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# **IMPROVING POLICY PROPOSAL DRAFTING SKILLS OF JOINT POLICY FORUM**

Date: June 2011

This publication is submitted for review to the US Agency for International Development.

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# REPORT FROM THE WORKSHOP AND RECOMMENDATIONS

**NOTE:**

Author's views represented in this publication do not necessarily reflect the views of the US Agency for International Development or the US Government

Introduction

**Background:**

East-West Management Institute, Inc. (EWMI) is carrying out a three year rule of law project in Bosnia and Herzegovina entitled Justice Sector Development Project II (JSDP II). Much of the work of JSDP II is assisting in implementing the Bosnia and Herzegovina Justice Sector Reform Strategy 2008 - 2012 (JSRS) which was adopted in 2008. Component 2 of JSDP II is providing support for a better coordinated and more unified system of justice ready for accession to the European Union.

The JSRS recommended that legislative initiatives be preceded by relevant policy analysis and extensive consultations. It listed 19 key topics that needed policy analysis (see JSRS, Addendum 3). Two key implementers of JSRS are the High Judicial and Prosecutorial Council (HJPC) and the BiH Ministry of Justice (MoJ). They play a major role in developing policy for the justice sector. The BiH MoJ established the Sector for Strategic Planning, Aid Coordination and European Integration (SSPACEI) and the HJPC Secretariat established a Department for Planning and Strategic Policy (DPSP) to carry out the action plans developed pursuant to the JSRS.

Component 2 assisted the HJPC and MoJ in organizing a joint policy body to address policy and strategy issues together, and in June 2010, the MoJ and the HJPC signed a Memorandum of Cooperation establishing the Joint Policy Forum (JPF), to “produce analyses of the existing policies and prepare proposals for new policies when the need arises for their establishment or amendment, as well as analyses and proposal drafting on other important topics and phenomena that are primarily of common interest for the HJPC and the MoJ of BiH, or the entire justice sector.” JPF does not have legislative authority, but it may develop policy proposals on behalf of the justice institutions it represents.

In providing support to the JPF in conducting policy analysis, Component 2 organized policy development trainings for its representatives from the MoJ and HJPC, as well as other institutions who would be implementing JSRS. In January 2011, a consultant was retained to conduct a workshop for the purpose of assisting the JPF in defining their values and objectives, improving their analytical skills and developing a protocol for policy analysis. This workshop introduced conceptual issues and went through the steps for developing public policy. The participants tested a hypothetical application of the protocol—that of reducing backlogs in the courts, and learned to analyze the policy proposals of other organizations and institutions.

**Description of Consultancy:**

The Scope of Work for this consultancy envisioned a two day workshop in June, 2011, for representatives of the JPF and other justice institutions aimed to

improve their skills in policy analysis and writing policy proposals, building on what they had learned in the January 2011 training.

### **Preparation:**

Before traveling to Bosnia, the consultant reviewed numerous documents, including the JSRS and its Implementation Action Plan, the Report on Workshop and Recommendations, together with the Proposed Joint Policy Forum Public Policy Analysis Protocol submitted by the consultant who conducted the first workshop in January 2011, the Memorandum of Cooperation between the BiH MoJ and the HJPC, the Assessment of the Budget Preparation and Execution Processes in the Bosnia and Herzegovina Judiciary, prepared by Joseph Bobek in May 2006, portions of the Functional Review of the BiH Justice Sector prepared by the European Commission in March 2005, two recent reports: the Options for Amendments of Legal Framework of Financing the Judiciary and a Comparative Analysis of Financing of courts with Neighboring Countries, issued in March 2011, the Uniform Rules for Drafting Legislation for BiH Institutions (the Drafting Code), the Law on Courts, the Law on HJPC of BiH, and various documents issued by the European Commission on policy development and related issues.

Also in preparation for the workshop the consultant developed a concept paper for policy development, a power point presentation, an agenda, a worksheet for analyzing social problems and finding solutions, and a one-page format for drafting a policy proposal.

The consultant met with the HJPC and BiH MoJ on June 10, 2011 to decide on one of the topics listed on Addendum 3 of the JSRS as the topic for analysis and drafting a policy proposal in the workshop. The topic they agreed upon was developing a unified system for preparing, approving and executing budgets for courts and prosecutors' offices in the BiH Federation, which is regarded as priority by the justice sector in BiH. This has been an unresolved issue for many years and much has been written about it, but no one has reduced the information contained in all the reports and recommendations down to a document intended to advocate what should be done and how to make it happen.

During the week following this meeting, the consultant worked on the workshop materials and met with JSDP II staff on various issues in preparation for the workshop.

