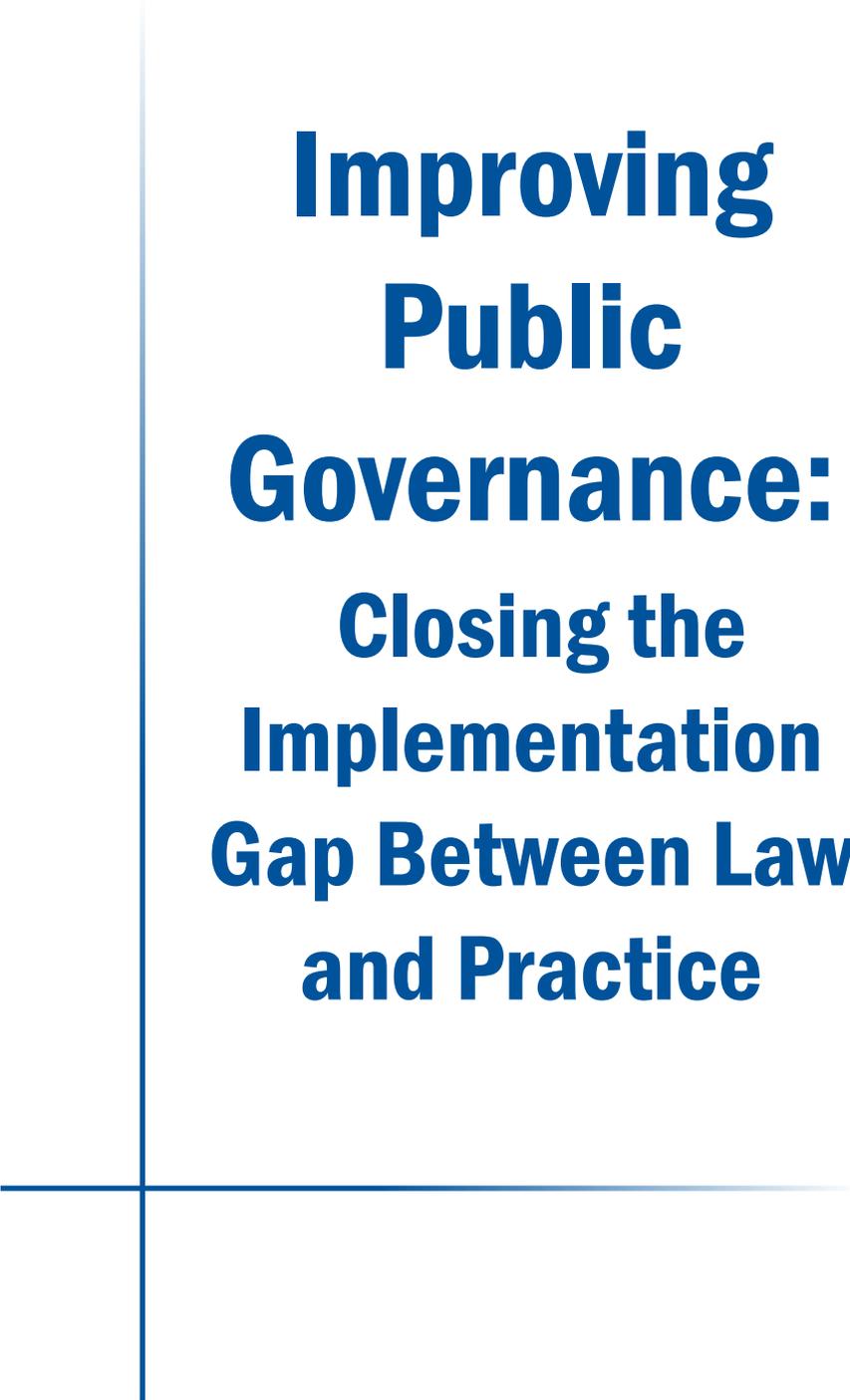


Improving Public Governance



**Closing the Implementation Gap
Between Law and Practice**

Center for International Private Enterprise and Global Integrity



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Governance:
Closing the
Implementation
Gap Between Law
and Practice**

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The Center for International Private Enterprise (CIPE) strengthens democracy around the globe through private enterprise and market-oriented reform. CIPE is one of the four core institutes of the National Endowment for Democracy. Since 1983, CIPE has worked with business leaders, policymakers, and journalists to build the civic institutions vital to a democratic society. CIPE's key program areas include anticorruption, advocacy, business associations, corporate governance, democratic governance, access to information, the informal sector and property rights, and women and youth. www.cipe.org



Global Integrity is an innovation lab that produces high-quality research and creates cutting-edge technology to advance the work of a global network of civic, public, and private reformers pursuing increased transparency and accountability in governments. Global Integrity has worked at the national, sub-national and sectoral levels assessing the existence and effectiveness of anti-corruption mechanisms and finding new ways to improve the quality of governance in many countries around the world. www.globalintegrity.org

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Improving Public Governance: Closing the Implementation Gap Between Law and Practice

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Introduction

Sound laws are a key foundation of democratic governance and economic development in every country. Yet, formulating such laws is only half of the puzzle. The other, more challenging, half is ensuring that the legal framework is properly implemented.

All too often the act of adopting a legal framework is regarded as an end in itself as it assumes that laws are administered and services delivered. All too often the fact that there is more to governing than the mere adoption of laws is overlooked. And all too often citizens, businesses, and the civil society are witness to wishful thinking expressed in legislative solutions that fail them in practice because the incentives for implementation are misaligned.

This phenomenon, known as the implementation gap, is the difference between what solutions have been adopted in legal documents and their actual implementation in practice. It affects countries across the globe and applies to laws passed at all levels of government. At the local level, citizens often feel the effects of implementation gap most painfully because it directly undermines their livelihoods. When on-the-books regulations are not enforced and when important economic regulations remain unimplemented, the credibility of local officials suffers, the risk of corruption rises, and the environment conducive to small business and entrepreneurship remains elusive.

Ultimately, the solution to addressing implementation gaps is to prevent them from occurring by building legal and regulatory frameworks that include mechanisms for cost-benefit analysis of proposed legislation and through the harmonization of different laws to foster implementation. The solution also lies in strengthening the key pillars of integrity in governance to create a system where the incentive structure for government officials and other social actors are such that laws are soundly crafted from the beginning and there exists the political will, state capacity, and public support to implement them.

The Center for International Private Enterprise (CIPE) and Global Integrity have first-hand experience working on this issue; this manual compiles both organizations' experience, research, and best practices. For nearly 30 years, CIPE has worked with chambers of commerce,

business associations, and other private sector organizations around the world to strengthen democratic and economic governance. CIPE's partners work at the national and local levels by helping to improve the quality of legislative frameworks and address implementation gaps. This deep experience provides direct understanding of the challenges inherent in addressing implementation gaps.

Global Integrity brings a unique complimentary experience of tracking governance and corruption trends around the world through its annual Global Integrity Report – an essential guide to good governance and anti-corruption institutions and mechanisms in countries around the world. Good governance provides the basis for efficient markets and effective government service delivery. Through its work, Global Integrity seeks a public sector that is responsive and accountable rather than predatory, and capable of promoting economic growth through citizen empowerment while simultaneously addressing complex public policy challenges.

Closing the implementation gap in each country will require different solutions and must be tailored to individual circumstances in order to be effective. This manual is intended to explore why the implementation gap happens and offer some possible scenarios and approaches for the three key stakeholders needed to solve this problem – governments, private sector, and civil society. The manual also includes first-hand journalistic accounts of how damaging implementation gaps can be to local governance and development prospects in countries around the world.

While the scenarios and approaches discussed here apply at various levels of government, the particular focus of this manual is on implementation gaps at the local level given the importance of the role that good local governance plays in building democracies that deliver. What is more, the reasons for persistent implementation gaps at the national level tend to be entrenched and hard to change. It is frequently easier to generate the necessary momentum for reform at a smaller scale of government, such as that of a city, a province, or a region where the lessons of this manual can be more readily used.

1

Defining and Measuring Implementation Gap

What does ‘implementation gap’ mean?

Implementation gap, simply put, is the difference between laws on the books and how they are carried out in practice. It can affect laws and regulations in various areas of life – from service delivery to the business environment. Ultimately, though, poor implementation of laws and regulations can often be traced back to implementation gaps persisting in key areas of governance, such as government accountability, transparency, and citizen oversight. Examining implementation gaps in these areas produces useful meta-indicators that say a lot about the potential for implementation gaps to occur in many other areas. That is precisely what Global Integrity measures in order to highlight the importance of improving the quality of regulatory frameworks in law and in practice to diminish implementation gaps.

Until recently, implementation gap was a term applied mostly in several specific sectors, such as in referring to insufficient delivery of innovations in healthcare to people in developing countries. However, implementation is also a key aspect of policymaking and its importance is intuitively obvious: if the government has a clear idea of what needs to be done but the agency charged with implementing the law lacks the will or capacity to actually do it, little will be accomplished. The space between government’s motivation behind the passage of a law and how that intent is translated into reality determines policy impact.¹ This typically bureaucracy-dominated gap between policy adoption and policy outcome becomes an implementation gap when that policy remains on paper only or is implemented poorly. Since the introduction of the Global Integrity Report,² this concept has been used to describe the discrepancy between laws and practice across numerous indicators evaluating the quality of anti-corruption and accountability mechanisms in countries around the world at both national and local levels, as well as in various sectors.

