



## Gender Sensitive Parliaments

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## Executive Summary

1. Our submission focuses on four areas which are key obstacles to promoting a gender-sensitive Parliament: lack of integrated family-friendly policies and practices; gender-insensitive language; harassment and violence on grounds of gender; and under-representation of women. We draw on the expertise of our team in comparative law and practice to highlight possible alternative solutions.
2. We emphasize unequivocally that **this should not be regarded as a ‘woman’s problem’**. In mainstreaming gender, we need to change the ‘mainstream’ institutional structure which was modelled on a male dominated society. We should not expect women simply to conform to a male world. This is an issue for all genders.
3. Our key recommendations are as follows:
4. **Reconciling Participative Parenting with Political Office:** MPs should be able to be participative parents and fully participative Parliamentarians. This entails:
  - a. *Paid Maternity/Paternity and Parental Leave:*
    - i. Women MPs should have the same rights as all working women to paid maternity leave.
    - ii. Parliament should also lead the way in recognizing the responsibility of men in parenting, by providing paternity and parental leave which incentivise men to share parenting responsibilities.
    - iii. MPs on leave should be provided with support to enable them to continue to support their constituents’ needs.
    - iv. Proxy voting should be improved and extended.
    - v. Easily accessible crèche facilities should be available.
  - b. *Working Hours:* Parliament should recognise that caring responsibilities do not end with the end of maternity leave, nor are they exclusively about child-care. Parliamentary rules should prohibit voting on sitting days after a set time and provide that voting should not be held on Fridays and/or Mondays to allow Parliamentarians time for their families and constituents and take the burden off weekend working.

5. **Gender Sensitive Language:** A gender sensitive Parliament should recognize that the use of language can reinforce the invisibility of women. Best practice from other jurisdictions suggests that reform should include: (i) avoiding subsuming the female gender within the male; (ii) avoiding the generic use of 'he' and encouraging the use of 'they' to include those who do not conform to the gender binary; and (iii) avoiding the use of titles for women which refer to marital status. It is particularly disappointing to note the current suggestions on language style by the new Leader of the House, which require the use of 'Esq.' for all non-titled men. Such an approach is a clear step backwards.
6. **Sexual Harassment and Violence against Women-A Fundamental Breach of Rights:** The striking persistence of sexual harassment and gender-based violence in Parliament despite several thorough and illuminating reports requires us to think in more foundational terms about how to tackle the issue. Rather than regarding sexual harassment as a matter for cultural change and better procedures, it should be emphasized that sexual harassment and gender-based violence constitute a fundamental breach of rights, including rights to bodily integrity, personal security, privacy, equality, speech and association.
7. Failing to recognize sexual harassment in these terms undermines basic constitutional principles. Granting effective immunity to political representatives undercuts the basic principle that no-one should be above the law, weakening the legitimacy and faith in democratic institutions.
8. Our survey of best practice in other jurisdictions demonstrates the need for a full array of implementation measures including:
  - a. *Specific legislation:* The Equality Act 2010 (EA 2010) should be extended to apply to everyone exercising a political role, including Parliamentarians. EA 2010 has sophisticated legal provisions for addressing sexual harassment and gender-based violence and there is no good reason why Parliament should not follow the same rules.
  - b. *Internal Mechanisms:* Internal Parliamentary procedures should be strengthened to ensure speedy and fair outcomes, such as those in Finland, Canada, and the US. This should include regular staff surveys about workplace culture.

- c. The Independent Complaints and Grievance Policy and the Behaviour Code for Parliament should be amended to reflect the fundamental constitutional and human rights issues implicated by sexual harassment.
9. **Representation of Women in Parliament:** From our comparative survey, it is not evident that legal methods are more efficient than voluntary measures for increasing the number of women in Parliament. Sections 104 and 105 of the Equality Act 2010 permit voluntary measures by political parties to reduce inequality in representation of women in Parliament at the point of selection of candidates for elections.
10. All parties should be encouraged to adopt affirmative action measures for the benefit of women in the selection of their candidates for Parliament. However, for this to be successful:
- a. All political parties should be strongly encouraged to take effective action at the point of selection, but particularly the large parties;
  - b. Women must be nominated to stand for seats where there is a real chance of their winning elections.
11. **Retention** of women MPs is as important as initial selection. All the above measures need to work together to ensure a genuinely gender-sensitive Parliament.

