup>454</sup> Safety Before Status, p. 38.



ensure that policies and practices effectively address the diverse needs and vulnerabilities of individuals facing gender-based violence within the context of intersecting identities. Additionally, the effectiveness of these measures should be continuously evaluated and improved to ensure that the legal framework is truly inclusive and responsive to the complexities of intersectionality. The current polarisation around current debates on the definitions and role of 'sex' and 'gender' as legal categories is also a point of real contention in the framing of VAWG, as noted earlier.

**12. What effects (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards VAW as contained in the current legal and policy framework from a transformative equality perspective?**

See previous sections.

## C. Women in Leadership

- 1. How is the problem of women's representation in the public and the business spheres framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging the gendered nature of underrepresentation and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.**

Reiterating a key point from earlier responses, the use of all women shortlists in elections by most major political parties is probably the most eloquent acknowledgment of the gendered nature of underrepresentation in elected public office. This acknowledgment must be premised on the underlying assumption that women's underrepresentation is not the result of the unadulterated expression of the democratic will of the electorate, but the outcome of over or covert gender discrimination, gender biases and gender stereotypes. A similar assumption appears to underpin the approach to women's underrepresentation in other areas of the public sphere, where representation is, perhaps, of a more symbolic nature. For instance, Lords Spiritual (Women) Act 2015, which provides that, for a period of ten years where there is a vacancy for Lords Spiritual in the House of Lords, the vacancy would be filled by the most senior eligible women Bishop rather than the most senior Bishop.

It is also worth noting that gender equality in company boards has been on the UK government's agenda since the 2010s. Two major reviews on gender balance in the boards of FTSE 350 companies have been successfully carried out, the Davies review<sup>455</sup> and the Hampton Alexander review,<sup>456</sup> both of which set out recommendations and actions for all stakeholders.

- 2. More specifically, are the laws and policies recognising the underlying causes of underrepresentation of women in leadership position, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?**

In addition to earlier responses, it is perhaps worth noting the following excerpt from the Joint Ministerial Foreword to the FTSE Women Leaders Review 2022: "Opaque networks can act as barriers to meritocracy, but when systems are open and recruitment processes transparent, we are more likely to see a talented and diverse workforce. It is clear that increasing representation can help ensure that we build back better and faster from Covid-19."<sup>457</sup> The following excerpt from the Sponsor of the review is also worth highlighting: "While companies have made great progress towards creating inclusive workplaces where everyone can thrive, the job is far from complete. Structural and cultural barriers still exist for women and other historically under-represented groups. This will require a sharp and deliberate focus on how businesses recruit, retain and progress their people at all levels.

<sup>455</sup> Available at: <https://ftsewomenleaders.com/2011-2015-the-davies-review/>.

<sup>456</sup> Available at: <https://www.gov.uk/government/publications/ftse-women-leaders-hampton-alexander-review/>.

<sup>457</sup> FTSE Women Leaders Review: Achieving Gender Balance, February 2022, p. 4 (available at: <https://ftsewomenleaders.com/wp-content/uploads/2022/02/2021-FTSE-Women-Leaders-Review-Final-Report.pdf>).

It's clear that the focus on the representation of women has opened up the floor to broader action on other facets of diversity, such as ethnicity or socio-economic background. This will guide the way to achieving true equality."<sup>458</sup>

**3. Are there specific provisions within the laws and policies that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies' leadership and that you think could be seen as a good/best practice?**

Although there appears to be no national law in the UK challenging traditional notions of leadership, the introduction of rules requiring companies with 250 or more employees to report their gender pay gap may have an indirect impact in revealing how such traditional notions result to discriminatory practices. The effectiveness of the reporting obligation is still difficult to measure, but there is already data emerging that seem point to a much more acute problem for the age group 40-49, when presumably working men and women are likely to reach the higher strata of their career trajectory (i.e. leadership positions). The following excerpt from the Office of National Statistics is telling:

“The clearest insight into the gender pay gap is provided by analysis across age groups. For groups aged under 40 years, the gender pay gap for full-time employees (which is a more comparable basis than all employees for measuring differences in hourly pay) is low, at 4.7% or below. This has been the case since 2015.