In 2007, Global Integrity began publishing implementation gap assessments for each country it surveyed. The Global Integrity Report evaluates both good governance and anti-corruption laws and the practical implementation and enforcement of them. It also takes a close look at whether citizens can effectively access and use anti-corruption safeguards. In this context, 'implementation gap' refers to the difference between the country's legal framework surrounding good governance and anti-corruption and the actual implementation and enforcement of that same legal framework. This snapshot of the condition of institutional pillars of integrity in each examined country or locality in turn provides valuable insights into why implementation gaps persist in other legislative and regulatory spheres.

Findings are usually astonishingly uniform: in countries that are in need of real structural reforms, the problem often is not the legal framework, but its implementation. Many countries have legal frameworks that in principle should allow them to implement far-reaching social reforms and make daily functioning of the government helpful to ordinary citizens. However, just as many countries suffer from implementation gaps. Legislative work is done in vain where it fails to deliver. Without proper implementation, there is no real effect on the lives of people who should benefit from particular laws.

Studies show that implementation gaps occur in all countries and at all levels of government. Global Integrity Report indicates that this is the case at the national level of government in many countries. The Kenya City Integrity Project, conducted jointly by CIPE and Global Integrity, as well as the 2011 State Integrity Investigation (a project of Global Integrity, Center for Public Integrity and Public Radio International conducted in all 50 U.S. states³), show the same problem at the local level. The same conclusions can be drawn from the studies conducted by Global Integrity at the sectoral level, for instance in health and education.

Even though implementation gap is a universal phenomenon, its negative effects are particularly visible and most painfully felt in developing countries where poor governance and weak implementation of laws have the greatest impact on daily lives of ordinary citizens. In the past, the focus of domestic reforms and foreign donors was too often on the adoption of particular laws, without paying close attention to their implementation.

Closing the implementation gap at the city level

In 2011, CIPE and Global Integrity conducted an implementation gap study in select Kenyan cities: Kisumu, Nairobi, and Mombasa, using 177 indicators to better understand key governance issues and existing anti-corruption mechanisms. The research was led by three Kenyan organizations: Kenya Association of Manufacturers, Civil Society Organization Network, and Hakijamii Haki Yetu.

Through a series of interviews and roundtables with local government officials, civil society, and representatives of the business community, the study identified shared findings, highlighting where public policies, institutions, and practices that deter, prevent, or punish corruption. By understanding where those mechanisms are stronger or weaker in each of the three cities, local reformers can better anticipate what changes are needed to limit opportunities for corruption given that it greatly contributes to poor implementation of various laws and regulations.

Implementation gaps in all three cities can be diminished by working with government officials to improve enforcement of existing laws, for instance by creating “one stop shops” for licenses and tax payments and increasing accountability of high-ranking civil servants through having them sign a voluntary code of ethics monitored by the public. These recommendations were then presented to the offices of town clerks, mayors, and the local councils. CIPE is working with local partners to advocate for adopting these solutions.

Learn more at <http://www.globalintegrity.org/local/kenya/>

However, laws are only meaningful if there is a political will, grassroots demand, and local capacity to implement them. Otherwise, each new law contributes to the growing implementation gap instead of solving problems it was meant to address.

How to measure implementation gap?

In order to effectively address the problems stemming from the existence of implementation gaps, it is first necessary to understand what those gaps are and their magnitude. Measuring implementation

gap, in the Global Integrity's approach that focused on evaluating the key pillars of good governance and anti-corruption, is based on several important elements.

Integrity scorecard

The primary component of the Global Integrity's assessments is an integrity scorecard that examines three concepts:

1. The existence of public integrity mechanisms, including laws and institutions, which promote public accountability and limit corruption.
2. The effectiveness of those mechanisms.
3. The access that citizens have to those mechanisms.

Integrity indicators

Each integrity scorecard is based on a number of so called integrity indicators – questions through which the existence, effectiveness and accessibility of integrity mechanisms are examined. The number and content of the indicators vary from one study to another, depending on their particular focus. Each integrity indicator is scored and substantiated by field researchers with relevant references, based on desk research and interviews with local experts, and are subsequently peer reviewed.

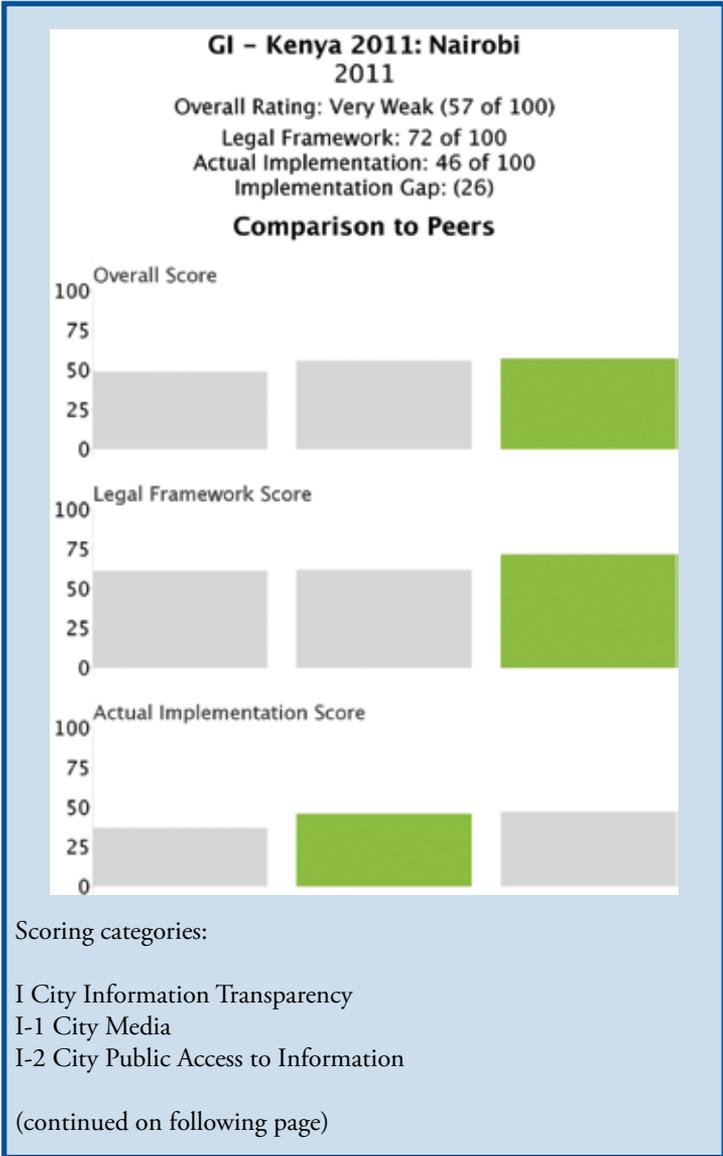
There are two types of integrity indicators: "in law" and "in practice." "In law" indicators provide an objective assessment of whether certain legal codes, fundamental rights, government institutions, and regulations exist. These *de jure* indicators are scored with a simple "yes" or "no" with "yes" receiving a 100 score and "no" receiving a zero.

"In practice" indicators address *de facto* implementation, effectiveness, enforcement, and citizen access. As these usually require a more nuanced assessment, the "in practice" indicators are scored along a zero to 100 scale with possible scores at 0, 25, 50, 75 and 100. In only a few cases, the "in practice" indicators are scored with "yes" or "no."

Implementation gap assessment

Aggregating "in law" and "in practice" indicators, respectively, generates a legal framework score and an implementation score for

a given subject of study (country, state, city, different sectors, etc.). Comparing the two allows to measure the implementation gap. The implementation score is simply subtracted from the legal score to generate the implementation gap measure.



II City Elections

II-1 Integrity of City Elections

II-2 City Political Financing

III City Government Conflicts of Interest Safeguards & Checks and Balances

III-1 City Executive Accountability

III-2 City Legislative Accountability

IV City Fiscal and Budgetary Management

IV-1 City Budget Processes

IV-2 City Procurement

IV-3 City Auditing

IV-4 City Taxes

V City Public Administration and Business Regulation

V-1 City Civil Service Regulation

V-2 City Health Regulation

V-3 City Safety Regulation

V-4 City Environmental Regulation

V-5 City Land Record Management

Source: <http://www.globalintegrity.org/local/kenya/nairobi/2011/>

For example, in Global Integrity's and CIPE's Kenya City Integrity Project, the city of Nairobi received the following scores:
72 (legal framework) – 46 (actual implementation) = 26
(implementation gap)

Assessing governance at the local level

As mentioned before, implementation gaps at the local level are particularly damaging to development prospects since they are at the root of democratic and economic governance problems that, in aggregate, affect the country as a whole. Global Integrity, through its Local Integrity Initiative that the Kenya City Integrity Project was a part of, is not alone in the efforts of evaluating local governance. UNDP's Good Governance for Local Development (GOFORGOLD) Index⁴ is composed of 25 indicators meant to monitor the governance situation in provinces, districts, municipalities, and villages against good governance benchmarks. The indicators are grouped under seven principles of good governance:

representation, participation, accountability, transparency, effectiveness, security, and equity. GOFORGOLD has been used to generate cross-nationally comparable information on local democratic governance in Central and Eastern Europe and integrated into the Afghanistan National Development Strategy.

