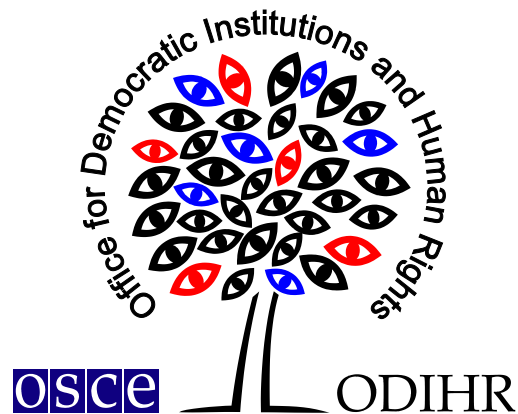


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# ASSESSMENT OF THE LEGISLATIVE PROCESS IN THE REPUBLIC OF ARMENIA

*The Assessment has been prepared by the OSCE Office for Democratic Institutions and Human Rights, with the support of the OSCE Office in Yerevan. The Assessment was peer reviewed by Professor Felix Uhlmann of the Law Faculty of the University of Zürich, Switzerland, Professor Alan Page of the University of Dundee, United Kingdom, and Ms Ani Chilingaryan of the German Society for International Cooperation's (GIZ) project on "Legal and Judicial Reform Advice in South Caucasus", located in Yerevan, Armenia.*

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## INTRODUCTION

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### *BACKGROUND*

1. By letter of 24 December 2013, the Ministry of Justice of the Republic of Armenia asked OSCE/ODIHR to conduct a comprehensive assessment of the legislative process in Armenia (hereinafter referred to as the “*Assessment*”), which would focus on both the legislative framework regulating lawmaking, and relevant practices in this context. OSCE/ODIHR had previously already conducted a preliminary assessment of the legislative process of Armenia, based on the request of the OSCE Office in Yerevan, which had focused only on the legislative framework. The Preliminary Assessment of the Legislative Process in the Republic of Armenia (hereafter, “the Preliminary Assessment Report”) was officially launched in November 2013, at an event attended by key counterparts from Parliament, Government, and civil society.
2. By date of 19 February 2014, in response to the letter of 24 December 2013, OSCE/ODIHR and the Minister of Justice signed a Memorandum of Understanding (MoU), in which OSCE/ODIHR committed to conduct a comprehensive assessment of the lawmaking process, which would include recommendations for reform. Additionally, this MoU stated that OSCE/ODIHR, with the support of the Ministry of Justice, would organize up to four thematic workshops on different aspects of lawmaking, aimed at developing additional recommendations to supplement those already made in the Assessment. Finally, the MoU states that the OSCE/ODIHR shall facilitate the preparation of a Regulatory Reform Roadmap in Armenia, with concrete action points, based on recommendations from the Assessment and workshops.
3. The current Assessment shall examine whether the current law-making procedure in Armenia corresponds with key standards and OSCE commitments on democratic law-making, as part of the combined efforts of OSCE/ODIHR to provide assistance to strengthening and improving the law-making process, in close cooperation with the OSCE Office in Yerevan. As a first step, an ODIHR team of experts traveled to Yerevan on 24-28 February 2014 to interview senior officials from the Government and the National Assembly, and other relevant interlocutors on the practice of the lawmaking process (for more information on the interviews and interlocutors, see Annex 2 to this Assessment).

### *SCOPE OF THE ASSESSMENT*

4. This Assessment seeks to build on the initial analysis contained in the Preliminary Assessment Report. It aims to synthesize and analyze the information collected in order to provide an accurate account of the legislative process in the Republic of Armenia, leading to credible recommendations for legislative reforms so as to improve the effectiveness, efficiency and transparency of the law-making process.

5. Information for the present Assessment was collected through field interviews with pre-identified interlocutors<sup>1</sup>, as well as by compiling relevant domestic legislation and regulations. The field interviews were preceded by questionnaires<sup>2</sup> sent out to the interlocutors in order to provide a better overview of the purpose and scope of the visit and to allow time for preparation. The interviews aimed to gather information on the national procedures and practices in place, as well as on the international assistance efforts in related areas. The information gathered in this manner was then analyzed in light of generally accepted democratic law-making standards.
6. This Assessment describes the current constitutional, legal and organizational framework for the legislative process in Armenia<sup>3</sup> and identifies some particularly critical aspects for reform. Not all Armenian laws and secondary legislation were taken into account, but only a selection of those laws that were considered relevant for the purposes of this Assessment.
7. The Assessment is based on unofficial English translations; errors from translation may consequently result. It is also possible that the amendments of key laws that were introduced after February 2014 were not yet taken into account in the English translations.
8. OSCE/ODIHR should stress that this Assessment is without prejudice to any description, analysis or written and oral recommendations and comments to the related legislation and legislative process that the OSCE/ODIHR may have the opportunity to make in the future.

#### ***MATERIALS ANALYSED***

9. This Assessment is based on non-official English translations of the following legal texts:
  - Constitution of the Republic of Armenia of July 5, 1995 (hereinafter, "the Constitution")
  - Rules of Procedure of the National Assembly, enacted by Law of the Republic of Armenia of February 20, 2002 (hereinafter, the "Rules of Procedure")
  - Law of the Republic of Armenia on Legal Acts of April 3, 2002 (hereinafter, the "Law on Legal Acts")
  - Law of the Republic of Armenia on Freedom of Information of September 23, 2003

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<sup>1</sup> For the full list of interlocutors, see Annex 2 to this Assessment.

