



Parliamentary and legislative indicators for Post-Legislative Scrutiny

CONCEPT NOTE

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1. Introduction

As parliaments assume a responsibility to monitor whether the laws they have passed are implemented as intended and have the expected impact, [Post-Legislative Scrutiny \(PLS\) is increasingly recognized](#) as an important dimension within the oversight role and the legislative role of parliament and an integral part of the legislative cycle.

1.1. The case for Post-Legislative Scrutiny

The act of evaluating laws that a parliament has passed is known as PLS. In [its 2006 report](#), the UK Law Commission outlined four main reasons for having more systematic PLS: to see whether legislation is working out in practice, as intended; to contribute to better regulation; to improve the focus on implementation and delivery of policy aims; to identify and disseminate good practise so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

In addition, one can mention the need to act preventively regarding potential adverse effects of new legislation on fundamental rights, as well as, for instance, gender equality, the environment and climate, or on economic and social welfare.

The act of carrying out PLS can therefore be justified as [a stand-alone activity](#) that enables a parliament to self-monitor and evaluate, as well as reflect on the merits of its own democratic output and internal technical ability. Various parliaments are beginning to institutionalise PLS as a separate mechanism within parliament.

1.2. The two functions of PLS

There are [two types of PLS](#). PLS can refer to a broad legislative review, the purpose of which is to evaluate whether and to what extent one or more pieces of legislation has achieved its intended purpose and what is its impact. It can also refer to a narrower evaluation of how a piece of legislation is working in practice. This latter is more focused and a more purely legal and technical review.

In consequence, the act of PLS holds two distinct functions: (1.) a monitoring function, as the application of legislation and especially the adoption of the necessary secondary legislation is assessed by parliament at identified moments (2.) an evaluation function, as parliaments seek to ensure the normative aims of policies are reflected in the results and effects of legislation.

1.3. PLS as a legislative enabler

The growing impetus for PLS coincides with the rationalisation of the law-making process, and a growing demand for the quality of legislation to be reviewed as well as procedures that can support parliaments to manage contemporary [‘legislative complexity’](#). Legislative evaluation is an effort to support this by institutionalising and systematising a moment of analysis and assessment focusing specifically on improving

the quality of legislation passed. Such an act should improve a parliament's understanding of the causal relations between a law and its effects as the accuracy of assumptions underlying legislation are tested after its enactment.

PLS as a form of legislative evaluation is therefore a learning process that both contributes to a parliament's knowledge of the impacts of legislation but also its know-how in ensuring legislation meets the needs of relevant stakeholders. By implication, PLS may reduce ambiguity and distrust and allows the legislator to learn by doing.

The UK House of Lords' Constitution Committee, in [its 2004 report](#), recommended that PLS should be a routine feature of parliamentary scrutiny. The Committee took a holistic view of the legislative process, encompassing not only the passage of a bill after introduction, but also pre- and post-legislative scrutiny. The adoption of such an 'end-to-end' or '[full cycle approach to the legislative process](#)' is further developed around parliament's role in the national budget process. PLS can be seen as a further extension of this responsabilisation of parliament at key stages in governance processes.

1.4. PLS as a form of executive oversight

While PLS can take the form of a separate mechanism within parliament, the process of evaluation is also the by-product of a parliament carrying out effective executive oversight and effective law-making.

By reviewing government action or inaction, and by amending legislation, a parliament takes measure of the extent to which the laws of a country are fit for purpose, as well as the extent to which a government is managing the effective implementation of its policies and abiding by statutory obligations.

However, this link is not always formally recognised within the parliamentary system, and relevant information is not always captured, directed, and responded to on that basis.

1.5. Factors determining parliament's capacity and performance in PLS

Taking into account the diversity of political and parliamentary systems, a [parliament's capacity and performance in PLS](#) are to a significant extent determined by the presence of parliamentary procedures and structures specific to PLS and the extent that PLS inquiries generate written findings and recommendations (PLS reports), and the parliament monitors and ensures follow-up to its PLS findings. [Earlier research](#) outlined a categorization of parliaments in terms of their PLS capacity and performance as passive, informal, formal, and independent scrutinizers.

Aside from parliament's capacity and performance in PLS, a country's system of law making provides a determining framework for conducting PLS. The process of law-making, the preparation of the accompanying documents for bills and some of the institutional features of the relationship between parliament and the government affect the system and practices of PLS.

In several parliaments, the practices of PLS are also influenced by the need to have a better understanding of how law implementation affects good governance considerations in terms of – for instance - the gender impact of legislation as well as the impact on the

environment and climate. Law implementation may give effect to unintended and unknown consequences for [gender equality](#), the [environment and climate](#), or other topics. Therefore, mainstreaming such thematic impact assessments related to good governance has become an additional driving force for the emergence of new systems and practices of PLS.