However, for the age group for those aged 40 to 49 years and older, the gender pay gap for full-time employees is much higher, at 10.3% or higher. The gender pay gap increased across all age groups between 2022 and 2023, except for those aged 18 to 21 years where it decreased from 1.1% to negative 0.2%. The largest increase was seen among employees aged 30 to 39 years, where the gender pay gap increased from 2.3% to 4.7%. This is the highest value of the gender pay gap for this age group since 2009.”

(<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2023#:~:text=The%20gender%20pay%20gap%20increased,from%202.3%25%20to%204.7%25>).

**4. How has this framing of the problem come about; what societal and political factors shaped it?**

See earlier responses.

**5. What aspects are left untouched in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?**

See earlier responses.

<sup>458</sup> Ibid, p. 6.

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6. **What effects (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?**

See earlier responses.

## Annex 1: Questionnaire D.2.2. Gendered laws and policies

### A. General questions (in answering, please identify as much as possible relevant sources):

1. Is gendered law/policymaking recognized as a **problem** in your country, and if so, by whom (political and/or societal institutions, academia)? If so, how is it perceived/defined and in which policy domains is it addressed?
2. Who are the key **actors or stakeholders (including at international level, legislative, judiciary, CSOs, etc.)** involved in de-gendering law- and policy making in your country, and in what ways do they contribute to addressing gender biases (what kind of intervention)?
3. What specific **measures or instruments** have been adopted to address or prevent gendered law/policymaking in your country (see EIGE tools: e.g. GIA),<sup>3</sup> and who was involved in their adoption, implementation, and monitoring? Are there studies or evidence on the **effectiveness** of tools or measures in your country aimed at preventing or addressing gendered law/policymaking? Can you also give some **successful** examples of interventions or strategies that have effectively challenged and transformed gendered laws and policies in your country (e.g. policies, advocacy campaigns, initiatives from CSOs, awareness raising, etc.)?
4. To what extent does the **social and political** context play a role in addressing/exacerbating gendered law/policymaking in your country, and are there specific historical factors influencing the current state of gender inequality legal frameworks?
5. Does the identified law or policy embrace **gender-neutral or gender-sensitive** language?
6. Are there any **specific legal mechanisms or provisions** that have been introduced to ensure the accountability of lawmakers in preventing gendered lawmaking?
7. Can **technology and data-driven approaches** be leveraged to identify and rectify gender biases in laws and policies? Are there examples of successful initiatives utilizing technology for this purpose?

### B. Violence against women

1. How is the problem of VAW framed in your national legislation; what are the underlying assumptions? Is it recognised as a **form of discrimination** in your domestic legislation? And **what societal and political factors** have shaped this framing?



2. To what extent do the laws and policies in your country adopt the **transformative approach** set out in the Istanbul Convention or that is similar to the IC?<sup>459</sup> Where do you locate the VAW legislation of your country in the **Gender Equality Continuum**?
3. Does your national law put lack of **consent** at the centre of the definition of sexual violence (art. 36 IC)? Is there any other controversial aspect in your domestic legislation with regard to the definition of forms of violence?
4. To what extent are the laws in your country sensitive to the **intersectional dimension** of GBV (e.g. are there specific measures to support survivors in asylum centres, women and girls with disability, migrants, etc.)
5. What aspects are left **untouched** in the framing of the problem and the legal/policy approach towards VAW and that should be dealt with in view of a transformative equality approach in your opinion?
6. **What effects** (limitations, benefits, good practices, otherwise) ensue from the framing of and approach towards GBV as contained in the current legal and policy framework from a transformative equality perspective?

### C. Women in decision-making

1. How is the problem of women's representation in the **public and the business spheres** framed in your national legislation; what are the underlying assumptions? In particular, to what extent are the laws and policies dealing with women's representation acknowledging **the gendered nature of underrepresentation** and how is this reflected in them? Please assess them in light of the Gender Equality Continuum Tool.

