

## Preface

Over the past couple of years, more parliaments have stepped up to the challenge to start monitoring the implementation of the laws they have passed. Despite perceptions that assessing law implementation is not an exciting issue, Members of Parliament start to advocate that they need the tools to assess to what extent legislation is implemented as intended and has the expected effects.

As parliaments put a large part of their human and financial resources to the process of debating and adopting legislation, it is not uncommon that the aspect of reviewing the implementation of legislation may be overlooked.

Implementation is a complex matter and several incidents can affect its course, including changes in facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.

Hence, implementation of legislation depends on the clarity of the legislative text, its compatibility with other laws, constitution, international obligations, available resources (human, financial) to implement the law, availability of secondary legislation, and the accessibility of legislation to those in charge for its enforcement.

Despite these challenges there are four overarching reasons why parliaments should prioritise monitoring and evaluating the implementation of legislation: 1. to ensure the requirements of democratic governance and the need to implement legislation in accordance with the principles of legality and legal certainty are being met; 2. to enable the adverse effects of new legislation to be apprehended more timely and readily; 3. to improve the focus on implementation and delivery of policy aims; and 4. to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

Therefore, Post-Legislative Scrutiny (PLS), or ex-post evaluation of legislation, is an important instrument for increasing government accountability and is part of the oversight role of parliament.

PLS is a two-pillars concept. In a narrow interpretation, PLS looks at the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law. In a broader sense, PLS looks at the impact of legislation; whether the intended policy objectives of the law have been met and how effectively. Therefore, there are two dimensions to PLS: (1) to evaluate the technical entrance into force and the enactment of a piece of legislation; (2) to evaluate its relationship with intended policy outcomes and the impact. To the extent that parliaments seek to carry out both dimensions, PLS contributes to improving the law itself and people's well-being. PLS thus contributes to good governance, including achieving the Sustainable Development Goals.

On 17-18 June 2019, the University of Jember (Indonesia), University of Yangon (Myanmar) and the Westminster Foundation for Democracy (WFD) co-organized the Academic Conference on Post-Legislative Scrutiny in Asia, bringing together 700 participants from 20 countries from Asia and beyond. A total of 24 research papers were presented during the 2-days conference in Yangon, including presentations on PLS of legislation regarding SDGs, military to civilian transition, citizenship in Myanmar, religious issues in Indonesia, structures and procedures for PLS in parliaments in Europe and Asia. The current Special Issue of the Journal brings together some of these papers.

Analysing emerging practices of PLS in different countries and political systems, it is recognized that very often the government and executive agencies are responsible for implementation of legislation and service delivery to citizens; and hence parliament often relies to a large extent on government information to assess the implementation of legislation. However, it is also noted that a diversification of data sources, such as from CSOs, international organizations and independent oversight institutions, considerably contributes to parliaments ability to PLS. The challenges of the design of laws can also affect the implementation of legislation in an early phase. Therefore, review clauses in bills can ensure that a proper impact evaluation of legislation will be planned. To understand the implementation and impact of legislation, it is useful to review secondary or delegated legislation at the same time as reviewing the primary act.

Through its country programmes around the world, WFD is increasing public awareness on the importance of assessing implementation of legislation, is supporting parliaments in pilot projects on PLS and encourages integrating gender analysis and PLS.

During the Academic Conference, the “London Declaration on Post-Legislative Scrutiny” has been presented (annex to the Special Issue). The document is offered for endorsement to parliaments worldwide as well as research institutions and other institutional stakeholders in the implementation of legislation in a wide range of countries. While maintaining a ‘pledge bank’, WFD supports signatories by providing policy advice and technical assistance.

Following the Academic Conference, the University of Jember and WFD Indonesia started a new cooperation to start combatting discrimination and human rights violations through PLS in the country. It was identified that strengthening the promotion and protection of human rights can benefit from a correct assessment of the implementation of legislation, identifying its impact, remedying possible gaps and addressing unintended consequences of legislation. Some human rights problems emerge because, among others, implementation of legislation gets stuck and discriminatory practices are entrenched at the level of sub-national secondary legislation or delegated legislation as issued by the provincial governments in the country. Human rights implementation often suffers from poor understanding of the law, gaps in legislation or reliance on local discriminatory patterns. To overcome such challenges and to ensure that citizens benefit from equal opportunities and equal protection under the law, there is need for a more comprehensive approach to PLS which fully considers discriminatory secondary legislation at sub-national level.

Experiences in other countries applying PLS are encouraging. Interesting examples can be found in, for instance, the UK, Cape Verde and Uganda. The UK House of Lords' PLS of the Equality Act (2010) focused on the rights of persons with disability and secured the implementation of key provisions for equal access to transport for persons with disability. In Cape Verde, women MPs secured more resources and new secondary legislation to ensure implementation of the Law on Gender Equality (2011), alongside a new roadmap on the national gender policy. In Uganda, the PLS of the Prohibition of Female Genital Mutilation Act (2010) highlighted the importance of conducting sensitization campaigns more broadly, assessing the financial implications of legislation in more depth, while recognising the limits of legislation in changing deeply rooted traditions and customs.

Experiences in various countries indicate that PLS is not a "luxury good", beyond the reach of newer or less established parliaments. Parliaments at various stages of institutional development have undertaken PLS successfully, and the reason for that is that PLS is undertaken in a wide variety of ways, in accordance with the legal framework, parliamentary practice and available resources. PLS thus becomes a useful tool to contributing to better governance.

We hope that the current Special Issue of the Journal will contribute to better understanding of PLS, encourage further research on the role of parliament and other stakeholders in PLS and contribute to better law implementation and the rule of law.

Franklin De Vrieze,  
Senior Governance Adviser,  
Westminster Foundation for Democracy.