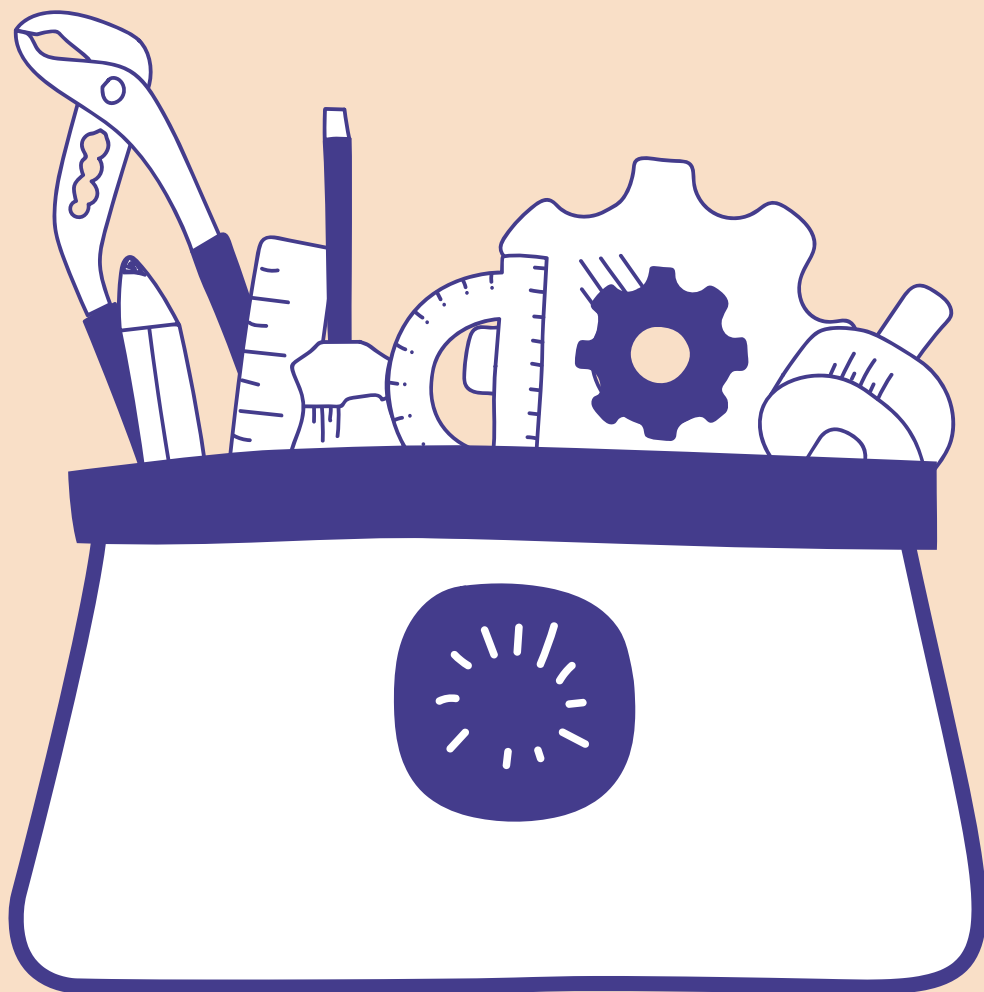


TOOLKIT FOR DESIGNING BILL PROPOSALS FROM A GENDER PERSPECTIVE



COLLABORATIVE WORKING

On the participatory process for the publication of this toolkit booklet

This booklet is the result of an initiative by the Parliamentary Equity and Gender Observatory of the Directorate-General on Equality. It emerged from the legislative experiences undergone by the different areas within the Argentine House of Deputies, conversations among colleagues, the legislative request to design proposals from a gender perspective and, mainly, the need for bill proposals to be more in line with the diversity of people that make up our society. The integration of human rights standards must apply a gender perspective.