<sup>2</sup> The questionnaires are included in Annex 3 to this Assessment.

<sup>3</sup> The detailed description of the system is included in Annex 1 to this Assessment.

- Law of the Republic of Armenia on Parties of July 3, 2002
  - Law of the Republic of Armenia on Television and Radio Broadcasting of October 9, 2000
  - Law of the Republic of Armenia on Copyright and Related Rights of June 15, 2006
  - Decree of the President of the Republic of Armenia on the Rules of Procedure of the Government of the Republic of Armenia, (hereinafter, "the Rules of Government Procedure")
  - Government Protocol Decision on Guidelines on Drafting Legal Acts, April 13, 2012 (hereinafter, Legal Drafting Manual)
10. Additionally, the following laws were taken into account:
- Law of the Republic of Armenia on Referendum of September 12, 2001, hereinafter, the "Law on Referendum")
  - Law of the Republic of Armenia on the Constitutional Court of June 1, 2006 (hereinafter, "the Law on the Constitutional Court")
  - Judicial Code of the Republic of Armenia of February 21, 2007

## EXECUTIVE SUMMARY

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11. The present Assessment is a situational analysis of the formal procedures and the actual practices in the Republic of Armenia that apply to the preparation, drafting, enactment, publication and communication of legislation. It discusses the salient aspects of the legislative drafting / law making process in the country and identifies existing concerns and risks. It also identifies a number of goals to be achieved in order to enable the law-making system to function efficiently and result in a high-quality legislative outcome. Based on the findings of the analysis, the Assessment outlines a proposed strategy for law-making reform efforts that the Armenian authorities may wish to consider, and possible OSCE/ODIHR assistance to such reform efforts, as required. Overall, the Assessment aims to initiate a home-grown, comprehensive reform process for national decision-makers, which will be continued by way of a series of thematic workshops on specific challenges, as identified based on the findings of the Assessment and in consultation with the Armenian authorities.
12. The following areas can be recognized as issues of concern:

- **Highly formalized legislative process with rigid time limits.** Although there are many legal and procedural requirements that aim to enhance legislative quality, these instruments are at times not sufficiently precise and may suffer from too rigid time limits. Setting rigid time limits increases pressure on legislative drafters and law makers and reduces the time that would be needed for a thorough consideration of the problem that they are trying to resolve through legislation. Adequate time limits should be set prior to the actual drafting exercise, as well as for the proper verification of draft laws and legislative policy at different stages of the lawmaking process.
- **Insufficient policy making at the initial stage of the legislative process.** Currently, the law-making process appears to be focused more on preparing and adopting legislation, than on open-ended policy and strategy discussions that would also contemplate alternative, non-legislative solutions to problems. Distinct policy development stages in the legislative process could be more clearly defined. The ministries should contemplate introducing internal policy making procedures, which would allow them to draft quality legislation. The high frequency of amendments to legislation suggests that legislative projects are not always sufficiently thought through at the outset, and then need to undergo numerous revisions. Legislative action plans are developed, but the transformation of policy into law appears to be up to the relevant ministry or even the individual person drafting the law. The explanatory notes attached to draft laws are very short and seem to summarize the basic concepts behind legislation, without going into further detail in terms of a regulatory or financial assessment of its implications. By law, many subject matters need to be regulated by primary laws passed by the National Assembly, which means that the National Assembly is constantly under a very high workload. The high number of draft laws passed may also partly be explained by the above-mentioned insufficient focus on conceptual thinking at the initial stages of preparing a draft law. Working on concepts and outlining several alternative solutions prior to deciding on one, and the elaboration of explanatory notes is a time-consuming process, which the current procedure does not seem to allow for.
- **Insufficient stakeholder consultation by the executive at the policy formation stage.** Throughout the current legislative process, there is a lack of adequate and sufficient stakeholder consultation, which already begins at the pre-legislative stage. In principle, draft laws become accessible to relevant stakeholders once they are submitted to the National Assembly. The executive branch publicizes certain draft laws in order to obtain external feedback before these drafts are officially finalized. The Armenian legislation requires all draft laws and Government decisions prescribed by the annual action plan of the Government to be publicized. However, according to a number of interlocutors, initiators of draft laws appear to follow an approach that is more

formalistic than pragmatic: there is not always sufficient outreach to all key stakeholders, nor are they provided with sufficient time and information to provide constructive input. The contents and impact of the provided contributions are also not shared in a transparent manner with other stakeholders or the public.