2. Objective of the project

Building upon its previous research on [principles](#) and [practical steps](#) in PLS, country research, comparative studies and PLS pilot projects, the Westminster Foundation for Democracy (WFD) is launching a new project on designing parliamentary and legislative indicators for PLS.

The overall objective of the project is, firstly, to measure how effective a parliament is in performing PLS and consider options for upgrading or strengthening PLS practices and systems. The objective of the project is, secondly, to assess, in a limited way, the law-making process, more specifically those aspects of effective legislation and the law-making process which are directly related to PLS, such as - for instance - Impact Assessments and the inclusion of review clauses in laws.

The PLS indicators are called 'parliamentary and legislative' indicators as they include both indicators regarding the role of parliaments in PLS as well as indicators related to the legislative process and the quality of legislation as far as relevant to PLS.

The project of drafting parliamentary and legislative indicators for PLS will enable parliaments, parliamentarians, parliamentary staff, legislative drafters, parliamentary development practitioners and governance advisers at donor agencies to make informed choices on how to initiate and strengthen ex-post legislative impact assessments, and by extension strengthen the legislative and oversight roles of parliament.

3. Purpose of the PLS indicators

With regards to the content of the parliamentary and legislative indicators for PLS, we have designed an outline which will ensure that the indicators contribute to the following objectives:

1. Analysing how a country's system of law-making shapes its PLS practices.
2. Understanding parliament's capacity to conduct PLS.
3. Analysing parliament's performance in PLS.
4. Mainstreaming a good governance thematic approach to PLS.

The broader objective of the indicators is to function as a tool for benchmarking, self-reflection, peer learning and exchange of practice between Parliaments.

4. Scope: four types of PLS indicators

In drafting the parliamentary and legislative indicators for PLS, we have identified four types of indicators which correspond to the above-mentioned objectives.

- I. **Framework indicators** identify how the country's process of law making and the executive-legislative relations provide the framework that enables PLS of individual laws. The framework indicators outline both incentives and challenges in the country's governance system in the way it affects how parliament can conduct PLS.
- II. **Parliament capacity indicators** assess parliament's procedures, structures, and resources that are dedicated to conducting PLS. They outline provisions that upscale parliament's approach of PLS. These indicators focus on how parliament is organized to conduct PLS as it relates to its overall legislative and oversight practices.
- III. **Practice indicators** analyse how parliament applies its procedures, structures, and resources to effectively conduct PLS. They also assess the quality of ex-post reporting and follow-up. While parliamentary procedures and resources might enable parliament to conduct PLS, the extent to which these are being used in practice is analysed here.
- IV. **Thematic indicators** analyse the legislature's good governance approach to PLS, and outlines options for mainstreaming crucial horizontal lenses to PLS, such as gender equality and environment / climate.

5. Structure of the parliamentary and legislative indicators for PLS

For each indicator, we aim to provide the following information:

- One paragraph with a narrative introduction that provides an explanation or clarification of the substance of the PLS indicator, to ensure a clear common understanding on what is the subject under review. Each PLS indicator provides a description of the subject against which parliament can assess its capacity or performance.
- One paragraph outlining options emerging from parliamentary and legislative practices to help parliaments consider ways to upscale their capacity and performance regarding PLS in that indicator. The options will ask different questions or project alternatives, which may be applicable depending on the legal system, context, political opportunities, strategic objectives of the parliament and the external context as identified in a Political Economy Analysis (PEA).

Under each of the four categories of PLS indicators, we intend to provide one or more text boxes with country-examples (legal framework or parliamentary practice), illustrating one or more indicators under that category.

6. Aligned with the Indicators for Democratic Parliament

This PLS indicators project builds upon the (ongoing) project of developing 'Indicators for democratic parliament based on the SDG targets 16.6 and 16.7 as prepared by the Inter-Parliamentary Union (IPU) and other organizations¹, aimed at supporting parliamentary

¹ The 'Indicators for democratic parliament based on the SDG targets 16.6 and 16.7' are currently prepared by the Inter-Parliamentary Union (IPU) in cooperation with Westminster Foundation for Democracy (WFD), Commonwealth Parliamentary Association (CPA), European Commission and INTER PARES, National Democratic Institute (NDI), UNDP, UN Women and Directorio Legislativo.

development. As the IPU-led project aims at developing a set of reliable, comprehensive, and universally relevant indicators for assessing parliamentary capacity and performance, covering all aspects of parliamentary activity, it includes one dimension and a few criteria on PLS.

This project takes on board the outline of the PLS dimension in the IPU-led project and offers a more detailed overview of options available to parliaments in strengthening PLS systems and practices. Specifically, it builds upon dimension 1.6.7 on Post-Legislative Scrutiny within the indicator 1.6 on legislation / law making.