The publication of this document was made possible thanks to the joint work undertaken with different House areas and colleagues, whose duties and interests focus on the lines of work herein included. The process to produce this version started by sharing a first draft to get feedback and suggestions. It was shared with those areas we thought could add new perspectives and enrich the work, namely: the chairs of House advisory committees on women and diversity, budget and finance, population and human development, and human rights and guarantees; the Directorate on Parliamentary Information, the Directorate on Committees, and the Parliamentary Training Institute (ICAP), all within the Parliamentary Secretariat; the Directorate on Modernization within the General Secretariat of the Speaker's Office; and the Department on Gender and Sexual Diversity within the Directorate-General on Human Resources.

Within each area, we were assisted by their corresponding authorities and key individuals, whose contributions and commitment made the launching of this booklet possible. They are: Eze Montenegro and Gabriela Rojas, who work for national deputy Mónica Macha; national deputy Jimena López; Alejandra Saudino and Sandra Sagripanti from the Directorate on Parliamentary Information; Miriam Aragón and her team from the Directorate on Committees; Sofía Balestrini from the ICAP; Nadia Calderón from the Directorate on Modernization; and Laura Caniggia and her team from the Department on Gender and Sexual Diversity.

It was on the basis of all these viewpoints that we developed this toolkit, which includes legislative technique recommendations, a set of guiding questions and a report on gender inequality gaps in Argentina today—which shall be published independently.

We face the challenge to develop a training program to raise gender awareness and share this document. We hope it proves useful for the Argentine Congress, the legislative assemblies of the provinces and the Autonomous City of Buenos Aires, and the municipal councils to contribute to the creation of a freer and more egalitarian society for everyone.

You may find all our initiatives at:
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1. INTRODUCTION

This booklet provides a set of tools aimed at helping legislators, their advisory teams and the technical-administrative staff of advisory committees to carry out their work and adopt the gender perspective for the drafting of bill proposals. Gender-sensitive legislation increases social equity and equality, improving the lives of everyone. Moreover, it strengthens institutions and, thus, the democratic life of our State.

The gender perspective can be applied to any proposal on any topic in every level of government, and not only to those on human rights of children, youth, women and LGTBQ+. The gender perspective is a way of seeing the world, which is full of unequal relations based on sex-generic identities, and laws are for everyone.

Thus, gender-sensitive proposals are not restricted to the competence of one specific committee because the gender perspective constitutes a cross-cutting axis that affects all subjects and disciplines that can be dealt with in the legislative sphere.

International regulations on human rights, which come from both the United Nations and the Inter-American systems for the protection of human rights and which, in many cases, have constitutional hierarchy (section 75, paragraph 22 of the Argentine Constitution), make it necessary to legislate directing special attention to the violation of the rights of children, youth, women and diversities given the structural gaps of inequality.

Checklists and guidelines with diverse normative value have been issued by different parliaments and congresses to

establish the feasibility of an act and the requirements (both regulatory and formal) for a bill. There are also national and subnational experiences of the application of checklists to assess gender-sensitiveness in a bill. The degrees of binding involved vary in those of a more general nature as well as in those that seek to adopt a human rights approach. We understand that the use made by the House of this toolkit shall contribute to their legitimization.

We have compiled experiences from gender-sensitive parliaments within the framework of the Inter-Parliamentary Union and from countries such as Cambodia, Costa Rica, Spain and Mexico.

We conceive these tools as a set of recommendations or guidelines to legislate. The lines of work that we propose to analyze any proposal applying the gender perspective are thought to improve legislative work aimed at attaining real equality, establishing rules to bridge gaps, and thus granting and protecting rights and reassigning obligations and incentives.

This booklet comprises the toolkit itself—made up by seven lines of work—, a set of guiding questions and a report on gender gaps in Argentina today, where the sources that systematically provide information are shared.

2. LINES OF WORK

How can we know if a bill proposal is gender-sensitive?

It needs to be analyzed taking into account the following gender-sensitive evaluation criteria:



Equality.



Adaptation to human rights standards.



Gender impact assessment.



Intersectionality.



Citizen participation. Public comment.



