

## Rule of Law Toolkit

### Chapter 3

### Effectiveness of Laws

#### Facilitator's Notes

**Target Audience:** High School Students; University Students; Law Students  
**Estimated Time:** 1.5 hours

#### Description of Section

Participants will be asked to think about the effectiveness of laws at the international and national level. The following major themes will be discussed:

- what elements make laws effective
- the importance of the legislative branch in drafting effective laws
- the legislative process for developing effective laws

#### Key Learning Objectives

Participants will:

- Identify the elements of effective laws.
- Understand the importance of having effective laws in their communities and countries.
- Become familiar with how lawmakers determine when new laws are needed, and how they create those laws.

#### Glossary of Terms

- **Rule of Law:** A general legal concept according to which all laws are enforced and applied equally to all people, without any discrimination.
- **Equality:** The principle under which each individual is subject to the same laws, with no individual or group having special legal privileges
- **Rules:** Generally agreed upon principles, standards, or laws that cover aspects of social behavior, governmental procedures, and financial transactions.
- **Law:** A system of rules enforced by societal institutions, such as courts, the police, and the government.
- **Legislation:** A proposed or enacted law or group of laws. This word can also refer to act and process of law-making, usually performed by parliamentarians or legislators.
- **Transparency:** The degree to which citizens can easily and swiftly obtain information about governmental procedures and resources, including how government officials make decisions, and what information they consider in making decisions. The greater the accessibility of this information, the more *transparent* the government is said to be.
- **Non-discriminatory:** The absence of discrimination. Laws and policies are *non-discriminatory* when they apply to everyone equally, without regard to a person's gender,

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race or ethnic origin, religion or political belief, age, social status, disability, or sexual orientation.

#### Handouts

Handout I: Background Paper on Effective Laws and the Legislature

Handout II: Challenges to the Legislative Process in Country X

Handout III: Elements of an Effective Law

*Handouts I and II should be provided to the participants prior to meeting as a group. The background material will not be discussed in detail, but will be used as a frame of reference for discussion and with group activities. Handout III will be used during Activity 1.*

#### **Introductory Activity: Brainstorm the Need for Effective Laws**

Explain the goals of the brainstorming session first: "The goal of our brainstorming session is to identify the need for effective laws in a country. Why might laws be needed? What are some characteristics of an effective law?" Articulate this task in full to the group and then note it down briefly as a title on the blackboard or sheet of paper.

Emphasize that after completing the list of ideas, each participant will have a chance to discuss any suggestions, and that the process of brainstorming itself is designed to generate as many ideas as possible, not to evaluate their quality. It is important to mention any time limits, so that the group knows how long they have to complete the task. All ideas should be noted down in the same words as articulated by the participants.

After brainstorming, organize, discuss, and articulate each idea in a well-formed statement. If at some point the group stops generating new ideas, you may facilitate the discussion by adding your recommendations or comments.

Conclude the brainstorming session by asking participants to consider how the effectiveness of laws and the rule of law interrelate. Write the answers on paper and tape to the wall for use at the end of the lesson.

Question: Which elements of the Rule of Law are related to effective laws?

Example Answers: Fairness; equality; protection of basic rights; openness and transparency of law-making process.

#### **Activity 1: Elements of an Effective Law**

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**Step 1. Ask participants to recall information presented in Handouts I and II. Then present participants with the following scenario:**

Imagine that you are a member of a legislative council. You perform many tasks, and you must always keep in mind the many roles you perform. For instance, you are responsible for being:

- A representative of your constituency;
- A politician who is a member of a political party;
- A law-maker who helps write public policy; and
- Someone who monitors government agencies to hold them accountable and counter excess bureaucracy.

**Step 2. Ask participants to answer the following questions:**

1. List the various roles you perform as:
  - a member of a legislative council;
  - a representative of a political party;
  - a member of a committee that deals with ways to hold government agencies accountable and counter excess government bureaucracy.
  - a. How do these different roles complicate your ability to balance your interests with those of your political party, and with those of your constituents?
  - b. If these different roles are ever in conflict, which role is most important?
  - c. In your opinion, what factors do you need to consider in order to guarantee that the public interest is being served by a particular policy? (Examples include cost, social impact, etc.)
2. Divide the participants into small groups. Ask each group to brainstorm the factors a lawmaker must consider when creating a new law.
  - a. Possible answers include:
    - Whether the law affects everyone equally. The law must not discriminate against women, religious or ethnic minorities, or poorer people.
    - Whether the law benefits the public at large, or only a privileged few.
    - Whether the law addresses concrete actions or behaviors, so that violations of the law can be proved.

