Post-Legislative Scrutiny in the Americas

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Acronyms

CONEVAL    National Council for the Evaluation of Social Policy (Mexico)
CSOs       Civil Society Organizations
DFID       Department for International Development
DIDP       Department of Research and Parliamentary Documentation (Peru)
FCO        Foreign and Commonwealth Office
LAC        Latin America and the Caribbean
PLS        Post-Legislative Scrutiny
RIA        Regulatory Impact Assessments
TTFSC      Trinidad and Tobago Forensic Science Centre
WFD        Westminster Foundation for Democracy

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I. Introduction
the why, what, how and who of Post-Legislative Scrutiny

By: Franklin De Vrieze, Senior Governance Adviser, Westminster Foundation for Democracy (WFD)

While parliaments devote a large part of their human and financial resources to the process of adopting legislation, it is not uncommon to overlook the review of implementation of legislation. Implementation is a complex matter depending on the mobilization of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties involved.

As parliaments worldwide start to pay more attention to implementation of legislation and begin to create specific procedures for this, Post-Legislative Scrutiny (PLS) can be considered a broad concept, consisting of two dimensions. First, it looks at the enactment of the law, whether the legal provisions of the law have been brought into force. Second, it looks at the impact of legislation, whether intended policy objectives are met, if implementation and delivery can be improved, and if lessons can be learnt and best practices identified.

Ex-ante and ex-post impact assessments

National governments, ministries or executive agencies often put considerable efforts in drafting new legislation. In many countries, ex-ante Regulatory Impact Assessments (RIA) contribute to preparing the new legislation. Ex-ante RIA, often conducted by the sponsor of the law, may look at the anticipated impact of the law or regulation on public budgetary income and expenditures, at compliance costs to the public, industry and public administration, (depending on topic) costs to (small and medium) business, impact on equality between men and women and on vulnerable groups in society, environmental impact, etc. The ex-ante RIA can provide a valuable benchmark against which to evaluate the actual impact of the legislation after a number of years.

Following the entry into force of the law, there is need for monitoring its implementation, reviewing its impact, and evaluating whether the law has achieved the intended outcomes. Implementation of legislation is a complex task which does not happen automatically.

In many countries, government departments or executive agencies hold most of the information on the impact of legislation. Legislative impact assessments can be helped by institutions such as Statistical Office in terms of empirical acquisition of concrete data and the National Audit Office or Supreme Audit Institution through performance auditing.

In many countries, national parliaments and elected representatives have little information on what happens after a law is adopted. Their focus is often on getting legislation passed, and only to a limited extend on checking how well it is being implemented or if it is being implemented at all. Nevertheless, parliament has a role to monitor the implementation of legislation. Legislative ex-post evaluation can be used as an instrument for accountability and oversight over the executive as well as a mechanism to improve the quality of new legislation and policies. Legislative evaluations may perform a key role in political systems as they provide a basis for parliaments to hold their executives accountable.

Post-Legislative Scrutiny by parliament

Legislative ex-post evaluation by parliament is often called Post-Legislative Scrutiny.
(PLS). It consists of the body of mechanisms and practices used to monitor the implementation of legislation, to evaluate whether the act has generated the intended policy outcomes and to ensure that laws benefit constituents in the way originally intended by MPs. PLS, often carried out by parliamentary committees, is a prominent feature of parliamentary democracy in UK and elsewhere.

**Benefits of PLS**

Lord Norton of Louth (UK House of Lords) identified three main benefits emerge from the process of PLS: (1.) It strengthens democratic governance: legislation adopted by parliament should be implemented and applied in accordance to the principles of rule of law, legality and legal certainty. (2.) It allows the identification of potentially adverse effects of new legislation and the opportunity to act to prevent these. (3.) It enables the consistent appraisal of how laws respond to the issues they intend to regulate. It enables the legislator to learn from experience both in terms of what works and what does not and how effective implementation is in meeting objectives, with an eye to making better legislation in future and reducing the need for corrective action.

Practices in different parliaments indicate various triggers to carry out legislative ex-post evaluations or PLS, such as a provision in the explanatory memorandum, a review or sunset clause in the law, when the law results in high compliance costs, when media reports or high-profile cases challenge the implementation of the policy underpinning the legislation.

**Evidence-based impact assessment**

For PLS to be effective and its findings to obtain broad support, it should seek to avoid being a simple replay of the policy arguments when the merits of the law were debated, but rather focus on the enactment and impact of the law considering the evidence of how it has worked in practice. PLS is very much an evidence-based assessment of the impact of legislation. While the adoption of the law and the debate on the merits of the policy might have been divisive among political parties and MPs at the time, the discussion on PLS should enable an in-depth look on the impact of legislation, looking at how far the objectives have been achieved. Emergency legislation may provide an exception to the rule by allowing for the re-examination of the policy behind the bill. Emergency legislation is often adopted without proper parliamentary scrutiny in time-pressured circumstances. Therefore, it is advisable to ensure the inclusion of a sunset clause for emergency legislation.

In addition, when analysing the impact of legislation, one needs to consider the cumulative effect of legislation, as well as how the state of affairs within a policy area has been shaped by different pieces of legislation. Legislative impact is rarely the effect of one single piece of legislation; hence the usefulness of considering the cumulative effect of legislation.

**Sources of information, stakeholders and public engagement**

Effective Post-Legislative Scrutiny requires full and timely access to governmental information, as well as to the views of a wide range of stakeholders, including civil society organizations. When adopting legislation, parliament needs to clarify how it will access governmental information on the implementation of the legislation. One way is to ensure that government departments provide this information on a regular basis or at an agreed point in time. In the UK, the relevant government department carries out an initial review, three to five years after enactment of the law, which is published as a report and laid before parliament. The relevant select committee then reviews the report and if it considers it appropriate may conduct its own evaluation of the impact of that legislation. If such a framework is not in
place—so that parliament itself needs to take the initiative to collect the relevant information—then access to government information remains important. The executive has a vast state apparatus at its disposal, able to generate the data required to analyse implementation and its impact. Parliament would therefore benefit from drawing on its insights by requesting the executive to submit evidence to the relevant parliamentary body dealing with the review.

The ability of parliament to receive, integrate and process governmental and other available data is of paramount importance. Hence, interconnection with governmental databanks, incorporation of open data and the creation of an administrative apparatus for parliamentary support are prerequisites for an efficient implementation of PLS.

In addition, effective PLS requires the views of a wide range of stakeholders, including civil society organizations; and parliament should put in place mechanisms and opportunities to access CSO views and information.

Public engagement in PLS enables access to additional sources of information, increases the credibility of the findings and enhances public trust in democratic institutions. When committees conduct public hearings or consultations as part of the PLS process, they usually access additional sources of information that increase the credibility of the overall findings of the PLS review. In addition, public consultation and engagement can enhance public trust in parliament as well as the democratic institutions. The results of the PLS findings, e.g. the PLS report, need to be publicly accessible, if possible using open data and document standards.

Follow-up to findings and recommendations

A legislative ex-post evaluation or PLS often results in a report including findings and recommendations. The report, mostly adopted by a parliamentary committee, may also form the basis for parliamentary questions to the executive. While some of these parliamentary questions may serve accountability purposes, they may also be used for agenda-setting purposes, policy change and legislative amendments.

Cross-cutting thematic review, such as gender analysis

A system of PLS scrutiny of past legislation allows a parliament to look at cross-cutting impacts which it has decided to treat as a priority. Interesting topics to look upon could be gender or human rights, regulatory or environmental burdens etc. For example, legislative initiatives frequently affect men and women differently. Systematic analysis and evaluation of law and policy, based on how they impact women, men and other relevant demographic groups can help to identify and avert or redress any potential disadvantages they may create. This technical approach, referred to as gender analysis, also helps to ensure women and men have access to the same opportunities and legal protections. Gender analysis is also used to safeguard value for money and promote government efficiency and transparency. Gender analysis requires the collection and analysis of evidence, such as sex-disaggregated data or qualitative assessments of government services. It also requires policy makers to challenge assumptions about how a government programme or service should be structured, and to ask detailed questions about who is affected by a problem or issue and how they would be impacted by proposed solutions. It is therefore preferable to plan for this process during the early stages of the legislative process, prior to adoption of the law, to ensure systems are in place to collect and collate necessary evidence and information.

Post-Legislative Scrutiny in the Americas

In March 2019, ParlAmericas and the Westminster Foundation for Democracy (WFD) co-organize the workshop on PLS in the Americas. In preparation for this workshop, this paper has been compiled,
highlighting the procedures and practices in reviewing legislation in selected parliaments, while recognising the differences deriving from the countries’ variety of historical backgrounds, political situations and the adopted constitutional and political systems.

Considering the distinct institutional characteristics of each country, each chapter highlights:

- The constitutional and legal basis for the parliament’s legislative powers and PLS;
- The structures within parliament which play an important role in the review of implementation of legislation;
- The legislative process and PLS, including the procedural steps and the role and responsibilities of the main stakeholders in the process.

The case studies in this publication are written by different authors and are informed through a range of sources. Firstly, there are the constitution of each country and the rules governing the structure and procedures of each parliament, known as the Rules of Procedure and (in Westminster-derived parliaments) the Standing Orders. Secondly, information was obtained from the websites of each parliament, some of which are highly developed and provide a great deal of information about parliamentary procedure, while others are more rudimentary but still provide some useful data. Thirdly, this publication relied on published scholarly material on the details of legislative procedure in the respective parliaments and parliamentary systems, wherever available. Finally, some of the information is directly based on the authors’ professional experience of working in the respective parliaments.

WFD sees value in comparative overviews, as they bring the most relevant or best-fit options to the table, which can be considered for incorporation into the national parliament process. Comparative overviews provide the opportunity to identify lessons learned and improve parliamentary practice based upon the experience of various countries, without imposing any national model.