In this way, the project of PLS indicators will be complementary and delve in further detail into one dimension within the 'Parliamentary Indicators based on the SDGs'.

7. Applying the PLS indicators

To accompany the best application of the parliamentary and legislative indicators for PLS in different countries, a *How-to-Note* will provide guidance and suggestions on the following issues.

7.1. Self-assessment and support by facilitator

As the overall objective is for national stakeholders (parliamentarians and parliamentary staff) to measure their parliament's capacity and performance in terms of PLS by comparing it to these indicators, the *How-to-Note* will describe different models of working with the indicators. The self-assessment is widely considered as the appropriate format for ensuring ownership of the process and sufficient input from various segments within parliament. In addition, it can be useful to ensure an external expert-facilitator (1.) to support the self-assessment consultations, (2.) to ensure the drafting of the assessment report in an evidence-based way, and (3.) to prepare recommendations for discussion and validation. This will contribute to avoiding a possible tendency for a too positive or non-objective self-reflection of the functioning of the institution of parliament. A parliament can work directly with a self-assessment expert-facilitator, or through the support of a parliamentary development organization or project.

7.2. Key parliamentary and legislative stakeholders

There are two key groups to include. First, MPs need to be engaged in the process to ensure their viewpoints and experience are part of the review. This needs to include MPs from the ruling party, opposition, and across the political spectrum. Secondly, staff of parliament needs to be engaged, senior staff as well as more junior, technical staff. In addition, it is useful to seek the views of external stakeholders, such as CSOs, independent institutions, and academics. Specifically for the framework indicators, it's important to seek the view of ministry officials and legislative drafters in the government. To have a meaningful process of data collection, validation of findings and follow-up to the recommendations emerging from the assessment, prior endorsement of the project by the leadership of parliament (Speaker, Bureau of Parliament and/or Secretary General) is required.

7.3. *Data collection*

As the institutional memory of a parliament, parliament staff can collect the preliminary data and initial responses, which can include qualitative and quantitative data. The initial data can then be discussed with MPs in focus groups or interviews, with the support of a facilitator. Since the framework or system indicators cover aspects of the interaction between government and parliament, it will be useful to collect data from government ministries and independent institutions and involve them in the process. The external expert-facilitator can offer support in ensuring that non-parliamentary sources of data are sufficiently taken into account.

7.4. *Timing and modular approach of the assessment*

- ✓ The assessment can be conducted at the start of a parliamentary term, mid-term or towards the end of the parliamentary term. It can be done prior to the start of a parliamentary assistance programme and after the programme has concluded.
- ✓ The assessment can also be done in modules. For instance, the oversight and law-making framework assessment [first type of indicators] can be part of an initial country Political Economy Analysis (PEA) to identify the executive-legislative balance of law-making and determine whether PLS is a priority on its own (for instance in contexts where parliament has little legislative drafting role) or whether it should be presented as part of a broader package of legislative process support (where some issues might be ironed out in the pre-legislative scrutiny or drafting phase). Conducting the assessment in a modular approach may also serve as an encouragement for parliaments which are at the start of doing PLS, thus exploring different areas of potential growth.
- ✓ One can envisage rolling out the other types of indicators to assess parliament's ability to do PLS and to do so in a gendered, climate-related and other issue-sensitive way.
- ✓ In this way, the assessment can help parliamentary development programmes identify how PLS fits into parliamentary oversight in the national parliament, the extent to which the parliament is able to do PLS, and the inclusivity of the PLS process and outcomes. The assessment can thus serve as an analytical tool for research and the development of governance or parliamentary strengthening programmes.

7.5. *Generating options for change*

- Under each PLS indicator, parliament can assess its capacity or performance against the subject matter under review.
- In making this assessment, the assessment facilitator or the respondents are invited to document the evidence of the rationale behind the assessment and on which the assessment was based, such as legal texts, parliamentary records, individual interviews, focus groups, and any other relevant information.
- Based on the options paragraph provided under each indicator, the assessment facilitator or respondents select one or more options as relevant in the national

context for the purpose of upscaling parliament's capacity and performance in PLS for that indicator.

- Grounding the assessment in options for change, rather than single-direction recommendations, provides the opportunity to encourage an incremental growth process, in accordance with the level of priority which a parliament wants to give to PLS, or the human resources which it can allocate. In this way, the assessment will generate achievable steps forward and avoid that parliament interlocutors might feel disempowered due to a potential lack of sufficient resources or explicitly stated priorities.
- Throughout the How-To-Note, we'll include country cases, quotes of legal/procedural texts and examples from parliamentary and other reports, and further resources. This will assist the reflection process on possible options, as relevant within the national context.

7.6. Rating or scoring

One part of the assessment is assigning a rating or scoring about the extent a parliament has achieved the PLS indicator. One can envisage a rating, per PLS indicator, according to six grades: "Non-existent", "Poor", "Basic", "Good", "Very good" and "Excellent".