2. More specifically, are the laws and policies **recognising the underlying causes of underrepresentation** of women in leadership position, such as stereotypical presumptions as to what good leadership is (for example in preambles or preparatory documents)?

<sup>459</sup> See in particular: Article 3 –Definitions For the purpose of this Convention: a “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

From the preamble: "Recognising that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women; Recognising that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women; Recognising the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men".

3. Are there **specific provisions within the laws and policies** that challenge traditional notions of leadership and encourage diverse perspectives on corporate boards or in public bodies' leadership and that you think could be seen as a good/best practice?
4. How has this framing of the problem come about; what **societal and political factors** shaped it?
5. What aspects are left **untouched** in the framing of the problem and the legal/policy approach and that should be dealt with in view of a transformative equality approach in your opinion?
6. **What effects** (limitations, benefits, good practices, otherwise) ensue from the framing and approach as contained in the current legal and policy framework from a transformative equality perspective?

### INSTRUCTIONS

#### **The Gender Equality Continuum Tool**

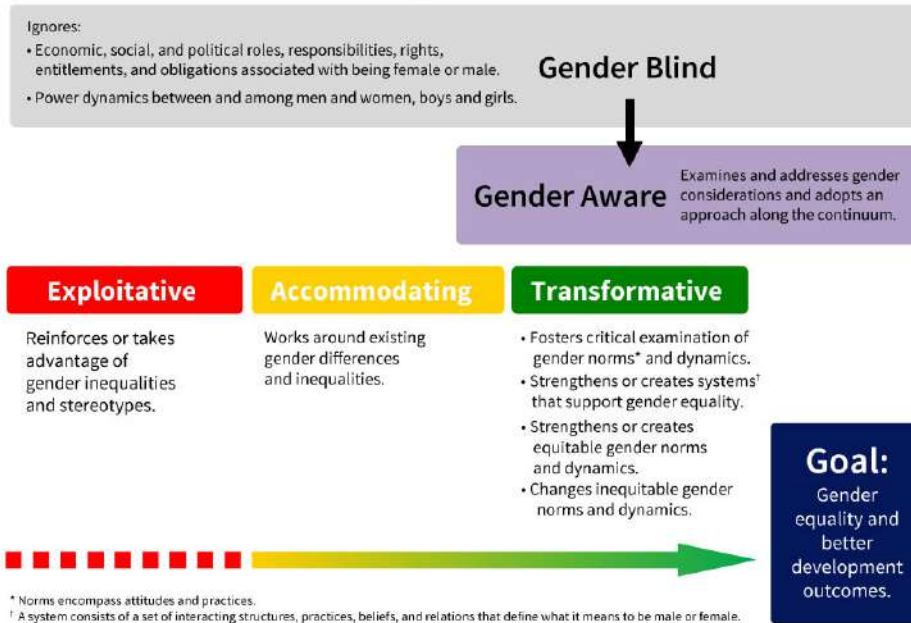
We use the Gender Equality Continuum Tool (GECT) established by the Interagency Gender Working Group (IGWC) to analyse the extent to which approaches to law and policymaking processes in the countries under study are gendered or not.

It provides not only a diagnostic tool for identifying institutional gender gaps, but also a planning framework for addressing them and moving towards a transformative equality approach. It will be applied at the general law- and policymaking level, considering the approach and tools/instruments that may (not) be designed to address gender inequalities in such processes, such as gender impact assessments, gender budgeting, etc. But we use it also to analyse two topical legislative cases. The first one related to violence against girls and women at EU level and the 6 consortium countries. The second one concerns laws and policies to address women's representation in leadership positions in those contexts (connected to the laws and policies identified already for D.2.1.)

Importantly so, we wish to establish to what extent some countries/the EU is already moving towards a transformative approach in their law- and policymaking processes or not for that matter, and to what extent this is subject of societal, political and/or academic debate at all.

Please note that you can frame gender-neutral laws and policies under the label of 'accommodating' and gender-sensitive policies under 'transformative'.

## Gender Integration Continuum



Source: Interagency Gender Working Group, 2009; updated 2019.