**Westminster Foundation for Democracy and PLS**

Throughout 2017 and 2018, the Westminster Foundation for Democracy (WFD) worked with partnering parliaments to help expand their internal capacity to review how a new law has worked in practice.

WFD developed three tools on Post Legislative Scrutiny: **Comparative Study on Post-Legislative Scrutiny** in parliaments in 10 countries; **Principles for Post-Legislative Scrutiny by Parliament**; and, a **Guide for Parliaments on Post-Legislative Scrutiny**. The publications supported activities and meetings to engage parliamentary staff and legislators around the globe.

In July 2018, the Institute of Advanced Legal Studies of the University of London and the Westminster Foundation for Democracy (WFD) co-organized an academic seminar on Post-Legislative Scrutiny, which forms the basis of a Special Issue of the European Journal on Law Reform (EJLR) on Post-Legislative Scrutiny, published by the Institute of Advanced Legal Studies of the University of London.

Pilot projects on post-legislative scrutiny, including the drafting of manuals, adjusted for the relevant context were developed in Myanmar, Georgia and Indonesia, among others.

Effective parliamentary monitoring of the implementation of legislation can make a fundamental difference when it comes to achieving gender equality. In November 2017, WFD organised a workshop, hosted by the Scottish parliament, that brought together leading experts in parliamentary procedures, policy development and gender equality from more than six countries.
to explore what best practice might look like in integrating gender analysis and post-legislative scrutiny.
II. Chile: progress and challenges for PLS*

By: Constanza Toro, advisor to the Chilean Congress**

“Post-legislative scrutiny appears to be similar to motherhood and apple pie in that everyone appears to be in favour of it. However, unlike motherhood and apple pie, it is not much in evidence”. ¹

Summary
This article shows how post-legislative scrutiny has been developed in Chile, analysing in particular its performance in relation to the scrutiny of the effectiveness, efficacy and efficiency standards of laws. This article examines the way in which the system of post-legislative scrutiny in Chile evaluates each of the aforementioned standards, identifying the advances that have been made over the years in terms of development and the challenges that continue to exist in making improvements to this system.

Key Words
Chile - Chamber of Deputies - post-legislative scrutiny - evaluation of legislation.

I. Introduction
The ultimate goal of any legislation should be that it can be applied and can achieve the results sought at the time it is proposed and enacted. There are many factors that can influence this process, from the design of public policies, to its drafting process, as well as the implementation method. Similarly, there are many stakeholders that play a role in this process, including the government, the legislature, the courts, and so on. In this article, I will address only one specific aspect related to achieving successful legislation: post-legislative scrutiny carried out by parliaments.

To examine this topic, I will focus on the specific case of Chile, using the criteria of the standards established by Luzius Mader to evaluate legislation: (i) effectiveness, (ii) efficacy and (iii) efficiency². These criteria were chosen because they allow us to consider the evaluation of legislation from a technical point of view, as well as considering its performance as a public policy tool.

This article is structured as follows: first, I will describe the different existing scrutiny processes and how they interact with each other. I will then explain Mader’s criteria and the meaning of the three standards that will serve to evaluate the system of post-legislative scrutiny in Chile. Finally, I will present some conclusions, highlighting some recommendations that can help strengthen this system.

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*Article written based on a previous publication by the same author, available at http://lals.uai.cl/index.php/rld/article/view/41

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¹ HOUSE OF LORDS (2004), Par. 165 “Post-legislative scrutiny appears to be similar to motherhood and apple pie in that everyone appears to be in favour of it. However, unlike motherhood and apple pie, it is not much in evidence”.

² MADER (2001), pp. 119.
II. General aspects surrounding the concept of legislative scrutiny

There are multiple ways to evaluate a legislative policy. Hence, it is necessary to start by introducing certain conceptual clarifications, in order to define the specific scope of post-legislative parliamentary scrutiny. The first distinction refers to who carries out the evaluation: whether it is the government, parliament, an independent agency, an experts' committee or another possible stakeholder. A second distinction refers to the time the evaluation is conducted, recognising that the evaluation can be carried out before the policy comes into force, known as an ex-ante, pre-legislative, or retrospective evaluation; or, it can be done once the policy is in force, known as an ex-post, post-legislative, or retrospective evaluation. Post-legislative control or scrutiny (PLS) is considered to be one of the three types of existing ex-post review, along with public policy evaluation and the post-implementation review (PIR). However, even though the post-implementation review and post-legislative scrutiny are ways of evaluating a public policy, they should not be regarded as synonyms. In this respect, the evaluation of public policies is the most generic term used to refer to a systematic evaluation of a regulatory policy. The purpose of the PIR, on the other hand, is to specifically complement the ex-ante evaluation, and is carried out in the context of the impact assessment process. Consequently, the PIR is a "revised version" of the impact assessment, while the PLS seeks to review how the legislation works in practice.

According to the British agency BIS, in post-legislative scrutiny "the primary audience is Parliament; this includes a review to determine the extent to which the main legislation and the secondary regulation that supports it have entered into force. Unlike the PIR, this involves reviewing to what extent the legislation and secondary regulation that supports it have been applied in practice. Thus, post-legislative scrutiny should consider all or a large part of delegated legislation drawn up pursuant to a law." There is a close relationship between the different categories of legislative scrutiny. On the one hand, the evaluation carried out by Parliaments is closely connected with the evaluation by government and other agencies; on the other hand, the ex-post evaluation must be understood in relation to the ex-ante evaluation. This last relationship has been explained by the OECD according to the following framework:

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1 Some authors add a third level of evaluation, which is conducted during the legislative process. KARPEN (2004), pp. 310.

4 Business, Innovation and Training Department (BIS).

This dual relationship between the evaluation conducted by various institutional bodies and the various stages of the regulatory policy cycle highlights the important benefits of post-legislative scrutiny, as well as helping us conceptualise the reasons that justify promoting the development of PLS in parliaments. In short, these reasons can be grouped into the following three categories:

a) Ex-post scrutiny helps improve the quality of the legislation: it contributes to "better regulation" through diverse channels; the first, post-legislative scrutiny, allows for the analysis of the political and regulatory cycle with greater evidence, helping identify shortcomings that exist in the laws in force and, consequently, designing the mechanisms to help rectify said shortcomings. At the same time, it makes it possible to identify good practices that could be replicated in other laws.

b) The second reason for involving parliaments in post-legislative evaluation is related to the idea of improved assignment of responsibility throughout the legislative process, in addition to serving as a counterbalance to the role played by the executive authority. In this sense, post-

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6 The movement in search of "better regulation", which later used the term "smart regulation", highlights the need to improve the quality of regulation. This approach has been adopted by the OECD, the European Union and the United Kingdom. For more details on this agenda, see WEATHERHILL (2007).

7 According to Hansard, there are strong reasons to believe that a more regular and systematic post-legislative scrutiny helps identify and rectify problems with legislation that presents certain deficiencies. Furthermore, knowing that the laws will be constantly monitored has a certain dissuasive effect, making it less likely to enact laws that are inappropriate for their respective purposes. BRAZIER (2005), pp. 7.

8 The House of Lords has also highlighted the usefulness of post-legislative scrutiny in the legislative process as a whole. HOUSE OF LORDS (2004), par. 172

9 In the Chilean legislative process, there are several characteristics that play a major role in the executive authority, including certain matters of exclusive initiative, the possibility of accelerating the legislative process, and so on. MANZI et al (2011), pp. 25 In the context of the European Parliament, Zwaan et al consider that post-legislative evaluation barely functions as an accountability method, rather, it is used for retrospective purposes, in order to set and change the agenda. ZWAAN et al (2016).
legislative scrutiny will help strengthen the representative and oversight role of parliaments\textsuperscript{10}, as well as help develop their internal competencies\textsuperscript{11}.

c) Finally, there is a more general reason to support the development of PLS conducted by parliaments, in order to improve compliance with the conditions for democratic governance, emphasising the need to implement legislation in accordance with the principles of legality and legal certainty\textsuperscript{12}. This point connects the legislative evaluation in general and the post-legislative evaluation in particular with the broader standard of a Rule of Law\textsuperscript{13}.

In this article, I will focus on the first set of benefits of post-legislative parliamentary scrutiny, because they are more related to the rationale inherent to the legislative process. The idea of parliaments that promote PLS as a "legislative facilitator" is in line with streamlining the law-making process, designed to account for the growing complexities of legislation in our day. In this context, having an institutionalised PLS system contributes to reducing ambiguity and legislative distrust\textsuperscript{14}. On the other hand, the parliamentarian PLS can present certain disadvantageous aspects. In this regard, it has been noted that post-legislative scrutiny should not be a scenario that allows for the review of arguments on public policies discussed during the debate leading to the approval of a law. This means that PLS should not be a second opportunity to debate a law, but rather to examine it in a constructive and future-focused way. Likewise, it must be recognised that there are costs involved in PLS, in terms of time and resources, which will probably translate into the need to prioritise laws subject to PLS. Finally, a systematic approach to PLS requires considerable political will, both on the part of government and of parliament\textsuperscript{15}.

In summary, having a good system of parliamentary PLS helps verify if the legislation works in practice, focusing both on the objectives of a specific policy and on its implementation method, which helps identify and disseminate good practices, and, in general terms, improves regulation. However, it must be recognised that there are certain disadvantages, like how the system is heavily dependent on political will and the resources available to carry it out. Therefore, a good parliamentary PLS system has to maximise its benefits and at the same time consider the limitations that come with it. According to this logic, it is necessary to specify the criteria according to which we will analyse the PLS of Chile.

