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Closing the Implementation Gap

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Article at a glance

- Implementation gap is defined as the difference between laws on books and how they function in practice. This is particularly visible at the local level, where poor governance and weak administration of laws have the greatest impact on the lives of daily citizens.
- The cause of implementation gap is a combination of political, economic, and social and cultural factors, as well as misaligned stakeholder incentives.
- Overcoming implementation gap requires a two-pronged approach that focuses on improving the quality of laws and making sure that they correspond to real needs and concerns of the affected constituents. The three main stakeholders – the government, the private sector, and the civil society – must work together to address the challenges.

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Introduction

In every country, sound laws are a key foundation of democratic governance and economic development. Crafting such laws, however, is only part of the path to success. The other half is making sure that the laws are properly implemented – which is often more challenging.

When laws and regulations are not properly adopted, such discrepancy creates an implementation gap – the difference between laws on the books and how they function in practice. This gap can have very negative consequences for democratic governance and the economic prospects of countries and communities. When laws are not properly implemented, that undermines the credibility of government officials, fuels corruption, and presents serious challenges for business, which in turn hampers economic growth. This is especially true at the local level. Implementation gaps are particularly visible and often most painfully felt at the local level, where poor governance and weak administration of laws have the greatest impact on the daily lives of ordinary citizens.

To help better understand why implementation gaps happen and how they can be addressed, CIPE and Global Integrity published *Improving Public Governance: Closing the Implementation Gap Between Law and Practice*. This article highlights excerpts from the *Improving Public Governance* guidebook, and offers starting points for identifying implementation gaps in various laws and regulations, asking why these laws and regulations are not fully adopted or practiced. To download the full guidebook, visit <http://www.cipe.org/publications/detail/improving-public-governance-closing-implementation-gap-between-law-and-practice>.

Sources of Implementation Gap

While implementation gap manifests itself uniformly in countries around the world as the difference between laws as envisioned during the design process and the reality that prevails as they are put into practice, the reasons for why that happens vary. The ultimate cause for implementation gap is a sum of several common underlying factors in political, economic, and social and cultural spheres. Following are common causes for implementation gap.

Political Factors

- **State bureaucracy:** the lack of proper implementation is often tied to state structures and public administration. In many countries bureaucracy is overgrown at both the national and local levels, often with unclear or overlapping responsibilities both horizontally (various parallel agencies) and vertically (national vs. local agencies). Due to the lack of clear delineation of responsibility and accountability within government structures, policy and rules deemed appropriate from the central government may seem unfair, unclear, or impractical to local government bureaucrats, which can ultimately cause an implementation gap.
- **Legitimacy of the laws:** when laws are made behind closed-doors without transparency and the consultation of stakeholders' inputs, they are likely to benefit only a small group of insiders. As a result, the general population will see such laws as illegitimate and therefore not deserving compliance.
- **Quality of the laws:** laws can suffer an implementation gap when its provisions are overly complicated, conflicting, or unclear. This can happen if the capacity of lawmakers is limited, or if the laws are purposely designed vaguely to benefit special interest groups.

- Divergent political agendas: once a law is passed the attention (or lack thereof) it receives from interest groups, civil society, and the citizenry at large is a key determinant of whether and how that law is carried out. At the local level, it often means that the influential groups on the ground where the law is implemented may have different priorities and interests than those who influenced the law's design. When the local political forces do not see an incentive to implement a given law, that law will remain on paper only. Or, they may be implemented but in a selective and biased way benefiting some but not others, and fueling corruption in the process.

Economic Factors

- Resources to implement laws: the cost of implementing laws is expensive but it is not the amount of resources that determines the capability of the state to design and implement them, but rather how the resources are allocated. Often the benefits that the law intended for the general population end up being appropriated by government officials themselves and well-connected elites. Especially at the local level, the influence of elites over governments is often substantial. Temptation to rent-seek, coupled with a lack of monitoring or sufficient deterrents for violations, means that an implementation gap is likely to develop.
- Barriers to economic activity: in most developing countries, the core economic aspect of the implementation gap problem is the way in which laws and regulations circumscribe economic activity in a manner that excludes large portions of the population from the formal economy. Because legal requirements are simply too hard to meet and complying with them does not make economic sense, a large portion of economic activity gets trapped in the informal sector. As long as bribing an underpaid official to avoid red tape is a more

effective way of operating than complying with legal requirements, informality will continue to be the only economically rational choice for many capable entrepreneurs whose energy and initiative could be much more productively channeled.

- Vested interests: implementation gap may occur because of the resistance a law may face. For instance, if the law in some way challenges vested interests of a certain economic group, that group not surprisingly will resist implementation. As long as implementation of a law remains stifled by special interests that see their economic interests as being threatened, even the best laws will remain only on the books.