The UN-HABITAT Urban Governance Index (UGI)⁵ assesses government structure and the supply side of governance, using universal criteria indicators and objective data. UGI consists of the indicators based on five principles of good urban governance: effectiveness, equity, participation, accountability, and security. It has been field tested in 24 cities around the world. The Local Governance Barometer (LGB),⁶ developed by the Impact Alliance, focuses on a participatory review of local governance conditions and assesses governance outcomes through locally conducted research based on locally defined criteria. It has been applied in over eight countries on two continents so far.

Other indices look specifically on the economic aspects of local governance. The World Bank's Doing Business sub-national reports⁷ capture differences in business regulations and their enforcement across locations in a single country, analyzing indicators such as starting a business, dealing with construction permits, registering property, and enforcing contracts. Asia Foundation's Economic Governance Index (EGI)⁸ ranks localities on factors that impact private sector development. EGIs are constructed from surveys of local business, interviews with local authorities, and data from published sources based on country-specific indicators. Still, all EGIs share similar criteria, including entry costs, transparency and access to information, participation in policy consultations, time costs of regulatory compliance, informal charges, crime prevention, taxes, and dispute resolution.

These examples show why local governance is of crucial importance for the democratic development prospects of countries: they shed light on particular governance problems faced by select local communities. They also show that there are many ways in which one may look at local governance, as various indices use different methodologies and highlight different issues. The level of their assessment may be a city, a district, or a province. The assessment scope may include all relevant territorial units in a given country or be limited to select few. While some indices examine local governance structures, others emphasize governance outcomes as perceived by

civil society or businesses. While some rely on broad surveys, others use more targeted interviews and gather expert opinions.

What makes Global Integrity's approach unique, however, is a systematic focus on identifying and quantifying implementation gaps in key areas of local governance. Its methodology of evaluating the in law vs. the in practice strength of institutions that comprise the pillars of integrity provides a framework for needed governance and anti-corruption reforms, and it can be a model for examining implementation gaps in other important policy areas as well.

VOICES FROM THE TRENCHES: KENYA

By George Okore

The Constituency Development Fund (CDF) is one of Kenya's devolved funds, created by the CDF Act of 2003⁹ (amended in 2007) to alleviate poverty and promote grassroots development. Under CDF, resources are devolved to the country's regions to advance various socio-economic initiatives that were previously managed from the center. The Kenyan Central Bank estimates that CDF contributes over 10 percent of the country's Gross Domestic Development (GDP).

The CDF is managed and monitored by the Constituency Development Fund Board, which received a budget equivalent to USD19 million for 2003/4 financial year followed by USD83 million (2004/5), USD107 million (2005/6), USD148 million (2006/7), USD149 million (2007/8), USD166 million (2010/2011) and USD284 million for the current financial year (2011/2012)¹⁰ with each constituency receiving an additional USD210, 000 to complete stalled projects.¹¹

Annually, 75 percent of the fund is directly distributed equally to all 210 constituencies while the balance is disbursed according to a weighted value of the constituency's contribution to national poverty.¹² The poverty ratio, derived from the Population and Housing Census 1999, is used to calculate constituency poverty levels. The formula favors rural over urban constituencies by a factor of 0.23 and provides fairly uniform distribution, with poorest constituencies receiving slightly more funds.

CDF was created to devolve resources to constituencies and solve the country's central funding mechanism, which hitherto

concentrated resources in the capital city of Nairobi and other urban centers and caused unequal development in Kenya. However, proper and efficient CDF implementation is dogged by repeated abuse, as “nearly 70 percent of all constituencies attest to gross mismanagement, theft, fraud and sheer shameless misuse and misappropriation of this public fund.”¹³ Auditor General’s findings in 2011 show that, for instance, the overpriced water pipes in Nida were procured through single sourcing; in Kajiado Central Constituency; expenditure documentation were never submitted for almost 40 percent of released CDF funds; and in Budalangi, local CDF treasurer withdrew over Ksh 4.3 million (ca. USD 47,000) from the fund supposedly for use in his office but without any evidence of how the money was actually spent.¹⁴

Such extensive level of misuse and mismanagement testifies to the failures of governance and financial accountability that has marred the implementation of CDF. The CDF Act permits a 15-member Constituency Development Committee to implement projects at constituency level, but most legislators pick cronies that lack project management capacity and skills for serving on these committees. In fact, pervasive lack of integrity, honesty, and transparency from fund managers put many constituency boards on the brink of disbandment and prosecution over mismanagement. In August 2011, for example, Kenyan police questioned Kitutu Chache legislator Richard Onyonka about influencing the purchase of sugar worth Ksh 137 million, or USD 1.5 million, using CDF cash.¹⁵

Inadequate CDF implementation structures and mechanisms reinforce commonly held views that devolved fund legislation has been systematically weakened by legislators who continue misusing the funds. At the national level, legislators craft laws favoring themselves, including the CDF Act itself, resulting in fundamental failures as reflected in CDF mismanagement. For example, the CDF Act in Section 21 (4) prohibits funding political and religious bodies or activities, but legislators occasionally support these partisan activities with impunity.¹⁶

Section 31 of the Act says all works and services must be sourced using current government procurement regulations. However, lack of distinct rules and safeguards against conflicts of interest means that many constituencies’ committee members supply goods and services to the same board they serve. Committee members also

establish agents or ghost companies that win tenders without following due procedures and consequently inflate prices of goods and services.

The 2010/2011 Controller and Auditor General Report reveals CDF mismanagement in 27 constituencies. In these constituencies, citizens' priorities were ignored and some purchased items had no development value or it remains unclear what the money was spent on. For instance, the report says Ksh 13.7 million (USD 150,000) from Rangwe CDF account financed various projects without relevant payment records.

In these cases, committees break the established laws and fail to convene constituency meetings, which the CDF Act stipulates must be held twice a year. It is at these meetings where each CDF Committee is supposed to consult constituents on how to best use the funds. Where held, most constituency meetings are shrouded in secrecy, locking constituents out of the decision-making process. Worse still, records are poorly kept and deliberately doctored to meet statutory requirements. For example, the High Court froze West Mugirango's CDF account in September 2011 after residents threatened to sue over lack of adequate consultations and misuse of funds.¹⁷

Despite the Ethics and Anti Corruption Commission (EACC) investigating more than 30 legislators over CDF mismanagement during the 2010/2011 financial year, no case has been taken to court. Complicity in tendering and procurement are major conduits through which monies and other resources are lost. Despite increased surveillance, the implementation of CDF and other devolved funds took a declining curve, with the July 2011 Infotrak Hariss Survey indicating that over a third of sitting legislators could be voted out due to CDF mismanagement.¹⁸

The combination of ineffectual legislation, weak regulation, and serious gaps in management and oversight of devolved funds prompted the creation of the National Taxpayers Association (NTA) in 2006. As a national, independent, non-partisan organization, NTA promotes good governance, monitoring and accountability in devolved funds and better management of other public services. NTA researches, publishes, and disseminates Citizen Report Cards¹⁹ on key public services like health,

education, registration services, rural roads, sanitation, security and water.

NTA's work has enhanced social accountability, created civic awareness, and built citizens' capacity to better monitor the funds usage. In addition, NTA aims to further increase civic education in part by enhancing citizen participation and awareness through publication of materials and radio programs focused on government accountability and service delivery, and a call centre with hotlines for reporting abuses of public office.²⁰ Furthermore, Kenya's new constitution, adopted in August 2010, has a recall clause for non-performing legislators, promoting transparency and accountability, which NTA and other civil society organizations can use as leverage to demand better governance.

A combination of better legislation, vigilant civil society, and easier access to information through initiatives of NTA and other civil society organizations now helps monitor the distribution and usage of CDFs. However, much remains to be done. A 2011 report prepared by the Institute of Social Accountability (TISA) recommends several key areas of needed reform, including the removal of Members of Parliament (MPs) from the management of CDF; the consolidation of the 2.5 percent allocated to CDF into the soon to be created county development structure; the winding up of CDF through a final disbursement in the fiscal year 2011/12 to complete all pending but viable projects; and ultimately the repeal of the CDF law so that staff and resources of its institutions can be integrated into the county administrative framework.²¹

George Okore obtained a Bachelor of Science degree in Information Sciences from Moi University, Kenya, in 1993 and has since worked for several local and international publications. Between 1994 and 2000, he worked as a sub-editor with Kenya Times newspaper. From 2001 until 2003, he edited and published All Africa News Agency. George currently works a consultant editor and contributes as a freelance journalist to several online publications, including News From Africa, Think Africa Press, New Agriculturist, and Ooska News.

2

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.

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 prerogatives both horizontally (various parallel agencies) and vertically (national vs. local agencies). Without a clear delineation of responsibility and accountability among government agencies, civil servants are left with an excessive degree of discretion to implement the law the way they please – or not implement it at all. That is particularly the case at the local level in centralized administration systems, given that policy and rules dictated from the center may seem unfair, unclear, or impractical to street-level bureaucrats charged with implementing them.²² In other words, the nature and complexity of state governance structures frequently explains the implementation gap.

The nature and capacity of local governance especially matters when it comes to implementation gap at the local level. Decentralization has been an increasingly popular trend in countries around the world. In many cases, however, central governments are reluctant to truly empower local governments. They instead pay lip service to decentralization while retaining more or less full control, particularly

when it comes to finances. Without a real mandate to act, and without adequate financial resources, local governments cannot meaningfully implement the law.