III. Criteria for evaluation of the Chilean PLS

The criteria on which I will evaluate the Chilean post-legislative scrutiny system are based on the three standards established by Mader to evaluate laws: (i) effectiveness, (ii) efficacy and (iii) efficiency\textsuperscript{16}. According to Mader, these standards do not explain all the possible effects of legislation, which can be generically described as the "impacts" of legislative activity. However, they particularly help emphasise relevant aspects of the process of formation of a law\textsuperscript{17}. Next, we explain the meaning of each of these three criteria:

\textsuperscript{10} BRAZIER (2017).
\textsuperscript{11} DE VRIEZE and HASSON (2017), pp. 11
\textsuperscript{12} Ibid.
\textsuperscript{13} This connection had already been highlighted by the Venice Commission, which organised a specialised seminar in June 2007 for civil servants from 16 countries, who met to share their experiences on the theme. Some of the papers presented at the "Legislative Evaluation" seminar organised by the UNIDE campus in Trieste are available at the following link: \url{http://www.venice.coe.int/webforms/events/default.aspx?id=650}.
\textsuperscript{14} DE VRIEZE and HASSON (2017), pp. 12.
\textsuperscript{15} Ibid.
\textsuperscript{16} MADER (2001), pp. 126.
\textsuperscript{17} MADER op. cit. pp. 127.
i. **Effectiveness:** refers to the implementation of the rule. This standard requires testing of whether a rule is respected in practice; however, it also requires evaluation of whether the conduct according to the rule is effectively attributable to it.\(^{18}\)

ii. **Efficacy:** consists of determining "the extent to which legislative provisions fulfil their purpose."\(^{19}\) As Mader clarifies, implementation (effectiveness) is a necessary condition for effectivity, but it is not sufficient, since the presumption underlying the legislative decision may be incorrect. Likewise, the efficacy of a rule is not proof of its effectiveness, since the objectives of the law may have been met by different factors and not because of the rules.

iii. **Efficiency:** focuses on the costs and benefits of a rule. This analysis goes beyond direct financial or monetary benefits and costs; it must also take into account other types of external factors, including the administrative burden, the global effects on the economy and even the psychological effects produced on citizens.

Certainly, Mader is not the only author who used these categories to define what the criteria for legislative evaluation should be. Ulrich Karpen, for example, also took these same standards as the parameters for assessing the consequences of laws.\(^{20}\) From the perspective of legislative drafting, Helen Xanthaki refers to them as the "virtues" that must be achieved by legislation.\(^{21}\) Other authors connect the quality of legislation to compliance with certain general principles of law, such as proportionality, consistency, transparency, responsibility and effectiveness.\(^{22}\) However, when assessing compliance with these principles, these authors acknowledge that "through, in particular, the ex-post evaluation, the obligation to periodically evaluate the application of current rules [effectiveness] is promoted, with the aim of checking if they have fulfilled the objectives pursued [efficacy] and if the cost and burdens derived from them were justified and adequately valued [efficiency]."\(^{23}\)

Acceptance of these criteria among academics confirms that they can be considered as key elements in the quality of legislation, and therefore it makes sense to use them as a test to evaluate a successful post-legislative parliamentary scrutiny process, so long as they are not limited to a technical or procedural perspective, but also control the functions of a law. However, it should be mentioned that they do not operate as exact measures, and therefore should only be considered as a guide to evaluate each model of post-legislative scrutiny.

**IV. Post-legislative scrutiny in Chile**

Before evaluating how the Chilean model complies with the aforementioned criteria, it is useful to briefly describe how its scrutiny system functions, and then analyse the relevant elements more carefully in terms of the evaluation of the effectiveness, efficacy and efficiency.

In Chile, the interest in and development of post-legislative scrutiny is relatively recent. Thus, in the Executive Authority, there are ex-post evaluation mechanisms, mainly connected to fiscal

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\(^{18}\) For the purposes of this article, this will be the definition of "effectiveness", however, this concept has been debated and can be understood from different perspectives (based on the acceptance of the rule, its application, the quality of the legislation, the results and so on). Professor Stefanou has emphasised the lack of a general theory on the effectiveness of legislation, as indicated during the Conference on Effective Law and Regulation organised by the Institute of Advanced Legal Studies on 7 July, 2017.

\(^{19}\) MADER (2001), pp. 126.


\(^{21}\) XANTHAKI (2010), pp. 79.

\(^{22}\) DE MONTALVO (2017), pp. 143.

\(^{23}\) DE MONTALVO (2017), pp. 146.
management, including performance indicators and institutional evaluation programmes\textsuperscript{24}. In addition, the Executive performs non-systematic ex-ante evaluation exercises.

As regards Congress, efforts to carry out post-legislative scrutiny have focused on the Chamber of Deputies\textsuperscript{25}. Traditionally, there have been thematic workshops where, to a certain extent, post-legislative scrutiny has been carried out, but this is not the main objective of the workshops\textsuperscript{26}. Other authors also mention the Investigative Committees as a form of post-legislative scrutiny\textsuperscript{27}, but these committees do not pursue this objective per se.

The most significant milestone in this context occurred in 2011 with the creation of the Law Evaluation Department of the Chamber of Deputies\textsuperscript{28}, which has autonomy to: (i) evaluate laws that have been approved by Congress in relation to their efficacy and influence in society; (ii) propose corrective measures, if necessary, for the correct application of laws; and (iii) create and manage a network of social organisations interested in participating in the evaluation\textsuperscript{29}. In addition, there is a Law Evaluation Committee, composed of deputies belonging to various political groups, whose function is to cooperate in the work of this department.

This department analyses laws with a view to determining if they achieve their objectives, identifying their impacts and external factors, as well as good practices, also considering public perception and proposing corrective measures. The work of the department is developed in three phases: technical study of the law, public perception and final report. The laws that are evaluated are selected each year by the Committee, based on a proposal prepared by the Law Evaluation Department, following the criteria of political neutrality, general applicability, contingency, methodological, temporal and technical feasibility, in addition to the application period (at least one year as an existing law)\textsuperscript{30}. Since its creation, the department has evaluated twelve laws.

Next, we will examine how this system works in terms of achieving an evaluation of the effectiveness, efficacy and efficiency of the laws in Chile.

i. Effectiveness

The Chilean system considers effectiveness as a key criterion to be considered in post-legislative scrutiny. Hence, it requires the law to be evaluated to have been in force for at least two years.

A fundamental aspect when assessing effectiveness is cooperation with the government or with the agencies in charge of implementation, since they can provide the best information regarding how the law functions in practice. As regards Chile, the Law Evaluation Department is the body that must perform the technical analysis, including the opinion of experts and of the implementing institutions. However, there is no specific institutional channel to receive the information, neither is there an obligation to provide it, thus the information deriving from the institutions involved in the application of the law tends to vary from one report to another. There are occasions when the report only includes a legal summary of which agencies apply the law in question; while others include interviews and documents from these agencies. But, in general, the emphasis on the analysis of the application has been placed mainly on public perception.

\textsuperscript{24} OECD (2012), pp. 54
\textsuperscript{25} In 2015, the Council for Modernisation of Legislative Work was created in Chile. Similarly to what happened in the United Kingdom, in December 2015, this council included among its final proposals the creation of bicameral committees (composed of members of both chambers), in order to process bills that could be quickly cleared with more efficiency. However, to date, these committees have not yet been created.
\textsuperscript{26} OECD, (2012), pp. 56
\textsuperscript{27} PAUL DÍAZ and SOTO (2009), pp. 597
\textsuperscript{28} http://www.evaluaciondelaley.cl.
\textsuperscript{29} CHAMBER OF DEPUTIES (2011).
\textsuperscript{30} OECD (2012), pp. 62
Another important aspect to consider is whether post-legislative scrutiny covers the delegated regulation or that which is related to a particular law, since "many of the details and meanings are contained in secondary legislation" and "a lot of legislation is amended or built based on existing legislation"\(^\text{31}\). In this context, in Chile, post-legislative scrutiny can be extended to include prior legislation, secondary legislation, and even related legislation.

An additional method to ensure the application of post-legislative scrutiny in terms of effectiveness is related to the use of automatic expiry clauses. This is a legislative technique that includes "a provision in the bill that establishes an expiry date for the law that is going to be enacted"\(^\text{32}\). This technique can be used to improve the effectiveness of a law and ensure the application of post-legislative scrutiny\(^\text{33}\). Thus, it is possible to reverse the "burden of proof", forcing those who support a certain law to subsequently prove its effectiveness\(^\text{34}\). Other authors emphasise that these clauses constitute a tool to strengthen the position and influence of legislature and minimise the influence of the executive branch on a broad spectrum of public policy issues\(^\text{35}\).

Automatic expiry clauses have been used increasingly in other countries, in line with what is known as the "better regulation" agenda\(^\text{36}\). Even though it can be considered that these clauses are contrary to the principle of legal certainty, we must consider "that the principle of legal certainty cannot be reduced to the mere continuity or stability of the Law", but that it should be considered as a "multidimensional concept", which allows the Law to be flexible and adaptable\(^\text{37}\). Along these same lines, these forced legislative reviews can facilitate legislative innovation\(^\text{38}\) or allow decisions to be made based on risk assessment\(^\text{39}\).

Despite the comparative development of this tool, in Chile, these clauses are barely applied. Paul and Soto provide some examples of Chilean laws that require a review period or provide for an "expiry date", but recognise that it is a barely used practice and is usually limited to the review of mathematical formulas or technical provisions of a law, intended only to establish economic percentages or figures\(^\text{40}\).

### ii. Efficacy

To prove efficacy, it is crucial to establish a line of reference that clearly identifies the objectives pursued by a law. These objectives may be established in the so-called purpose clauses or in other documents, such as explanatory notes, memoranda, information notes and so on. The purpose clauses are provisions "that specifically establish the social, economic or political objectives or goals that must be achieved"\(^\text{41}\). Unlike the explanatory notes or other annexed documents, the purpose clauses are part of the law itself and serve to clarify its objectives beyond the interpretations of why the law was enacted, hence they help specify public policy goals and constitute a scale that helps evaluate their efficacy.