- **No comprehensive and reliable regulatory impact assessment.** Although the law stipulates that every draft law shall be accompanied by relevant “expertise”, the actual accompanying documents often seem to be of a formal and quite basic character and may at times be misleading as they do not indicate the actual budgetary implications of the draft law in question. Budget planning, according to some interlocutors, does not appear to be a transparent exercise.
- **Legislative burden.** The rate at which new laws are adopted by the National Assembly appears to be quite high. This places undue pressure on both the National Assembly and all those involved in the legislative process, which in the end might also undermine the quality of impact assessments and legislative drafting.
- **Lack of specially trained staff for legislative drafting.** There is an insufficient concentration of specialist skills and resources required for drafting within both the executive and the legislature. As a result, the quality of laws may be diluted. Another pressing issue is the fact that insufficient resources are made available for the drafting and redrafting process. New staff need to be trained but are then often lured away by positions elsewhere with higher salaries. In job descriptions for positions involving legal drafting, the requirement of a university degree in law seems to be the only one that is clearly articulated. There is no proper education in legislative drafting at the university level or in practice. Staff involved in legal drafting receive no professional training in legal drafting techniques and usually learn their skills on the job. Such training should provide students with practical skills in addition to theoretical knowledge, for instance, knowledge of the logical structure and style of a legal act, how to make references in a legal act, how to use certain words and phrases, how to use the active and passive voice while drafting legislation, or how to define concepts.
- **Lack of agreement between Government and opposition parties over the preparation of laws.** Perhaps one of the most important challenges to the law-making process is the fundamental lack of agreement between Government and opposition over what might be termed the “rules of the game” or a basic common understanding of the ways in which laws should be made. Given the Government’s strong position, also in the National Assembly, there is often a lack of dialogue, or compromise discussions with the opposition on individual

draft laws, which are frequently prepared by the Government, and then easily passed by its majority in the National Assembly. This leads to a perceived constant level of frustration on the side of the opposition parties, which often feel side-lined and unable to have any real impact on the legislative process.

- **Density of Legislation.** The density of the legislation, meaning extremely detailed primary laws, the content of which are later merely repeated in subsequent by-laws, seems to be a serious challenge. This may be attributed to the already mentioned short timeframes, and insufficient policy discussions that mark the process of preparing laws. Another reason could be the desire, on the side of the legislator, to minimize situations where laws are not implemented consistently, e.g. because of insufficient or unclear secondary legislation. Dense legislation also means that even minor issues need to be constantly amended by primary legislation, which leads to less legal certainty overall.
- **Legislative overload.** The system seems to be overloaded with legal initiatives. The Government's programme might typically include 150-200 proposed laws a year, which inevitably places enormous pressure on the combined law-making resources of both the Government and the National Assembly. This pressure is increased if, as seems to be the case, the programme must be completed within the legislative year, which also leaves little time for essential elements of a well-ordered law-making process, such as a regulatory impact assessment or consultation with civil society. By way of comparison, a typical legislative project in the United Kingdom or Switzerland, for instance, will take between 18 months and 2-3 years respectively to complete. In this context, the Armenian Ministry of Justice spoke of legislative projects taking six to seven months, and appeared to imply that even this timeframe was considered too long. When other normative acts (aside from laws passed by parliament) are added, the scale of the problem becomes even greater. In 2013, reportedly, the Ministry of Justice issued some 6,000 opinions on normative legal acts (both laws and by-laws).
- **The lack of a meaningful role for the National Assembly in the legislative process.** Currently, the principal role in the law-making process is played by the Government; the role of the National Assembly by contrast is limited. The Government remains very much involved, even once draft laws reach the National Assembly. The National Assembly has little power to effectively change governmental legal proposals: the draft laws initiated by the Government may be voted on only with regard to those amendments that the Government has agreed to accept. This leads to a situation where, rather than reject a draft law in its entirety, the National Assembly adopts a draft law in the format approved by the Government without introducing all changes that the National Assembly may consider necessary. This gives the Government



quite significant leverage in pushing legislation through and weakens the position of the National Assembly in the law-making process, thereby significantly reducing its scope for action. Further, the oversight functions of the National Assembly vis-à-vis the Government could be made clearer in relevant legislation, including in rules specifying the budget approval process.

- **Lack of engagement with civil society.** Public participation in the lawmaking process was characterised as “growing but ineffective”. Some ministries were said to provide for public consultations on draft laws, but not as a matter of routine. Certain parliamentary committees organise hearings at which those whose interests are affected by draft legislation can make their views known, but the practice is not institutionalised. There appear to be some legal requirements with regard to consultation (e.g. in Article 27.1, par 4 of the Law on Legal Acts), but these are quite general, and not always observed. Frequently, civil society consultation is performed by displaying the draft law on the Government's website and on websites of the relevant ministries and sometimes also by means of parliamentary hearings. Of all tools relevant to ensuring good quality legislation, public consultation seems to be the one that is least anchored in the legislative process. While the high number of laws passed annually certainly adds to the problem, a greater awareness of the usefulness of this tool is needed. Overall, civil society organizations consider themselves to be insufficiently involved in the lawmaking process. On the other hand, governmental institutions criticize the quality (and quantity) of civil society feedback on draft laws. However, the general idea of parliamentary hearings is well-received and one may consider strengthening this instrument, as a platform for sharing concerns, interest and knowledge, while enhancing mutual trust and understanding between the Parliament, civil society and the wider public. Also, the Government may consider elaborating a more proactive process aimed at obtaining feedback on its legal initiatives, rather than just displaying draft laws on the Government's and ministries' websites.
- **Problems of implementation.** The problem of insufficient implementation of laws appears to be wide-spread. This may be due to shortcomings in the laws themselves, which is to be expected given the considerable pressure under which they appear to be prepared and enacted. However, other factors may play a role here as well, such as the alleged lack of independent judicial review of the validity of legislation. Reportedly, there are many pieces of secondary legislation which are in conflict with the laws that they are meant to implement; however, competent courts have allegedly never gotten involved to strike down such legislation.