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- Whether a majority of citizens agree that the law is a good idea. This is not a necessary factor, but it is something a good lawmaker should consider.
- Whether the law provides for reasonable penalties for crime. A penalty is reasonable if it is proportional to the harm caused by the violation and does not result in an excessive deprivation of liberty or rights.

**Step 3. Distribute Handout III to participants. Ask each group to read the Scenario described in the handout.**

**Step 4. Ask each group to discuss the Scenario, while recalling the information presented in the Background Paper on Effective Laws and the Legislature. The Questions included on the handout should guide their discussion.**

**Step 5: After discussing the participants' conclusions, ask them to consider the following additional scenarios. Discuss whether each proposed law would be effective. Why or why not?**

1. The government is considering passing a law that would ban the smoking of tobacco in public places. Over 60% of the citizens smoke and are not in favor of the ban.

Will this law be effective and enforceable? Should a law be passed that protects the rights of a minority, but limits those of the majority? Can laws change social norms?

2. The government is considering passing a law that would provide authorities with broad powers to censor the Internet. The government believes the law is necessary to protect citizens from obscene information and possible criminal activity. Many citizens agree that some sites should be blocked, particularly for children, but are nervous about the law giving government officials broad discretionary authority to limit free speech.

Will this law be effective? Why or why not? How can the government ensure that an effective law will be passed – one that meets the needs of the public while respecting individual rights of free speech?

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**Step 6:** Ask the groups to come together and share their results with the entire class. Discuss.

#### Some Additional General Discussion Points

- Can laws change social norms?
- Is creating new legislation an effective way for governments to promote policy?
- Why is it important for a law to apply to everyone equally?
- Should citizens follow bad laws that are unjust?
- Are quality, fairness and effectiveness only associated with the law or are they also associated with procedures?
- Should all laws have strict penalties and punishments? Why or why not?

**Step 7:** Ask the entire group to consider the challenges a law-maker might face in creating and enacting a new law.

**Step 8:** To conclude the Activity, ask participants to re-think about the elements of an effective law. Ask them the same question you asked at the end of the brainstorming exercise: Which elements of an effective law are related to the Rule of Law?

Possible answers include:

- Fairness and equality – equal treatment of everyone affected by the law
- Openness and transparency – publicizing the proposed law to promote public awareness and solicit public feedback and support; explaining to the public how the law will be enforced, what the punishment will be for violations; etc.

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#### **Handout I:** **Background Paper on Effective Laws and the Legislature**

A law, defined as a rule promulgated by the state and implemented by state officials, can take many forms. For instance, rules include – but are not limited to - statutes, ordinances, and administrative regulations.<sup>1</sup> Laws are necessary to ensure stability and security within a state and to protect individuals' rights. Some laws prohibit or regulate how individuals must act towards each other, or how the state must act towards them. Other laws establish individual rights and freedoms that the state is bound to protect. Legal provisions must apply equally to all members of society.

An effective law “achieves its legislative mandate; operates with the requisite accountability and control mechanisms in place; operates with the appropriate level of due process; is enforceable and enforced; and operates with the right level of expertise.”<sup>2</sup> As much as possible, for a law to be effective, it should be derived from the cultural and social environment that is considered acceptable by society. Most importantly, effective laws need to be drafted so that they are in accordance with constitutional, national, and international standards. On a national level, legislatures should draft laws that are constitutional and do not conflict with other existing laws and regulations. However, sometimes legislatures draft and adopt new laws that challenge, conflict, and overrule existing provisions in order to affect social change. Legislation should also be in compliance with principles of human rights and provisions of the international human rights covenants and treaties that the country has ratified.

The legislature plays a critical role in drafting, passing, and evaluating laws and regulations. In order to draft effective legislation, legislators must first identify the causes of the problematic behavior or issues impacting society. Once a drafter thoroughly comprehends the issue, he or she can propose a solution that responds to the causes of the problem. In doing so, the drafter should compare his or her solution with possible alternatives. This can be accomplished by consulting professional literature, comparative law, or experts. The goal is to find out how others have tried to solve similar problems.