As regards Chile, reports by the Law Evaluation Department usually refer to the objectives already established in the same law, which rarely consist of little more than a paragraph. Unfortunately, in

\(^{31}\) BRAZIER (2005), pp. 3.


\(^{33}\) RANCHORDÁS (2015), pp. 32.

\(^{34}\) DE MONTALVO (2017), pp. 157.


\(^{36}\) RANCHORDÁS (2015), op.cit, pp. 33.

\(^{37}\) RANCHORDÁS (2015), op.cit, pp. 45.

\(^{38}\) RANCHORDÁS (2014).

\(^{39}\) JANTZ and VEIT (2012).

\(^{40}\) PAUL DÍAZ and SOTO (2009), pp. 588-560.

\(^{41}\) BERRY (2011), pp. 49.
Chile there is no systematic pre-legislative scrutiny that can serve as a basis for post-legislative scrutiny, which shows that although both types of scrutiny differ\(^{42}\), they are complementary mechanisms\(^{43}\).

Another aspect to consider is which agents evaluate the fulfilment of the objectives established in a law. As far as Chile is concerned, the evaluation is carried out by the Law Evaluation Department, consisting of a technical team. Even if post-legislative scrutiny should not be an occasion to debate a law again, it is worth reflecting if parliamentarians could be better able to evaluate whether or not it meets the established political goals. In this sense, if they were part of the legislative discussion of the law, they could be more aware of its details and challenges. An alternative to incorporate this contribution would be to institutionalise channels of participation of the deputies throughout the evaluation, particularly those who promoted or were members of the committees that debated the law under analysis.

Finally, the Chilean model considers the participation of citizens as a way to ensure that people subject to a law can give their opinions on whether or not it meets its goals. In this sense, the methodology chosen by the Law Evaluation Department "grants special relevance to the participation of civil society groups related to the law under evaluation as well as individual persons"\(^ {44}\), with the understanding that they are directly affected, thus they "can contribute to visualising unexpected and/or undesired side-effects of the laws; their participation promotes transparency and accountability in the legislative process; and their incorporation prevents the excessive influence of private interests over public interests in decision-making"\(^ {45}\). Following this logic, the Law Evaluation Department administers citizens fora for the evaluation of laws, where individuals and groups contribute their opinions, concerns and suggestions.

iii. Efficiency

The international movement for "better regulation" or "smart regulation"\(^ {46}\) originated from the beginning of the 2000s, with special emphasis on the quality of legislation, since this was considered as a fundamental instrument to improve competitiveness and promote sustainable growth. Since then, economic analysis has been a crucial element of the legislative agenda in general, and of legislative evaluation in particular\(^ {47}\).

The efficiency standard is closely identified with the evaluation of the economic costs and benefits that a law entails and, for this reason, it is usually based on documents such as a regulatory impact analysis (RIA) or a cost and benefit (C&B) analysis carried out by the government or by other agencies in the ex-ante evaluation of public policies.

In Chile, "there is no particular quantitative methodological approach to measure the impacts of a law, for example, in terms of costs versus benefits"\(^ {48}\). Furthermore, in its methodological description, the costs and benefits of a regulation or the evaluation of its efficiency are not mentioned. Although this evaluation implies higher costs\(^ {49}\), since it requires the contribution of highly skilled professionals, it would be important to include a quantitative aspect in a complete post-legislative scrutiny process.

\[^{42}\] In this sense, post-legislative scrutiny should not be considered as a "mirror" of the pre-legislative scrutiny. LAW COMMISSION (2006), para. 4.5.
\[^{43}\] MADER (2001), pp. 124.
\[^{44}\] http://www.evaluaciondelaley.cl/participacion-ciudadana/foro_ciudadano/2012-11-09/122557.html
\[^{45}\] Ibid.
\[^{46}\] See footnote number 5.
\[^{48}\] OECD (2012), pp. 63
As for the other types of impact that could be included in the test of the efficiency of a law, there is a consideration of its broader impacts. In this sense, the Law Evaluation Department of Chile mentions the need to consider social, cultural and environmental aspects\(^\text{50}\).

In summary, from the analysis of the three components that a complete post-legislative scrutiny process must encompass, it is possible to extract the following strengths and weaknesses of the Chilean system:

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Strengths</th>
<th>Weaknesses</th>
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| **Effectiveness** | - Two-year validity period of the rule.  
- This covers an analysis of delegated, prior and related legislation. | - It lacks an institutionalised method to receive feedback from government.  
- Limited use of expiry clauses. |
| **Efficacy** | - Based on purpose clauses.  
- Strong feedback from citizens. | - It lacks a systematic contribution of pre-legislative inputs.  
- There is no institutionalised channel to allow for the contribution of the deputies. |
| **Efficiency** | - Consideration of impacts in a broad sense. | - It does not include a quantitative analysis of costs and benefits of legislation.  
- It does not have trained personnel or specialised support to carry out this type of analysis. |

*Source: own preparation.*

V. An example of post-legislative scrutiny

To illustrate how post-legislative parliamentary scrutiny functions in Chile, it is useful to briefly present, as a case study, the latest report prepared by the Law Evaluation Department\(^\text{51}\). This is the evaluation of Law No. 20.418 that establishes rules on information, guidelines and benefits in the area of fertility regulations\(^\text{52}\).

<table>
<thead>
<tr>
<th>Evaluation of Law No. 20.418</th>
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<tbody>
<tr>
<td><strong>Date of the rule</strong></td>
</tr>
<tr>
<td><strong>Report Date</strong></td>
</tr>
</tbody>
</table>
| **Structure of the Report** | I. Background to the Evaluation of Law No. 20.418  
II. National figures and international milestones on health and sex education  
III. Regulatory framework of Law No. 20.418  
IV. Institutional nature  
V. Public Perception  
Conclusions and Recommendations |

*Source: own preparation.*

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\(^\text{50}\) OECD (2012), pp. 62


\(^\text{52}\) Law available at [https://www.leychile.cl/Navegar?idNorma=1010482](https://www.leychile.cl/Navegar?idNorma=1010482)
The rule complies with the selection criteria established by the Law Evaluation Department\textsuperscript{53}, as there was a demonstrated public interest in HIV/AIDS legislation, which resulted in the Health Committee of the Chamber of Deputies requesting the analysis of this law. Likewise, the temporary feasibility criterion has been met, since it is a law that has been valid for several years.

The report in reference consists of 122 pages, organised into chapters that cover the background of the evaluation, national and international health and sex education figures, the regulatory framework of the law, institutional aspects, public perception and conclusions and recommendations. This structure confirms the over-riding role of public perception, obtained through fora and \textit{focus groups}, as the main source of analysis of the efficacy of the law, while the rest of the information focuses on the exhaustive technical analysis of the rules and the associated legislation.

Regarding the information that can be provided by other stakeholders, this report is a good example of an evaluation exercise that successfully incorporated the vision of those in charge of implementing the rules as an important part of the analysis of the effectiveness of the same. In this sense, the report draws from interviews with specialists, including officials from the main health and education organisations, as well as those in charge of programmes related to sex education. Nonetheless, weaknesses persist in terms of the analysis of the efficiency of the law, while the quantitative tools incorporated in the report serve more to contextualise the state of sex education in the country than to evaluate the potential contribution of the rules. Finally, it is worth mentioning the specific indication of the recommendations, which seek to transform this evaluation exercise into a mechanism that translates into rectifications and improvements to legislation.

\textbf{VI. Conclusions}

This article analysed the post-legislative parliamentary scrutiny process. After reviewing the existing relationship with other types of evaluation, we highlighted the advantages and disadvantages of post-legislative scrutiny. Based on Mader's criteria, according to which a law must be evaluated in terms of its effectiveness, efficacy and efficiency, we developed an analysis of the post-legislative parliamentary scrutiny model in Chile, which is based on a centralised system, with a single specialised unit in the Chamber of Deputies in charge of post-legislative scrutiny. Then, we investigated how this model complies with the evaluation of the effectiveness, efficacy and efficiency of the laws, presenting a case study of a recent evaluation report on the legislation on sex education.

As a corollary to this analysis, it is possible to distinguish three types of recommendations for the Chilean post-legislative parliamentary scrutiny system: (i) coordinate and institutionalise a method for permanent cooperation with the government, in order to better evaluate the implementation of a law (effectiveness); (ii) improve and regularise the ex-ante scrutiny exercise, in order to generate useful inputs to determine if a law is achieving its objectives (efficacy); and (iii) strengthen the Law Evaluation Department, ensuring that it incorporates a quantitative approach that allows for the analysis of legislation in terms of its costs and benefits (efficiency)\textsuperscript{54}. However, it is necessary to be aware that making these changes will require political and financial support.

\textbf{VII. Bibliography}

\textsuperscript{53} Criteria of public interest, general applicability of the law, methodological feasibility, temporal and technical feasibility and political neutrality.

\textsuperscript{54} These recommendations are consistent with those made by the OECD in its 2012 report, which distinguished institutional, methodological and governance recommendations. OECD (2012), pp. 75

BERRY, Duncan (2011). ‘Purpose sections: Why they are a good idea for drafters and users’ in Loophole, Commonwealth Association of Legislative Counsel, pp. 49-67.


RANCHORDÁS, Sofia (2014). Sunset clauses and experimental legislation: Blessing or curse for innovation, Koninklijke Wöhrmann B.V.


III. Mexico: Post-Legislative Scrutiny in the Congress of the State of Guanajuato: methodology and experiences.
By: María Fernanda Arreguín Gámez, LLM in International Human Rights Law (University of Liverpool). Post-Legislative Scrutiny Coordinator at the Congress of the State of Guanajuato.

Summary
Due to the globalization, the world has been facing different changes. One of those changes has impacted the role of the parliaments around the world. Whilst Parliaments used to be those who created the law and leave its application to other powers, that is no longer it is role. Nowadays parliaments must demonstrate that the approved laws are fulfilling the purpose they were created for. This is the era of Post Legislative Scrutiny (PLS). In the case of Mexico, the Congress of the State of Guanajuato constitutes the first Mexican parliament which has established PLS as part of the legislative process. This paper will analyze the emergence of PLS in the Congress of the State of Guanajuato, its legal regulation, the methodology for its application, the results it has reached and the challenges that it may face to be established within other Mexican congresses.