### **Workshop:**

JSDP II held the Joint Policy Forum Workshop on Policy Development in Fojnica on June 16 and 17, 2011. It was attended by representatives from the HJPC

Secretariat, the BiH MoJ, the entity MoJs and the Judicial Commission of Brcko District, together with supporting staff of these institutions. The Chief of Party, Component 2 Leader, the Component 2 Program Coordinator and two interpreters attended from JSDP II. The names, titles and institutions of these participants are set forth at the end of this document. Each participant received the Agenda (Annex A), the concept paper for the policy development workshop (Annex B), Problem Solving Worksheet for Policy (Annex C) a Policy Proposal Format (Annex D), and excerpts from Uniform Rules for Drafting Legislation (the Drafting Code) relating to policy development. The consultant used Power Point presentation to emphasize lecture topics (Annex E).

The consultant spent several years working with HJPC and MOJ staff in the past, and is familiar with both their strengths and weaknesses. Their enthusiasm for learning is a strength, but sometimes they exhibit a lack of focus. The consultant designed the course materials specifically to force the participants to discipline their thinking in an orderly way and identify issues correctly. Of the various models of policy analysis, the consultant chose a problem-solving approach.

The workshop commenced with introductions and each participant was asked to describe what he or she expected to take away from the training. The consultant gave an overview of conceptual issues in policy analysis and described how this fit into the legislative process. Policy is a broad term and means different things to different people. The consultant focused on legislative policy, since most policy proposals in BiH result in legislative solutions. The consultant also stressed that a policy proposal usually advocates a preferred course of action and is not an academic exercise. The consultant also suggested that because a policy proposal is advocating a position, the proponents of a policy should carry out informal consultations with stakeholders to elicit comments, determine resistance to the policy, and lobby for support. This should be done prior to drafting the proposal and will contribute to succeeding in implementing the policy later on.

Although the Drafting Code only applies to laws drafted by state level institutions, it reflects European standards for legislative drafting and is useful as a guide for a proper approach to legislation. Under the Drafting Codes, any legislation submitted to Parliament requires an explanatory memorandum to be attached to all draft legislation including a policy analysis. This is significant because policy analysis, including justification, cost/benefit assessment, consideration of alternatives, etc., should start earlier in the legislative process and provide the basis for legislative initiatives.

The consultant used a step by step problem-solving approach to policy analysis. The participants learned how to apply a systematic methodology for identifying a social problem, analyzing the problem in terms of the “problematic behaviors” of the individuals and institutions involved, with a view to finding solutions to change those behaviors to solve the social problem. These steps include answering a

series of questions. First the societal objectives to be achieved need to be listed and prioritized. Then the manifestation of the social problem must be described, including the persons or institutions it affects, directly and indirectly, and how they are affected. Next, the participants learned to identify who is causing the problem (persons and/or institutions), and finally what are the behaviors that result in the manifestation of the problem.

In analyzing the behaviors causing the social problem the participants were asked to consider seven factors. Even though not all of them might be relevant to a particular social problem, the person analyzing the policy should at least consider whether they contribute to the problem. They include, (a) laws or regulations that contribute to the problem, such as those that are poorly drafted or unclear, (b) opportunity, meaning the circumstances that permit a person to obey or disobey a law, (c) the ability a person has to obey or disobey a law or regulation (d) communication (if people do not know the law exists, how can they be expected to obey it?), (e) process, such as bureaucratic red tape, (f) interest, meaning incentive or motivation, and (g) beliefs and prejudices.

Because one of the participants had indicated interest in developing policy on harmonization of the bar exam, they were asked to analyze whether having disparate bar exams in the entities and BiH was a problem, using the Worksheet as a guide. There ensued a lively discussion, and everyone agreed that judges and lawyers should be better trained, but they were unable to relate the quality of judges and lawyers to the different bar exams. The quality of legal education in the law schools and lack of continuing legal education were seen as a reason for the problem, but no one could find a causal relationship between different bar exams and the quality of judges and lawyers. They had to admit that the different bar exams was not a problem and ask themselves whether it warranted a policy proposal.

In the afternoon of the first day, the participants learned about seeking and testing solutions. Solutions include doing nothing, direct measures, indirect measures (enabling legislation), educational measures and other alternatives to regulation. For the next exercise, the consultant divided the participants into three groups to analyze the problem of litter and present their findings to the group as a whole. By following the steps in the Worksheet, they were able to analyze the problem accurately and articulated some novel perceptions, such as examples set by parents for children.

Following this exercise, the participants learned about testing the preferred policy solution and its alternatives. One example of a failure to test a policy solution involved making medicine bottle caps childproof. More injuries to children occurred with them because elderly people could not open the childproof caps and left the bottles open for children to get into.