### ‘What’s the problem represented to be’ (WPR approach)

Several questions formulated in this questionnaire have been inspired by Carol Bacchi’s ‘what’s the problem represented to be’ approach (2012), combined with questions from Rikki Holtmaat’s research (2004). Both designed questions for a deeper analysis of the policy solutions that are adopted to address gender inequality, and the social and political factors that determine such choices.

To establish whether damaging negative gender stereotypes lie at the basis of a particular policy area of law, Rikki Holtmaat proposed a methodology based on a two-level analysis, focusing on **the context** (first order analysis) **and the assumptions underlying a law/policy** (second order analysis).

The **context** refers to the structure of the policy field or field of legislation and the way this field interacts with the wider society and politics (e.g. relationships of power between government and social partners, role of advisory committees in policy making, structure of social services into which these arrangements must fit). **Second order analysis** is about the social structure in which policy and law is constructed and the contribution that policy or law makes to the functioning of this structure. The second order analysis looks at the power of law and its legal frameworks, its classifications (e.g. male citizen, worker, etc.), the presentation of men and women into fixed categories, and the law’s tendency to present a male standard as neutral, etc. While such analysis would provide deeper legal analysis into the topic of gendered law and policymaking, it would have required extensive research and leave outside essential aspects that need addressing (e.g. actors involved, factors that lead to policy outcomes, etc.).

As a result, the **questionnaire privileged the first order analysis**, seeking to grasp all those aspects that contribute to an understanding of how the policy outcome came about, starting from the problem representation, and delving into the actors involved in shaping the ‘narrative’, or challenging it with opposing ones, what social and political factors accompanied its adoption, etc.

This approach very much resonates with Bacchi’s concept of ‘problematization’, a way of exposing the contingency of policy choices, letting their hidden assumptions emerge, and critically discuss them. Bacchi understands that laws and policies (as well as other propositions) “contain implicit representations of what is considered to be the ‘problem’ (‘problem representations’)”. A classic example is the introduction of training to improve women’s employability and career opportunities. Such policy solution implies that their lack of training is the ‘problem’, responsible for ‘holding them back’. By studying problematizations, we explore how policies create problem, and define what aspects are relevant or not, etc.

A set of six questions constitute the WPR approach (Bacchi, 2012):

1. What’s the ‘problem’ (for example, of ‘problem gamblers’, ‘drug use/abuse’, ‘gender inequality’, ‘domestic violence’, ‘global warming’, ‘sexual harassment’, etc.) represented to be in a specific policy or policy proposal?
2. What presuppositions or assumptions underpin this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the ‘problem’?
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?

For the purposes of our questionnaire, these questions were condensed into few general inquiries about 1) problematization of gendered law making as such (in general and with regard to two specific policy areas: GBV and representation); 2) the actors/stakeholders involved in challenging gendered law and policymaking (both institutional actors, CSOs, etc.); 3) the social and political context in which such problematization(s) comes about.

## Sources

Holtmaat, R. (2004). Towards Different Law and Public Policy: The Significance of Article 5a CEDAW for the elimination of Structural Gender Discrimination. Reed Business Information:

Bacchi, C. (2012). Introducing the ‘What’s the Problem Represented to be?’ approach. In A. Bletsas & C. Beasley (Eds.), *Engaging with Carol Bacchi: Strategic Interventions and Exchanges* (pp. 21-24). The University of Adelaide Press. doi:10.1017/UPO9780987171856.003

## Annex 2: Extra Examples of court cases in South-Africa that are gender-transformative and gender-exploitative

Issues with the implementation of **gender transformative** judgments is notable. Most of the case summaries that follow involve sex workers, the majority of which are poor black women and transgender women.<sup>460</sup> All of these women face high levels of GBV including through sexual violence, physical violence, harassment and police corruption.