## Reconciling Participative Parenting with Political Office

12. Parliament is like any other workplace and needs to foster a culture that is both gender sensitive and recognises the role of men and women in parenting. Drawing on best practices from around the world, the UK Parliament should adopt a series of measures to ensure that MPs can harmoniously be political advocates and balance caring responsibilities. There are four key areas that need to be addressed: (i) regulating working hours; (ii) pregnancy and early childhood care; (iii) caring policies and (iv) implementation strategies.

### *Working Hours*

13. There is a plethora of good examples that the UK can draw upon. For instance, some parliaments prohibit voting after 7pm on sitting days; others hold that voting should not be held on Fridays or Mondays, so MPs have time to spend with their families and take the burden off weekend work; some parliaments coordinate sitting days with the school calendar; and other have standardised ending times for parliamentary business.<sup>1</sup>

### *Pregnancy and Early Childhood Care*

14. Currently there is no maternity leave for MPs.<sup>2</sup> The maternity leave policy should guarantee adequate pay and include enough time-off political duties.<sup>3</sup> To change gendered cultural norms on parenting, there also needs to be paternity leave and consideration should be given to encourage and incentivise fathers to use paternity leave.<sup>4</sup>

15. More challenging is to devise a system that allows for MPs on maternity or paternity leave to vote in Parliamentary sessions. The UK allows proxy voting when MPs are on maternity/paternity leave<sup>5</sup> and technological solutions to distance voting should be explored so MPs can still directly participate.

16. When MPs return to work after giving birth, there needs to be a space to express and safely store breast milk that is near to key locations in Parliament buildings. Although there are rules of access, these need to be modified to allow breast-feeding in all spaces in Parliament.<sup>6</sup>

### *Caring Policies*

17. Recognising that MPs and staff may have caring responsibilities—both children and elderly persons—there should be paid caring leaving

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<sup>1</sup> Sonia Palmieri, 'Gender Sensitive Parliaments: A Global Review of Good Practice' (2011) Inter-Parliamentary Union No.65-2011; Hannah Britton, *Women in the South African Parliament* (University of Illinois Press 2005) Chapter 5; Rosie Campbell and Sarah Childs, 'Parents in Parliament: Where's the Mum?' (2014) 85(4) *The Political Quarterly* 487.

<sup>2</sup> Stella Creasy, 'I'm Pregnant and Forced to Choose Between Being an MP and a mum' (17 June 2019, *The Guardian*) <<https://www.theguardian.com/commentisfree/2019/jun/17/pregnant-mp-maternity-leave-equality-stella-creasy>> accessed 24 July 2019.

<sup>3</sup> Palmieri (n 1)

<sup>4</sup> Sandra Fredman, 'Reversing Roles: Bringing Men Into The Frame' (2014) 10(4) *International Journal of Law in Context* 442.

<sup>5</sup> Palmieri (n 1).

<sup>6</sup> *ibid.*

policies that allow MPs, both men and women, to take time off their duties to attend to caring responsibilities. Similar to pregnant and new parents, there needs to be a system devised to allow for those on caring leave to vote on Parliamentary matters as caring responsibilities extend beyond new-born children. Parliament should ensure there is a *crèche*, again close to key locations and that the hours of the *crèche* mirror the working hours of MPs.