Legitimacy of the laws

Laws, whether at the national or local level, are a product of a given country's law-making system. When that system is transparent and accountable, and when it allows stakeholders' meaningful input into how the legislation is shaped, chances are the laws that pass will address the citizens' needs and concerns reasonably well. On the other hand, when decisions are made behind closed doors without the broader public consultation, laws are likely to benefit just a small group of insiders. As such, the general population will see them as illegitimate and therefore not deserving compliance.

No political system is perfect and even in established democracies there may be laws passed in a way that does not meet the standard of transparent and accountable decision-making. However, with a democratic system of checks and balances in place, the likelihood of that is significantly smaller than in authoritarian regimes.

Quality of the laws

Aside from the legitimacy and representativeness of a law, which are crucial for compliance, the quality of a law itself often also is an issue. Even a well-intentioned law can suffer from implementation gap when its provisions are overly complicated, conflicting, or unclear. This happens for two reasons. First, the capacity of lawmakers plays a role. If the lawmakers are not familiar with the law's subject matter, and if they lack knowledgeable staff to help them understand the law's implications or point out its problematic provisions, the quality of the law will suffer. Second, laws are rarely rational, apolitical constructs. Their design is subject to the influence of special interest groups who may press for intentional loopholes or vague wording that allows for loose interpretation and circumvention of the law.

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, in case of laws structured in a flawed way, 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

Implementation gap in developing countries is sometimes blamed on the aggregate lack of resources. The cost of implementing laws is expensive, and government officials often reason that they simply do not have the means to do so. Yet, it is rarely the overall amount of resources that determines the capability of the state to design and implement well thought out laws. In fact, many countries rich in natural resources – from Nigeria to Venezuela – suffer from poor governance that exacerbates the implementation gap because their economies have become overly dependent on the extractive sector, leading to rent-seeking and corruption across all levels of the government.

The failure to efficiently allocate resources also causes problems. All too 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 directly by diverting resources or indirectly by influencing the decision-making process, coupled with a lack of monitoring or sufficient deterrents for violations, means that an implementation gap is likely to develop.

On the other hand, a law may be overly populist and cater to the demands of the public by calling for certain economic benefits to be broadly awarded but failing to identify realistic sources of funding for implementation, whether through increased taxation or de-prioritizing another area of public spending.

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. Legal

requirements are simply too hard to meet for ordinary citizens and complying with them does not make economic sense. Hernando de Soto, President of the Institute for Liberty and Democracy, illustrated this problem in his native Peru and many other countries by examining the many barriers that entrepreneurs face, ranging from inaccessible property rights to the lack of efficient justice system.²³

In CIPE's experience working with the private sector around the world, laws and regulations governing business registration and operations are a prime example of this problem. When such procedures are complicated and expensive, few businesses can afford to comply both in terms of money and time. Consequently, they are forced to conduct legitimate economic activities in the informal sector, without the protection of the law.

The extent of the implementation gap becomes starkly visible when a significant portion of a country's population is trapped in the informal sector. Since these people are not part of the formal economy, many laws that would otherwise be beneficial to them do not apply. As long as bribing an underpaid official to avoid red tape is a more effective way of operating than complying with the 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

Other economic reasons why the implementation gap occurs have to do with the opposition 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. The challenge is to overcome this resistance through a concerted action of other groups who support the implementation of a given law.

Social and Cultural Factors

Influence of local elites

Implementation gap also occurs and persists due to a variety of social and cultural conditions. 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. Even if the elites themselves are not directly involved in implementing laws, they may still have indirect influence over those who are involved in the process.

One example is the allocation of healthcare funding. In many countries, there is a tendency to spend scarce funds on complex healthcare services because the local elite has already secured quality primary healthcare for itself and seeks to guarantee further care. The general population's needs for widespread primary healthcare become secondary to elite's interests. Thus, although in theory the legal provisions for healthcare funding improve overall levels of health as intended, the reality is somewhat different because there is a discrepancy between the needs on the ground and the benefits provided.

Social structures

Social complexities also affect implementing laws. Informal structures often have their roots in culture or history, such as ethnic loyalties or trends in civic engagement. In many developing countries, 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. This indifference is often rooted in their historical experiences, reinforced by government inaction towards local needs. As such, underrepresented members of society carry on despite the local government, rather than with its help and support. This in turns promotes the tendency of those in power to act in their own interests with impunity and exacerbates the problem of implementation gap.

Cultural legacy

Implementation gap can also be fueled by cultural stereotypes or practices persisting over generations. One notable example has to

do with 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, in reality, women are not treated equally.

For instance, although in most countries the constitution guarantees equal protection of property rights for men and women, in practice men are the ones who control the land and other assets. Women are also commonly disadvantaged through inheritance, with a widow's estate passed on to the male next of kin. The same is often true of women's rights to economic participation: while the law may spell out equality of opportunity, women are often prevented from starting and running a business by constraining social norms.

Institutions and incentives matter

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 – be it political, economic, or socio-cultural – 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, we 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.²⁴ 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 we understand what those institutional incentives are can we 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. To put it in economic terms, implementation gap will be eradicated only when the supply of sound laws is met by corresponding demand on the ground to implement them.

VOICES FROM THE TRENCHES: THE PHILIPPINES

By Miriam Grace A. Go

For close to six years now, the Philippine government and the province of Palawan²⁵ have been battling it out before the Supreme Court over an estimated US\$10 billion, the proceeds over two decades from the Malampaya natural gas operations off the shores of Palawan. Despite legal guarantees, local governments in the Philippines have a hard time getting their share of the proceeds from natural resources in their backyards.

Palawan's struggle represents the biggest attempt by the national government to embezzle funds meant for local government units (LGUs) since 1992 when decentralization gave LGUs the right to fiscal proceeds from natural resources.²⁶ Legally, the national government is obligated to split the profits 60-40. The Philippine Constitution stipulates that, "Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas." The Local Government Code (LGC) sets the share at "40 percent of the gross collection derived by the national government from the preceding fiscal year."²⁷

Based on these laws, Palawan is entitled to \$4 billion over two decades starting in 2002, which, the Code says, should be released to the province and its component municipalities and villages directly and automatically.²⁸ To date, however, Palawan has only received the equivalent of \$72 million,²⁹ with the releases carefully labeled by the national government as "assistance" to the LGUs and not as their rightful share.³⁰

At the heart of this conflict is a contradiction in how the national government interprets Palawan's territorial jurisdiction. Under President Gloria Macapagal-Arroyo, the government contended that the Malampaya operation is offshore and therefore a national territory and not part of the territorial jurisdiction of Palawan. The revenues from Malampaya, it said, should go to the national government only.

However, other operations such as permits and endorsement of operations in Malampaya are under the jurisdiction of Palawan. Moreover, the reservoir lies between the mainland Palawan and

Kalayaan Island, a component municipality of the province, and on the continental shelf, a natural prolongation of the mainland.³¹

The presidential palace has not always thought in this way. President Fidel Ramos, under whose administration the commercial quantity of petroleum in Malampaya was confirmed in 1998, acknowledged that Palawan was entitled to a fourth of the revenues.³² Even President Arroyo acknowledged this, saying that Malampaya was within Palawan's territory, and that the LGU's share in the revenues would be more than what they were earning from tourism.³³

However, in July 2001, the Arroyo administration faced financial difficulties. The finance department was "left with no room to generate more revenues" and considered raising its budget deficit target.³⁴ This new interpretation of the law served as a quick fix to the government's fiscal problems, allowing it to redirect resources belonging to local entities.³⁵

Malampaya's offshore location renders the revenue sharing scheme vulnerable to varying interpretations. Yet even with clear jurisdiction, LGUs have had difficulties claiming their share in the proceeds from power plants and mining operations in their areas. There are no laws or directives compelling national collecting agencies to submit collection reports to the Department of Budget and Management, so they are unable to regularly include in the annual budget law the LGUs' share in national wealth. This leads to the indefinite postponement of payment to the LGUs.

Overall, the problem stems from a poor appreciation of the promises of decentralization on the part of national policymakers who, before the Code, were used to having considerable influence on local officials. As a result, policies are adopted and laws are passed that either fail to strengthen the weak provisions of the LGC or are inconsistent with it, undermining the financial independence of LGUs.

President Ramos and his successor President Joseph Estrada, for example, attempted to address public sector deficit by withholding certain portions of the LGUs' share in the internal revenue collection, which accounts for 70 to more than 90 percent of the local budgets.³⁶ Three years later, the Supreme Court ruled that the administrative orders were unconstitutional.³⁷

Under the National Internal Revenue Code, companies pay their taxes to the revenue district offices of the national government, and not to the treasuries of the local governments.³⁸ It is up to the national government to then release the correct amount to LGUs, which often does not happen as legally mandated. Moreover, newer laws threaten to erode even the taxes that LGUs can directly collect (real property taxes) and there are attempts to dip into mining taxes and fees to finance the armed forces.

Then there are the occasional direct interventions by the President into the LGUs' tax collection efforts. Just this year, Benigno Aquino III issued an executive order preventing the province of Quezon from collecting \$142 million in real property taxes and penalties from an independent power producer.³⁹

When local governments' share in tax collections is reduced or delayed, or when limits are put on their taxing powers, basic services suffer. Their Internal Revenue Allotment (IRA) goes almost entirely to LGU employees' salaries and operational expenses. Funds for basic services have to be sourced elsewhere.