13. In terms of the ways in which these risks might be addressed, the Assessment's approach is also based on the consideration that any reform should be conceived by

the Armenian authorities, rather than be handed down by the international community, and should be embarked upon only after a full process of consultation with all relevant stakeholders; only in this way will the reforms undertaken be in line with the specificities of the local legislative and political cultures.

14. The Assessment, based on its findings, recommends the following:
  - A. The Armenian authorities may wish to consider the possibility of developing and endorsing key principles of effective and democratic law-making that will be mandatory for both the Government and the National Assembly, in primary legislation, in addition to the principles already enshrined in the Legal Drafting Manual. These principles should be explained and illustrated so that they are clear to everyone involved in the preparation and adoption of laws;
  - B. The Government and the National Assembly may wish to explore ways in which to secure greater involvement of Members of Parliament in the elaboration of the executive branch's legislative programme, perhaps by establishing a co-ordination commission;
  - C. The National Assembly may consider amending rules pertaining to deadlines in the legislative process, so that time frames become more flexible, and will allow for extensions, as needed;
  - D. The National Assembly may consider whether in future, a fast-track or extended procedure could be put in place for minor or more complex legislation respectively;
  - E. The Government and the National Assembly may wish to examine their rules of procedure and include provisions requiring them to update draft laws on the website as they pass through the legislative process. This will allow all stakeholders to monitor the progress of draft laws. Consideration could also be given to using software which tracks changes in the text, showing both the original and the amended text;
  - F. Given the shortage of skilled and experienced lawyers willing to work as law-drafters on a public sector salary, and the variable quality of legislation, the Armenian authorities might find it expedient to establish a single, centralised drafting agency to work on elaborating new draft laws. This approach, however, has its positive and negative sides. A centralized drafting system has advantages in terms of ensuring consistency in the application of standards and increased efficiency in the use of limited drafting resources. It also has disadvantages in terms of less involvement of drafters at the stage of policy formation and the risk that drafters become a closed cadre of professionals that perpetuate their own practices with little

influence from the outside. A particular model should therefore only be selected thoroughly weighing the advantages and disadvantages.<sup>4</sup>

- G. Clearer criteria are required for defining when draft laws will be considered “urgent” and the procedures to be applied when adopting such laws. The Government and the National Assembly are recommended to review and ideally amend their Rules of Procedure accordingly;
- H. The National Assembly and the Government may consider introducing a requirement, for instance in the Law on Normative Legal Acts, that the explanatory note which must accompany a submitted draft law should disclose whether the draft law has been the subject of public consultation, along with the nature and findings of such consultation;
- I. The National Assembly may consider whether parliamentary committees should be assigned a more active role in shaping legislation;
- J. The Armenian Government and the National Assembly may wish to consider strengthening the role of the National Assembly in the legislative process to ensure that it may effectively “check” and “oversee” the Government;
- K. The Armenian Government and the National Assembly may consider discussing the level of detail that primary laws should contain, with a view to perhaps regulating general issues in laws, and moving more detailed regulation to sub-legal acts. The empowerment of governmental entities to legislate may well be balanced by parliamentary oversight on implementation of legislation, which can help reveal to what extent implementation is effective;
- L. The Armenian Government may wish to consider introducing a systematic procedure by which ministries publish policy strategy papers for civil society consultation at the initial stage, before policies are finalised within ministries;
- M. The Armenian Government is recommended to explore the Rules of Procedure to delineate policy development and implementation within

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<sup>4</sup> “Law Drafting and Regulatory Management in Central and Eastern Europe”, Sigma papers: no. 18: checks in respect of policy options include general regulatory checks, checks on administrative requirements, costs and economic impact checks, efficiency checks, practicability checks, and implementation checks; checks of legislative drafts include checks for constitutional and legal compliance, checks for approximation to EU law, checks for compliance with international treaties, implementation checks, checks as to secondary law-making powers, and checks on legal form, clarity and comprehensibility. SIGMA Papers are a series of specialised reports that are focused on particular issues in governance and management, such as expenditure control, administrative oversight, inter-ministerial co-ordination, public procurement and public service management, see at [http://www.oecd-ilibrary.org/governance/sigma-papers\\_20786581](http://www.oecd-ilibrary.org/governance/sigma-papers_20786581).

ministries more clearly, starting from the stage of policy discussions, to the drafting of legislation to implement developed policy;