Introduction
The globalized world has brought different challenges for the members of the international community in both economic and political areas. The case of developing countries is particular because they are pushed to establish a democratic government by involving the society in the decision process and, specifically, by winning public approval of its performance. In this sense, Chelimsky affirms that the application of evaluation or scrutiny of the activities done by the government are implemented as a tool to strengthen democracy, reduce corruption and increase the legitimacy of the government. According to the Oxford Dictionary, evaluation means “the making of a judgement about the amount, number, or value of something; assessment.”. Chelimsky continues affirming that a democratic government has to be evaluated because it helps to:
1) Report information about the government performance that public needs to know.
2) Add new data to the existing stock of knowledge required for government action.
3) Develop an analytical capability within agencies that move them away from territoriality and toward a culture of learning.
4) Help to keep the government honest.
Therefore, evaluation plays a key role to determine the success of democratic governments.
According to the World Bank, Mexico has been identified as a developing country and as an upper-middle-income economy. In general words, Mexico is a federal, democratic, representative Republic composed of free and sovereign States. The supreme power of the Federation is divided, for its exercise, into legislative, executive, and judicial branches. Although the Federal Constitution establishes that Mexico is a democratic republic; until recently, there was not any interest to strengthen this idea by the application of evaluation to the government performance. Due to the hegemonic power of a single political party for more than seventy years (the Institutional Revolutionary Party. PRI, in Spanish) the only interest was to apply those programs which were part of the agenda of the president in turn. Although an economic crisis obliged them to evaluate the application of the Mexican assets the results of such evaluations were not taken into account for the design of public policy nor for new laws. It was not until the PRI lost the Presidency of Mexico to the National Action Party (PAN) when the evaluation was taken seriously. At the end of the first PAN period, the National Council for the Evaluation of Social Policy (CONEVAL, in Spanish) was created by the General Law of Social Development. CONEVAL has the competence to design, promote, apply and spread different types of evaluation. Nonetheless, it has a limitation:
it applies exclusively to social development. The next administration led by PAN (2000-2006) established a broader program of evaluation known as Performance Evaluation System to determine the social and economic impact of the projects and programs implemented by the public administration. Whilst the implementation of this system constituted a paramount achievement in terms of evaluation and the strengthening of democracy, something was left. The focus was given exclusively on the executive power and public policy, no one focused on the evaluation of the legislative or the judicial powers. The evaluation of the law by the legislative power was not visualized in Mexico until 2016. The first legislative power in Mexico who decided to effectively implement evaluation as Post-Legislative Scrutiny (PLS) was the Congress of the State of Guanajuato (hereinafter as the Congress).

This paper will demonstrate that the Congress of the State of Guanajuato is a pathfinder on PLS matter in Mexico. To provide a context for the reader, the first section will describe the legal organization of the Congress based on the Legislative Organic Law. The second section will constitute the core of this paper as it will focus on PLS practices. Therefore, it will be divided in four sub-sections. First, it will cover the legal basis of PLS in Guanajuato and its scope to determine that PLS must cover both, enactment and impact of the law. Second, it will present a brief analysis of the methodology developed by the personnel of the Congress by explaining each stage that must be follow for each evaluation. Third, it will explain the criteria that has been applied for selecting laws to be evaluated. Fourth, it will provide a case-study of PLS on the evaluation of the Law of Anticipated Will of the State of Guanajuato. Furthermore, the third section will explore the challenges that PLS might face to be established within other Mexican parliaments. Finally, this paper will conclude that whilst there is an area of opportunity for the Congress of the State of Guanajuato to strengthen its department of evaluation with human resources, the Congress is the most advance parliament in Mexico on PLS and it can collaborate to strengthening democracy by training the local and regional parliaments on the topic.

First section: The Congress of the State of Guanajuato at a glance
The Congress is made up by 36 legislators which are elected every three years. It is an independent power and is vested with autonomy for the exercise of its resources and for its internal organization.

For the exercise of its competence, the Congress is divided in: The Plenum (maxim organ of the Congress composed by all the legislators), the Directive Board (in charge of conducting the sessions of the Plenum and the Permanent Deputation. The President of the board holds the legal representation of the Congress), the Permanent Deputation (It is established between ordinary periods and its constituted by eleven legislators, its main function is to guarantee continuity of the legislative work during the recesses of the Plenum), the Government and Political Coordination Board (constitutes the maxim organ of government within the Congress made up by the coordinators of the political parties and independent legislators if that is the case. The presidency of the Board belongs to the coordinator of the majority political party), and the Permanent Legislative Commissions (which are responsible for the elaboration of opinion or analysis of the subjects related to the competence of the Congress. They are composed by legislators designated by the Plenum).

The period for the ordinary sessions is established by the Political Constitution of the State of Guanajuato. According to article 51, the Congress must have two Ordinary Periods each year. The first period starts the 25th of September and ends the 31st of December. The second period starts on the 15th of February and ends the 30th of June.
Having established the general characteristics of the Congress, this paper will focus on its practices of PLS. The next section will cover the scope, the application and the results that PLS has produced during its recent application in Guanajuato.

Second section: Post-Legislative Scrutiny in Guanajuato: concepts, methods and results.

a) Legal basis of PLS in Guanajuato
For the implementation of PLS, the Congress published a new Legislative Organic Law on 27th December 2016. It established that the Congress must have a department to monitor and evaluate the impact of the law such department is called Unidad de Seguimiento y Análisis de Impacto Legislativo (Usail, in Spanish). According to article 282 of the Legislative Organic Law the general mandate for the Usail is:

Process decrees, agreements and laws issued by the legislative power to verify the results, efficiency and efficacy in its implementation and the impact that such legislative bodies had generated in the Guanajuato population.

In particular, the Usail has to:
- Follow the fulfilment given by the Powers of the State (Executive, Legislative and Judicial) autonomous organisms and municipalities regarding the law;
- Develop indicators to measure the impact of the law;
- Carry out research to measure the social and economic impact of the law and decrees;
- Inform the annual impact of the law and decrees according to the developed indicators; and
- Analyze the necessity and opportunity to create, modify or derogate a decree or a law.

The scope of PLS in Guanajuato reaches both the stricter and broader sense of PLS:
- the Usail must review whether the obliged subjects have released primary and secondary legislation necessary for the implementation of the law;
- the Usail must evaluate the economic and social impact of the law.

Therefore, it can be said that the objectives of the Usail are aligned with those identified by the Westminster Foundation of Democracy for PLS.

As the mandate for PLS has been established within the Organic Law, it is not necessary to incorporate a review clause in every law. However, some legal bodies do contain a transitory article which acts as a review clause. Generally, such period is up to five years. Specifically, there are three laws which contain such clause: 1) Mobility Law of the State of Guanajuato and its Municipalities, 2) Livestock Law for the State of Guanajuato, and 3) Transparency and Access for Information Law for the State of Guanajuato. All these legal bodies require the Usail to start the evaluation on 2021.

Although some international bodies affirm that not every law has to be evaluated, the Organic Law indicates that all the laws and decrees generated by the Congress must be subjected to PLS. Notwithstanding, the Usail has developed a methodology to indicate, according to international standards, which laws should be evaluated or not. The next sub-section will analyze the methodology.

b) Methodology
Conscious of the challenges that innovation means, the Congress of the State of Guanajuato has built permanent links with other organizations whom also are developing PLS practices. This is the case of the Chilean Congress which whom the Congress signed an agreement to collaborate in the application of a pilot project of PLS as well as in the designing, construction and application of a
PLS Methodology – particularly designed for the necessities of the Congress of the State of Guanajuato.

The Methodology has five stages: a) the legal study of the law, b) the measuring of citizen perception and the perspective of the obliged subjects, c) the measuring of effectiveness and efficiency, d) impact assessment; and e) dissemination of results.

i. Legal study of the law

The first stage provides the legal elements necessary to know the background of the law, its objectives, the target population and, its relationship within the national legal system to guarantee harmony and respect for the Federal Constitution. This section constitutes the basis for PLS as it provides:

a) the social context which motivated the creation of the law;

b) the general characteristics of the evaluated law;

c) allows the evaluator to identify the population that must be considered during the second stage;

d) identifies the objectives of the law which will be considered during the impact assessment, and

e) clarifies the legal provisions that must be brought into force to guarantee the implementation of the law.

ii. Citizen perception

Its main objective is to obtain the perspective of the population, obliged subjects and experts. For this stage ‘participatory methods’ are applied. These are used to obtain ideas, perspectives and opinions from the people linked with the application of the evaluated law. Such techniques are characterized for being practical and require the exchange of ideas and experiences.

To illustrate some techniques that can be applied it can be mentioned: round table, semi-structured interview, panel and focus group. For the application of the techniques, the Usail is based on the ‘Guidance for witnesses participating in PLS hearing or consultation’ developed by Franklin De Vrieze from Westminster Foundation for Democracy. Thus, there are three essential steps for this stage: a) Opening of the technique, b) Dialogue, and 3) Conclusions. The final step will help to identify good practices, barriers for the application of the law and measures to improve its application.

ii.a Actors

During this stage, the people who participate as part of the techniques are:

a) Services institutions

b) Obliged subjects

c) Social organizations

d) Lobbyist

e) Academy

iii. The measuring of effectiveness and efficiency

This stage determines whether a law can be classified as a quality law or not. This result is obtained from the analysis of the achieved objectives and the use of economic resources. Effectiveness is comprehended as the degree of progress achieved on the fulfillment of the objectives stipulated by the law without considering the resources allocated for it.