Social and Cultural Factors

- Influence of local elites: most commonly the reason for the lack of proper implementation at the local level is the lack of political will stemming from the fact that the elites benefit from the status quo. Without better grassroots oversight and pressure, local governments are unlikely to follow through on reforms that may be beneficial to the general public but hurt the interests of the elites in some way.
 - Social structures: informal structures often have their roots in culture or history, such as ethnic loyalties or trends in civic engagement. Informal power structures – especially at the local level – frequently complement or even supersede formal ones, creating room for advancing the interests of those with power at the expense of those without it. When they pass through the informal power network, laws can lose to their original design and objectives. As a result, citizens become more concerned with wielding whatever influence they have through the informal networks than with holding the local government accountable.
 - Culturally legacy: cultural stereotypes or practices persisting over generations can also fuel

implementation gap. One notable example is women's rights. In many countries, the law itself does not treat men and women equally. However, even in countries where in principle both genders enjoy equal protection under the law, women are not treated equally in reality. For instance, although in most countries the constitution guaranteed equal protection of property rights for men and women, in practice men are the ones who control the land and other assets.

Institutions and Incentives

All the multiple reasons behind the existence – and persistence – of implementation gaps in diverse country contexts clearly points to one overarching theme shared among these different explanations: incentives matter. When an implementation gap occurs, its root cause is the fact that incentives are misaligned or even counterproductive. It is therefore imperative to understand what those incentives are in order to diagnose why policies are rarely implemented as planned and to effectively address particular manifestations of the implementation gap.

In analyzing the underlying incentives, one must first map out the institutional environment that creates them. Nobel Prize winning economist Douglass North famously noted that the key challenge of institutional reform is the need to understand why things work the way they do.¹ What formal and informal institutions as well as corresponding enforcement mechanisms are in place to influence behavior of decision-makers, public officials, businesses, civil society organizations, and ordinary citizens? Only when one understands what those institutional incentives are can one begin to shape them in a way that helps to close the implementation gap.

Overcoming implementation gap requires a two-pronged approach that focuses on both improving the quality of laws and making sure that they correspond to real needs and concerns of the affected constituents.

Overcoming Implementation Gap

Implementation gap presents major issues to those with a stake in addressing it: the government, the private sector, and the civil society. If public services are not delivered because the government fails to implement appropriate laws or if firms operate in the informal economy because following regulations is too costly, then societies can struggle to prosper. Fixing the core problem, however, is not the responsibility for just one of the stakeholders. All societal actors must participate in addressing and closing the implementation gap.

1. *The government*

In democratic societies, governments at every level represent the people and are entrusted to work in the interest of their constituents. However, in practice this is often not the case in both weak and strong democratic countries. Implementation gap heavily affects all governments, and they could take an interest in addressing them in the following ways.

Political will is one of the most important elements of successful law implementation. Where there is political will among government leaders to see reforms through, it is unlikely that implementation gap would occur. Political will can be enhanced through better communication, i.e. making sure that those in the government responsible for implementation as well as their constituents understand the benefits of the law. At the same time, implementation rarely works if left to the government alone: civil society must stay engaged, demand action, and monitor progress.

Human capital is another key point. Educated and well-qualified civil servants are the backbone of successful law implementation. A realistic reform plan needs to include specific number of people that will be needed in the state administration at all levels for a successful implementation of laws. Educational background and professional experience are extremely important

for law implementation as well. The cost of having inadequately prepared civil servants can ultimately be much higher than not adopting laws at all.

Being mindful of material means is also important. While lack of resources may be an obstacle for many governments, the key to avoiding implementation gaps is setting realistic reform agendas. This includes realistic planning and budgeting of material resources that will be needed for implementation of particular reforms. The government should also seek input from qualified subject matter experts and relevant stakeholders to make an effective, studious plan. As a result of such a planning process, the government should avoid all the aspects of the reform that cannot be realistically and responsibly implemented.

Combating corruption remains one of the biggest challenges and most important tasks for governments across the world. As probably the biggest obstacle to proper implementation of laws, corruption needs to be curbed at all levels of government if reforms and law implementation are to be successful. This can be done through: better governance, introducing clear guidelines of proper conduct, extensive ethics training, whistleblower protection, and strict punishment for corrupt behavior among public officials.

Also, government needs to be realistic when it comes to the capacity of the public to absorb reforms and follow new laws. Various variables, including history, culture, or nature of the political system, can affect this capability and they have to be taken into account when the government is deciding on its political agenda. To improve public reception, the government should be open to input from various stakeholders before the law is passed.

Lastly, a clear intra-governmental communication is helpful. A good communication of ideas and programs from the national to local governments, as well as the other way around, is very important for successful implementation of laws and regulations. Officials at all levels need to

ensure that these channels of communication are open and easily accessible to relevant government employees before undertaking implementation of a specific law.

2. Private Sector

The private sector plays a vital role in building prosperous and free societies, and it is also a major stakeholder in addressing implementation gaps. In particular, a good business environment where private property rights are protected, the legal system creates a competitive market economy, government administration is efficient, and supporting infrastructure is adequate, depends on minimizing implementation gaps that affect key pillars of integrity.