Next, the drafter should make sure the proposed law addresses the causes of the problematic behavior that were initially evaluated and try to predict what behaviors the new bill might introduce. In addition, a bill's costs and benefits should be weighed against each other. The bill should only be adopted if its benefits exceed its anticipated costs. This can be a complicated

<sup>1</sup> Ann Seidman, Robert Seidman, and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, Feb. 2003, <http://www.pogar.org/publications/other/undp/legis/assessing-legislation-e.pdf>: 18.

<sup>2</sup> Edward Donelan, “*Legislative Drafting – Civil and Common Law Approaches Compared*,” Organization for Economic Co-operation and Development, [www.oecd.org/dataoecd/47/43/41725083.ppt](http://www.oecd.org/dataoecd/47/43/41725083.ppt)

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analysis and should include an evaluation of the impact on various and diverse social strata, and the public interest, such as the environment, human rights and good governance, and the economy. Finally, the drafter should create a mechanism to monitor and evaluate the effectiveness of the new law and to determine if further action is needed.<sup>3</sup>

Understanding the role of the legislature and how it functions is important for other branches of government because the laws impact the activities of the judiciary and the executive. A competent legislative body is subject to oversight and assessment as necessary in order to ensure the passage of just laws that support the rule of law. In both civil and common law countries, the parliament or legislature has several roles. The legislature controls which laws are discussed, drafts and enact laws, and exercises oversight over the judicial and executive branches. Most importantly, the role of a legislature is to represent the citizens. An integral part of this representation involves legislators communicating with constituents about how current laws work, how laws impact constituents, and what are current needs in order to initiate new needed laws.

The issuance of just and effective laws must be based on *transparent* and *collaborative* drafting processes. This means that the public is informed of the policy goals of the proposed legislation, and allowed to comment and make recommendations about the law. It is very important that legislators consult civil society groups in all stages of the law-drafting process. The participation of civil society is essential to ensure the law expresses the needs of society. In addition, parliamentarians must notify their constituents about the implications of new laws. This particular role of a legislator cannot be stressed enough.<sup>4</sup>

In representative democracies, the parliamentarian is a lawmaker. Legislatures in different countries have different processes for writing laws, usually depending on whether the constitution provides for a parliamentary or presidential system of government. However, the legislative process usually includes the following two parts:

1. **Preparation.** Especially in parliamentary systems, but also to some extent in presidential systems, laws are researched, developed, and drafted by the executive branch. In many countries, the executive designates a certain committee initiate research and hold hearings to investigate the need for a new law, and what that law should say. This is the stage when the public, non-governmental organizations, and other interest advocacy groups participate by providing testimony and submitting their comments.<sup>5</sup> Legislatures can also look to political parties, party caucuses, or other groups for their recommendations, as well as to objective information sources like parliamentary libraries and academia, and

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<sup>3</sup> Seidman, *supra note 1*, at 63-85.

<sup>4</sup> *Id.* at 22.

<sup>5</sup> *Lawmaking and Stages of Legislative Procedure*, United Nations Development Programme, 2005, <http://www.pogar.org/publications/other/undp/legis/procedure.pdf>

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subjective information sources like think tanks or professional lobbying firms.<sup>6</sup> In order to write an effective law the legislature needs an in-depth and diverse amount of information.

2. **The Floor.** At this stage, the law has been drafted and is presented to “the floor” of the legislature. In a parliamentary system, the prime minister introduces the proposed law – also known as a “bill” – and a debate takes place. Then the bill is referred to a committee to be modified. The bill can be debated multiple times in the future and eventually may pass after a vote. Similarly, in a presidential system, individual members of the legislature can introduce a bill, which is then referred to a permanent legislative committee. Depending on the system, the committee may or may not be required to vote on the bill. If the bill makes it through the committee, it will be resubmitted for debate and possibly voted into law. In bicameral systems, the two chambers must reconcile different versions of the bill that they may be evaluating simultaneously. Legislatures differ widely on the degree to which the public is invited into these procedures. Overall, only a small volume of bills that are proposed actually become law.<sup>7</sup>

Parliaments should consider the decisions or recommendations of international or regional human rights bodies and, wherever possible, incorporate them into national laws. Parliaments can also create human rights bodies to oversee human rights in the country and to ensure that human rights are considered and respected in legislation. For example, in Finland, the Constitutional Law Committee reviews and compares all proposed bills with the constitution and international human rights standards, and identifies portions of the bill that are incompatible and therefore must be deleted or changed.<sup>8</sup> Laws will be much more effective if legislators take into consideration international standards, especially those pertaining to human rights.

