

Post-Legislative Scrutiny of the Law against Gender-Based Violence

The Successful Story of the Cabo Verde Parliament

Elisabete Azevedo-Harman & Ricardo Godinho Gomes*

Abstract

In 2011 Cabo Verde's parliament approved the Law Against Gender-Based Violence (GBV). In 2014, 3 years later, the Women's Caucus (WC) of this parliament agreed to trace the implementation of the law and its impact. This decision was taken without a clear perception of how to conduct post-legislative scrutiny (PLS) and without suspecting the eventual troubling findings. Post-legislative scrutiny has not previously been done in Cabo Verde, partly because of the inexperience of this democratic parliament, partly because PLS is a rather recent and still underdeveloped legislative activity anchored in oversight and legislation functions. In 2014 and 2015, Women's Caucus conducted PLS of the GBV Law finding that the government had not enacted the necessary implementation rules to enforce this law, which hampered budget allocations and funding. According to the country's legislative process this should have taken place within 10 months of the law's approval. This study describes and discusses how the post-legislative scrutiny of the GBV Law was conducted and the lessons learned through this pioneering process in Cabo Verde's parliament.

Keywords: oversight, post-legislative scrutiny, Cabo Verde, parliament.

A Introduction

In 2011, Cabo Verde's parliament approved the Law Against Gender-Based Violence (GBV). The law approval resulted from a broad and enthusiastic consensus across political parties and civil society.

Three years later, between 2013 and 2014, the Women's Caucus (WC) in the parliament agreed to trace the implementation of the law and its impact. This

* Elisabete Azevedo-Harman is Professor on legislative and political institutions in Angolan and Mozambican universities, political advisor, international expert on parliamentary and institutional development. Currently is a senior consultant of the National Assembly of Angola. Ricardo Godinho Gomes is a political scientist in the field of democratic governance since 2006 for UNDP, more specifically in electoral assistance, parliamentary strengthening and public finance management. He is a UNDP programme manager and he was the head of the management units of the project in support of electoral cycles in PALOP and Timor-Leste (2010-2013) and the Pro PALOP-TL SAI (2014-2017).

decision was taken without a clear perception of how to conduct post-legislative scrutiny (PLS) and without knowledge of their subsequent troubling findings. Post-legislative scrutiny has never previously been done in this parliament, partly because of the inexperience of this democratic parliament, partly because PLS is a rather recent and still underdeveloped legislative activity anchored in oversight and legislation functions.

After an intensive and coordinated plan of field visits to 22 municipalities, the 2014 post-legislative scrutiny of the GBV Law led by the WC revealed that the government had not enacted the necessary implementation rules to ensure enforcement, which hampered budget allocations and funding. According to the country's legislative process, this should have taken place within 10 months of the law's approval. Their findings took even the parliament by surprise and forced it to ensure that the government approves the necessary regulatory elements and allocation of funds for the law's implementation.

The authors used a descriptive research study approach applying the case study methodology and the survey method. The methodology allowed to discuss quantitative data on the *ex-ante* and *ex-post* cases of GBV, as well as data on the legislative procedures used in the law's approval and PLS process.¹

The study describes how the post-legislative scrutiny of the GBV Law was conducted, what strategies were adopted by the WC to successfully pressure the executive and the lessons learned through this pioneering process in Cabo Verde's parliament. The research also highlights the role of post-legislative scrutiny of the GBV Law for the success of the law's implementation.

B Cabo Verde's Parliament: A Tranquil Institutional History

Cabo Verde's parliament enjoys a relatively tranquil institutional history in comparison with the vast majority of their African counterparts. The political literature has characterized politics in Africa as an arena where ruling leaders have manoeuvred formal rules and institutions to their benefit.² In contrast, Cabo Verde's national assembly enjoys balanced constitutional powers. Legislative functions are ones that are often dominated by the Executive. Parliaments are theoretically presented as the lawmakers. However, while it is true that they remain the most democratic and legitimate institution to produce legislation, it is the Executive that leads this function on an ongoing basis.

- 1 Interviews were conducted with four key informants directly involved in the process (2012-2015). A questionnaire was administered to 18 MPs of the current legislature to capture their attitudes to PLS in their parliament. The survey provided data on MP's perceptions and attitudes regarding the post-legislative scrutiny of the GBV Law and the function of PLS in general in their parliament.
- 2 G. Hyden, *African Politics in Comparative Perspective*, Cambridge, Cambridge University Press, 2006.

C How Parliament in Cabo Verde Is Undertaking Oversight and Using Oversight Tools

This article problematizes the challenges of conceptualizing and carrying out PLS by Cabo Verde parliament. A brief review of the relevant literature written in Portuguese shows that concepts used include ‘evaluation of the legislative impact’, ‘as ex-ante and ex-post evaluation’, ‘evaluation techniques retrospective’ ‘legislation quality’ and so on.³

Parliament’s oversight role is set out in the constitution⁴ and in the rules of parliamentary procedure.⁵ There is a system to monitor how effectively parliament performs its oversight role. The institution publishes an annual report on its oversight activities, but it has not reviewed the performance of its oversight role in the last 5 years, nor is there an official plan to increase parliament’s institutional capacity for oversight in the future.

Cabo Verde’s National Assembly provides equal opportunities both in plenary sessions and in committees for oversight. According to a survey completed by the parliament within the scope of the 2017 Inter Parliamentary Union|United Nations Development Programme Global Parliamentary Report and a strategic plan exercise carried out with the support of the Pro PALOP-TL SAI,⁶ Cabo Verde parliament is using most oversight tools. In the plenary, the legislature uses the most common PLS tools, namely questions, budget scrutiny, interpellations, and commissions of inquiry.