Economic development suffers as well. While LGUs would not admit to it, some of them frustrate national government projects from which they do not financially benefit. Companies receive permits and environmental clearance from the national government, but local governments can still deny these companies construction and business permits, effectively blocking their operations and bringing instability to the business environment.

In order to ensure that LGUs get their rightful share of proceeds from natural wealth, the national government, the legislature, and various agencies must honor the LGC's provision granting LGUs 40 percent of gross proceeds and release their due share to them. Unfortunately, numerous obstacles continue to prevent national entities from shifting mindsets.

In 2007, the House of Representatives passed Bill No. 1020 of Mauricio Domogan, who represents the mining province of Benguet. It sought an amendment in the LGC, which, ironically, was already in the Code—of having the 40 percent share of LGUs automatically and directly released to them. It failed to secure a counterpart measure in the Senate, however, forcing the lawmaker

to re-file it in the current Congress, where eight other bills with the same proposal are pending today.

What happened to Domogan's National Wealth Bill is an indication of the poor chances of bills like this to get passed. In fact, the LGC has been up for review once every five years for the past 15 years, but no significant amendments have been introduced.⁴⁰

LGUs should look to local communities and civil society, not the national government, to push for the recognition of LGUs' rights and better implementation of the LGC. In the Malampaya case, the provincial government of Palawan filed a case against the national government to claim its 40 percent share of the proceeds. The same provincial officials who filed it, however, became impatient with the progress of the case and agreed to enter into an interim agreement with the Arroyo government to reduce their share in order to get a hold of funds immediately.

A local organization called Kilusan Love Malampaya (KLM), aided by lawyers from the University of the Philippines, questioned the provincial government's decision to enter into an interim agreement with the national government. Its complaint was consolidated with that of the provincial government, however. The interim agreement being questioned by KLM expired in June 2010, while the provincial government's case is pending without much progress.⁴¹

While many non-government organizations have successfully blocked projects or efforts by either national agencies or LGUs when it comes to environmental concerns, the intervention in the Malampaya case is the first attempt so far of a local government and private citizens to preserve the integrity and improve implementation of the Local Government Code. It is going to be the test case for future exploration projects. And it is worth watching.

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3

Overcoming Implementation Gap

Key stakeholders and their roles

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.

This chapter introduces some of the most important challenges that governments, the private sector, and civil society may encounter in dealing with implementation gap. It enumerates a series of situations these stakeholders may find themselves in, obstacles that they may face in trying to respond to these challenges, and possible recommendations for addressing them.

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 weak democracies, let alone non-democratic countries.

Possible scenarios

Government adopts laws but does not implement them

This situation is the classic implementation gap. Governments often consider their work done once a law has been adopted in the legislature. However, laws are meaningless unless implemented.

Creation of laws is usually a complex process and in many countries it requires participation of both the legislative and executive branches of power. In countries that base their judicial systems on the common law, the judiciary sometimes actively creates laws. Whereas the executive often starts the process of drafting a law, its major goal should be its implementation and not merely adoption in parliament.

Implementation gap may result in social instability and create fertile grounds for political opportunism and even politically motivated violence. In this context, it is important for every country to be realistic in anticipating to what degree the implementation of its legislative efforts is feasible. Sometimes it is even advisable to forego certain reforms before the previous ones have taken roots. Otherwise, multiple legislative reforms without proper follow through can create collective mistrust in the political will of a government or, in the worst case scenario, have the aforementioned hazardous ramifications.

Government adopts laws and implements them

This is clearly an ideal scenario. Every government faces various obstacles in its endeavor to implement laws (see below), but its primary focus should be to overcome these and ensure full implementation of regulations. Again, it is important that laws are realistic, in both their scope and numbers. Fewer and more effective laws are a better option than many adopted laws that remain only empty words on paper.

Obstacles that governments may face

Lack of political will

Political will is essential in the process of adoption and implementation of laws and regulations. It is a starting point and a necessary precondition for an overall progress of society.

Political will is ideally a result of the desires of the public expressed through the democratic process. In this manual, political will refers to the will of the government to implement political solutions that benefit the entire society. Where political will is absent, however, even adoption of laws may be problematic, and implementation gap becomes a rule rather than an exception.

At the local level, the issues of political will are compounded if the laws that local governments are expected to implement are simply passed down from the central government without any local input. When that is the case, local governments do not feel the ownership of such laws and therefore are reluctant to implement them.

Problems related to human resources

Some political reforms require significant human resources. If a reform is to be implemented at various levels of government (national, regional, local) or in various sectors, this burden can be even greater. This reinforces the need for political reforms to be realistic and to rely on an adequate number of civil servants who will be executing them.

Yet, even if there are enough people in a given administration to implement laws, lack of appropriate education and professional skills could represent an insurmountable hurdle in this effort. Lack of knowledge and experience among public officials can result in implementation gap, even though there may be a political will to both adopt and implement new laws.

Lack of material means

Lack of resources can be an obstacle to implementation of laws, especially in developing countries. As mentioned earlier, this is especially true for local governments if they receive an unfunded mandate to introduce particular laws from the central government. It is hard to imagine that this problem could ever fully go away as all countries operate under certain financial constraint. However, in many cases it is not the lack of resources per se but rather entrenched governance problems that prevent better allocation of resources. Inefficient and corrupt governments are more prone to wasting the scarce resources rather than using them to implement needed legislation.

Corruption

Corruption is undoubtedly one of the major obstacles to the implementation of laws and regulations. In an atmosphere of corruption (in whatever form it manifests itself), it is very difficult to adopt needed laws in the first place, and virtually impossible to implement them. Corruption creates a parallel system where the government and the society alike operate by and large independently

of, or even against, the existing laws. It undermines the very essence of the rule of law and creates a greater social and economic uncertainty. It can make poor societies even poorer.

Reception deficiency

If a reform is too ambitious or unrealistic given the current circumstances in a country, society can face the challenge of reception deficiency, or the general public's lack of readiness to embrace reforms. This means that the public is not ready for new laws because the people may fear the scope of the proposed reforms or, alternatively, they think that the reforms will be ineffective and therefore not worthy of their support. This often happens when the existing laws on a given issue were not implemented properly and did not yield expected results. To overcome reception deficiency, the government must address these concerns. A more gradual reform progression may be needed to assuage the public's fears of drastic change, and a more thorough implementation of previously enacted laws is necessary to build people's confidence in the government's ability to successfully implement new laws.

Public opposition

In every country smaller or larger segments of society may oppose a certain reform agenda. This, however, does not necessarily end up in an implementation gap, if the forces supportive of the reform agenda are in majority. If a majority or an influential group within the constituency is opposed to reforms, however, implementation gap can happen.

Another form of this problem, which can have a significant impact on the implementation gap in a country, is inability of governments (at any level) to convey their policy message to the public. If these messages are not communicated clearly or do not sufficiently explain the need for implementing a given law, implementation gap is more likely to happen.

Blocked government channels of communication

Depending on the particular constitutional structure, fiscal arrangements, and relations of authority, sometimes governments do not have an administrative structure that provides for a clear communication between the central and local governments. This problem can manifest itself in both the top-down and bottom-up

forms – either the central government cannot communicate its will to the local governments or vice versa, local governments cannot reach the national one.

Possible ways for the government to address implementation gap

Political will

Clearly, political will is one of the most important (if not 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, for example, 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. Organizations representing various segments in a society need to be focused on the implementation of laws and actively advocate them through available channels.

Human resources

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. For this reason, human resources need to be carefully considered in the preparatory work on laws and regulations – before they have been adopted.

Material means

Even though lack of resources may be an obstacle for many governments, especially in developing countries, the key to avoiding implementation gaps is setting realistic reform agendas. This, of

course, 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. In doing so, the government will not distract from plausible elements of the reform or create public mistrust in the laws that need to be implemented.

Fight against corruption

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 various measures such as better governance, introducing clear guidelines of proper conduct, extensive ethics training, whistleblower protection, and strict punishment for corrupt behavior among public officials.

At the same time, it is crucial to recognize that combating corruption cannot be left to the government alone. The private sector and civil society need to be actively involved in monitoring government actions and ensuring that they themselves do not contribute to the corruption problem through lack of transparency and accountability in their own organizations.

Public reception

A 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. It is better to make small steps, yet always in the positive direction, than go back and forth on various legislative initiatives without the public understanding the aim of laws that are supposed to be implemented.

To improve public reception, the government should be open to input from various stakeholders before the law is passed. For instance, the government should pre-publish laws in their draft form for public comment so that they can be adjusted based on that input before

Improving Public Governance in the Philippines

While the Philippines enjoys a steady economic growth, the quality and reliability of the country's public services have remained static and corruption continues to fester. Addressing these issues has become a national priority, and the Institute for Solidarity in Asia (ISA), with the assistance of CIPE and the Asia Foundation, has been working to answer the need for public sector reforms by making governance a shared responsibility. ISA's Public Governance System (PGS) addresses two major problems of the Philippines' public sector: the inability to translate development goals into concrete strategies that produce actual results, and also corruption in government.