An effective law has the following characteristics: (1) it addresses a policy goal or problem; (2) it affects everyone equally; (3) it addresses concrete actions or behaviors, and therefore violations of the law can be proven and reasonable penalties can be established; (4) it has popular support; and (5) there are adequate resources for the law to be enforced and for enforcement to be monitored, so that the legislature can determine whether amendments are necessary. The government must also publicize the law to promote public awareness and support for the law.

It is important to remember that the purpose of a law is to serve the public interest, not the interests of a few individuals or companies. If the law fails to fulfill its goals or discriminates against certain segments of society, it will undermine the rule of law and public respect for

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<sup>6</sup> *Internal Organization of the Legislative Branch*, United Nations Development Programme, <http://www.undp.org/governance/docs/Parl-Pub-internalorg.htm>.

<sup>7</sup> Id.

<sup>8</sup> *Human Rights Handbook for Parliamentarians*, Office of the High Commissioner on Human Rights, 2005, <http://www.ohchr.org/Documents/Publications/training13en.pdf>: 63-80.



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government institutions. Effective laws are important for sustaining the rule of law, which is necessary in order for people to feel physically and economically secure. It also guarantees that the fundamental freedoms and rights of all people will be protected fairly and equally.

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#### Handout II: Challenges to the Legislative Process in Country X

In order for a law to be effective, it must be the result of a good legislative process. A good process has certain characteristics, including transparency and in-depth research into the particular policy issues being addressed. The legislative and executive powers in Country X have been weakened due to the international situation confronting the country. Therefore, it is more difficult for Country X citizens to have total confidence in their current legal structure.

Some internal and external challenges facing the legislative process in Country X are listed below:

#### A. Internal Challenges:

1. Conflict between groups in the parliament
2. Corruption
3. The legislature passes legislation too quickly
4. New parliamentarians do not know their roles
5. Low level of public awareness about the legislative process, existing laws, and how they can get the government to address their concerns through new legislation.
6. Underdeveloped channels of communication between the public and parliamentarians.
7. Need to create new legislative procedures and traditions for addressing internal challenges.

#### B. External Challenges:

1. Incorporating international democratic norms and principles into national legislation, applying those norms and principles.
2. Incorporating international legislation, such as WTO agreements, into the local legislative framework.
3. Updating modes of communication to ensure that the public and media have access to accurate information about the Palestinian legislative process.
4. Need to create new legislative procedures and traditions for addressing external challenges.

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#### Handout III: Elements of an Effective Law

1. Read the scenario below.

#### Scenario

Last year, in Country A, the government realized that a lack of traffic laws was creating an endangering public safety. After a period of economic growth, the numbers of cars in Country A increased, causing a dramatic rise in the number of car accidents, traffic congestion, and deterioration of the roads. There was growing public concern for traffic safety, especially the increased danger to children crossing crowded thoroughfares.

The National Traffic Regulation Act, passed 10 years earlier, was outdated and inadequate. The Act did not give local government officials authority to create local traffic regulations. In addition, there was no comprehensive traffic regulation that limited the speed of vehicles or restricted parking.

The government, recognizing the growing safety issue, begins to debate a new law that would explain: (1) who in government has the authority to pass traffic regulations – either permanent or temporary; (2) what procedures must be followed in passing new regulations; and (3) how new orders should be announced. The government is also debating how best to change drivers' behavior – whether this should be accomplished by imposing penalties on drivers who violate traffic laws, rewarding good drivers, posting more road signs, etc.

2. In your group, discuss the following questions:

- What elements would make the new national traffic law effective?
- What procedures should the legislature follow in drafting the new law? What groups or individuals should be consulted? What objective information should the legislature consult? Is there any research that should be done before specific traffic laws are passed?
- In the case of the traffic law, what do you think would convince people that there is a good chance they will be punished for violating the law?
- Why is it important for a law to provide for reasonable penalties for violations of the law?
- How can the government ensure that the law will apply to everyone equally? Why is this important?

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- Are there laws in your country that are effective? Why or why not?
  - Are there laws in your country that are ineffective? Why or why not?
3. Be prepared to share your discussion with the entire group.