D PLS of the Law against Gender-Based Violence – The Successful Story of the Cabo Verde Parliament

The Law on Measures to Prevent and Suppress the Crime of Gender-Based Violence (VBG Act) was a product of Civil Society Organizations’ advocacy. The drafting of the VBG Act was triggered by the Cape Verdean Institute for Gender Equality and Equity (ICIEG), with the support of international organizations such as the United States Embassy, and UN Women (UNW), the Network of Women Parliamentarians, and civil society. In 2010, the law was passed by the National Assembly.

3 R.L. Scalcon, ‘Avaliação de impacto legislativo: a prática europeia e suas lições para o Brasil’, *Revista de informação legislativa*, Vol. 54, No. 214, 2016, pp. 113-130. Available at: www12.senado.leg.br/ril/edicoes/54/214/ril_v54_n214_p113 (last accessed 17 June 2018). F. Meneguim, ‘Avaliação de impacto legislativo no Brasil, Senado Federal’, 2010. Available at: <https://www12.senado.leg.br/publicacoes/estudos-legislativos/tipos-de-estudos/textos-para-discussao/td-70-avaliacao-de-impacto-legislativo-no-brasil> (last accessed 20 June 2018).

4 Assembleia Nacional de Cabo Verde, Constitution of Cabo Verde, Art. 180, 2010.

5 National Assembly of Cabo Verde, Art. 228 of the Standing orders. 2000.

6 A South-South and Triangular Multi-Country (SStrC-MC) Project fully funded by the European Union with 6.4 million euros and directly implemented by UNDP Country Office in Cabo Verde for the period 2013-2017, delivering activities in Angola, Cabo Verde, Guinea Bissau, Mozambique, Sao Tome and Principe, and Timor-Leste. More information can be found at <https://agora-parl.org/pro-palop-tl-sai> (last accessed 20 September 2019).

The proposed draft Law Decree was drafted in 2012 but was only approved in December 2014.

Regardless of the PLS carried out by the WC only in 2015 the necessary regulatory was produced.

I Why and How Was This Achieved?⁷

In 2013, 1 year after the enactment of the GBV law, the draft LD required for the implementation of the law was still not approved. The WC initiated an advocacy campaign to put the issue on the political agenda, trying to overcome the hurdles of the politics of oversight and introduce the matter into parliament's 2013 sessions agenda.

Building on these efforts and preliminary results, the EU-funded UNDP SStrC multi-country project, the Pro PALOP-TL SAI, partnering with UNW, provided expert and financial support to the WC and parliament to set up an effective strategy to overcome the challenges referred to above.

During the PLS two main issues were found: the stagnation in the implementation due to lack of regulation and, consequently, lack of budget allocations and funding for the implementation of the measures foreseen in the law.

The lack of the implementation had a negative impact on governance and the legitimacy of the government and parliament. The announced policy could not be implemented and the electoral manifesto regarding fighting GBV was seen increasingly as an unfulfilled political promise.

Consequently, at the beginning of the third quarter of 2014, using the 2015 budget formulation process as the entry point, the WC put in place and successfully implemented its strategy to approve the GBV law regulation. Using as sources 2014 expenditure reports and 2015 executive budget proposal, training on gender-responsive budgeting targeting the WC and the Budget Standing Committee members was followed by the setup of a framework to scrutinize state budget appropriations and public expenditure to promote gender equity and implement gender policy targets.

Due to the thorough analysis of the budget documents, the legislature was able to face the executive with a solid a realistic approach to promote the national and the Executive's own gender policy targets without affecting the fiscal discipline. This exercise strengthened the linkages between the WC and the Budget Standing Committee and allowed the former to influence effectively discussions of the Executive budget proposal in committees during the formulation of the 2015 state budget.

The legislature framed the GBV law's regulation and funding proposals within a broader agenda to promote gender equality and create the conditions for the

7 Interviewed with four of the actors involved in the process of making the GBV Law and the evaluation of the law: Graça Sanches (MP and President of the Women's Caucus for the period 2011-2016), Virginia Baessa (MP and secretary of WC 2011-2016), Clovis Silva (MP 2011-2016 and 2016-2021), and Anete Borges (member of the association of Women Lawyers, currently president).

implementation of the Executive's policies and targets through gender-responsive budgeting streamlined into the 2015 budgetary.⁸

The outcomes of this strategy occurred during 2015 fiscal year, namely:

- 1 The approval in December 2014 and enactment in January 2015 of the GBV regulation.
- 2 An increase in funding by the ministry responsible for the implementation of the GBV law in the 2015 budget of 84,000 USD (approximately 8 million CVE).
- 3 The formulation of a clear roadmap for the streamlining of a national gender policy and targets in the state budget.
- 4 The standardization of an approach to legislative oversight of public expenditure with a focus on gender that was attempted in other parliaments within the PALOP and Timor-Leste.

In addition, for this research a questionnaire was administered to 18 MPs (the current mandate) and within the findings 28% of respondents were not aware of any *ex-post* legislative scrutiny action that has taken place in Cape Verde. The current MPs perceptions reveal that MPs consider it important to oversee the implementation of legislation. After unanimous agreement on the need for *ex-post* evaluation of the legislation there are differences around how to do this and with whom.

E Conclusion

The GBV *ex-post* evaluation was a pioneer and successful story led by the parliament with other important actors, including those from civil society. However, it did not generate within the parliament a systematic *modus operandi* for *ex-post* legislation evaluation.

A good lesson from the Cabo Verde law and its regulation was the establishment of the regulation on compulsory *ex-post* evaluation with detailed steps. This can be undertaken in the future.

8 More information at <http://iknowpolitics.org/en/news/partner-news/pro-palop-tl-sai-strengthening-women-mps%E2%80%99-capacities-more-effective-gender> (last accessed 30 September 2018).