Consultations with stakeholders and other institutions intended to elicit comments can help further define the policy and improve upon solutions. The consultant described the importance of thinking about the effect of the policy and conducting some form of regulatory impact assessment. It may not be feasible in poorer countries to conduct full-blown regulatory impact assessments on every alternative solution, but at least some thought should be spent on the effects of a legislative policy. Most importantly, the cost of implementation of a policy and the resulting legislation is a critical part of any policy analysis.

The participants also learned that they must think of potential barriers or resistance to a course of action and address them in the policy proposal. A policy proposal should include a detailed implementation plan and timetable, as well as a description of how the effectiveness of the policy will be monitored and changed at a later date, if necessary.

The participants divided into two groups for the last exercise of the day, which was to analyze whether smoking was a problem, and if so, explore solutions, using the Worksheet as a guide. The smokers were grouped together for this exercise and went outside to smoke, presumably, and fill out their Worksheet. Both groups presented their analyses, which were essentially the same. They identified issues correctly and presented good solutions.

Day 2 was devoted to developing a policy on unifying the procedures for budget preparation, budget adoption and execution for courts and prosecutors' offices in the BiH Federation. After a quick review of the first day's training, the Worksheet was placed on the screen so that each step of the analysis could be entered onto it via computer.

Many ideas floated during the discussion but first the objectives needed to be pinned down and prioritized. Several were mentioned but they all fit in one of three categories: equal justice for citizens, independence of the judiciary and efficiency. Much discussion ensued as to what is meant by independence of the judiciary and how to achieve it, while keeping the judiciary accountable.

Next, each of the steps of policy analysis was addressed and entered on the worksheet, starting with analyzing the problem. There was some confusion over differentiating between a manifestation of a problem and its causes, but by taking it in small steps, it could be properly analyzed.

The participants listed several manifestations of the problem, such as delays in processing cases and backlogs in certain courts. Some courts could not pay their bills, such as expert fees, postage and delivery fees; they had mounting debts. This causes unequal treatment between citizens with cases in courts with sufficient funding and those without.

They found that the parties affected were the judges, prosecutors and court staff in cantons that were underfunded, as well as the public. The parties contributing to the problem were the cantonal ministries of finance and some of the courts and prosecutors offices.

They identified several causes, using the factors from the worksheet as a guide: insufficient court input into the process, poor planning and poor procurement practices by the courts and prosecutors offices, fractured budgeting, existing legislation, and political interference in budget allocation. They also thought the courts were understaffed courts and there were poor audit and monitoring procedures and a lack of communication between the courts and Federation MoJ. There were different interests being served in different cantons.

They believed that the Law on Courts created disproportionate financing systems, and the HJPC's consulting role under the Law on the HJPC was unclear. The judiciary should not be treated like any other budget user, and the HJPC should appear before Parliament to lobby for budgets for all courts and prosecutors' offices.

Each participant received three copies of the solution portion of the worksheet. For solutions, they quickly dismissed the option of doing nothing. They agreed that a single budgeting process for the entire country was the ideal solution, but it was unlikely to happen for political reasons. Unifying the budget process in the Federation and eliminating the participation by cantonal ministries of finance and justice was perceived as a reasonable compromise until such time the country was ready for a single budget process.

They analyzed and entered on the worksheet each part that would comprise a defense of the solution reflected in the policy proposal: implementation, costs, barriers, consultations, oversight, etc.

They listed the legislation that would have to be amended to effectuate the policy. They understood that they would have to organize conferences in the cantons to educate them about the advantages of the unified system and to overcome resistance. They would have to assure the more prosperous courts that their status would be undisturbed, and that minimum standards and guarantees would be set. They would inform stakeholders that the proposed system would be more in line with European standards and Council of Europe recommendations that the state provide sufficient funds for all judges to adjudicate cases.

The costs of the change would not be insurmountable. Fewer people would be needed at the cantonal level, but more staff might be needed at the Federation level. In order to sell their policy, they would have to devise a plan for reassigning surplus staff or help them find other work.

They learned that they could strengthen their position by addressing weaknesses in the policy proposal. They had to think whether the courts and cantonal authorities that had sufficient funding would really be a barrier to the proposal or whether the barrier might be inertia or resistance to change. They listed the advantages of the single funding policy as: equality before the law, ability to conduct long range planning, and increased independence of the judiciary due to its increased financial leverage.