***Carmichele v Minister of Safety and Security and Another (Centre for Applied Legal Studies Intervening) 2002 (1) SACR 79 (CC)*** - In the case, the Applicant, Carmichele, sued the Minister of Safety and Security (the State) for damages for the harm that she suffered due to being brutally attacked by a man who was awaiting trial for the alleged attempted rape of another woman. Despite his history of sexual violence, the police and prosecutor had recommended his release without bail. In the High Court the Applicant alleged that she had been attacked due to the police and prosecutor failing to fulfill the duty of care that they owed her as state officials in terms of her constitutional rights to life, equality, dignity, freedom and security of the person and privacy. The High Court dismissed the Applicant's case on the basis that she did not prove that the police or prosecutor owed her these duties in terms of the law. The Applicant appealed to the Supreme Court of Appeal, which also held that the police and prosecution did not owe her a duty of care and could not be held responsible for the harm that she suffered. The Applicant then appealed to the Constitutional Court which held that the other courts who heard the matter were under a general duty to develop the law in accordance with the principles of the Constitution and the state's constitutional duty to protect the rights of women. The court further held that the State is obliged by the Constitution and international law to prevent GBV and to protect the dignity, freedom and security of women. Finally, the court held that prosecutors, who are under a general duty to place information relevant to the refusal or grant of bail before the court, may reasonably be held liable for negligently failing to fulfill that duty. The Constitutional Court referred the case back to the High Court for trial. The High Court held that the state owed the Applicant a constitutional duty of care to protect her against violent crime in terms of her constitutional rights.<sup>461</sup>

In the case of ***K v Minister of Safety and Security 2005 (6) SA 419 (CC)*** the Applicant, K, had been brutally raped by two uniformed policemen who gave her a lift. In the Supreme Court of Appeal, the court held that the Minister of Safety and Security was not liable for the

<sup>460</sup> Sexual services are a commodity that poor, black women with little education can sell to survive. Spies A 'The criminality of selling sex: A trajectory of South African sex work law reform' 65(3) *Journal of African Law* (2021) 7 and 19; and Sex Worker Education and Advocacy Taskforce and Impact Consulting, *Sex Workers in South Africa: A Rapid Size Estimation Study* (2013) 2.

<sup>461</sup> Sanger C *Know Your Rights: A Simplified Guide to Your Rights Against Sexual Violence* (2010) 22.



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conduct of the policemen because they were not acting in the course and scope of their employment with the police service at the time of the commission of the offence. The Applicant appealed Supreme Court of Appeal’s decision to the Constitutional Court. She argued that the Minister should be held liable for the actions of the policemen as the law must be developed in accordance with the principles of the Constitution and that the state should be held responsible for failing to protect her from harm. She said that the Supreme Court of Appeal’s decision was inconsistent with the BOR. The Constitutional Court agreed with the Applicant. The court further held that the policemen failed to fulfil their duty to protect members of the public both in terms of the Constitution and the Police Service Act 68 of 1995 and that such failure was closely linked to the policemen’s employment with the police service.<sup>462</sup>

The Western Cape High Court’s order in ***Sex Workers Education and Advocacy Taskforce v Minister of Safety and Security & Others*** (2009 2 SACR 417 (WCC)). This 2009 concerned police officers arresting sex workers for motives other than pursuing prosecution. The Sex Workers Education and Advocacy Taskforce, the applicant in the matter, sought a court order interdicting police officers in the Cape Town Metropolitan area from arresting sex workers for any purpose other than that of arrest with the intent to have them prosecuted. The applicant asked the court to prohibit police officers from unlawfully arresting sex workers merely to harass, punish or intimidate them, or for any ulterior purpose not sanctioned by law. The court found that police officers were arresting sex workers without the intent of pursuing prosecution and held that the purpose of arrest must be for prosecution. When arrests are made without the intent to pursue prosecution, such arrests amount to an unlawful exercise of a police officer’s public power. The Court issued an interdict prohibiting police officers from arresting sex workers unless they had the intent of bringing them before a court of law. The Court’s issue of the interdict in itself is an acknowledgment of the issue of police officers exploiting and abusing sex workers. This calls into question the effectiveness of the interdict considering that it was issued several years ago but police brutality, corruption, and harassment remain a common features of sex workers’ experiences with police officers.

The courts have also handed down judgments which are **gender exploitative** despite the fact that these judgements were handed down after the interim and final Constitutions came into operation.