The grade "non-existent" is the lowest grade that corresponds to a "zero" grade, while the grade "excellent" is the highest grade reserved for the strongest assessment against the assessment criterion. An alternative scoring would be numerical, between 0 - 5, for instance.

The grades are identical to the grades used in the IPU-led project of 'Parliamentary Indicators based on the SDGs'. This is done on purpose to ensure the best possible alignment in the assessments of parliament's capacity and performance.

The scoring enables reviewing progress over time, for one parliament, but is not intended to create a ranking among parliaments, as the scoring is determined by national context and political system.

7.7. PLS assessment report and implementation roadmap

It is envisaged that the assessment process results in a PLS assessment report, covering one or more of the four above-mentioned types of PLS indicators. The PLS assessment report, including examples providing evidence for the assessment and the options discussed or recommended, may serve as the baseline study for parliamentary strengthening initiatives related to PLS, and contributing to further institutionalization of PLS, if that is what the parliament aims for. If so, the report can provide the basis for an implementation roadmap to follow-up on identified options. The How-To-Note will provide a template for the report and the implementation roadmap.

7.8. Engaging civil society

It is recommended that the PLS assessment process engages all relevant stakeholders, inside and outside of parliament. Bringing on board civil society can considerably contribute to the transparency of the assessment process and transparency of the functioning of parliament. Bringing on board civil society can happen through a dialogue with the leaderships of CSOs, or as part of questionnaires distributed on the occasion of parliamentary development activities involving CSOs. In addition, the PLS indicators can also be used by civil society to conduct their own, independent review of the functioning of parliament, the legislative process and parliament's preparedness to conduct PLS. The How-to-Note may include a separate section for CSOs [parliamentary monitoring organizations, advocacy groups] on how they can work with the indicators.

7.9. *Communications*

To support the process of data collection and engagement of all stakeholders, a plan for internal and external communications is advisable. The How-to-Note will provide suggestions for the communications plan, based on the experience of similar parliamentary assessments. While the ultimate decision is with parliament, the How-to-Note may suggest that the assessment report will be a public and easily accessible document.

8. **Project approach**

The project of designing the PLS indicators will be supported by 2 or 3 co-drafters and by a reference group which will include parliamentary development experts and legislative experts. Some members of the reference group may be linked to a democracy assistance organization, while others may be linked to a parliament with a track record of conducting PLS. Members of the reference group provide quality assurance and expertise to the project in an individual capacity, rather than on behalf of their organization or its members. The reference group is expected to hold approximately four (online) meetings over a period of six months.²

To overcome challenges regarding time availability or language barriers for non-English speaking persons, the project will work with 'corresponding members' of the reference group. They will be invited to submit written comments on the draft indicators, as translated into other languages.

The draft indicators will be published online for an open consultation and for feedback by parliaments and interested individuals. The draft indicators will also be offered for discussion at the *Parliamentary Development Community of Practice (CoP)*, by end 2021 / early 2022.

The draft indicators will be piloted in a couple of parliaments with existing practice in PLS. WFD or another parliamentary development partner may accompany the piloting (through own staff or a consultant), resulting in an assessment report.

² So far, the reference group for this project includes representatives of 10 organizations, including IPU, CPA, EC's Inter-Pares, NDI, UNDP, Directorio Legislativo, ParlAmericas, OECD, IALS and WFD.

Lessons learned from the piloting, comments from the online consultation and feedback through the *Parliamentary Development CoP* will inform the final version of the indicators. Parliamentary strengthening organizations, good governance institutions and projects, and national parliaments will have the opportunity to endorse the (final version of the) “parliamentary and legislative indicators for PLS”. Such endorsement is considered a public expression of support for the project and its objectives and is not expected to constitute a binding commitment or policy approval for each individual indicator.

9. Tentative project timeline

1.	First meeting reference group to discuss Concept Note: process, scope, type of indicators, timeline, interest in future piloting	16 July 2021
2.	Second meeting reference group on the zero draft of the indicators	28 July 2021
3.	Written feedback by members of reference group to zero draft of indicators and by selected parliaments as corresponding member	July – August
4.	Authors revise zero draft of indicators and work with WFD on first draft	September
5.	Third meeting of reference group to discuss first draft of indicators	October
6.	Second draft of indicators is published online for open consultation and feedback	November-January
7.	Piloting of second draft of indicators in parliaments, resulting in an assessment report	November-January
8.	Discussion of indicators at <i>Parliamentary Development CoP</i>	TBC
9.	Fourth meeting of reference group to discuss online comments, as relevant, and findings from the piloting in a few parliaments	February 2022
10.	Third draft of indicators is finalized and published	March 2022

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