### *Implementation Strategies*

18. There need to be **formal measures** to de facto enhance the ability of MPs to be both fully participative politicians and fully participative parents. The evidence indicates that non-formal or soft measures are routinely flouted and ignored.<sup>7</sup> The OECD has developed a useful toolkit on how to embed and sustain gender transformation in Parliament. This includes gaining the support of cross-party parliamentary leadership; targeting both women and men; paying attention to ‘broader organisational political dynamics’ and developing benchmarks to measure progress and enhance accountability. There need to be adequately resourced disciplinary mechanisms.<sup>8</sup>

## Gender Sensitive Language

19. Parliamentary environments are often non-inclusive, due to constant use of the masculine form or the male pronoun. Women parliamentarians have remarked that this indicates “a sense of rejection...language makes women invisible...in a symbolic sense and in everyday life”.<sup>9</sup> This is especially so since parliaments have historically been masculine institutions—the atmosphere being described as a “gentleman’s club, dominated by male voices and “masculinist practices”—making women feel like outsiders.<sup>10</sup> The UK Parliament Audit 2018 makes only brief reference to the need for gender-sensitive language by recommending, that “inclusive language material” be developed and shared, and that public engagement of the

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<sup>7</sup> *ibid.*

<sup>8</sup> OECD, ‘OECD Toolkit for Mainstreaming and Implementing Gender Equality: Implementing the 2015 OECD Recommendation on Gender Equality in Public Life’ (2015) <[www.oecd.org/gov/toolkit-for-mainstreaming-and-implementing-gender-equality.pdf](http://www.oecd.org/gov/toolkit-for-mainstreaming-and-implementing-gender-equality.pdf)> accessed 24 July 2019.

<sup>9</sup> Inter-Parliamentary Union (n 1).

<sup>10</sup> *ibid* 84.

Parliament with the public be sensitive through the use of “gender-neutral language”.<sup>11</sup> However, there is no mention of what language would be gender-sensitive.

20. Best practices from other jurisdictions are helpful here. Most recently, the EU guidelines recommend three changes: *first*, avoiding the practice of subsuming the female gender within the male gender by replacing gender-specific terms such as ‘chairman’ or with ‘chairperson’ or; *second*, avoiding the use of the male pronoun alone, by replacing “he” as a generic reference by the terms “he or she”; and *third* avoiding the use of titles for women (s Mrs.), which make reference to their marital status. Gender inclusive language is more than a matter of political correctness, as language “powerfully reflects and influences attitudes, behaviour and perceptions”.<sup>12</sup> The 2019 European Parliament Resolution on Gender Mainstreaming endorsed these guidelines as a gender-mainstreaming tool.<sup>13</sup> The need for gender-inclusive language was also highlighted by the Council of the European Union, in the Guidelines on Inclusive Communication, 2018, which additionally also made reference to persons who do not identify as either male or female, by encouraging the use of “they” as a pronoun, along with “he or she”.<sup>14</sup>
21. The shift towards gender-inclusive language is also seen in Parliaments around the world. Costa Rica has agreed to use gender-sensitive language in its new parliamentary website. In Peru, Law 28983 on Equal Opportunities for Men and Women stipulates that the government should use gender-sensitive language in all written communications and documents prepared by government bodies at all levels.<sup>15</sup> Burundi, has replaced terms such as “rights of man” with

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<sup>11</sup> ‘Report of the Gender-Sensitive Parliament Audit Panel to the House of Commons Commission and the House of Lords Commission’ (2018) [101], [131] <[https://www.parliament.uk/documents/lords-information-office/UK%20Parliament\\_%20Gender%20Sensitive%20Parliament%20Audit\\_Report\\_DIGITAL.pdf](https://www.parliament.uk/documents/lords-information-office/UK%20Parliament_%20Gender%20Sensitive%20Parliament%20Audit_Report_DIGITAL.pdf)> accessed on 29 July 2019.

<sup>12</sup> ‘Gender-Neutral Language in the European Parliament’ (2018) <[http://www.europarl.europa.eu/cmsdata/151780/GNL\\_Guidelines\\_EN.pdf](http://www.europarl.europa.eu/cmsdata/151780/GNL_Guidelines_EN.pdf)> accessed on 29 July 2019.