At the end of the day, the participants had most of the information they would need to write up a persuasive proposal, following the one-page format they each received. Having taken the topic through each of the steps, the JPF was in the position of preparing the policy proposal for the two institutions with the authority to carry it through to a legislative initiative. Each of the participants will be provided with a copy of the completed Worksheet to use in drafting the policy proposal.

### **Observations and Recommendations:**

The consultant noted that the participants tended to jump around between symptoms and causes and solutions and failed to approach policy analysis in a methodical way. This may have much to do with an educational system where they were lectured rather than a Socratic method and they were required to memorize. By failing to break down issues into components, they run the risk of missing significant factors that could help them overcome barriers to their policy proposal. The worksheet helped them focus by forcing them to analyze issues one step at a time. For example, it was important in the addressing a unified system of budgeting for courts and prosecutors' offices that the participants think about what the real source of resistance might be and how they can overcome it.

The consultant suggests that JSDP II consider developing a mentoring program to work with the JPF and assist it in developing policy papers. Working groups could be formed comprising the HJPC, the MoJs, and other interested governmental institutions to draft policy proposals on the topics listed in the Addendum 3 of the JSRS, using the Protocol, the Policy Proposal Format and the Worksheet as working documents, or any other model. If JSDP II decides to initiate some kind of mentoring program, all necessary research or preparatory work should be completed before drafting the proposal. Whatever format is chosen, it should require the group performing the analysis to proceed slowly taking one step at a time.

### **Conclusion:**

The participants all expressed enthusiasm for the topics presented in the workshop and took their practice exercises seriously. The consultant is hopeful that JSDP II will continue assisting the JPF in developing policy. To the extent

the workshop was deemed successful, this was due in large measure to the assistance given by the Component 2 team. For that assistance and enthusiastic participation, the consultant is most appreciative of the opportunity to work with all those listed below.

## **LIST OF WORKSHOP PARTICIPANTS**

### **BH MOJ:**

Srđan Arnaut, member of the Forum, Deputy Minister of Justice  
Niko Grubešić, member of the Forum, Assistant Minister of Justice, Head of the Sector for Strategic Planning, Aid Coordination and European Integration of the BH MOJ  
Toni Šantić, supporting staff, senior advisor at the Sector for Strategic Planning, Aid Coordination and European Integration of the BH MOJ  
Sanja Gaco, Expert Advisor  
Nikola Jokić, Expert Advisor

### **HJPC:**

Muhamed Tulumović, member of the Forum, Director of the HJPC Secretariat  
Damir Balic, Head of HJPC Budget Department

### **RS MOJ:**

Nikola Kovačević, Assistant Minister of Justice

### **Federation MOJ:**

Entoni Šeperić, Sector for Strategic Planning and European Integration

### **Brčko District Judicial Commission:**

Slobodan Zobenica, secretary of the Brčko District Judicial Commission, observer

### **USAID JSDP II:**

Gerald Meyerman, Chief of Party  
Muhamed Sušić, Head of Component Two  
Nedim Daul, Program Coordinator  
Emir Budalica, Interpreter  
Adisa Okerić, Interpreter  
Sally Fleschner, Consultant

## JOINT POLICY FORUM WORKSHOP ON POLICY DEVELOPMENT

Fojnica, Hotel “Aquareumal”, 16 & 17 June 2011

### Agenda

**Thursday  
June 2011**

**16**

#### Day One

- |                      |                                                                                                                                                                                       |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>10:00 -10:15</b>  | Opening Remarks                                                                                                                                                                       |
| <b>10:15 – 11:15</b> | Introduction<br>Background and conceptual issues<br>Steps in the legislative process<br>BiH Uniform Drafting Code<br>Special challenges faced by the developing world.                |
| <b>11:15 - 11:30</b> | Break                                                                                                                                                                                 |
| <b>11:30 - 11:45</b> | Summary of Problem-Solving Approach to Legislative Policy Development                                                                                                                 |
| <b>11:45 - 12:30</b> | Introduction to problem identification<br>Objectives<br>Identifying the social problem<br>Identifying the behavior that causes the problem<br>Factors to consider in analyzing causes |
| <b>12:30 - 13:30</b> | Lunch                                                                                                                                                                                 |
| <b>13:30 – 15:00</b> | Formulating policy solutions<br>Proposing alternative solutions<br>Regulatory and non-regulatory considerations<br>Barriers                                                           |
| <b>15:00 – 15:15</b> | Break                                                                                                                                                                                 |

**15:15 – 16:30** Consultations  
Regulatory impact assessment and Cost/benefit analysis  
Implementation plan  
Monitoring, oversight, reporting and amendments

**Friday  
2011**

**17 June**

### **Day Two**

**9:00 - 9:30** Review of topics covered on Day One

**9:30 - 10:30** Analysis of topic on unifying financing and budget procedures for courts and prosecutors' offices in the Federation of BiH.