- N. The Armenian National Assembly and Government may consider conducting mandatory in-depth regulatory impact assessments and civil society consultations at least on draft laws of high importance, e.g. codes, or laws with a direct impact on fundamental freedoms, or economic or social rights;
- O. The Government may consider introducing procedures which ensure a comprehensive and consistent process for civil society consultation on Government draft laws;
- P. The Armenian National Assembly may wish to consider introducing procedures for its committees to take written and oral evidence from experts or other stakeholders on draft laws, and if possible on significant amendments to draft laws, to facilitate more structured civil society consultation;
- Q. The Armenian National Assembly might wish to examine its rules on the parameters of debate during a draft law's second reading and make them less rigid, particularly where there has been no detailed debate on the draft law's provisions during its first reading;
- R. The Armenian National Assembly and the Government may consider whether there is too much focus on laws, and insufficient use made of other, non-legislative methods, when addressing certain topics. As far as possible, matters which can be regulated by means other than by law are recommended to be diverted from the legislative agenda and addressed by subordinate acts, internal rules of procedure, guidelines and other non-normative acts;
- S. The Armenian Government may wish to consider the possibility of vesting ARLIS, the Armenian system of online publication of laws, with the right to consolidate the legislation and publicize it to make official versions of consolidated legislation widely accessible.

## THEMATIC ANALYSIS

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### *INTRODUCTION*

15. This Assessment outlines a condensed version of the legislative process in Armenia, embedded in the constitutional order. It focuses on norms that determine the functioning of the legislative process and attempts to provide a brief overview of the rules defining the legislative process as a whole.
16. This Assessment is based on written law as well on the information collected during the country visit that OSCE/ODIHR experts conducted to Yerevan in February 2014 (see par 3 *supra*). It also explores certain discrepancies between the law and its implementation, also in relation to how they affect the many positive aspects of the legislative process in Armenia.
17. The Assessment aims at promoting better legislative efficiency to ensure good quality, and enforceable legislation in all fields through improving effectiveness and transparency of the legislative procedures in practice. It involved re-visiting many issues contained in the Preliminary Assessment, as well as conducting semi-structured field interviews with pre-identified interlocutors, including all governmental and parliamentary bodies involved in law-making activities. Discussions with representatives of the Armenian authorities as well as with practitioners and scholars familiar with the Armenian legislative practice were necessary for a more thorough analysis and for the formulation of precise practical recommendations.

### *MAIN FEATURES OF THE ARMENIAN LEGISLATIVE PROCESS*

18. The most striking feature of the Armenian legislative process is that state activity seems to be measured by the number of laws enacted. This holds true for both the Government and the National Assembly. Legislation appears to be the primary and only feasible form of state responses to current and upcoming socio-economic, and other challenges. The five-year national action plan is basically a blueprint for (at times excessive) legislation, which is sometimes of insufficient legislative quality and mitigates the effectiveness of tools for quality verification. Such tools aim to verify, for instance, whether correct and consistent terminology was used, whether draft laws comply with the Constitution and other laws in force, or whether administrative practice is compatible with relevant legislation. As a result, the legislative system appears to suffer from a substantial overload that has negative consequences on the legislative process and its outcome, notwithstanding other factors that may come into play.
19. There is a general impression that within the Government and the National Assembly, the legislative process is highly formalized. There are many rules in legislation that impose quite rigid deadlines. The Government remains very involved in the legislative process, also once a draft law reaches the National Assembly, since it is able to

respond to parliamentary initiatives and prevent those that it does not approve of. If the Government is the "author" of draft laws, it may effectively block any amendments proposed within the National Assembly that it disagrees with.

20. Many areas of regulation are reserved for laws; this is confirmed by the quite detailed nature of the legal norms analysed for this Assessment. There appears to be insufficient focus on conceptual thinking at early stages of the process, including policy-making and developing concept papers, before the actual drafting of a law begins. The workload in the National Assembly seems to be quite high – which may be both the reason for, and the result of the highly formalized nature of the Armenian legislative process.
21. The legislative framework by which laws are prepared acknowledges the importance of the preparatory stages of the legislative process. The relevant laws include many requirements aimed at enhancing legislative quality. The framework also envisages quality checks within the Government and in the interaction between the National Assembly and the Government. Although regulatory impact assessments and civil society consultations are prescribed by law, these instruments are not focused on particular areas of importance but apply to all laws and may suffer –as does the legislative process as a whole – from rigid time limits and overload. As a result, they frequently tend to be used in a rather formalistic manner; proper in-depth application of these tools is rare.
22. A statement of principles of good law-making that will clearly articulate the standards to which the system is expected to conform, and to which the Government and ideally the National Assembly should commit themselves, is highly recommended. Such a statement, amplified by guidance as to how these principles are to be achieved, could represent a considerable step forward. These principles could include legality, proportionality, effectiveness, efficiency, transparency, inclusiveness and accountability of legislative processes. As things stand, legislation requires consultations to take place, for instance, but does not specify in detail how this or any other element of an effective law-making process should be carried out. Lawmakers may consider rejecting draft laws where the basic standards of good law making are not adhered to. This could contribute to a situation where the legislative system is operationalised and firmly anchored to a set of agreed principles of good law-making. Such practice would also help reduce the workload of the National Assembly, and free parliamentarians up for a proper review of good quality draft legislation prepared in line with relevant legislation and standards.
23. The law making system is a relatively closed system, with few opportunities for external access and influence from outside Government and the National Assembly. Further, it is a highly decentralized system, meaning that there appears to be only limited capacity for central coordination and control. The Ministry of Justice acts as a key “quality checking” mechanism, but receives so many documents for review that it

is overwhelmed or is at risk of being overwhelmed by the scale of the task. The expertise service of the National Assembly, whose task it is to review all draft laws submitted to the National Assembly, seems no better equipped to cope with the demands made upon it.