<sup>13</sup> ‘European Parliament Resolution on Gender Mainstreaming in the European Parliament’ 2018/2162 (INI) (15 January 2019),

<sup>14</sup> Council of the European Union, ‘General Secretariat, Inclusive Communication in the GSC’ (2018) <[https://www.consilium.europa.eu/media/35446/en\\_brochure-inclusive-communication-in-the-gsc.pdf](https://www.consilium.europa.eu/media/35446/en_brochure-inclusive-communication-in-the-gsc.pdf)> accessed on 29 July 2019.

<sup>15</sup> Jutta Marx and Jutta Borner, ‘Gender Mainstreaming in Latin American Parliaments: A Work in Progress’ (2011), 30 <<https://www.idea.int/sites/default/files/publications/gender-mainstreaming-in-latin-american-parliaments.pdf>> accessed 29 July 2019.

“human rights” on their Senate website; France has adopted gender-specific forms of address—for instance, the title “Madam Minister” for women— and the Parliament of Montenegro uses gender-sensitive language in all official communications.<sup>16</sup>

## Sexual Harassment

22. Despite recent studies and consultation, sexual harassment and gender-based violence persists unabated. The UK Parliament Audit 2018 noted that online threats, threats to physical security, gender-based intimidation, harassment and violence against female Parliamentarians/candidates remained a barrier to equal participation in the Parliament. An Inter-Parliamentary Union global study revealed that more than 80 per cent of surveyed women MPs in Europe had experienced acts of psychological violence, profuse online/social media violence during their parliamentary terms.
23. Though there is an appreciable shift in conversation and effort to transform the culture of the Parliament, the conversation misses the constitutional perspective the issue deserves. The focus of these inquiries is mainly procedural, the governance or regulation of the Parliament and those within it. The focus is scarcely on the unconstitutionality of sexual harassment.<sup>17</sup>
24. Sexual harassment is not simply an issue of cultural change, or an issue of processual or systems regulation and governance. It is also not merely a ‘women’s issue’, although women are overwhelmingly victims of sexual harassment and sexual assault. It is primarily and expressly a constitutional issue. This means three things.
25. First, it impinges on the foundations of our democracy. When those at the helm of the democratic machinery commit acts of sexual harassment, including assault, they damage the legitimacy and faith in democratic institutions. The lack of applicability of ordinary laws on sexual harassment (under the Equality Act 2010 to MPs who are

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<sup>16</sup> Inter-Parliamentary Union (n 1) 70.

<sup>17</sup> *Janzen v Platy Enterprises Ltd* [1989] 1 SCR 1252 (Canada), *Vishaka v State of Rajasthan* (1997) 6 SCC 241 (India), *Jenson v Eveleth Taconite Co.* 130 F.3d 1287 (8th Cir 1997) (USA); *Mohd Ridzwan bin Abdul Razak v Asmah binti Hj Mohd Nor* [2016] 4 MLJ 282 (Malaysia).



elected and thus not considered 'employed', to peers, and to volunteers) gives the impression that those who govern are above the law. This has serious implications on rule of law.

26. Second, while the principle of parliamentary sovereignty allows for the Parliament to govern itself, the lack of legal and constitutional limits to self-governance, including the application of legal and constitutional standards against sexual harassment, weakens the legitimacy of principles like parliamentary sovereignty.
27. Third, sexual harassment is a clear violation of constitutional rights. Acts of sexual harassment violate the right to equality and non-discrimination which is constitutionally enshrined in the Equality Act 2010 and Human Rights Act 1998. Equally, acts of sexual harassment and sexual assault may violate the right to life and liberty, right against torture, right to privacy, and right to freedom of expression, all of which are part of the UK constitutional fabric. The fact that those at the Parliament, as MPs, peers, staff, visitors or volunteers, may be violating rights or suffering violations of their rights while inhabiting the institutional setting of the state, conveys that the Parliament only declares rights but does not uphold them. This is a damaging message which dampens the human rights culture and enforcement in the country.
28. We recommend that the Parliament engage with sexual harassment as an issue in constitutional terms—democracy, rule of law, Parliamentary sovereignty and human rights—because that is fundamentally the reason for which it matters. The conversation thus needs to shift from institutional regulation to constitutional law.
29. To effectively achieve a gender-sensitive Parliament framed in these fundamental terms, Parliament can learn from good Parliamentary practices in other countries. Several different and complementary means have been used.