Gender-inclusive language.



Budget: Forecasting funding in the bill proposal (if necessary).



EQUALITY

Equality is one of the guiding principles of the Argentine Constitution and of all international law on human rights. In fact, it is the right of every person and collective to be treated equally and respectfully without being discriminated and for the State to promote the conditions for real equality. It constitutes a necessary requirement for the effective and universal enjoyment of human rights. This explains the differentiation between *de facto* and *de jure* equality, two different though interrelated concepts.

a. Formal equality (equal access to rights)

Formal (*de jure*) equality is attained when rules of a legal or other nature treat men, women and other gender identities neutrally, requiring objective and reasonable differentiation criteria. Therefore, it forbids unreasonable or arbitrary treatment differences (IACHR, 2019).

b. Real equality

Real or substantive (*de facto*) equality is based on the acknowledgement of the different conditions and aspirations to exercise equal rights and opportunities. It requires the implementation of specific actions to remove inequalities that emerge from differences of gender, age, ethnicity or others, which produce discriminatory effects as to rights, benefits, obligations and opportunities, both in the public and in the private spheres. It implies that not only equality of opportunities is needed, but also equality of outcome. (UN Women, 2014).

c. Equality of outcome

It constitutes the culmination of legal and real equalities, both qualitatively and quantitatively, making it more effective in practice and distancing it from the notion of procedural justice. It is attained by providing unequal treatment. This is why it necessarily requires the performance of special actions (often temporal) to achieve substantive equality, cornerstone of egalitarian democracy in all social spheres. It helps to reduce the gap between legal and real equalities.

Affirmative actions

Set of actions designed and implemented to redress a discriminatory situation experienced by a community or social collective based on sex, gender, sexual orientation, ethnicity, religion, age, disability, among others. They are temporarily applied in concrete situations to make up for an inequality. Their aim is to achieve equality of opportunities for everyone (Gamba y Diz, 2007).

Section 37 of the Argentine Constitution concretely applies the principle of equality set forth in section 16 allowing positive discrimination to guarantee real equality of opportunities between men and women to access elective and political party positions. Affirmative actions are to be taken in the regulation of political parties and the electoral system, until said equality is attained.

In addition, among the powers of Congress (section 75, paragraph 23), the following is included: “(t)o legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women, the aged, and disabled persons.”

Recommendations:

To assess a bill proposal in terms of discrimination, the three dimensions of equality need to be considered.

Questions: Which living conditions are expected for all kinds of women, men and LGBTQ+ if the bill proposal is passed?

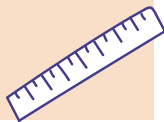
Formal equality: Is the bill proposal aimed at improving formal (legal) equality for everyone?

Real equality: Does the bill proposal seek to reduce inequalities by means of concrete actions?

Equality of outcome: Does the implementation of the act fulfil purposes related to bridging inequality gaps? This information can be found out by consulting the data published by enforcement authorities.

Affirmative actions: Does the bill proposal include any affirmative actions aimed at redressing structural inequalities in relation to particularly vulnerable groups? Is it a relatively short-term action?

ADAPTATION TO HUMAN RIGHTS STANDARDS



What does the term “human rights standards” mean? It refers to the minimum required levels of protection defined by human rights principles and rules, and the authorized interpretations given by their enforcement authorities. “Human rights standards are the statements made by intergovernmental organizations and other human rights agencies, by means of resolutions, suggestions, declarations or decisions in specific cases. In other words, human rights standards are the result of the efforts made to implement human rights. The former are the concretization of the latter” (De Casas, 2019:294).

They are rooted in human rights’ international instruments and other documents such as declarations, which are not legally binding but are part of the international consensus to which the State is committed to adapt its domestic legislative framework.

The State, by signing or ratifying an instrument, assumes the obligation to respect and guarantee the recognized human rights before the international community. This is the foundation for the protection of human rights.

Standards are defined by the content of the rights outlined in international instruments and in the additional statements made by enforcement agencies (having jurisdiction or not), which are legally binding for the member States.