In this step the next questions must be answered:

a) Do the objectives of the law have been achieved in quality, quantity and time when compared with the contrafactual?

b) How does the law have contributed to achieve objectives or activities which would not have happened if the law would not exist?
c) Does the implementation have been affected by external factors?
d) Do secondary unexpected effects have occurred?

On the other hand, efficiency is the degree of fulfillment of the objectives using the economic resources. It evaluates the quality of the application of the resources.

Generally, the evaluation of efficiency will answer the next questions:

a) Does the intervention for the achievement of the objectives was carried out using the less expensive option?
b) Is there any activity which produces leak of resources?
c) Do the administrative expenses were optimum?
d) Do the level of productivity of the resources for the application of the law are acceptable?
e) Does the implementation generate eventualities?

iv. Impact assessment

This stage is related to the theory of change, indicators, databases and results. The theory of change helps to indicate the relationship between the implementation and the results of the application of the law. It is obtained by analyzing the design of the program considering the supplies, activities and results expected.

Furthermore, indicators must be determined by the question looking to answer and por the theory of change.

iv. a Method

The basis for the application of impact assessment is a contrafactual, this is to say, a group which can be compared with the objective population. Such group is characterized because it is not intervened by the law. Some examples of methods that could be applied are: random assignment or random placement, difference in difference (DID), instrumental variables, the regression discontinuity design and others.

v. Dissemination of results

PLS application generates information which must be classified for the population it will be presented to. For this reason, the methodology suggests producing three type of documents: a) a technical report, b) a legislative report, and c) a report for citizenship.

c) Selecting legislation to be evaluated

Based on the criteria established by the Organization for Economic Co-operation and Development, the Usail applies six elements to determine whether a law should be subject to PLS or not. Such criteria are:

a) Political neutrality
b) General applicability of the law
c) Contingency
d) Methodological feasibility
e) Temporal feasibility
f) Technical feasibility

d) Case-study of PLS

The pilot project of PLS by the Congress of the State of Guanajuato is being applied on the Law of Anticipated Will. This law was selected because it fulfilled the previously mentioned criteria. At the moment of publication of this paper, the methodology covered the first section related to the legal study of the law by; carrying out interviews with the designers of the law, analyzing the figure of anticipated will i.e. its origin and its development in the Mexican system. During this stage was found that the main problem during the discussion of the initiative was establishing the difference between euthanasia and orthothanasia. The second stage will be applied on February. It will
analyze the perspective of the obliged subjects of the law to determine good practices, barriers for the applications of the law and measures to improve its application. The evaluation should be finished by the end of March. If it is approved for publication it should be available in the web page of the Congress by the end of April.

Third section: Challenges and future of PLS in Mexico

As the only department in Mexico who applies PLS, the Usail has faced different challenges which may occur for the other Mexican congresses interested in developing PLS. The first one is related to the prevalent interest in evaluating public policy but not the law per se. When trying to capacitate its personnel, it was found that in Mexico does not exist a program which teaches what is PLS or how it should be carried out. There is not Mexican literature regarding PLS nor any previous experience in local congresses. The courses which have been taken by the personnel are related to public policy and not the law. In this sense it is found that most of the literature in Spanish applies exclusively to the evaluation of Public Policy, in fact, the evaluation of public policy is relatively new in Mexico.

The second challenge concerns the lack of political will. As the Global Parliamentary Report states, the congresses or parliaments tended to be scapegoats of the Executive Power. Therefore, they did not discuss important issues for the society such as unemployment or corruption. The Report recognizes that “in almost every parliament around the world, there is a gap between the powers that a parliament has to hold the executive power to account and the unwillingness or ability of politicians to use them”. As it can be seen, politicians do not share the idea that a parliament has to scrutinize legislation to hold the government to account.

In the case of Mexico, Congresses were dependent on the decision of the Executive power, particularly at the Federal level. The deputies did not discuss or counterargument any bill presented by the executive. Mexico had a stage known as “The Presidentialism” where the president was the supreme power of the nation from 1928 until 2000. This period was controlled by the hegemonic power of the PRI (political party) and leave remnants for the states. Just as in the Federal level, the local congresses were loyal to the Governor. For this reason, no one fought for the establishment of evaluation or scrutiny of public policy or the law. Some of these remnants prevail in Mexico which makes difficult for the department of evaluation to ask for information about the enactment of the laws from the Executive Power as the latter was not used to be accountable.

This role has changed in Guanajuato as the Congress has recognized the importance of evaluation of the law and executive accountability.

Another challenge that evaluation can face is corruption. According to the Global Corruption Barometer, politicians in Latin America are perceived as the most corrupt. Corruption constitutes a barrier for development, it affects public service delivery, state legitimacy, stability and even the environment. Olken and Pande affirm that corruption is costly for developing countries because it “raises the marginal tax rate of firms, decrease business activity, raise the marginal cost of public funds, make certain government projects economically unviable, and undo the government’s ability to correct externalities”. The Global Index of Corruption situates Mexico in 30 points where 0 is the worst evaluated country and 100 is the best one. The question to be addressed in relation to corruption is: How does the Parliament, particularly the Usail, can face corruption? The first step suggested by Transparency International is not just monitoring or oversight the government but parliamentarians themselves must promote and adhere to high standards of integrity and legitimacy through codes of conduct, the implementation of laws anti-corruption, integrity, freedom of information and oversight. For this reason, the Congress has the Code of Ethics and Conduct of Public Servants of the Congress of the State of Guanajuato and an internal oversighting for the public servants.
To carry good executive accounting, reporting and transparency, parliaments must have the appropriate economic, human and methodological resources. This constitutes another challenge that the Usail identified for carrying out PLS. According to principle number 9 of the “Principles for Post-Legislative Scrutiny by Parliaments”, parliaments need to empower their human resources and enable them to work with appropriate ICT systems and applications. The Congress of the State of Guanajuato has been empowering the Usail personnel by training them on evaluation methodology.

Conclusion
Due to social movements, access to information and globalization, the role of the governmental institutions has changed. Particularly, the role of the parliament. Whilst parliaments used to play a passive role as scapegoats of the executive power, that is no longer their function. Evaluation has permeated the parliamentarian activities. Post-Legislative Scrutiny is the mechanism which has been implemented by the parliament to pursue accountability. PLS allows the parliament to measure the enactment and the impact of the law. Nevertheless, whilst all the parliaments should apply PLS, some of them may face more challenges than other for such implementation. This is the case of the parliaments in México.

This paper has demonstrated that Mexico used to be a Presidentialism system where the Congress was subordinated to the Executive power. Even though this changed, some remnant of it still permeates the action of the congresses in both Federal and Local levels. Trying to overrule such precedent, the Congress of the State of Guanajuato established PLS as a mechanism to guarantee accountability. The Usail is the unit which has the competence to scrutinize the enactment and impact of the legislation and decrees approved by the Congress. The creation and work of the Usail constitutes a precedent in Mexico for PLS. It has developed a strict methodology for the evaluation of the law based on international standards provided by both Westminster Foundation for Democracy and the Organization for Economic Cooperation and Development. Additionally, the application of a pilot project by the Congress will be the first example of PLS in Mexico which could be used as a referent of this practice in Mexico and the Latin-American region.

As it was established, there is political will in Guanajuato to apply PLS in the most effective way. The Congress of the State of Guanajuato has growth on practices of PLS. Therefore, its experience can be used as an example of successful implementation of evaluation of the law not only in Latin-America but in the world.
Introduction
The Parliament of the Republic of Trinidad and Tobago has a constitutional duty to make laws for the peace, order and good government of the people and to bring the Executive to account for the status of such laws.

In discharging these responsibilities, the Parliament engages periodically in the review of its own processes to determine its efficacy in producing quality legislation and exercising enhanced scrutiny of executive functions. The results of these reviews are then used as the basis for urgent interventions or to inform the objectives of its next strategic plan.

It was through this level of proactive review and the implementation of its 2013-2018 Comprehensive Strategic Plan, that the Parliament was able to modernise its scrutiny and oversight systems by revising the Standing Orders of both Houses and establishing nine (9) additional sector-specific oversight committees.

By late 2015, however, a high level assessment of the oversight committee system revealed that although Parliament was exercising its oversight functions and the country had a high GDP, the country’s cost of living and perceived level of corruption were high and worsening. This led to committee inquiries which were largely focused on sectoral issues and government spending.

In 2016, oversight strategies were again reviewed and it was determined that more focus was required in assessing the outcome of the Parliament’s oversight activities. In this regard, the Parliament began placing greater emphasis on post-legislative scrutiny as a means of further strengthening its oversight functions.

Parliamentary Oversight
Although Trinidad and Tobago is a small-island state, it has approximately two hundred and seventy (270) state entities that require Parliamentary oversight on behalf of the people. This figure includes all Government Ministries and Departments (inclusive of the Office of the Parliament, the Office of the Prime Minister, the Office of the President and the Judiciary), as well as a number of State Enterprises and Statutory Bodies.

As a consequence, the Parliament of Trinidad and Tobago utilises a number of robust oversight mechanisms to ensure that it effectively discharges its constitutional duty of ensuring oversight and accountability.

Oversight Practices
Procedures contained in the Standing Orders of both Houses provide for two main categories of oversight, namely, debates and questions on the floor of the House and Parliamentary Committees.

Parliamentary Oversight Committees
Currently, the Parliament of Trinidad and Tobago has thirteen (13) Standing Oversight Committees:
1. The Public Accounts Committee
2. The Public Accounts [Enterprises] Committee;
3. The Public Administration and Appropriations Committee;
4. The Committee on National Security;
5. The Committee on Energy Affairs;
6. The Committee on Foreign Affairs;
7. The Committee on Human Rights, Diversity and Equality;
8. The Committee on Land and Physical Infrastructure;
9. The Committee on Finance and Legal Affairs;
10. The Committee on Social Services and Public Administration;
11. The Committee on State Enterprises;
12. The Committee on Local Authorities, Service Commissions, and Statutory Authorities; and
13. The Committee on Government Assurances.