**10:30 – 10:45** Break

**10:45 - 12:30** Continuation of analysis of topic

**12:30 - 13:30** Lunch

**13:30 - 14:30** Drafting the policy proposal

**14:30 – 15:00** Conclusions and closing remarks

**CONCEPT FOR POLICY DEVELOPMENT WORKSHOP  
JUSTICE SECTOR DEVELOPMENT PROJECT II  
JUNE 2011**

**A. Introduction**

Public policy can be generally defined as “a system of laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives.” Policy is a broad term and encompasses social policy, environmental policy, economic policy, legislative policy, etc., and often is confused or blurred with strategy. Simply stated, policy is what one wants to do and strategy is how the decision of what one wants to do will be accomplished; however, policy proposals generally contain a strategy. Because the policy analysis under consideration here will most likely result in a legislative policy proposal, this document is concerned with how to develop legislative policy.

The proponent of a course of action should conduct a policy analysis which results in, hopefully, a persuasive legislative policy proposal or paper that a governmental agency or institution will adopt, thereby creating the basis for the proposed legislation. A policy proposal not only states what should be achieved, but also addresses who will carry it out, when it will happen and how it will be achieved (strategy). It should reflect that the proponent has performed the following:

- Selected and prioritized the applicable objectives,
- Analyzed the problem creating the need for the policy,
- Found a policy solution that meet the objectives,
- Conducted an impact analysis (risk and benefits),
- Determined cost of implementation,
- Harmonized policy with European Union directives, and
- Conducted consultations

Once the policy is adopted by the appropriate governmental agency and the legislation drafted in accordance with the policy, the draft legislation should also undergo further investigation (although much will have been conducted previously). This includes, impact analysis, costing, EU harmonization, and consultations, all of which are part of the explanatory memoranda accompanying the draft legislation when it is submitted to the Parliament. Once a law is enacted, the implementing agency or institution should undertake reporting, monitoring and oversight responsibilities to ensure that the legislation meets its objectives, and if not, take corrective action.

## **B. Problem-solving approach to legislative policy development.**

Legislative policy should be developed using a systematic framework that provides a transparent and logical process for finding legislative solutions to social problems. An effective approach to policy development is the “problem-solving approach.” It uses a systematic methodology for identifying a social problem, analyzing the problem in terms of the “problematic behaviors” of the individuals and institutions involved, with a view to finding solutions to change those behaviors to improve the social problem. The legislative problem-solving approach is simply a way to explain problematic behavior in order better to understand the behavior and then begin proposing precise legislative policy responses to change this behavior.

## **C. Identify and describe the social problem**

### **1. Describe the manifestation of the social problem.**

Legislative policy is designed to fix social problems. Therefore, drafting effective legislation requires the one to be able to precisely identify the social problem or issue to be addressed by legislation. You must ask what is the problem the legislation seeks to solve and why this is a problem.

There are ways not to state the problem, such as, “There is no law on [topic].” A better way to state the manifestation of a problem might be, “Rural farmers are unable to get their crops to market in a cost-effective way.”

In doing this, you must distinguish between **causes** and **manifestation**. The example of the rural farmers is a manifestation. It is what you see as the effect of the problematic behavior. Later, you will seek to explain the causes.

### **2. Who is directly and indirectly affected by the problem?**

It is important to identify persons and institutions that are affected by the social problem, even if they do not cause or contribute to the problem. These are people who may be negatively affected by the problem now, or who might be affected by a policy change. Consider also how they are affected. Remember that, you are not blaming the persons or institutions you are identifying. (So, for example, it is not the farmer’s fault that he cannot get his crops to market.)

### **3. Who is responsible? Identify the individuals and institutions (including implementing agencies) that contribute to the problem.**

Having described the manifestations of the problem and who is affected by it, then identify the individuals, legal entities, organizations, governmental agencies, or institutions that are causing or contributing to the problematic behavior.

**4. What is the underlying problematic behavior? Identify the problematic behavior of these persons or institutions.**

Next look at the behaviors (actions or inactions, omissions) of these persons or institutions and determine how they contribute to or cause the problem? In other words, who is contributing to (or causing) the problem? How does what are they doing (or not doing) contribute to, or cause the problem? Social problems are usually caused by more than one problematic behavior. Therefore, it is important to identify each of the problematic behaviors. What is it that these individuals and institutions are doing that result in the manifestation of the problem? If possible, state the problem as a specific action or omission on the part of the individuals and institutions involved in the problem.