The judgment in ***Jordan and Others v S and Others 2002 ((11) BCLR 1117 (CC))*** concerns the constitutionality of the criminalisation of sex work and other matters relating to sex work. By means of a background to the case, in 1996, a police officer posed as a client at a brothel, paid R250 to an employee and received a pelvic massage from Christine Jacobs, a sex worker (Jacobs). Jacobs was convicted for selling sexual services in terms of the provisions of the 1957 SOA which criminalises selling sexual services (sex work provisions).<sup>463</sup> Jacobs

<sup>462</sup> Sanger (2010) 24.

<sup>463</sup> The 1957 SOA was the only sexual offences legislation in operation at the time of the commission of



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appealed the trial court’s decision to the Pretoria High Court to reverse her conviction. She argued that even though she had contravened the 1957 SOA, the sex work provisions were unconstitutional and should be declared invalid. The High Court agreed that the sex work provisions were unconstitutional. The order to declare the sex work provisions invalid was referred to the Constitutional Court for confirmation. The Constitutional Court ruled that the sex work provisions were valid and consistent with the Constitution. It concluded that it did not infringe on the right to human dignity because human dignity is compromised by the character of sex work itself and by engaging in sex work, not by the provisions criminalizing sex work in the SOA. With regard to the right to privacy, the court found that the sex work provisions did not limit the right to privacy because of the illegal status of this work. The court held that the state has an interest in crimes even when they are committed in private. The court further stated that even if the right to privacy was limited by the sex work provisions, such limitation would be justifiable due to the illegality of the sale of sex. Sex workers are permitted to engage in sexual activity and use their bodies in any way they wish, save for the purposes of deriving an income. Most importantly, in relation to the right to equality, the court found that the effect of the sex work provisions did not amount to discrimination because of their gender-neutral nature. The court ruled that these provisions serve a legitimate purpose, namely to outlaw commercial sex.<sup>464</sup> No regard was thus given to the broader context of VAW and particularly the intersectional vulnerabilities that make female and transgender sex workers susceptible to VAW. Finally, regarding the right to freedom and personal security, the court held that the sex work provisions did not limit this right. It reasoned that sex workers make themselves liable for arrest and imprisonment when they violate the law by engaging in sex work. Essentially, the court ruled that any violation of sex workers’ freedom and security is occasioned by their own engagement in illegal activity, not by the state’s intrusion on these rights. This ruling remains the current position of the Constitutional Court of sex work in South Africa. The ruling can only be overturned through litigation or through law reform. A law reform process<sup>465</sup> was instituted by the Minister of Justice and Correctional Services, Ronald Lamola, on 30 November 2022 but the process was since stalled.<sup>466</sup> The Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2022 (the Bill) sought to remove the criminal sanctions and penalties attached to sex work but the Minister’s State Legal Advisors advised that the Bill would not pass

the criminal offences in issue.

<sup>464</sup> Sanger C ‘The Symbiosis between the Criminalisation of Sex Work and Corrupt Policing of Sex Work in South Africa’ (2021) 5(1) *Journal of Anti-Corruption and Anti-Money Laundering* 44 – 48.

<sup>465</sup> South African Government ‘Minister Ronald Lamola updates the nation on decriminalisation of sex work in South Africa, 9 Dec’ available at [https://www.gov.za/speeches/minister-lamola-updates-nation-decriminalising-sex-work-south-africa-8-dec-2022-0000#:~:text=Minister%20of%20Justice%20and%20Correctional,and%20Related%20Matters\)%20A,ment%20Bill](https://www.gov.za/speeches/minister-lamola-updates-nation-decriminalising-sex-work-south-africa-8-dec-2022-0000#:~:text=Minister%20of%20Justice%20and%20Correctional,and%20Related%20Matters)%20A,ment%20Bill) and Wicks B ‘Bill proposing the decriminalisation of sex work out for comment’ <https://ewn.co.za/2022/12/09/bill-proposing-the-decriminalisation-of-sex-work-out-for-public-comment> (accessed on 24 April 2023).