These committees are mandated to inquire into agencies under their purview with a view to identifying deficiencies in their administration and operation. In order to effectively discharge their oversight obligations, the Standing Orders for each House empowers these committees to:
(a) send for persons, papers and records;
(b) sit notwithstanding any adjournment of the House;
(c) adjourn from place to place;
(d) report from time to time;
(e) appoint specialist advisers either to supply information which is not otherwise readily available, or to elucidate matters of complexity within the Committee’s order of reference;
(f) communicate with any other Committee on matters of common interest; and
(g) meet concurrently with any other Committee for the purpose of deliberating, taking evidence or considering draft reports.

Post-Legislative Scrutiny

Scope
Parliament recognises that post-legislative scrutiny is designed to test the merits of implemented law within three to five years of its implementation. It also accepts that best practice requires the Parliament to determine whether all or certain key provisions contained in an Act of Parliament have been brought into force, how the courts have interpreted such law and the manner in which legal practitioners and citizens have been using the law.
Trinidad and Tobago does not have a dedicated committee mandated to conduct post-legislative scrutiny of primary legislation. As a consequence, post-legislative scrutiny continues to be a standing objective of inquiries undertaken by the Departmental Joint Select Committees which are empowered under the Standing Orders of both Houses to review all legislation relating to their respective Ministries, departments or bodies. A recent example of this type of conjunctive inquiry was the ‘Inquiry into the systems in place to protect children from abuse’ which was undertaken by the Joint Select Committee on Human Rights, Equality and Diversity in February 2017. A core objective of that inquiry was a determination of the adequacy of the provisions of the Children Act, 2012 in protecting children from abuse.

Mandate
Parliament’s decision to engage in post-legislative scrutiny of any legislation is driven by its constitutional duties. It does not bind itself to any single mechanism to initiate scrutiny. Post-
legislative scrutiny can be undertaken by departmental or sector specific committees in conjunction with their wider inquiries into policy areas.

Provisions in a statute can also trigger post implementation scrutiny. This can arise where there is a sunset clause or where a clause imposes a duty on the Executive to submit to the Parliament a report accounting for the execution of the functions and the exercise of powers created by the legislation. An example of this can be found in section 18 of the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01 which prescribes at subsection (1) that the Director of the Financial Intelligence (FIU) must submit within sixty days of the end of the financial year, an annual report to the Minister on the performance of the FIU, including statistics on suspicious transactions and suspicious activity reports, the results of any analyses of these reports and trends and typologies of money laundering activities or offences and the financing of terrorism. Subsection (2) then imposes a duty on the line Minister to have the report laid in the Parliament within thirty days of his receipt of the report.

Participants
The process of initiating scrutiny of the implementation of laws can be made by the Houses referring a matter to a Committee for consideration and report, or by consensus of the members of a Committee.

Immediately following a Committee’s appointment, it considers its mandate or terms of reference to understand the scope of its responsibilities. Once this is complete, the Committee will then consider all of the possible issues for investigation and compile those in its Work Programme. Committee Work Programmes are subject to change according to prevailing issues that may arise from time-to-time.

Each Committee is supported by personnel from the Parliament’s Committees Unit. These consist of a Secretary, Assistant Secretary and two Graduate Research Assistants with graduate or post-graduate qualifications in law, politics, government, international relations, sociology, finance, accounting and management. Despite such academic diversity, Select Committees are empowered under the Standing Orders to appoint specialist advisers either to supply information which is not otherwise available or to elucidate on technical or complex matters.

The other key actors in the process include: the Executive, that is, the Ministry and/or agency responsible for implementation; and stakeholders who are impacted by the legislation, including inter alia, members of the society, Non-Governmental Organisations and other Civil Society Groups, Private Sector entities, Associations, Unions, the Law Association, Universities and other specialist with interest in the legislation under review.

Process
The methods used for post-legislative scrutiny are similar to those used by committees in administrative/departmental or policy inquiries. The parliamentary committee which covers the relevant policy area will most often undertake the post-legislative scrutiny and will follow the normal procedures for a committee inquiry such as, the collection of information and views about the law (written and in oral evidence sessions), analysis of the information received, followed by committee deliberations, the publication of a report and, if appropriate, recommendations for amendment of the law or a proposal to reform how it works in practice.

Process at the Pre Inquiry Stage
The initial planning phase of an inquiry involves identifying and reviewing legislation relevant to the issue being examined. The following data sources are among those that may be consulted during this stage:
• Parent/Governing Legislation;
• Subsidiary Legislation;
• Annual Administrative Reports;
• Past Reports of Select Committees on the entity;
• Budget Documents;
• Strategic Plan and Business Plan of the entity; and
• Academic publications from online research databases (EBSCOHOST, Jstor); and
• Newspaper articles.

In recognising the importance of assessing the impact of legislation on certain issues, Departmental Committees have the option of focusing an inquiry on a piece or pieces of legislation or specific provisions of a law.

More frequently used, is the framing of an inquiry objective to scrutinise legislation that is relevant to the issue which the Committee is examining. A good example of this process can be found in the inquiry on the Systems in Place to Protect Children from Abuse where Objective No. 2 was “to determine the adequacy of legislation in protecting children from abuse.”

Accordingly, questions for pre hearing submission were based on objectives, such as:

i. “Have there been any challenges to operationalise the current suite of Acts of Parliament since proclamation on May 15, 2015 in relation to child abuse?

ii. Do current Acts of Parliament and the Family and Children Division Bill, 2016 require further amendment or is new legislation required to provide additional support the powers, functions and duties of the Authority outlined in the Children’s Act, Chap. 46:01? If yes, provide your proposals.

iii. Do current Acts of Parliament provide for the monitoring, protection and prosecution for acts of child abuse and child sexual abuse that are videotaped and placed on social media? What are your proposals and plans to protect children and the elderly in this area?

iv. Do current Acts of Parliament have provisions to protect teenage mothers from their abusers?”

Process at the Inquiry Stage
During an inquiry, Members are at liberty to ask questions that involve the scrutiny of relevant legislation. These questions may be prepared by the Members themselves or may arise out of an Issues Paper.

Process the Reporting Stage
Legislation often impacts on a number of other pieces of legislation, for instance, the Fourth Report on the Joint Select Committee on Human Rights, Equality and Diversity on the Systems in Place to Protect Children from abuse highlighted a number of pieces of legislation which are all linked to the issue of protecting children from abuse. This information was presented at the Introduction of the Report and further elaborated in the Evidence.

Timing
Implementation is a complex matter which depends on the mobilisation of mechanisms, funds and different actors. For these reasons, the Parliament is aiming to develop a systematic approach to review selected legislation. This is intended to include, the review of at least one statute by each Joint Select Committee on an annual basis.

The decision on the timeline for review post-enactment, is generally left up to each committee. The length of the review process can range from three months to well over a year.
Case Study - Post-legislative scrutiny of the Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34

In 2000, Trinidad and Tobago enacted its first Deoxyribonucleic Acid legislation in an effort to significantly improve its detection and conviction rates for a number of serious crimes including murder and rape. However, the 2000 legislation lingered unimplemented and in 2007 it was repealed and replaced by the Deoxyribonucleic Acid Act, 2007. The 2007 Act provided for the establishment of a DNA Databank and empowered the court at section 19 to compel ‘suspects’ to give samples.

Since the Act failed to empower the courts to compel ‘convicted’ criminals and ‘charged’ persons to provide samples, persons in those groups refused to provide samples and that in turn, impeded the development of the DNA database. For example, in April 2008, a man charged with murder refused to give a sample to police, even after confessing to two persons that he committed the murder. Police applied to the High Court under section 19, for an order to compel the suspect to give a sample for analysis to determine whether blood found on his trousers were the victim’s. However, as he was already ‘charged’, the court denied the order. As a result, while serious crimes increased, crime detection dropped.

In 2011, Government examined the 2007 Act and Trinidad and Tobago’s DNA legislation was again overhauled to address a number of issues. This led to the passage of the Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34 (DNA Act, 2012) which repealed and replaced the 2007 DNA Act. It was assented to on May 10, 2012 and since it was not subject to proclamation, it had the full force of law with effect from that date. Provisions of this Act form key aspects of the country’s national security policy and are therefore essential in the fight against crime.

In the First Session of the Eleventh Parliament (2015/2016), the Joint Select Committee on National Security (‘the Committee’) noted that although the current Act also provided for a DNA databank and rectified the deficiencies of its predecessors, implementation was slow. In its Report to the Parliament, the Committee expressed its dissatisfaction with the slow pace of implementation and this prompted Cabinet to establish a Steering Committee at the Ministry of National Security to expedite the establishment of the DNA Databank.

In August 2016, the Committee commenced its post-legislative scrutiny of the Act through an inquiry into the operations of the Trinidad and Tobago Forensic Science Centre and the issue of DNA sampling in Trinidad and Tobago. The inquiry’s objectives were to:

(a) gain an understanding of the operations of the Trinidad and Tobago Forensic Science Centre (TTFSC);
(b) identify the challenges faced by the TTFSC as it related to effective forensic sciences; and
(c) determine the effectiveness of forensic sampling and the process of the collection of DNA as required under the Administration of Justice (Deoxyribonucleic Acid) Act, 2012.

In order to satisfy these objectives, the Committee requested written submissions from the Ministry of National Security on a number of issues, including inert alia: compliance with World Health Organisation (WHO) and International Organisation for Standardisation (ISO) standards; logistical arrangements for the effective collection of DNA; the identification of procedural guidelines for forensic sampling; the provision of information and statistics relating to cases that were waiting to be processed for narcotics, homicide, ballistics and toxicology; the adequacy of arrangements in relation to public facilities, body and human remains storage facilities, work spaces, chemicals and equipment; and staffing.