**5. Analyze and explain the causes of the problematic behavior and create explanations based on the causes of the behavior.**

The next step is to analyze the problematic behavior of the individuals and institutions identified above that contribute to the social problem in order to create explanations about why these individuals and institutions act, or fail to act, as they do. Seven factors help determine the causes of problematic behavior. Each factor focuses on one aspect of behavior and asks questions that will lead to a better understanding of the problem and meaningful policy responses. These factors are:

**(a) Rules**

The term “rules” most often refers to laws and regulations that affect a regulated person and contribute to the problematic social behavior. Some examples of ways in which the rules contribute to the problem are the following:

1. Laws that are unclear or poorly drafted.
2. Laws that permit or require the problematic behavior.
3. Laws that do not address the causes of the problematic behavior.
4. Laws that do not provide for accountability in their implementation.
5. Laws that grant too much discretion in their implementation or that too greatly restrict discretion.

**(b) Opportunity**

The term “opportunity” refers to the circumstances, occasion, chance, or probability that a person has to engage in the problematic social behavior or to obey or disobey a law or regulation.

**(c) Capacity (or ability)**

The term “capacity” refers to the ability or inability that a person has to participate in the problematic social behavior or to obey a law or regulation. Capacity also includes any obstacles that may impede or prevent the person’s ability to participate or not participate in the problematic behavior. Some examples that address the “capacity” factor are: Inability to obtain credit, lack of expertise, or lack of transportation (for example, a farmer who cannot get produce to market).

**(d) Communication**

The term “communication” refers to the effectiveness with which a law or regulation is communicated to the persons affected by it. If people do not know what actions the law permits, requires, or prohibits, how can they possibly be expected to obey it? It also includes communication, or lack thereof between governmental institutions and implementing agencies and how that may contribute to the problematic behavior.

**(e) Processes and procedures**

The term “process” refers to criteria and procedures that (1) explain the decision-making process that leads someone to decide whether to obey or not to obey a law, or (2) encourage or discourage someone from engaging in the problematic behavior. This factor is particularly important in the case of an institution (such as a governmental agency, a corporation, or other complex organization), in which the decision-making process is not vested in a single individual. A complex institution’s structure and internal procedures can affect how the institution decides whether to obey or disregard the rules.

**(f) Interest and incentive (or disincentive)**

The term “interest” refers to the incentive or motivation (both material, as in money, and non-material, such as personal or political power, for a person to engage in the problematic behavior. This is the person’s perception of the personal costs and benefits of complying with the law or regulation. This factor also includes “disincentives” that discourage good behavior.

**(g) Beliefs and values**

Beliefs and values include the attitudes that shape how we look at the world and therefore shape our decisions. These are the backgrounds and personal values each person brings to any set of circumstances and affect how the person behaves in the face of those circumstances.

There may be multiple and overlapping explanations for problematic behavior. More often than not one factor may interact with another factor to affect or contribute to the problematic behavior. For example, a rule affecting a person may require the person to do something that cannot be completed because the person lacks the capacity to do it. In this example, the “rule” factor has combined with the “capacity” factor to explain the problematic behavior.

In summary, ask yourself:

- What are the overt manifestations of the problem?
- Where is it happening?
- When is it happening?
- Who is affected by the problem?
- Whose behavior causes, contributes to, or permits the problem?
- What is the behavior that causes, contributes to, or permits the problem?

Use the Worksheet to analyze causes of problematic behavior and to propose specific solutions. Keep in mind that every factor may not apply to every problematic behavior and some items may overlap. Create hypotheses as to the causes based on the seven analysis factors.

## **D. Solutions**

Propose possible policy solutions based on these explanations for the problematic behaviors and choose the policy (or policies) that are most likely to improve the social problem. This section will discuss (1) where to look for solutions, (2) what to consider when deciding how to implement the solution, (3) the importance of elaborating several alternative solutions, (4) how to test the possible solutions for adequacy, including how to conduct a basic cost-benefit analysis, (5) implementation of a policy, and (6) monitoring.

### **1. Formulating solutions.**

The next step is to propose solutions for each of the causes of problematic behavior you have just identified, and then to combine the solutions into a policy that will address the social problem you originally identified. There are three general categories of solutions.

#### **a. Direct measures**

Direct measures address factors associated with interest or incentive. Direct measures include both punishments (a fine) and rewards (tax benefits) that encourage certain activities. Direct measures try to eliminate or reduce the incentive to engage in the problematic behavior, or they try to increase the incentive to engage in the desired or preferred behavior.