<sup>466</sup> GroundUp ‘“Tough blow” for sex workers as decrim bill delayed’ <https://www.groundup.org.za/article/sex-work-decriminalisation-bill-heads-back-to-the-drawing-board/> (accessed on 21 July 2023).



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constitutional muster because of it did not include regulations on how sex work would be decriminalised.<sup>467</sup> There have since been no further developments with the Bill.

In *Kylie v Commission for Conciliation, Mediation and Arbitration and Others* (2010 (10) BCLR 1029 (LAC)), Kylie was employed as a sex worker at Brigitte’s massage parlour in Cape Town. Brigitte’s dismissed her in 2006 and their reasons for the dismissal were that she failed to attend to enough bookings, failed to manage her time, only provided services to specific clients, refused to perform oral sex and spent time in her room with her boyfriend, who did not pay for services. In August 2006, Kylie approached the Commission for Conciliation Mediation and Arbitration (CCMA) for legal recourse for the dismissal. The CCMA turned Kylie away saying that they could not hear her case because her employment contract was invalid and could not be enforced because sex work is illegal. Kylie then referred the case to the Labour Court. She was turned away again for the same reasons given by the CCMA. The case was eventually referred to the Labour Appeal Court. The court ruled that the CCMA and Labour Court were incorrect and should have heard her case. The Labour Appeal Court’s reasons for its decision was that ‘everyone’ has the constitutional right to fair labour practices – even if the employment contract is illegal. The court classified Kylie was an ‘employee’ in terms of the Labour Relations Act 66 of 1995 (the LRA) and thus had some of rights under the Act. Furthermore, the court ruled that sex workers can form and join a trade union but cannot participate in the activities of such a trade union. Brothels and sex workers can also not enter into collective agreements. Whilst this judgment confirmed sex workers right to fair labour practices, it has denied them other crucial constitutional and labour law rights. Without law reform in favour of decriminalisation or legalization of sex work, sex workers are not likely to refer unfair labour practice disputes to the CCMA because they fear disclosing their status as sex workers for fear of repercussions of stigma, unfair discrimination by community members and arrest and profiling by police officers.<sup>468469</sup>

X

In *Coko v S (2022 1 SACR 24 (ECG))* - the accused had previously been found guilty of rape of his ex-intimate partner in the Regional Magistrates Court. His conviction was overturned on appeal by the Eastern Cape High Court which ruled that even though the complainant had said ‘no’ to sexual intercourse and had tried to push the accused off her and cried, the High Court the accused had not possessed the necessary intention to rape the complainant. The court explained that he was under the mistaken belief that the complainant had consented to sexual intercourse. In making this ruling, the court relied upon facts to support the accused’s version, such as the including that he and the complainant

<sup>467</sup> GroundUp “‘Tough blow’ for sex workers as decrim bill delayed” <https://www.groundup.org.za/article/sex-work-decriminalisation-bill-heads-back-to-the-drawing-board/> (accessed on 21 July 2023).

<sup>468</sup> Pudifin S and Bosch S ‘Demographic and social factors influencing public opinion on prostitution: An exploratory study in Kwazulu-Natal Province, South Africa’ (2012) 15 *Potchefstroom Electronic Law Journal* 13 and Mgbako, C (2013) 1431 and 1438.

<sup>469</sup> Sanger C and Manoeck S (SWEAT) *Sex Worker Labour Law Guide: A Guide to Your Rights* (2018) 3.

had engaged in intimate sexual acts such as kissing and oral sex prior to the sexual intercourse. This judgment is problematic in terms of the importance of the right to withdraw consent at any time before or during sexual intercourse. This send the message to society that a woman consents to sexual penetration when she engages in foreplay prior to sexual intercourse commencing. *The judgement has been overtruned in April 2024.*<sup>470</sup>

**Appendix B: A Table breakdown of the Laws and Policies designed for Enhancing Women’s Voice and Decision-Making Power within the South African Context**