Standards define the scope of State rights and responsibilities. Therefore, they are like a floor of protection that needs to be respected so that people can carry out their life projects freely and the State does not incur international responsibility. Given that Argentina is part of two systems of human rights protection, instruments and documents belonging to both the global system (UN) and the inter-American system (OAS) need to be taken into consideration.

Section 75, paragraph 22 of the Argentine Constitution mentions a number of treaties which have constitutional hierarchy, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child. It also adds that “(i)n order to attain constitutional hierarchy, the other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each House, after their approval by Congress.” The instruments are included under the conditions of their validity without repealing any sections of the Constitution and they are supplementary to the rights and guarantees granted thereunder.

Recommendations:

The link between the bill proposal and international commitments and regulations may be included in the grounds or in the first sections of the proposal, if it is a bill proposal.

Standards shall be established in relation to every right by compiling a collection of legislation and the interpretations by enforcement authorities (general comments, final reports, decisions, advisory opinions, among others) and **taking into account the Argentine legislative framework.**

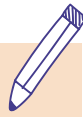
Questions:

Were human rights standards taken into account when establishing the guidelines of the proposal?

Is the proposal grounded on international regulations on human rights?

In particular, were the main instruments and interpretations on human rights of women, children, adolescents and LGTBIQ+ people consulted?

To learn more about the obligations related to each human right, visit:
https://www.csjn.gov.ar/om/guia_ddmm/index.html



GENDER IMPACT ASSESSMENT

Gender impact assessment (GIA) is a “prospective evaluation technique applied to rules, that is, an *ex ante* study and analysis of bills to check if, when the measures contained in the provisions were planned, the impact they will produce on people according to their gender was considered. It is used to let those who will adopt them know their desired and the non-desired consequences, and to propose changes if necessary” (De la Cruz, 2009: 79).

This analysis involves adopting the gender-equality perspective in the purposes and the outcomes. GIA must be applied to all bill proposals, including those which, at first, seem to have little or no connection with the topic.

“When a gender mainstreaming strategy is to be applied to the legislative work, it is advisable to include GIA as part of the documents enclosed to the proposals” (Guidelines, 2011: 66). The analysis must take into consideration gender stereotypes as they establish normative expectations for gender-specific behavior, which often result in unequal enjoyment of rights. These expectations associate women and feminized identities to housework, such as the raising of children, and men to work outside the home to provide for the family. Heterogeneous ways of experiencing the feminine and the masculine are effaced, partial representations (woman as sensitive caretaker; man as strong breadwinner) are generalized, and value judgements are made. Gender roles must also be considered. They are built in relation to the sexual, anatomic differences between the bodies and are partial though totaliz-

ing representations that lead to the naturalization of the feminine and the masculine. Thus, stereotypes are deduced and gender-specific activities are defined for both men and women and feminized identities. For example, the role a woman may play within a family is associated to the caretaker, while that of a man, to the breadwinner. Gender roles define the sexual division of labor, in which tasks are assigned to workers based on their sex. This organization of everyday life derives from social constructs acquired through the process of socialization. They are part of people’s identity and attach a “member” or “legitimate” label to those who comply with the expected roles, while excluding and/or delegitimizing those who do not. We must keep them in mind so as not to reproduce them.

The analysis must also consider the needs of the different genders to see if they are reflected in the proposal and avoid discrimination. For this purpose, we must take into account that “(t)he concept of indirect discrimination (...) implies that an apparently neutral rule or practice has a particularly negative impact on a person or group with certain characteristics (...). An impartially applied act may produce a discriminatory effect if the specific circumstances of the people to whom it is applied are not taken into consideration”.

International Human Rights Court. Case Artavia Murillo and others (“In Vitro Fecundation”) vs. Costa Rica. Preliminary Exceptions, Matter, Damages y Costs. Sentence on 28 November 2012. Series C-257, paragraph 286.