Based on the proprietary Balanced Scorecard process, PGS is a performance management tool for local governments to lessen implementation gaps. When a city adopts the PGS, city officials work with a broad-based community consultative group (which includes representatives from business, labor, professional organizations, local churches, youth groups, and academia) to design specific public policy goals, an action plan to accomplish them, and performance metrics to measure the progress. By involving the local community to set benchmarks and monitor the progress of fighting corruption and closing implementation gaps, PGS makes local governance a responsibility for the entire community.

Since the project's inception in 2004, ISA has successfully improved governance of 11 local governments and municipalities, and at the time of this report, 13 national government agencies were adopting the PGS, including the Philippine Army, Department of Transportation, and the Bureau of Internal Revenue. This approach works because of four major success factors: commitment from the executive leadership at the local level that overcomes political differences; a clear change agenda and well-defined strategy; involvement of internal and external stakeholders allowing the PGS to continue despite changes in leadership; and organizational alignment where all involved understand their roles in achieving the long-term vision through measurable goals.

Learn more at: <http://leading-practices.cipe.wikispaces.net/Public+Governance>; <http://isacenter.org/core-programs/performance-governance-system/>

they are passed. The government should also institute the practice of regular and transparent public consultations on key upcoming reforms.

Work with the public

Often it is enough to open a dialogue with the public, especially on far-reaching reforms, to avoid social tensions and ensure proper implementation of laws. No group in a country should feel isolated, and discussion with various communities and representatives of different social interests is essential for successful law implementation.

Public disapproval of certain reform efforts is something politicians need to count on and accept. In this context, it is important to make a timely analysis of which reforms can work and which cannot. It is also important that the government communicates with the public on the goals and benefits of reform, as well as progress of its implementation, in order to help overcome the opposition.

Intra-governmental communication

A clear 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. How to best improve this communication depends on the particular constitutional and administrative structure of government in a given country.

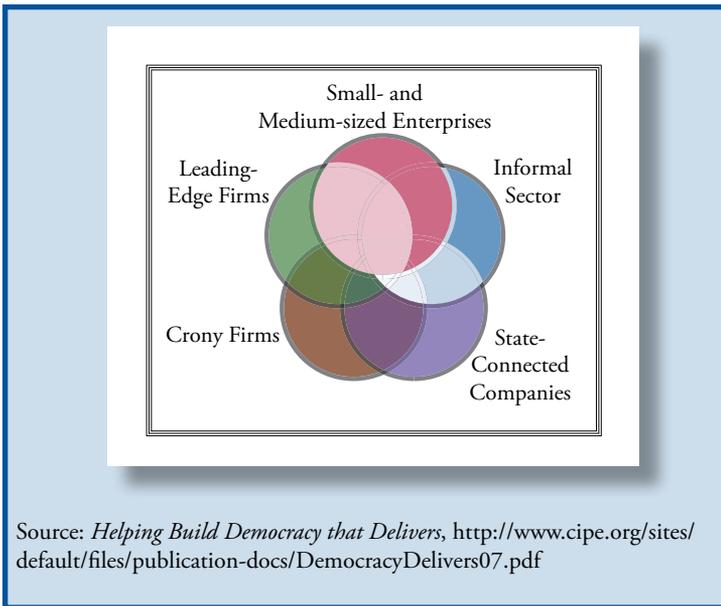
Regardless of the exact nature of the relationship between national and local government, officials at all levels need to ensure that these channels of communication are open and easily accessible to relevant government employees before undertaking implementation of a specific law.

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. These pillars include good governance and anti-corruption mechanisms

examined by Global Integrity in its reporting: access to information, government conflicts of interest safeguards, checks and balances, fiscal and budgetary management, public administration, and business regulation.

Businesses possess the resources, human capital, and problem-solving capabilities that can contribute to better implementation of laws. Yet, it is important to recognize that while the business community in any given country is often portrayed as a monolithic entity, the private sector is actually composed of multiple groups with different characteristics and often divergent interests, such as small and medium enterprises or state-connected companies.



Their interests – and consequently their willingness and ability to help close the implementation gap – vary depending on which particular segment of the business community is under consideration and what the overall institutional environment of a given country is like. As a result, businesses deal with implementation gaps in different ways.

Possible scenarios

Implementation gaps elicit a range of firm-level responses as well as broader business group responses. In some cases the inaction – or actions – of businesses perpetuate implementation gaps; however, the

private sector can also play an important role in helping to address them.

Private sector passively accepts implementation gaps

This situation happens when the private sector is largely passive and accepts the fact that certain laws, even though potentially beneficial, are just not implemented. The business community may be unable or unwilling to change this situation for several reasons. First, businesses may not have sufficient capacity to demand better implementation of laws. If no representative business organizations exist, such as independent business associations or voluntary chambers of commerce, it is very hard for individual businesses to effect change. Similarly, if such organizations exist but remain weak and inactive, the implementation gap will persist.

The organizational capacity to demand better implementation of laws is not the only factor contributing to the passive acceptance of implementation gaps. It is common that some companies are profiting from the existing environment of insufficient enforcement. Such companies may, for example, benefit from weak implementation of procurement transparency laws because they enjoy a close relationship with procurement officials and are favored to win bids. Not surprisingly, they have no interest in pressing for implementation of laws that would reduce their advantageous position.

Private sector contributes to the implementation gap problem

If the burdens imposed on firms by implementation gaps are relatively small, they tend to learn how to work around the existing system since it is easier for them to adjust than to press for reforms. They may find loopholes in existing regulations so as to comply with the letter but not the spirit of the law. They may also use bribery to obtain a public service such as speedy business registration or licensing that the law in theory entitles them to but in practice does not deliver. In doing so, companies that are merely striving to survive in a difficult environment contribute to the persistence of implementation gaps.

At the same time, companies that benefit from weak implementation of certain laws may actively work to undermine more effective implementation. They do so through using their influence at the legislative level to prevent clarification of broadly phrased or unclear laws, leveraging their privileged relationships with public officials to obtain special treatment, or seeking favors with courts if

implementation of a given law is a matter of enforcing judgments. By using bribery and other forms of corruption to get around laws, the private sector can add to the problem of implementation gaps.

Private sector helps solve the implementation gap problem

In this case, the private sector recognizes the negative side effects of implementation gaps and wants to help solve the problem by using effective strategies and tools to accomplish that goal. For example, by working together in business associations and chambers of commerce, the business community can gain a representative and transparent voice in the lawmaking and law enforcement processes. This in turn facilitates the private sector's participation in seeking solutions to existing implementation gaps in partnership with the government and other stakeholders, such as civil society organizations and the media. Given that the private sector in any country is made up of different types of businesses that have varying interests, not all of them will be equally interested in reform. However, like-minded businesses can greatly contribute to reducing the implementation gap problem provided that a critical mass of them exists. Businesses can help address the implementation gap in a number of ways, ranging from committing themselves to compliance with relevant laws, to jointly advocating for better implementation of laws by the government.

Possible ways for the private sector to address implementation gap

Internal measures

In order to meaningfully help close the implementation gap, businesses must 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. It is up to each business to translate the law into their day-to-day operations. After all, it is ultimately the sum of actions of individual firms and entrepreneurs that either contributes to the implementation gap or helps to close it.

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. Traditionally, corporate

governance has been thought of as something applicable only to publicly listed companies. However, it is equally important to other types of businesses such as family-owned firms, state-owned enterprises, and even small and medium-sized enterprises. They all face shared challenges such as sustainability of business or leadership transitions that must be effectively managed for a business firm to prosper and survive beyond the founder's generation. In doing so, good corporate governance practices, aggregated across the economy, will help address the problem of implementation gap.

Better corporate governance in family-owned firms in Pakistan

Pakistan's Code of Corporate Governance applies only to companies listed on the country's stock exchange. Yet many of Pakistan's largest and most important companies are unlisted, family-owned firms. These companies make an important contribution to the economy and require solid guidelines for corporate governance to function well. Responding to research showing that many such companies eventually encountered succession issues that led to their dissolution, CIPE, the Pakistan Institute of Corporate Governance (PICG), and the Institute of Chartered Accountants of Pakistan worked together to create the *Corporate Governance Guide for Family-Owned Companies* in 2008.

This guide provides a framework for sound corporate governance in family-owned firms, based on the OECD's internationally recognized principles, yet tailored to the need of Pakistani businesses. By providing practical lessons on how to institutionalize good governance in family firms, the guide has helped close the implementation gap by making those companies better governed and therefore better positioned to follow the law and mitigate corruption risks.

For more information and success stories of Pakistani family-owned companies in improving their governance see: *Safeguarding the Legacy: Corporate Governance and Longevity in Family-Owned Enterprises*, <http://www.cipe.org/sites/default/files/publication-docs/Safeguarding%20the%20Legacy%20Book.pdf>.

Public policy advocacy

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. 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 and through public-private dialogue with the government at both national and local levels.

Although many think of business associations primarily as providers of services, training, and networking opportunities to their member businesses, they can do much more. Voluntary, independent business associations can lead advocacy efforts to improve their local business environment by focusing on legislative issues such as business entry

Advocacy vs. lobbying

In talking about the need for public consultation, it is important to make a distinction between advocacy and lobbying. Those two terms are often used interchangeably and in the broadest sense they both refer to trying to influence decision-makers in favor or against a particular cause. However, in practice the scope of lobbying is narrower: it remains limited to direct interactions with decision-makers and does not necessarily reflect the views of broader constituency. Lobbying has also come to be associated with allegation of corrupt conduct and illegal financial contributions to lawmakers.