### *POLICY-MAKING*

24. Policy making in Armenia does not appear to be a sufficiently inclusive and transparent exercise. A clear separation between policy formation and law drafting, i.e. the translation of the agreed policy into law, is also not apparent. Policy discussions on future legislation need to be open and transparent, and need to involve a wide range of relevant stakeholders; this is crucial for consistent and good law-making. If due attention is not paid to policy making, then this may lead to the adoption of laws which, rather than tackling the issues in question, hinder their effective resolution. As a result, legislation may not always meet actual domestic needs. Further, other non-legislative options to resolve such issues or needs are usually not considered at the stage of policy formation. Legislation is overwhelmingly believed to be the only path to achieve overall policy goals and in-depth analysis is reportedly conducted rarely.
25. In general, a draft law must be accompanied by an explanatory note which substantiates the background and purpose of the legislative act. In addition, it should provide a short description of its contents. However, these requirements do not always appear to be fulfilled completely, and explanatory notes are reported to be of varying quality. While standards on structure and content of explanatory notes may be found in the Legal Drafting Manual, such standards are not found in primary legislation. This lacuna could be one of the reasons why explanatory notes are prepared and attached to the draft law, but are not always consistent in content. Though the legislation envisages financial and legal impact assessments, and other estimates prior to the submission of a draft law, insufficient attention appears to be paid to this requirement and the general impression is that in most cases, explanatory notes are of a rather abstract character and seldom offer a detailed assessment of the anticipated impact. Since they are thus often no more than summaries of a draft law, explanatory notes are not the useful instruments that they should be, as they provide little information on the objectives, purpose and impact of the proposed draft law.

### *CONSULTATIONS*

26. Throughout the lawmaking process, consultations with relevant stakeholders, including the public, are essential to ensure that laws gain legitimacy in the eyes of the public, and are easier to understand and implement. In Armenia, public opinion is apparently rarely requested when deciding on policy options. This may be attributed to a lack of awareness of the positive aspects of involving stakeholders at an early stage of the process, and the fact that policy-making is rarely treated as a distinct exercise. The Law on Legal Acts requires the drafters of legislation to engage in consultations with civil society, when submitting draft laws for regulatory impact assessment.

Consultations within state agencies or between different agencies also appear to take place in practice, at least when the draft is initiated by the Government.

27. Meaningful consultations that are properly organised and conducted are important as they might help avoid potential gaps in the proposed regulation. Such gaps are a real danger if stakeholders' legitimate interests are overlooked or not assessed in a consistent way. It is essential to identify the right form of consultations, which will best fit the needs of a particular draft law in order for the law drafters to gain the most benefits out of this exercise.
28. Civil society consultation is currently performed by displaying the draft law on the Government's and relevant ministries' websites and sometimes by means of parliamentary hearings. In individual cases, ministries have organized consultation events as well, but the extent of consultations is largely left up to them, and certain ministries reportedly do not consult with civil society at all. At times, the Government has consulted with international bodies, but without yet involving the public. According to certain NGOs, at times only civil society groups favored by the Government are invited to public hearings. If true, this could undermine the purpose and legitimacy of public consultation processes, which should aim to receive input from a wide group of stakeholders, following a transparent and open process.
29. No legal consequences for the authors of the draft law are expected in case of failure to submit a draft law for public consultation. The consultation process does not appear to be properly institutionalized within the legislative process. Its shortcomings cannot only be explained by the excessive number of laws passed annually, which forces the ministries to organize numerous consultations every year, adding to already existing financial and time constraints. Civil society organizations do not consider themselves to be as involved as they should be and governmental institutions criticize the quality and quantity of civil society feedback. However, the general idea of parliamentary hearings appears to be well-received by both the Members of Parliament and the public, and the Armenian National Assembly may wish to consider strengthening this instrument, which could contribute to enhancing mutual trust and understanding.
30. One benefit of public consultation when a draft law has been prepared is that it is only at this stage that citizens and affected persons can begin to properly understand or fully appreciate what is being proposed. At the same time, there may be merit in having public consultation at an even earlier stage in the legislative process when the Government's proposals have crystallized sufficiently to make consultation meaningful (e.g. in a draft policy paper), but where the policy has yet to be fully worked out and translated into a draft law. The Armenian authorities may therefore wish to consider extending the practice of public discussion in appropriate cases to include consultation on the main issues of policy raised by a legislative project *before* the drafting of a detailed proposal has begun. Such consultation could usefully (as also indicated in the Law on Legal Acts) be combined with the process of regulatory impact assessment. Furthermore, since the draft law during its elaboration can undergo



significant changes, conducting consultations on the finalized version of the draft law at a later stage may prove to be important as well.