What input is required? GIA implies looking up information to improve the quality of the proposed measures and actions, and contribute to the monitoring of public policies' implementation.

Specifically, the following is required:

- Statistical information disaggregated by sex/gender for the context of application of the proposal, taking into consideration if an official or a civil society institution produces the information.
- Qualitative information on the roles attributed to the different genders in the context of application of the proposal.

Recomendaciones:

How is the gender impact of a bill proposal assessed? The expected impact of a bill proposal is assessed by comparing the expected scenario after its application with the starting conditions of the people, considering the different gender identities and diverse discriminations (find more in section "Intersectionality").

Wanted scenario:

positive impact. The application of the proposal proved to reduce identified inequalities.

Unwanted scenario:

negative impact. The proposal left aside or deepened certain gender inequalities. GIA may be included in the grounds of the bill.

Questions:

Has the impact of the bill proposal on the different population groups that compose the community been taken into consideration? Which individuals, groups or collectives will be affected? How?

Will the impact of the rule include meaningful gender differences? To what extent will each gender be specifically affected? How do the purposes of the proposal affect the current division of labor among women, men and other gender identities? Would the hegemonic model of division of labor based on sex be transformed?

Which pieces of official information and from other sources were used in the gender analysis?

How is the public policy going to be monitored? Has a monitoring strategy been devised?



INTERSECTIONALITY

It is “a useful tool to identify the multiple forms of discrimination that intersect in a way that leads to the subordination and marginalization of women day after day. An intersectional perspective must be applied to every individual in the different levels of public and private life” (Golubov, 2017: 198).

Being a white, cisgender, heterosexual man is not the same as being an Afro-descendant with a disability. In this way, intersectionality serves to create more complex frameworks of analysis than those which only include one axis (gender, class, ethnicity, among others). Thus, the analytical perspective is widened and attention is directed to the way in which systems of oppression are interrelated. Assuming that each system needs the others in order to function creates a distinct theoretical stance that stimulates the rethinking of basic social science concepts (Hill, 1991).

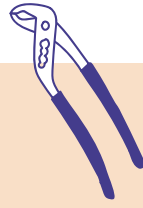
Therefore, an intersectional analysis needs to be carried out to plan a public policy—or bill proposals in this case. Being an educated woman living in a city is not the same as being a poor woman from a native community living in a rural area; being a white, cisgender, heterosexual woman is not the same as being a lesbian or a trans woman; it is not the same being a migrant woman or not. From this perspective, specific individuals arise.

Recommendations:

To define the target population of the bill proposal (public policy), age, sexual orientation, gender identity, class, ethnicity, disability, immigration status, among others, must be considered. In each case, different processes for the violation of rights prevail and they must be taken into consideration in the legislative work.

Questions:

How would the act affect individuals according, for example, to their gender, class, ethnicity, educational level, age and dependants?



CITIZEN PARTICIPATION PUBLIC COMMENT

Citizen participation is the main cornerstone of democracy and it refers to the right of citizens to actively participate and get involved in the process of developing public policies. “It is a right, a responsibility and a supplement of the traditional mechanisms of political representation” (Ibero-American Charter of Citizen Participation in Public Management, 2009). The purpose is to ensure that all citizens participate in the decision-making process of public policies and that their concerns are acknowledged and considered.

Social inclusion is the process by means of which the conditions for vulnerable people (due to different reasons such as age, sex, gender, disability, ethnicity, religion, class, among others) to participate in their societies can be improved, offering them better opportunities and access to resources, hearing their voice and respecting their rights (Argentine House of Deputies, 2019).

In case the rights of indigenous peoples become affected, the standards for making consultations and previous, free and informed consent must be taken into account.

Legislators are the clear reflection of citizen participation and they play a crucial role by representing the population in the search for mechanisms for the community to participate in the decision-making process, monitoring and assessment of legislation and public policies in general.

Recommendations:

It is of great importance for citizen participation to be early and timely. It needs to be present as soon as the social issues that acts seek to solve are identified, during the legislative debate process and, later on, after acts are passed, to monitor their implementation and outcomes.