### *Specific Legislation*

30. The Bolivian Law Against Harassment and Political Violence Against Women (Law No. 243, 2012) has as its objective (Article 2): "To establish mechanisms for the prevention, treatment, and punishment of individual and collective acts of harassment and/or political violence towards women, in order to guarantee the full exercise of their political rights." This is not limited to women in public office, but it extends its

scope to women designated to or exercising a political-public role. In 2016, the Ministry of Justice decided to strengthen the Bolivian law by prohibiting people with backgrounds of violence against women from running for political office.

31. Such bills have been introduced in Costa Rica, Mexico, Peru, Ecuador and Honduras.
32. Mexico amended its law on violence against women and its electoral legislation to incorporate a definition of political violence against women.
33. The USA's Congressional Accountability Act 1995 requires Congress and legislative branch entities to follow many of the same employment and workplace safety laws applied to private business and the Federal Government. It was amended in 2018 to improve the process for congressional employees to report allegations of sexual harassment, by eliminating mediation requirements and lengthy waiting periods, making members (not taxpayers) responsible for paying settlements, increasing transparency by publishing reports of committee findings, and requiring regular staff surveys about workplace culture during each congressional period. It also added protections for interns and fellows.
34. The Equality Act 2010 has a sophisticated set of provisions on sexual harassment. We recommend that Parliament may consider the extension of the Equality Act 2010 to protect all persons in a workplace and not only employees, or it may consider widening the definition of employees to include MPs, peers and volunteers at Westminster.

#### *Non-Legislative Measures*

35. Strengthening internal mechanisms such as Parliamentary code of conduct, the sexual harassment policy and complaint settlement procedures.
  - a. In Finland, the Guidelines of the Bureau of Parliament for the prevention of conduct and harassment (2017) are applicable to parliamentarians and parliamentary staff. They provide for a confidential procedure for making complaints, followed up by mediation and an internal investigation.
  - b. Costa Rica and Canada have set up mediation committees. In both countries, the human resource director can hire an external specialist for investigation.

- c. The Swiss and the Austrian Parliament have set up independent consultative body /experts specializing in cases of intimidation and sexual harassment, which parliamentarians may contact on a confidential basis.

36. The Parliament at Westminster should at the very least:

- a. Amend the Independent Complaints and Grievance Policy to reflect this position.
- b. Ensure that the Behaviour Code for Parliament speaks to constitutionality beyond institutional matters.
- c. The Constitutional Affairs Committee or a Special Select Committee should duly consider these options, including having all party leaders and whips engage with combating sexual harassment in constitutional terms.

*Providing training courses, taking communication and awareness raising initiatives*

37. In France, a poster campaign at the National Assembly and the Senate displayed the Criminal Code provisions on sexual harassment and information on existing victim services.

38. In 2017, the US House of Representatives adopted a resolution requiring anti-harassment training for all members, officers and employees, during each congressional session.<sup>18</sup> The US Senate similarly passed a resolution requiring Senators, Senate officers and Senate managers to periodically complete training that addresses workplace harassment, including sexual harassment and related intimidation and reprisal prohibited under the Congressional Accountability Act of 1995.<sup>19</sup>

39. However, research shows that the ‘training’ route to combating sexual harassment or effecting cultural change of any kind is not effective in fact. Laurie Edelman’s research in *Working Law* is the most exhaustive empirical justification (spanning twenty years) for why trainings are a hindrance to justice in sexual harassment cases. There

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<sup>18</sup> H.Res.630 — 115th Congress (2017-2018).

<sup>19</sup> S.Res.330 — 115th Congress (2017-2018).

is a risk that the focus on training can displace real change, and lead to complacency. We therefore recommend that if training is used, they should not be regarded as evidence of compliance with duties, legislative or otherwise.

