

## Introduction

Post-Legislative Scrutiny (PLS) is emerging as a new dimension within the oversight role of parliament. PLS has been subject to diverse interpretations. It may be carried out without being styled as PLS. The term itself is only now beginning to gain recognition. A narrow interpretation of PLS looks at the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted it and how legal practitioners and citizens have used the law. This also means parliaments are giving more attention to their responsibility to monitor the extent to which the laws are implemented as intended and evaluating their impact. In a broader sense, PLS looks at the impact of legislation, namely whether the policy objectives of the law have been met and their effectiveness.<sup>1</sup>

There is a perception PLS is not an exciting issue, however, we are seeing Member of Parliament (MP's) across the world advocating for it. It is a crucial tool to assess the extent to which legislation is implemented as intended and monitoring its effects. In many countries across the world, it is not uncommon for this attentive review of legislation to be overlooked. Implementation is complex, and several variables can affect its course, including the evolving situation on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework in related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.

Implementation of legislation depends on the clarity of the legislative text, its compatibility with other laws, constitution, international obligations, available resources (human and financial) to implement the law as well as the availability of secondary legislation, and the accessibility of legislation to those overseeing its enforcement. Despite these challenges, there are four overarching reasons why parliaments should prioritize the monitoring and evaluation of 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 in a more timely and readily manner; (3) to improve focus on implementation and delivery of policy aims; and (4) to identify and disseminate good practice allowing lessons to be drawn from the successes and failures revealed by this scrutiny.

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1 For a more detailed discussion, see Fotios Fitsilis & Franklin De Vrieze, "How parliaments monitor sustainable development goals - a ground for application of post legislative scrutiny" (2020) 26:1 J Legis Stud 1-21.

There are two dimensions of PLS: to evaluate the technical entry into force and the enactment of a piece of legislation; and to evaluate its relationship with intended policy outcomes and subsequent impact. 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 the achievement of sustainable development goals (SDGs).<sup>2</sup>

PLS can take form as a separate mechanism within parliament. The process of evaluation is also the by-product of a parliament carrying out effective executive oversight, assessing the extent to which a government is managing the effective implementation of its policies and abiding by statutory obligations. However, the act of carrying out PLS on a primary basis extends beyond executive oversight, it acts as an internal monitoring and evaluation system allowing parliament to consider and reflect on the merits of its own democratic output and internal technical ability. Hence, PLS facilitates parliament in becoming the country's legislative watchdog.

Through the analysis of emerging practices in conducting PLS across countries and political systems, it can be discerned that often government and executive agencies are responsible for implementation of legislation and service delivery to its citizens; leaving parliament to rely on government information to assess the implementation of legislation. However, diversifying data sources, such as civil society organizations, international organizations and independent oversight institutions, contribute considerably to parliament's ability to conduct PLS. The challenge of designing laws can also affect the implementation of legislation during the early phase. Therefore, the insertion of review clauses in Bills can ensure the impact evaluation of legislation is 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.

This second Special Issue of PLS in the *Journal of Southeast Asian Human Rights* provides insightful examples into the practical experiences of PLS processes across Asia and Europe. The articles were derived from the International Academic Conference "PLS in Asia" organised by the Westminster Foundation for Democracy, Yangon, Myanmar, in June 2019. This Special Issue analyses the emerging structures, procedures and methodologies shaping parliaments' approach in conducting PLS. The purpose of the Issue is to demonstrate the value of PLS, benefiting the executive, parliament and the people in ensuring laws deliver what they are expected to. It also helps parliaments and parliamentarians to reflect on their understanding and what they seek to achieve, by PLS.

The *Journal of Southeast Asian Human Rights* chooses to publish the special issue of PLS as the editorial office believes government, especially parliament should

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2 *Ibid* at 2.

take a firmer stance on fulfilling their human rights obligations. Parliament is a representative democratic institution, it ought to have a special duty to ensure human rights fulfilment.<sup>3</sup> The duty of Parliament is not limited to the enactment of laws but must extend to their evaluation; thereby providing opportunities to repeal laws that perpetuate inequality and discrimination. The PLS practices in the United Kingdom, Europe,<sup>4</sup> Australia<sup>5</sup> and other developed countries published in this Journal are expected to be utilised by parliaments, parliamentarians, scholars and practitioners in Southeast Asian Countries, especially to evaluate the impact of a laws and their fulfilment of rights. It can be asserted the majority of parliaments in Southeast Asia have yet to maximise their political strength to protect human rights especially those of vulnerable groups.

The editorial office hopes the readers will gain new and broader insights from this Issue, whether it be the special issue on PLS or those articles focusing on human rights in Southeast Asia. We believe the combination of these two dimensions boasts an impressive array of knowledge and academic discussion on law and human rights in the region.

Finally, we are grateful for the dedication of the anonymous reviewers that contributed to the development and quality enhancement of the articles. Special thanks are due to Saima Raza, the Journal's copy editor who checked all articles to ensure clarity of language and structure. The publication also benefitted from the skills and dedication of the Journal's copy editor Dr. Jesper Kulvmann and assistant of copy and production editor, Cindy Claudia Putri.

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3 Etienne Boumans & Monica Norbart, "The European Parliament and Human Rights Part A" (1989) 7:1 Neth Q Hum Rights 36-56 at 36-37.

4 See for a more detailed discussion at *Ibid* at 36-56.

5 See *e.g.* Sarah Moulds, "Parliamentary Rights Scrutiny and Counter-Terrorism Lawmaking in Australia" (2019) 3:2 J Southeast Asian Hum Rights 185-230. and Sam Hastings & Kate Doust, "An Overview of Post-Legislative Scrutiny in Western Australia" (2019) 3:2 J Southeast Asian Hum Rights 231-257.