The Argentine House of Deputies has an Open Legislation Portal (<https://leyesabiertas.hcdn.gob.ar>), by means of which citizens can make contributions and comments.

In addition, the implementation of the virtual modality makes federal participation easier during the entire legislative process.

Questions:

Was civil society called upon for the drafting of the bill proposal or during its discussion?

Were the opinions of different social groups (civil society organizations, experts, among others) on the issue to be regulated taken into consideration?



GENDER-INCLUSIVE LANGUAGE

As to the adoption of the gender perspective for the drafting of bill proposals, it is important to use of gender-inclusive language as a way of including the differences among men, women and LGTBQ+ when naming them. The purpose is to avoid using discriminatory or excluding language, as it is the case of the Spanish “generic masculine.” As the form corresponds exactly with the masculine version, the supposedly comprehensive form is not clear; as women may (or may not) be included, this may lead to the violation of their rights.

Gender-inclusive language can be defined as that use of language which resorts to some existing resources in order to attain a non-sexist wording. “Non-sexist” refers to the linguistic resources by means of which people can be referred to without implying hierarchies, excluding nor assigning value to one gender over the others to mainstream the diverse nature of gender identities. (Inclusive Language Dossier, Parliamentary Equity and Gender Observatory, Argentine House of Deputies, 2019).

It is essential to be aware of the language used in all the stages of the legislative process: the drafting of the bill proposal, committee decisions and the text passed in the plenary session. It would be desirable to use inclusive language even in those bill proposals that have already been drafted and incorporate it before they are adopted.

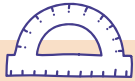
Recomendación:

For the drafting of bill proposals, committee decisions, and amendments introduced in the chamber, see the Guidelines for the use of non-sexist and egalitarian language in the Argentine House of Deputies, at https://www4.hcdn.gob.ar/archivos/genero/archivos/guia_lenguaje_igualitario.pdf.

For more information, visit the Gender-Inclusive Language Dossier (2020), Parliamentary Equity and Gender Observatory, Directorate-General on Equality, at: https://www4.hcdn.gob.ar/archivos/genero/archivos/Dossier_Lenguaje_inclusivo.pdf.

Questions:

In accordance with the recommendations stated in the Guidelines, does the bill proposal use gender-inclusive, non-sexist, non-discriminatory language?



BUDGET: FORECASTING FUNDING IN THE BILL PROPOSAL (IF NECESSARY)

The implementation of most public policies requires financial resources, which implies taking into account the adequacy of expenditure to address everyone's needs.

“At the national level, there are regulations that require provisions which imply expenditure to state the means of funding; their implementation may even be delayed until financial resources are allocated. Therefore, any rule providing for expenditure must include a ‘budgetary clause’, a section specifying the following:

- The amount of the expenditure, if known;
- When the amount is unknown, a general formula is used;
- The corresponding budgetary jurisdiction;
- If a fund or any other financing mechanism is created;
- If the expenditure can be financed by debt.”

(Part of Alejandra Saudino's presentation used in the workshop “Gender-sensitive legislative technique,” given in October 2020 and organized by the Directorate-General on Equality of the Argentine House of Deputies and the Metropolitan Athletic Federation (FAM).

Recommendations:

To include a budgetary clause that guarantees the allocation of resources by forecasting the means of funding.

To benefit from the technical support provided by the Congressional Budget Of-ice (OPC) (<https://www.opc.gob.ar/categoria/perspectiva-de-genero>).

Questions:

Have financial resources been allocated to the bill proposal? What is the means of funding to afford the expenditure? Could it be included in an existing ministerial program? Can it be included as part of a specific allocation of resources coming from existing taxes? Has a monitoring mechanism been established to control the expenditure of the allocated financial resources?