In contrast, advocacy is a group effort focused on changing particular public policies and laws in an open, transparent, and ethical manner. Whether conducted on a local, regional, or national level, advocacy is an expression of the most basic democratic right of any constituency to have its voice heard in a decision-making process. It involves grassroots mobilization, coalition building between like-minded groups, and getting the message out through various public awareness campaigns.

Source: *How to Advocate Effectively: A Guidebook for Business Associations*, http://www.cipe.org/sites/default/files/publication-docs/advocacyguidebook_english.pdf.

and exit regulations, rules for disclosure and access to information, or taxation levels and procedures. Thus, effective business associations combine member services with advocacy programs for policy reform in areas that influence their members and communities where they operate. By engaging the private sector in policy debate, transparent advocacy processes strengthen good governance and help close implementation gaps.

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. Laws that

Collective action against corruption in Thailand

In June 2010, CIPE launched a project with the Thai Institute of Directors (IOD) to cultivate private sector support for anti-corruption strategies, successfully translating Thai business community's interest in collective action into a viable campaign that is rapidly gaining momentum. IOD has built a coalition of about 60 leading businesses (including Shin Corporation, Thai Airways, Toshiba Thailand, Siemens Thailand, and Pfizer Thailand) and most influential business associations committed to tackling the supply side of corruption. Collective action is now an actual movement within the Thai business community to attack corruption.

When a company or an association signs IOD's Anti-Corruption Declaration, they pledge to implement strong internal anti-bribery policies and anti-corruption controls. They also pledge to send senior executives and compliance staff to IOD-led anti-corruption training programs. Coalition members must also undergo an external verification of compliance with what they committed to and if they aren't, they will be removed from the coalition. This initiative greatly helps address the implementation gap of Thai anti-corruption legislation.

Learn more at <http://14iacc.org/social/collective-action-against-corruption-in-thailand-and-beyond/>

reflect the input and address the concerns of the stakeholders they affect obviously have a much better chance of being implemented than laws created without any sort of public consultation.

Collective action

Complex issues that contribute to implementation gaps 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. Anti-corruption efforts are a good example. While in principle most businesses want to obey the law and understand the benefits of a clean business environment, in countries where corruption is widespread, this is very hard to do. Individual businesses fear that if they renounce corrupt practices but other companies do not follow, they'll find themselves in a competitively disadvantaged position. Only when enough businesses openly commit to combating corruption, can it become a new norm that more and more firms have an incentive to follow.

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 organizations are an important stakeholder in addressing implementation gap because they form crucial links between society and government. They channel citizen participation into the policymaking process, providing the government with information about what it should be doing. They also monitor government actions and relay information back to citizens, helping to hold officials accountable and keep them responsive to citizens' needs. Therefore, civil society makes sure that the interests of various social groups are reflected in laws and their implementation.

Possible scenarios

Civil society is not allowed to function in the country

This worst case scenario happens in countries that do not allow free establishment and functioning of the various civil society groups. Civil society should be an indispensable part of every country's social landscape, since it represents a variety of interests vital for a healthy political dialogue and effective policymaking. Without a truly free expression of various interests, governments may not be willing or able to address important issues in society or implement the already existing solutions, which results in implementation gap.

The role of civil society is limited

In this case, the civil society is allowed to operate, but under very strict guidelines. Since its most essential characteristic – the freedom to decide which area it wishes to deal with – is not guaranteed, it is impossible for the civil society to tackle the issue of the implementation gap. That is a common scenario in many authoritarian countries where governments allow civil society organizations to function in limited areas such as humanitarian services (free medical care, housing for the homeless, educating orphans, etc.) but strictly prohibit activities such as work toward better governance and anti-corruption.

Another way in which governments limit the independence of civil society is by making it very difficult to register civil society organizations and placing excessive limits on the types of funding that these organizations can receive. Authoritarian governments also go as far as influencing appointments to boards of directors or management selection to ensure government control over various organizations while trying to maintain the façade of having a “civil society” in their country.

Capacity and financial resources are insufficient

Civil society needs to have enough personnel and material means to be fully operational. This, however, is often a challenge. Inadequate human resources and lack of finance can be an insurmountable hurdle in presenting the civil society agenda to the public, as well as achieving its objectives. Burdened by the lack of essential means to operate, civil society organizations fail to effectively exercise

their primary role of the “public watchdog.” This also has direct implications for implementation gaps – if it is too focused on personnel matters and material means of survival, civil society can only superficially be involved in drafting new legislative solutions, let alone dedicate sufficient time and resources to monitoring their implementation.

Civil society does not focus on implementation gap

Under this scenario, civil society functions freely but its focus may not be on dealing with the implementation of existing laws and regulations, even though this may be the biggest hurdle in advancing their cause (for instance, if relevant legal documents have already been adopted). Civil society may not sufficiently address the issue of the implementation gap for various reasons. For instance, many civil society organizations focus on broader social issues – such as protection of consumers, better public services, and protection of human rights – rather than implementation of particular laws. Alternatively, organizations may not be interested in addressing implementation gaps because the legislative process and executive procedures that affect legal implementation are too complicated to tackle.

However, civil society organizations should be involved in monitoring and advocating for the implementation of laws and regulations relevant to their scope of work because the real obstacle to realization of their initiatives and goals very often lies in the implementation phase. It is therefore in the vital interest of the civil society to work actively on the issue of implementation gap and, through its wide range of activities, civil society can contribute greatly to narrowing and closing of many such gaps.

Civil society actively deals with the implementation gap

Ideally, the government will find a natural ally in civil society in overcoming the implementation gap. As mentioned above, various groups and individuals standing for different causes are natural beneficiaries of closing implementation gaps. However, it is important to note that civil society is not a homogenous entity and that objectives of different groups may vary significantly. This, in turn, can have an impact on implementation gap as well. For example, focus of various civil society groups can be on segments of a comprehensive reform on an important issue such as taxation where elements

supported by some organizations are vehemently opposed by others. As a result, even though most stakeholders agree that enacting a comprehensive reform was needed, its implementation becomes deadlocked.

Strengthening the Public Council to Fight Corruption in Mongolia⁴²

Weak institutionalization of the Public Council (PC), a domestic accountability institution originally foreseen to guarantee effective participation of civil society in the fight against corruption in Mongolia, has led a local civil society organization (CSO), Globe International (GI), to take action and build a strong coalition of advocates to constructively enhance the conditions of institutionalizing and strengthening the PC, empowering its members and educating the public.

There are ample positive project outcomes. One outcome is the increased public awareness and public debate on corruption issues – achieved through strategic involvement of the media, capacity building and coalition-building efforts instigated by GI among CSOs, the PC and the Independent Agency Against Corruption of Mongolia. On the basis of the new set of working rules, the PC has also started providing guidance to the public on what corrupt practices are and how the public can effectively file cases against corrupt officials.

Learn more at <http://ptfund.org/2012/04/strengthening-public-council-mongolia/>

Possible ways for civil society to address implementation gap

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. Only successful implementation of laws guarantees that their interests will be adequately protected. Civil society can achieve this goal by engaging 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.

Partnership with the government

Ultimately, it is the government that adopts new regulations and implements them. Therefore, 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, especially in countries where the government does not look favorably on civil society organizations, 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 many different means. They include 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.

Partnership with the private sector

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 such as economic think tanks, 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. Other areas of legal implementation, from laws that foster anti-corruption to regulations that improve delivery of public services, are also important for the private sector because they create conducive business environment. Therefore, civil society and the private sector both have strong reasons to cooperate.

Such cooperation can take many forms. Business organizations can work together with other civil society organizations, building broad coalitions focused on issues of mutual interest. Private sector can

A framework for tackling implementation gaps

To effectively address implementation gaps, and to improve democratic and economic governance, business associations and other civil society organizations must first analyze not only about the state of implementation of particular laws and regulations but also the underlying institutions that may hinder that implementation. International governance indices and rankings can be a useful starting point. Local governance assessments, where available, can provide additional layer of information. But what if no such information is available for a particular country or locality? In most cases, local reformers already know what the most pressing implementation gaps are since the problems affect them daily. Turning that awareness into an action plan requires these key steps:

1. *Asking the right questions* – Why do things work the way they do? What are the institutions and incentives that hinder implementation of specific laws? Global Integrity assessments provide a useful template for organizing such questions by category and distinguishing between laws on the books and actual practice.

Sample questions on a key aspect of property rights at a sub-national level:

Are there transparent regulations governing land records at the sub-national level?

- In law, is there a transparent system to track and update land records?
- In law, is there an agency that maintains land records and regulations?
- In law, is there mandatory professional training for staff responsible for land record issues?
- In law, can citizens bring land record disputes to a court of law?

Are the regulations governing sub-national land records effective?

- In practice, can citizens access land records and regulations within a reasonable time period?
- In practice, can citizens access land records and regulations at a reasonable cost?

- In practice, does the agency or entity responsible for maintaining land records and regulations have sufficient staff and resources?
- In practice, is bringing a land records dispute to court affordable for the average citizen?

Providing well-researched answers to such probing and detailed questions gives grassroots advocates an important tool for sharpening their message when calling for reform. Rather than simply criticizing government for failing to implement laws, advocates can instead use such answers to pinpoint specific, actionable reforms that are more likely to resonate with the government than general criticism.

2. *Stakeholder participation* – For any reform initiative to have meaningful local ownership and support, all groups should jointly discuss implementation gap problems that affect them.