One meaningful way to help close the implementation gap is for businesses to start with examining their own internal policies and procedures and improving them where needed. This may involve complying with financial disclosure requirements or abiding by legally mandated product safety standards or labor regulations. Legal compliance by businesses starts with good corporate governance, which consists of rules and mechanisms for transparent and accountable decision-making within the company on both business strategy and daily operations.

In addition to enhancing its own operations, the private sector can play an active role in changing the institutional circumstances that lead to the implementation gaps through public policy advocacy. As a major provider of goods and services in market-oriented economies, it can affect decision-making and ultimately help close the implementation gap. This can be done through business associations, chambers of commerce, economic think tanks, and other organizations representing voices of the private sector in public forums. Policymaking greatly benefits from receiving the private sector's transparent feedback when deciding on priorities for its legislative activities as well as law enforcement. Because

businesses are directly affected by many government laws and regulations, they are best positioned to identify the shortcomings of existing laws and their enforcement, and recommend concrete policy solutions.

Collective action is another recommendation for the private sector. Complex issues such as corruption are more than any single business or organization can tackle. Therefore, successful solutions require a joint effort among many different stakeholders committed to a concrete reform idea. Collective action can involve initiatives such as anti-corruption campaigns, voluntary adoption of best practices and business standards, or codes of ethical business conduct. These are tools that businesses around the world have successfully used to overcome the situation in which the business community is either passive or actively contributing to the implementation gap problem.

3. Civil Society

Civil society should play an active role in addressing the issue of implementation gap. The various laws that are adopted as a direct consequence of efforts of the civil society make sense only if they are implemented, and each civil society group should insist on implementation of regulations relevant to its area of focus. Civil society can engage in advocacy campaigns aimed at opening public debate around certain issues, starting a dialogue with the government, and partnering with other societal stakeholders and like-minded domestic and international organizations. By forging these partnerships, civil society groups have the ability to be important voices on policy issues and participate in decision-making processes of relevance for their work.

Because it is ultimately the government that adopts new regulations and implements them, it is in the interest of civil society organizations to work closely with governments to ensure that their ideas are embedded in the new norms. While this may be a very cumbersome process, establishing

a constructive dialogue with the government is an essential step for different social interests to be represented in law implementation. Such dialogue can be accomplished through civil society participation in public hearings on particular legislative issues and their implementation, participation in working groups that governments sometimes establish to advise on policy implementation, or various advocacy campaigns meant to bring the decision-makers' attention to concrete problems with implementation and put pressure on them to act.

Although the roles and goals of civil society and the private sector are sometimes perceived as adversarial on certain issues, when it comes to good governance and implementation of laws, they both benefit from closing implementation gaps. It is also important to keep in mind that business associations, independent chambers of commerce, and other private sector-focused organizations are themselves a part of civil society that can help close implementation gaps, especially when it comes to crucial laws that affect the conditions for entrepreneurship. Such cooperation can take many forms including: working together with business associations and other civil society organizations to build broad coalitions focused on issues of mutual interest; receiving important source of information from the private sector – and a key source of data for the research-oriented ones – on the state of implementation of various laws and regulations that affect the country's economy and development prospects; as well as a funding source for civil society organizations provided that such contributions are transparent and support that organization's mission so as not to compromise the independence of the recipient.

Civil society organizations can also cooperate with other like-minded organizations to work together toward a common cause. Such joint efforts may involve just domestic civil society groups or be a part of a larger international initiative in support of implementing country commitments to certain principles (for example, enforcing labor laws or

transparency in public procurement). In the era of growing Internet penetration and rising popularity of social media, forming such partnerships is easier than ever before, connecting organizations that might otherwise not have known about each other. What is more, cooperating with larger and more experienced organizations can help smaller and newer ones gain broader recognition and improve their advocacy skills.

Lastly, it is very important for civil society to be able to effectively present its agenda and goals to the public. This is best done in cooperation with free media. Unfortunately, freedom of the media is not equally guaranteed throughout the world. It is in the interest of civil society, however, to make best use of what is available to promote its agenda and goals. Media is present in people's everyday lives and can significantly contribute to greater visibility of civil society efforts and objectives. This goes for combating the implementation gap, as well, whether via emphasis on its existence in the media or indirectly, by questioning ineffectiveness of reforms that were supposed to be implemented.

Conclusion

There are clear benefits for the entire society if implementation gap is narrowed or closed in key policy areas. Narrowing and closing the implementation gap makes social and political reforms possible. These reforms may be modest in scope, but if implemented properly, they can serve as cornerstones for more comprehensive reforms in the future. Once the method in which laws are adopted and implemented is clear and meaningful to the public – and once the public sees that laws are indeed implemented – it is easier to undertake such necessary reforms.

It is also important to keep in mind that the lack of implementation often has to do with misalignment of institutions and incentives that hinder the proper follow-through on legislation. Yet, the three major societal stakeholders – government,

private sector, and civil society – do have significant benefits to realize if they overcome the skewed incentive structure and make a concerted effort to push for implementation of key reforms.

Endnotes

¹ Douglass C. North, *Institutions, Instructional Change, and Economic Performance*, New York: Cambridge University Press, 1990.

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