An analysis of the written submissions revealed a number of issues which impacted full implementation and as a consequence, the Committee conducted two public hearings in June
2016 with officials from the Ministry of National Security, the TTFSC, the Trinidad and Tobago Police Service and other key stakeholders. Based on written and oral evidence provided the Committee determined that the following factors were impediments to the proper implementation of the Act:

(i) accommodation and other staffing issues at the TTFSC;
(ii) a significant backlog of DNA testing;
(iii) need to introduce effective methods of DNA sampling;
(iv) the DNA Databank was not yet established nor was a Custodian Manager for the Databank employed;
(v) Regulations to give effect to the DNA Act were outstanding; and
(vi) the TTFSC and its laboratory were not yet certified under the ISO and International Electro Technical Commission.

Report Recommendations
In its Report to the Parliament, the Committee recommended, among other things, that the TTFSC pursue measures to ensure that it received ISO/IEC 17025 accreditation; that it conduct periodic follow-up with the Ministry of National Security toward operationalising a comprehensive timeline for the implementation of identified solutions; and that there be a review process for the granting of scholarships in the area of forensic pathology.

The Committee also recommended that once employed, the Ministry of National Security should provide assistance to the Custodian Manager for the establishment, commencement and operationalisation of the DNA Databank and further, that the Ministry should assist the TTFSC in sourcing additional staff, procuring equipment and acquiring suitable accommodation.

In relation to the outstanding Regulations, the Committee recommended that the Office of the Attorney General should expedite its drafting and presentation to the Parliament as required under section 34 of the Act.

Ministerial Responses
Following the presentation of the Report in both Houses, it was then forwarded to the Minister of National Security and the Attorney General for their responses to the Committee's recommendations.

ISO/IEC 17025 Accreditation
The Minister’s response advised that an Accreditation Project Committee (APC) comprising personnel of the TTFSC and the Ministry of National Security had been established to ensure that accreditation of the analytical services provided by the scientific sections at the TTFSC. The APC had identified and documented the outstanding activities required for ISO 17025 compliance and had provided timelines for completion. It was anticipated that outstanding activities would have been completed by January 2018 and that an application could have been made to the Accreditation Body immediately thereafter to formally initiate the process.

Operationa"alising a timeline for the implementation of solutions
The Minister indicated that the Ministry continued to liaise with the Service Commissions Department with a view to ensuring the availability of adequate staffing at the Centre. The Ministry had also initiated the process to purchase a Genetic Analyser and it was exploring options for a suitable location for the accommodation of the TTFSC.
Forensic Pathology Scholarships and the hiring of internationally-based Forensic Pathologist

The Committee was informed that the Scholarship Evaluation Framework was revised in 2013 to include scholarships in the area of forensic pathology and that the Ministry was seeking to collaborate with the Ministry of Health in the engagement of pathologists.

Assistance to the Custodian Manager

In an effort to assist the Custodian Manager in the establishment, commencement and operationalisation of the DNA Databank, the Minister stated that a preferred provider had been identified for the provision of the hardware for the DNA database, the procurement process for buccal swab kits had been initiated and that work had commenced at a building to house the Custodian Unit.

Regulations

In his response, the Attorney General advised that representatives from the Ministry of National Security, the Police Service, the TTFSC, the Chief Parliamentary Counsel's Department and the DNA Custodian had collaborated on the formalisation and finalisation of the DNA Regulations pursuant with section 34 of the Act. It was further stated that pending approval of the Regulations by the Law Review Committee, it would have then been submitted to the Cabinet for its consideration with a view to having same debated in the Parliament during the next session.

2018/2019 Follow-up

The Administration of Justice (Deoxyribonucleic Acid) Regulations, 2018 came into effect in June 2018. While the Regulations breathed life into the Act by regulating the roles and responsibilities of the Custodian and the taking, analysis, transport and storage of DNA samples, a number of key activities still remained outstanding for full implementation of the Act. These included the uploading of DNA profiles into the Databank, the upgrading of the ICT infrastructure and equipment at the site of the Databank and the accreditation of the Trinidad and Tobago Forensic Science Centre.

As a consequence, the Committee commenced a follow-up inquiry in December 2018 by requesting written responses to questions surrounding the outstanding issues from the Ministry of National Security and the TTFSC. Following the receipt of responses, the Committee then held a public hearing on January 23, 2019 with officials from both institutions. The inquiry is at the stage of deliberations following which, a report with recommendations will be presented in both Houses.

Challenges

External-Agency Level

Although the Parliament of the Republic of Trinidad and Tobago remains committed to its plan to increase oversight of implemented legislation, several administrative limitations have thwarted the efforts of implementing agencies.

Namely, financial constraints, human resource deficiencies and deficits in leadership are major contributors to inadequate legislative enforcement.

Parliamentary Level

Additionally, in small Parliaments such as Trinidad and Tobago’s, there are very limited backbench Members available to serve on Committees. Therefore, the composition of oversight Committees usually include several Cabinet Ministers. This often leads to the lack of political will or the consensus required to follow-up on implementation.
Conclusion
Post-legislative scrutiny is a recent addition to the legislative oversight activities of the Parliament of Trinidad and Tobago. Thus far, this process has been executed in a relatively unstructured manner through the departmental oversight committees. Plans to develop a more methodical system to evaluate laws are currently being developed. However, there are administrative shortcomings that hinder implementing agencies from attaining implementation benchmarks. Despite these challenges, the Parliament undertook post-legislative scrutiny of eight pieces of legislation during the 2017/2018 Session in fulfillment of its constitutional obligation.
In 2019, the Parliament intends to increase this number and explore technological solutions for the tracking and monitoring of implemented law.
V. Peru: Structural and political challenges to effective PLS

By: David Thirlby, Senior Programme Manager, WFD

In Peru, the Congress has a number of mechanisms at its disposal to undertake oversight of the executive including through the submission of oral and written evidence by government ministers and senior officials to the plenary and committees. The Congress also has the power to call ministers for formal questioning which may lead to censure. However, oversight is primarily undertaken through “ordinary” committees, which are arranged dependent on the structure of the government and tend to be aligned to government ministries. In addition, Congress may establish ad-hoc cross-party extraordinary and investigative cross-party committees.

In terms of support, Congress has the Department of Research and Parliamentary Documentation (DIDP – through its Spanish acronym). DIDP provides a comprehensive range of products including thematic research reports and a compilation of state statistics. It also has a digital platform that includes all legislation that has been published in the official gazette “El Peruano” and it develops a monthly legal calendar where by law state ministries and agencies need to submit their reports. For example, the President must submit to Congress the state accounts no later than the 15th of August of the following year (Article 88, Constitution 1991). DIDP also tracks the developments of secondary legislation and statutes and informs the “ordinary committees” that have originally considered the primary law.

There are no separate instruments for post-legislative scrutiny and its function is undertaken through the established oversight mechanisms, namely through the committees. However, despite the “ordinary committees” and other committees at the disposal of the chamber, and the support of a dedicated research and documentation unit, the Congress does not fully undertake post-legislative scrutiny (or arguably broader oversight of government policy). Taking into consideration that post-legislative scrutiny, i.e. a methodical approach to evaluate the impact and implementation of law, is relatively new amongst parliaments in the 21st Century, the Congress of Peru also faces structural and political challenges.

To begin with the unicameral chamber is small in comparison to other countries with similar population. The Congress of Peru consists of 130 members serving a population of over 30 million people under the 1991 constitution. Previously, under the 1979 Constitution, Peru had had a bicameral chamber with a total of 240 parliamentarians. A proposition to re-establish a bicameral parliament with a Senate and increase the total number of parliamentarians, was defeated in the December 2018 Constitutional referendum. The small number of parliamentarians, relative to the size of the country, means that the focus of attention is not on post-legislative scrutiny. There are examples of other countries where a large number of parliamentarians or an upper chamber a step removed from politics, can afford the time to undertake extensive post-legislative scrutiny.

However, perhaps the biggest challenge in Peru, is the political environment where a number of crises has upset the routine functioning of parliament. A major cause of the political instability is the weakness of the political party system which has an impact in Congress. The personification of political parties, the fragmentation of the party landscape, the high-cost of politics and the electoral

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55 Interpelación
56 Comisiones ordinarias
57 Comisión especial y comisión investigadora
58 Departamento de Investigación y Documentación Parlamentaria
59 www.congreso.gob.pe/DIDP/seguimiento_reglamentacion_leyes
60 See Pedro A. Fernández Chávez: “La necesidad de fortalecer a los partidos políticos como eje fundamental de la reforma del sistema político”, Cuadernos Parlamentarios No. 20 Congreso del Perù
pressure all have an impact in how parties operate in Congress. Personality led politics, lack of policy coherence and long-term planning within the parties and a culture of crossing the floor all impact on the effectiveness of the Congress\textsuperscript{61}. It is therefore not surprising that within this environment, space is limited to conduct post-legislative scrutiny which requires long-term planning, focus and cross-party engagement.

Moreover, considering the political crises that has affected Peru, it is not surprising that where there have been committee inquiries, these have focused on the immediate. For example, in the 2015-16 year a special committee looked at the effect of the corruption allegations following the Odebrecht scandal and an investigative committee considered the effect of drug trafficking in national and regional political parties. Attention has also been focused on the government’s response to handling environmental disasters\textsuperscript{62}.

Arguably, a greater number of parliamentarians would allow Congress to undertake the more systematic and detailed evaluation of the impact of laws that post-legislative scrutiny requires and, be able to respond to the immediate issues of primary concern to the citizen. Congress has the structures and support required for more detailed oversight work but the impact of the weak party system and the on-going political environment, mean that the overall attention of the parliamentarians is not in developing a culture where post-legislative scrutiny takes place.

\textsuperscript{61} See p25 above
\textsuperscript{62} See www.congreso.gob.pe/informescomisionesespaciales and www.congreso.gob.pe/informescomisionesinvestigadoras