## **b. Indirect measures**

Indirect measures address factors associated with opportunity, capacity, communication, and process. Enabling legislation is an example. Indirect measures aim to eliminate the opportunity or interest to engage in the problematic behavior, or to encourage or provide the opportunity to engage in the desired or preferred behavior. For example, eliminating excessive bureaucratic red tape is an indirect measure.

## **c. Educational measures**

Educational measures are generally aimed at influencing beliefs but may also deal with capacity in situations in which the capacity factor involves a lack of information or expertise. Educational measures can show the negative aspects of the belief and the positive aspects of the solution. They can include methods for informing those affected by the law, so that they are aware of what the law requires, permits, or prohibits and they can therefore conform their behavior appropriately.

## **2. Explanations for problematic behavior dictate potential solutions.**

It is important to think of the analysis factors not only as factors that affect or contribute to problematic social behaviors, but also as factors that new policy or law should focus on in order to change the problematic behavior.

## **3. Where to look for solutions?**

Your own ideas, based on logic and your experience, are the first place to look for solutions. Other sources include:

**(a) Foreign law and experience** — including both successes and failures — can be an important source for solutions. Particularly look to the European Union and the experiences of nearby countries with similar legal and social systems. However, take care not to merely “transplant” laws from other countries. Even if the social and legal systems are similar, the circumstances are likely to be different in important respects, so what may have worked somewhere else may not work here.

**(b) Professional or academic literature.** Professional or academic literature may also provide a good source of ideas for proposing solutions. This kind of literature may come from a variety of sources, including publications in any language you understand and from any nation, as long as the subject of the articles or papers is relevant.

**(c) Your own country's past experience.** Your own country's past experience can also provide ideas for solutions. This is especially helpful in established governmental institutions with professional staff members who can advise newer policymakers about past policy proposals that were ineffective and the reasons why they were ineffective. This prevents "reinventing the wheel" and repeating past mistakes.

#### **4. Regulatory scheme**

A policy proposal must include a regulatory scheme for implementation. What laws or regulations must be amended, repealed or drafted to carry out the policy?

#### **5. Consider alternatives to legislation**

It is important to consider alternatives to regulation. These include:

- Establishing a general public information campaign to educate and warn people about the problem;
- Providing specific information directly to consumers to allow them to look after their own interests, or
- Promoting the development of a scheme of "self-regulation" within an industry or group or encouraging sellers to give information to consumers before they buy their goods;

#### **6. Barriers**

Invariably there will be opposition to a policy. It would behoove the proponent of any legislative policy to address potential obstacles to the policy in the policy proposal and provide an explanation of how they will be overcome.

#### **7. Consultations**

Consultations are critical for obtaining input for policy development. Stakeholders, government institutions, civil society organizations, and even the public, not only help the proponent improve upon the policy, but also can help in persuading a government agency to adopt a policy proposal. The proponent should meet, formally or informally, as the situation dictates, with parties who can either impede the adoption of a policy or who can be influential in supporting it, to begin lobbying for the policy. Such meetings can be followed by more formal conferences and public education measures so that the proponent can explain the basis for the policy and present its benefits to garnish support for adoption by the respective governmental agency. The Regulations on Consultations in Legislative Drafting can be applied to policy proposals as well as legislation and

provide guidance regarding the manner in which consultations should be conducted.

## **8. Regulatory Impact Assessment (RIA)**

The purpose of an RIA is to try to ensure that legislation is only made when the benefits of the regulation outweigh its risks (costs). This must be the case if society as a whole is to be made better off by the legislation. If it is not clear that this is the case, legislation should usually not be used. RIAs are broader than cost analyses and take into consideration environmental, health, social, and many other monetary and non-monetary ways a policy can affect the public. Risk/benefit considerations include:

- Health and environmental impacts
- Consumer impacts
- Impact on cost of doing business
- Risk and uncertainty:

Identify risks and take steps to mitigate adverse consequences.  
Is the policy flexible?  
Develop strategies for quickly responding to changing circumstances.

## **9. Cost Analysis**

In order to determine which of the various possible solutions will be most effective, you must assess the costs of each of the possible solutions and choose the solution most likely to solve the problem in the most effective way. It is important to consider in a cost-benefit analysis both monetary and non-monetary costs and benefits for each solution.

In order to determine the relative costs and benefits associated with your possible policy solutions, you must (1) ask what would happen if there were no change in the current policy (that is, if you kept the “status quo”), and (2) compare the costs and benefits associated with the alternative policy solutions.

Cost considerations include:

- Capital expenditures: What equipment is necessary, and what is available? What is the useful lifetime of needed assets?
- Operational and maintenance costs.