3. *Prioritization* – Not everything can be accomplished at once; in order to be effective, a push for reform should focus on select issues of highest importance.

4. *Strategic planning* – To make sure that the reform objectives are attainable and meaningful, reformers should consider the underlying logic model of their plan:
 Inputs → Activities → Outputs → Short-term outcomes → Long-term outcomes

5. *Mobilizing constituencies* – Identifying partners and allies is crucial to success, given that implementation gaps often result from entrenched practices or influences that require a strong voice of a broad-based coalition to effect change.

Learn more at: Local Integrity Initiative, <http://www.globalintegrity.org/local> and *The CIPE Guide to Governance Reform* <http://www.cipe.org/sites/default/files/publication-docs/Guide%20to%20Governance%20Reform.pdf>

also serve as an important source of information for civil society organizations – 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. Finally, businesses can be an important source of funding 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.

Partnerships with other civil society organizations

There is strength in numbers. The more like-minded organizations work together toward a common cause, the greater the effectiveness of those efforts is going to be. 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.

VOICES FROM THE TRENCHES: SLOVAKIA

By Štefan Hudec

To get a flat for a fraction of the real market value in the lucrative historical part of Bratislava was for many years normal practice in the municipality Old Town. Among those who received the city apartments were several well-known national and local politicians, town hall employees or famous actors, including Slovakia’s former transport minister and former European Union Commissioner Ján Figel’.

The municipality rented him a flat of 156 sq meters in 2001, which he bought two years later for roughly 1,800 Euro (the real value was several hundred percent more). Scandalous was not only the low price, but also the fact that the mayor of the Old Town Andrej Ďurkovský was Figel’ party colleague from the Christian Democratic Movement (KDH).

After the *Daily SME* wrote about the case in 2010, Figel’ decided to donate a flat to charity. Others involved kept the property.

There was no police investigation; individuals involved in the scandal paid “only” political consequences as many of them were not elected for the next term. How was this possible? Because the whole process was legal – according to a national level law the Slovak municipalities could give out free flats, but there were no fixed criteria to whom. The implementation of the law was left to the municipalities, who by themselves set the criteria. In the case of Old Town, the municipality created the so-called flat commission composed by three persons, which subjectively and behind closed doors made decisions about the flat allocation.⁴³

Mária Mozolová, the head of the city’s property department was a member of this commission. One of the apartments was assigned to her mother-in-law. Pavel Nechala, a lawyer from Transparency International told the *Daily SME* that in this case, a law about work in the public interest might apply.⁴⁴ Under this law a municipality employee must act impartially and refrain from acts that could lead to conflicts of interest. According to him, Mrs. Mozolová should not take part in the decision in a case where she had a conflict of interest.

After the scandal became public, Mrs. Mozolová was fired along with other two members of the commission, but she did not pay any other consequences. According to the Labor Code, a municipality is allowed to not only dismiss an employee, but is entitled to receive the damages, i.e. it has the right to obtain the property back.⁴⁵ The fact that the municipality chose not to apply damages indicates a selective – and overly lenient – implementation of the law.

This case illustrates how poor legislation on the national level can enable corruption on the local level. A poll conducted by FOCUS research agency for Transparency International Slovakia in 2007 revealed a rise in local corruption.⁴⁶ More than a third of Slovaks felt that local governments suffer from corruption and more than half of respondents thought that nepotism is the only way to secure a job in the municipality. Areas such as land management, property sale, procurement and contracting of construction projects were also perceived as highly corrupt.

Corruption, however, is not only a product of weak national legislation. There are also problems at the local level, such as low levels of media attention and objective reporting. Many

municipalities publish their own newspapers (distributed freely) or have local television channels, in which they never criticize their own work. The nation-wide media has neither the resources nor the interest to investigate such small-scale cases.

Despite this bleak picture, things are slowly changing for the better. After the national and local elections in 2010, significant progress was achieved in fighting corruption, such as introducing the Central Register of Contracts.⁴⁷ Anyone can go online and look at contracts executed by the government and its institutions.

Encouraged by civil society, some local municipalities took initiative and developed anti-corruption initiatives that surpassed government standards. Martin, a northern town of 60 thousand inhabitants famous for being the birthplace of Slovak national emancipation and a 19th century cultural center, is a pioneer in Slovakia's fight against corruption. With the help of Transparency International, the municipality last year applied ambitious anti-corruption reforms in 17 areas, including procurement, staffing and grant giving. One of the most important reforms was creating a public database of all town contracts, invoices and orders, and mandating all city purchases be carried out by electronic auctions.⁴⁸

Since the adoption of these measures, many foreign investors have expressed interest in investing in Martin. The project also brought significant economic benefits: town purchases carried out by electronic auctions saved more than 30 percent of expected costs, approximately €300,000. Citizens are also interested in the municipal information and the town's website traffic increased enormously. This success story inspired other Slovak municipalities, including the fifth biggest Slovak city, Banská Bystrica, which is about to adapt similar reforms.

Despite such positive changes, Slovakia has a problem with entrenched networks of corruption in areas ranging from health care up to local municipalities and even at the highest levels of the state administration.

As the former Prime Minister Iveta Radičová said, it is reminiscent of an octopus. "Corruption has soaked into people's skin," she said on *Lampa*, a political talk show on Slovakia's public channel STV,

claiming that a 10 to 30 percent “commission” is a routine process in any state’s cash flow. She also noted that if the government approves any new anti-corruption rules, some “inventive” individuals quickly circumvent them.⁴⁹

One of the key tools in making municipalities and local government more transparent is the disclosure of all information, especially on the management of property, finances and staffing. To achieve this is essential to the strict implementation of the Freedom of Information Act and Conflicts of interest Act.⁵⁰

Such legislation provides a legal framework key to combating corruption on both local and national levels. Weak national legislation, as the case of the flat commission shows, can enable corruption at the local level. However, local municipalities are not helpless when it comes to misguided national legislation. Positive changes within some of Slovakia’s municipalities suggest that civil society can play an essential role in waging an effective fight against corruption and circumnavigating weak national legislation.

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Partnership with the media

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.

4

Conclusion

The Benefits of Closing Implementation Gap

As the experience of countries around the world shows, 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.

If government delivers on its promises, the public is more likely to trust it, and re-elect it. But even in non-democratic states governments are subject to the pressures of public opinion, and in some respects more so, given that the public's unhappiness with persistent implementation gaps can lead to social unrest in the absence of democratic outlets for dialogue. Implementing laws and undertaking reforms is a difficult process, but if governments seriously commit to overcoming the implementation gap, citizens will also be more inclined towards understanding and supporting reforms.

If people see that the government does its job and that laws are being implemented as they should be, they are more likely to follow the law themselves with all the positive social spillovers that this entails

in terms of better culture of compliance, stronger rule of law, greater productivity, among others. Much social energy is lost because of the lack of trust in the government and public institutions. Closing the implementation gap is a good way to start addressing this problem.

The private sector in particular stands to benefit from reducing implementation gaps. Just as for any other segment of the society, it is important for businesses to be able to rely on the system of laws designed to regulate their activity. A legal system that does not provide for sufficient legal security is not an adequate environment to conduct business because the private sector is left with ambiguous and unenforceable rights and duties. In most cases, a poorly managed legal system means implementation gap.

Development prospects of countries suffer when laws and regulations make it difficult to conduct business but an equally pressing problem occurs when laws on the books are business friendly but remain unimplemented. That breeds opportunities for corruption and a degree of unpredictability that makes entrepreneurship and investment difficult. Many businesses say they would rather operate in a place where laws and regulations are perhaps not optimal from their point of view (for instance in terms of registration procedures or level of taxation) but consistently enforced and predictable than in a place where the legal framework appears sound but that is not what businesses experience on the ground.

Another benefit of overcoming implementation gap is the possible reduction in the number of firms participating in the informal economy. If legal requirements for businesses are simplified, it will be easier for firms to become officially registered and conduct their activities under the protection of law. At the same time, formalizing businesses is good for the society as a whole because these firms become tax-paying entities. Similarly, if the implementation gap is narrowed or closed with regard to the laws regulating labor practices, this can ensure greater satisfaction of workers, greater productivity, and better goods and services. Closing implementation gaps, therefore, directly benefits both businesses and their employees, and indirectly also consumers, creating greater opportunities for all.

Addressing the problem of implementation gap is also of vital importance to civil society. For some groups narrowing or closing implementation gaps in certain areas such as laws guaranteeing accountability of public officials or access to information may be the

primary focus of their work. For others, if the implementation gap is narrowed or closed in these areas, they can effectively focus on other issues (e.g., greater budget transparency or new policy solutions) without a fear that their efforts would be undermined by insufficient implementation.

If there is certainty that adopted laws will indeed be implemented, then the energy of the civil society is better spent on the core of their activities, without the concern that their efforts, even if introduced into law, will not be meaningful in practice. This can also result in a greater diversification among various civil society groups leading to more focus on diverse issues, which benefits the society through broader coverage of important social topics.

These benefits are too significant for any society to not address implementation gaps. Political will, constructive involvement of the private sector, and active role of the civil society are essential in overcoming this challenge. There is no one-size-fits-all recipe on how to approach an implementation gap that affects a particular law in a given country, but there are certainly some tested solutions and good practices highlighted here that can help accomplish this goal.

Endnotes

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