	LAWS	ACTS	POLICIES	PURPOSE	STAKEHOLDERS
Public Sector	The Constitution of the Republic of South Africa, 1996			Country's supreme law promotes gender equality and women's rights.	Citizens of South Africa, Government officials and political parties, the judiciary and legal professionals, Civil society organizations and non-governmental organizations, Business and industry groups, Trade unions and labor organizations, Traditional leaders and cultural communities, International organizations and foreign governments, Religious groups and institutions, Media and journalistic organizations

<sup>470</sup> Norton Rose Fulbright, 'Supreme Court of Appeal Ruling Sets Landmark Precedent on Sexual Consent' (Norton Rose Fulbright, April 2024) <https://www.nortonrosefulbright.com/en-za/news/fff09f96/supreme-court-of-appeal-ruling-sets-landmark-precedent-on-sexual-consent> accessed 1 July 2024



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		The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000		This legislation makes it illegal to unfairly discriminate against people based on their gender and promotes equality.	Government, Civil society organizations, Business Community, Trade unions, People with disabilities, LGBTQI+ Community, Women, Religious institutions, Traditional leaders, Media
		The Employment Equity Act, 1998		This act promotes equal opportunities in the workplace and prohibits unfair discrimination on the grounds of gender.	Employees, Employers, Trade unions and employee organizations, Human resource professionals, Government regulators and policymakers, Job seekers, Equity groups (women, disabled persons, indigenous peoples, visible minorities, etc.), Education and training institutions, Business associations and chambers of commerce, The public and society as a whole.
		The Domestic Violence Act, 1998		This act provides for the protection and relief of victims of	Survivors of domestic violence, Perpetrators of domestic violence, Law enforcement



				domestic violence, including women.	agencies, Legal professionals and the courts, Government agencies responsible for implementing the Act, Non-governmental organizations assisting survivors of domestic violence, Family members and close associates of survivors/perpetrators of domestic violence, Healthcare professionals (doctors, nurses, counselors, etc.), Children and other dependents affected by domestic violence, Media reporting on cases of domestic violence and the Act's implementation.
		The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007		This act criminalizes various forms of sexual offenses, including rape, sexual assault, and sexual harassment.	Government officials and policymakers, Law enforcement agencies, such as police and prosecutors, Advocacy groups for victims of sexual offenses, Organizations

					providing support and treatment for offenders, Legal professionals, such as defense attorneys and prosecutors, Health professionals, such as doctors and psychologists, The general public, who may be affected by the changes in law related to sexual offenses.
	The Women Empowerment and Gender Equality Bill, 2013			This bill seeks to promote gender equality and empower women in various spheres of life, including education, employment, and decision-making.	Women, Government, Non-governmental organizations (NGOs), Men, Businesses, Civil society, Academia.
			The National Policy Framework for Women's Empowerment and Gender Equality, 2000	This policy framework offers a thorough strategy for advancing gender equality and giving women a bigger voice in South Africa.	Government agencies, Women's rights and advocacy organizations, NGOs and civil society organizations, Private sector organizations, Academic and research

					institutions, Women and Girls themselves.
Private Sector		Employment Equity Act (EEA) 55 of 1998		The Equal Employment Opportunity Act (EEA) aims to advance equal opportunities and fair treatment for workers in the workplace, including the eradication of unlawful discrimination based on gender.	Employees, Employers, Trade unions and employee organizations, Human resource professionals, Government regulators and policymakers, Job seekers, Equity groups (women, disabled persons, indigenous peoples, visible minorities, etc.), Education and training institutions, Business associations and chambers of commerce, The public and society as a whole.
		Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 4 of 2000		This act prohibits unfair discrimination based on gender, among other grounds, and promotes equality in all spheres of life.	South African Government, Non-governmental organizations (NGOs), Civil Society Organizations, Business Organizations, Labor Unions, Religious Institutions, Educational Institutions, Media

					Institutions, Individuals who have experienced unfair discrimination, Human Rights Organizations.
		Basic Conditions of Employment Act (BCEA) 75 of 1997		The BCEA gives effect to, the right to fair labour practices referred to in section 23(1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment	Employees and workers, Employers, Trade unions, Government, Civil society organizations, Consumers