- Direct Costs, such as staffing (wages, benefits, training) and good and services (temporary and on-going).
- Tax Implications: Will the proposal either increase or decrease tax revenue?
- New Revenue Streams: User fees, new taxes, development of a new technology.

After conducting a basic cost-benefit analysis of the various possibilities, you should choose the most effective solution that deals effectively with each of the causal factors you have identified. You will combine the provisions into a comprehensive policy.

## **10. Implementation**

For the policy proposal to be effective, you must include a plan for how the policy will be implemented, setting forth the regulatory scheme, as well as the costs, personnel, timing, etc. You must also select an implementer that has adequate structure, processes, and resources to implement the resulting legislation.

Implementers are usually government agencies, but also include courts, public corporations and private sector organizations (hospitals, universities, etc.) In this regard, you must choose between using an existing implementer and establishing a new one. You may find that existing implementers are unable successfully to implement the measures called for in your policy. In such a case, you will have to weigh whether to establish an entirely new entity and determine whether additional powers, resources (such as funding), or personnel are needed.

## **11. Consider how the policy, once enacted as legislation, can be monitored. Has the legislation been implemented? Is it working? Does it meet the objectives? Should it be modified, and if so, how?**

When legislation is implemented, it often produces unanticipated results, or results that cost more or less than expected, or that are more, or less effective, than expected. Thus, the final step in the problem-solving approach is to design a system within the legislation to ensure that the implementing agency provides data and information that is sufficient to determine the costs and effectiveness of the implementation of the new policy that is embodied in the legislation.

**12. Checklist.** You can use the checklist below to “test” whether the comprehensive policy will be an adequate solution.

- Does the policy actually induce the desired behavior or eliminate or reduce the problem behavior?
- Does the policy address each of the causal factors you have identified?
- .Does the policy prescribe an appropriate regulatory scheme?
- Does the policy select the best implementing agency likely to result in effective implementation?
- Can the government allocate sufficient resources to ensure effective implementation?
- Are there sufficient provisions for monitoring and reviewing the resulting legislation and making changes later if required?

## PROBLEM-SOLVING WORKSHEET FOR POLICY - EXHIBIT C

<b>Objectives</b>	
<b>Manifestation of the Problem</b>	
<b>Person or Institution affected by the problem</b>	
<b>Person or institution causing the problem</b>	
<b>Problematic Behavior</b>	
<b><u>Analysis Factor:</u></b>	<b><u>Explanation of the Problem</u></b>
<b>Rules</b>	
<b>Opportunity</b>	
<b>Capacity</b>	
<b>Communication</b>	
<b>Process/ Procedures</b>	
<b>Interest or Incentives</b>	
<b>Beliefs/Values</b>	

<b><u>Analysis Factor</u></b>	<b><u>Effect of Potential Solution</u></b>
<b>Solution</b>	
<b>Regulation</b>	
<b>Non-regulation</b>	
<b>Barriers</b>	
<b>Costs</b>	
<b>Impact</b>	
<b>Implementation</b>	

<b>Advantages to solution</b>	<b>Disadvantages to solution</b>

EXHIBIT D

**POLICY PROPOSAL FORMAT (20 PAGES)**

**I. Title Page**

**II. Executive Summary.** Summarize the content of the entire brief (2 pages).

- A. State the problem or issue
- B. Give BRIEF background;
- C. Identify major alternatives;
- D. State preferred alternative with justification;

**III. Introduction and Description of Objectives** (1 page)

**IV. Statement of Problem.** Identify with clarity and specificity the problem being addressed and why it is important. (5 pages)

- A. Background of the Problem
- B. Importance of the Problem
- C. Identification of persons affected
- D. Identification of those causing the problem
- E. Impact of the Problem
- F. Current Status of the Problem

**V. Alternative Solutions.** Discuss the alternative policy responses under consideration, including doing nothing. Examine the "best practices" elsewhere. State the criteria that you will use to score the alternatives explicitly, such as costs, equities, etc. The discussion of each option should be balanced, and should reflect the evidence of the degree to which the option is useful. Apply the criteria to each of the policy alternatives using the most appropriate methodology. If possible, score the alternatives. Summarize comparative assessment using a matrix or similar summary display (6 pages)

- A. List alternatives considered, including doing nothing
- B. Compare alternatives
- C. Barriers and limitations, including political considerations

**VI. Recommendations.** Close the policy proposal with a recommendation that summarizes the preferred policy option. Justify why this option is preferred over the others. If there are more than one option, list them in order of their priority (5 pages)

- A. Description of Policy Recommendation(s)
- B. Rationale for Recommendation(s)

- C. Plan for Implementation
- D. Provisions for Monitoring/Evaluation

## **VII. Appendices and Summary Displays**