31. The Government publicises its drafts on the websites of respective ministries in order to receive feedback and comments from the public. It is not clear whether draft laws are publicized in advance if they are initiated by Members of Parliament. The timely publication of both general and detailed information about new draft laws is likely to foster greater opportunities for consultation with the public, lobbying groups, political organisations and parties, as well as civil society generally. A proper consultation process promotes both transparency and accountability of the law-making process, improves awareness and understanding of the policies pursued and encourages public ownership of these policies, thereby increasing public commitment to them.
32. When consultations are held, the ability of stakeholders to provide comments should be facilitated by informing them promptly about the consultations. It would also be helpful if such information could be found in one place. In this way, stakeholders would not need to search for it on a variety of government websites, which makes the process burdensome and may discourage some stakeholders from engaging in it. While this is already happening in some cases, the Armenian Government may thus wish to consider the possibility of publishing all draft laws undergoing public consultation on the existing e-government portal in order to streamline access to and exchange of information on the draft laws. It would further be helpful to have clearly defined procedures in place specifying the publication of draft laws, and how information on consultations is shared, which are known and systematically enforced. Currently, there are no mechanisms in place to ensure that the opinions and suggestions presented are considered. A feedback mechanism is also important: if the results of consultations are not acknowledged, the risk of “consultation fatigue” is quite high.
33. A number of interlocutors noted that when civil society organisations do have access to draft primary legislation, they sometimes do not have a real possibility and/or skills to present their substantiated opinion and propose alternative amendments in a timely and constructive way. Often, civil society representatives do not know which comments were taken into consideration and which ones not (and in this case, why they were rejected). So far, public participation in the legislative process appears to be small but growing, partially due to increasing public pressure and partially due to a greater readiness on the part of some Ministries and parliamentary committees to discuss the draft laws. NGOs have reported a few examples of effective lobbying by civil society groups, but this, in their view, is insufficient and could be expanded upon.
34. In some cases, NGOs are invited to participate in working groups set up by a ministry to develop a concept or draft a law. However, NGOs usually appear to have no possibility to get involved in work on *ad hoc* drafts, which were not included in the Government’s or National Assembly’s legislative agendas.

35. It is worth mentioning that none of the interlocutors referred to secondary legislation when speaking about consultations. There is allegedly a lack of coordination between amendments to primary laws and secondary legislation; secondary legislation is often not part of discussions on primary legislation and receives much less attention. As a result, it is reportedly often not in line with primary laws, though it is designed to introduce mechanisms for their implementation.

#### ***ALTERNATIVES TO LEGISLATION***

36. One feature of the Armenian policy making process is the emphasis placed on dealing with issues through primary or secondary legislation. According to many interlocutors, legislation is often the only response discussed in relation to most upcoming problems that require state action. Alternative measures, such as public awareness campaigns, are seldom considered. Nor is sufficient analysis of the likely impact of a legislative response undertaken before work starts on preparing a draft law. There are some attempts to apply alternative approaches, such as instructions or guidelines<sup>5</sup>. Nevertheless, the Assessment Team did not have an opportunity to assess their variety, quantity and quality, nor was it able to see whether such documents meet the existing needs. These attempts are, however, still rare - overwhelmingly, discussions at the policy level do not appear to foresee other options by which problems can be resolved, such as, for instance, specific guidelines or wide public awareness campaigns.

#### ***TIME PRESSURE ON THE LEGISLATURE***

37. The National Assembly may consider rendering the deadlines set for consideration of a draft law in the legislative process more flexible, as they are rather numerous and rigid at present. For instance, after the first reading, the Government and Deputies may propose changes to the law within a 14 days period. Once all proposed changes are forwarded to the leading Committee, the Committee needs to submit its conclusions on these proposals to the President of the National Assembly within a 14 day period in order to schedule the second reading (Article 67 par 4 of the Law on Normative Acts). Depending on the complexity and length of a draft law, these time periods may be too short to allow for proper consideration of key aspects of the draft laws.
38. Further, if every draft law pending with the National Assembly needs to be completed within the same time limit, the National Assembly may have difficulties prioritizing those draft laws that it considers urgent and/or significant. The rules of procedure should provide the possibility of extending time limits, as needed, and should prescribe consequences if the existing deadlines are not met. At present, the deadlines can reportedly be extended in practice, provided that consensus to this effect exists among the stakeholders, but this option is currently not set out in law. Additionally, this essentially means that if the Government or the National Assembly refuse to agree

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<sup>5</sup> The only guidelines the Assessment Team was informed about is the recently adopted the Legal Drafting Manual.

to an extension of the deadline, then everything must be completed within the existing tight schedule. One option to be considered may be the indication, in the Rules of Procedure, of minimal time periods between the different legislative stages in the National Assembly<sup>6</sup>.

39. Insufficient time allowed for the preparation of legislative proposals and for their scrutiny both within the government and by the legislature may also be the result of a weakness in the current system of legislative planning. Within the Government, ministries may submit their input to draft legislation within five days; draft laws are then passed on to the Ministry of Justice, which has 15 days to review it (Article 18 (e) of the Rules of Government Procedure). In this context, it is noted that the draft legislative agenda prepared by the Government covers the timetable for preparing draft laws up to and including the approval by the Government and submission to the National Assembly, but it does not appear to cover the time required for the consideration by the National Assembly. The limited time available for the consideration of draft laws both before the Government and the National Assembly may prove detrimental to increased public participation (and therefore more effective scrutiny) throughout the process, and to the legislation as such. The Armenian Government and the National Assembly may wish to consider expanding the range of factors to be taken into account when setting the legislative agenda, to include the time required for effective governmental and parliamentary scrutiny of proposed measures.