## Women's Representation in Parliament

42. There are currently 209 women MPs in the House of Commons, 32% of a total number of 650 MPs. Further, only 28% of select committee chairs are women.
43. These measures to address gender imbalance can be differentiated on the basis of whether these are (a) legally mandated or (b) have been voluntarily adopted by political parties.<sup>20</sup>
44. These measures can also be differentiated on whether they require affirmative action (a) at the time of selection of aspirants (all woman shortlists for candidates to stand for election); (b) at the point of nomination of candidates to stand for elections; or (c) in the form of reserved seats in Parliament.<sup>21</sup>
45. Reservation of a fixed number of seats in Parliament which men are ineligible to contest, has become an increasingly popular solution for including women in countries with very low levels of female parliamentary representation. This approach is geographically concentrated in Africa, Asia, and the Middle East.<sup>22</sup>
46. Affirmative action in the selection of aspirants or candidates addresses party selection practices, rather than the final proportion of women in Parliament.

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<sup>20</sup> Drude Dahlerup, 'Gender Quotas' (*International IDEA*) <<https://www.idea.int/data-tools/data/gender-quotas/quotas#different>> accessed 15 July 2019; Drude Dahlerup (ed), *Women, Quotas and Politics* (Routledge 2006) 21; Drude Dahlerup, 'Increasing Women's Political Representation: New Trends in Gender Quotas' in Ballington and Karam (eds), *Women in Parliament: Beyond Numbers* (rev edn, International IDEA 2005).

<sup>21</sup> *ibid.*

<sup>22</sup> Mona Lena Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (OUP 2009) 56. For a full list of jurisdictions, see: <<https://www.idea.int/data-tools/data/gender-quotas/reserved-overview>> accessed 24 July 2019.

- a. It can be in the form of legal requirements that political parties nominate a certain percentage of women among their candidates standing for elections.<sup>23</sup>
- b. Secondly, these may be voluntarily adopted by political parties.<sup>24</sup> In Sweden, *Varannan Damernas* or “every second a woman” is a strategy adopted by parties on the centre or left, requiring that every alternate candidate nominated for elections be a woman.<sup>25</sup> Affirmative action in the form of nominations can be impactful if women are placed in a position with a real chance of winning elections.<sup>26</sup>

47. It is not evident that legal methods are more efficient than voluntary measures for increasing the number of women in parliament.<sup>27</sup> However, the number of parties voluntarily adopting affirmative action for women, and the position occupied by these parties in terms of share of seats in Parliament, are vital for the success of voluntary affirmative action measures.

48. Sections 104 and 105 of the Equality Act 2010 permit voluntary measures by political parties to reduce inequality in representation of women in the UK Parliament, at the point of selection of aspirants and candidates for elections. Such measures include, but are not limited to, all woman shortlists.<sup>28</sup> It is, therefore, recommended that, as a first measure, all parties be encouraged to adopt affirmative action measures for the benefit of women in the selection of their candidates for Parliament, keeping in mind that:

- a. such measures are likely to be successful depending on the number of parties voluntarily adopting affirmative action for women;
- b. the position occupied by these parties in terms of share of seats in Parliament; and

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<sup>23</sup> *ibid* 162. For a full list of jurisdictions, see: <<https://www.idea.int/data-tools/data/gender-quotas/voluntary-overview>> accessed 24 July 2019, and <<https://www.idea.int/data-tools/data/gender-quotas/legislative-overview>> accessed 24 July 2019.

<sup>24</sup> For a full list of jurisdictions with voluntary measures for affirmative action in nominations, see: <<https://www.idea.int/data-tools/data/gender-quotas/voluntary-overview>> accessed 24 July 2019.

<sup>25</sup> Krook (n 22) 109.

<sup>26</sup> Dahlerup (n 20)

<sup>27</sup> *ibid*.

<sup>28</sup> Equality Act 2010, ss 104 and 105.

- c. whether women are nominated to stand for seats where there is a real chance of their winning elections.