If the aim of the bill proposal is to monitor the implementation of a public policy, visit: <https://www.opc.gob.ar/evaluacion-politicas-de-gobierno/presupuesto-con-perspectiva-de-genero>

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GUIDING QUESTIONS

1. EQUALITY

- Is the bill proposal aimed at improving formal (legal) equality for everyone?
- Which living conditions are expected for the different genders if the bill proposal is passed?
- Does the bill proposal include any affirmative action aimed at redressing structural inequalities in relation to particularly vulnerable groups? Is it a relatively short-term action?

2. ADAPTATION TO HUMAN RIGHTS STANDARDS

- Were both domestic and international human rights standards taken into account when establishing the guidelines of the bill?
- Is the bill grounded on international regulations on human rights?
- In particular, were the main instruments and interpretations on human rights of women, children, adolescents and LGBTIQ+ people consulted?

3. GENDER IMPACT ASSESSMENT (GIA)

- Have data disaggregated by gender for the context of application of the proposal been collected?
- Is qualitative information on the roles attributed to the different genders in the context of application of the proposal available?
- Has the impact of the bill proposal on the different population groups been taken into consideration? Which individuals, groups or collectives will be affected? How?
- Will the impact of the rule include meaningful gender differences? To what extent will each gender be specifically affected?
- Does the proposal affect the current division of labor among genders?
- Would the hegemonic model of division of labor based on sex be transformed?
- Which pieces of official information and from other sources were used in the gender analysis?

- Was GIA included in the grounds of the bill proposal?
- How is the public policy going to be monitored? Has a monitoring strategy been devised? Has the control body been established?

4. INTERSECTIONALITY

- How will the act affect individuals according to their gender, class, ethnicity, educational level, age, dependants, among others?
- Were different collectives, peoples and communities consulted to assess the need for the public policy?

5. CITIZEN PARTICIPATION

- Was civil society called upon for the drafting of the bill proposal or during its discussion?
- Were the opinions of different social groups (civil society organizations, experts, among others) on the issue to be regulated taken into consideration?

6. GENDER-INCLUSIVE LANGUAGE

- Does the bill proposal use gender-inclusive, non-sexist, non-discriminatory language?

7. BUDGET

- Have financial resources been allocated to the bill proposal?
- What is the means of funding to afford the expenditure?
- Could it be included in an existing ministerial program?
- Can it be included as part of a specific allocation of resources coming from existing taxes?
- Has a monitoring mechanism been established to control the expenditure of the allocated financial resources?

APPENDIX: STAGES OF A BILL PROPOSAL

A bill proposal is carried forward through the different stages of the legislative process to become a law. The lines of work described above can be applied along that process in the following manner:

- Study stage

During this stage, GIA must be applied, adequacy to domestic and international human rights standards must be assessed, together with the contribution of the bill proposal to attain formal equality and equality of outcome. Normative analysis and analysis of the regulatory framework involved must be carried out. Citizen participation and intersectional perspective can also be applied.

- Drafting stage

The recitals must include the findings reached in the study of the bill proposal, the reasons why the proposed solution is the correct one, and its desired effects in the legal system. The results of the normative analysis must also be reported to make explicit the political intent of working on the subject with the purpose of bridging inequality gaps without neglecting legal logic.

When necessary, there must be a section on the way the public policy is going to be monitored, by which monitoring body and the budgetary clause.

Special attention must be paid to the use of gender-inclusive language in the recitals and sections.

- Committee stage:

It is important that advisory teams and committee members keep track of bill proposals to maintain the application of the gender perspective while they are discussed in the committees.

During this stage, diverse participation not only of the collectives and peoples involved but also of the related state agencies is key.

- Debate stage:

Once the bill proposal reaches the floor, it is advisable to use the time allotted by the regulations for the sponsors and co-sponsors to share the scope of the bill, making reference, in particular, to its implementation of human rights standards, contribution to equality, GIA and the joint work and consensus reached by politicians and interested parties. Making use of this statutory resource generates two effects: on the one hand, informing the plenary session that the gender perspective has been applied to the bill; and, on the other hand, recording it in the verbatim report, public document used as source for interpretation when laws enter into force, especially by the judicial branch.

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