#### *VERIFICATION PROCEDURES*

40. The Constitution foresees a system of checks-and balances, under which the executive branch, the legislature and the judiciary oversee each other to ensure a proper balance of power. This system was designed to ensure, among others, that the government does not become too powerful in one branch, but this does not appear to have been developed sufficiently. Indeed, the National Assembly appears to be in a rather disadvantageous position vis-a-vis the Government, since throughout the legislative process, the latter has quite extensive legal leverage to ensure that those draft laws that it considers important are passed. This could be counterbalanced through independent and extensive verification procedures, e.g. those conducted by the judiciary.

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<sup>6</sup> For instance, the Rules of Procedure of the Scottish Parliament set such deadlines in the following way: “Rule 9.5 Stages of the Bill. (...) 3A. The minimum period that must elapse between the day on which Stage 1 is completed and the day on which Stage 2 starts is 12 sitting days. 3B. The minimum period that must elapse between the day on which Stage 2 is completed and the day on which Stage 3 starts is 10 sitting days. 3C. Where part of a Bill is referred back to a committee under Rule 9.8.6 (for further Stage 2 consideration) a minimum period of 4 sitting days must elapse between— (a) the day on which Stage 3 proceedings are adjourned and the day on which further Stage 2 proceedings start; (b) the day on which further Stage 2 proceedings are completed and the day on which Stage 3 proceedings resume (but only if the Bill is amended at those further Stage 2 proceedings).”

41. Currently, primary legislation (usually prepared by Government) can be scrutinized for its compatibility with the Constitution via appeals to the Constitutional Court.<sup>7</sup> A law which is inconsistent with these constitutional rights will be declared wholly or partly invalid. However, it is less clear whether infringements of one law by another law may also lead to invalidation. Such a conflict may especially arise with respect to the many rules in the Law on Legal Acts. One may argue that a comparative legal review is implicit in the principle of rule of law; especially as many important aspects of legality are encompassed in the Law on Legal Acts, such as the hierarchy of norms or the delegation of legislative powers. However, reviewing a law with respect to all existing legislation may open a wide field of legislation for invalidation, especially as, in case of conflicting legislation, legislation passed earlier prevails over newer legislation (Article 24 par 3 of the Law on Legal Acts).
42. Reportedly, there are some procedures in place for checking the compliance of laws or secondary legislation with primary legislation of a higher legal order through appeals to the administrative courts. The Administrative Court can check the consistency with other legislation of those normative legal acts that were issued by the President, the Government, the Prime Minister, and of normative legal acts issued by ministries and other agencies, as well as the Community Council and the Head of Community with normative legal acts of a higher legal order (except the Constitution). However, according to Armenian interlocutors, this happens very rarely. There is no monitoring system in place that would efficiently evaluate the operation and effectiveness of enacted laws. Furthermore, in practice, there appears to be a low level of regular amendments or updating of existing legislation, as legal amendments usually happen as a response to problems of implementation.
43. As far as verification procedures within the Government or the National Assembly are concerned, compliance with constitutional law, international law and with existing domestic legislation is quite thoroughly checked for all laws. The reports may typically be anywhere from one line to four pages. Expert opinions, possibly up to fifty pages, are attached to the draft law and posted on the website, and usually include the Government's views as well as the opinion of the Legal Expertise Department of the National Assembly. They do not always extend to the operational features of the legislation, such as the question of whether all necessary provisions have been included that would make the scheme operative and enforceable, or to a choice of terminology that would reduce the likelihood of disputes, or other aspects of legal compliance.
44. At present, within the Government, there are some obligatory impact assessments that ministries need to conduct for their legislative drafts. Specific checks are undertaken by the Ministry of Justice and by the Ministry of Finance. Within the National

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<sup>7</sup> It should be mentioned that the ODIHR Assessment Team did not scrutinize Armenian court decisions and did not have an opportunity to speak to judges in Armenia to this end.

Assembly, there is a department of expertise that may voice disagreement with the findings of governmental impact assessments. Technically, this set-up may prove quite effective in producing good legislation. However, the sheer number of laws produced annually raises some concern as to the efficiency of these quality checks per se: allegedly, due to a lack of time, explanatory notes, as well as other accompanying documents pertaining to draft legislation are not drafted as thoroughly as they should be. The situation may be aggravated by tight deadlines that prevent meaningful feedback from both internal and external stakeholders.

45. Further, the consequences of such checks are also not always apparent: for instance, although the Ministry of Finance must provide its conclusions on a draft law, the legislation does not specify whether a negative assessment by this Ministry would entail a veto of the draft. This could lead to a situation where the draft in question may still be voted on in the National Assembly despite a negative expert opinion provided by the Ministry of Finance.
46. All laws need to be checked to verify their linguistic and terminological consistency prior to adoption. At present, such verification is conducted upon approval of the draft law after the third reading. It is not clear, however, whether these checks are performed against the background of an established glossary of terminology, for instance, and how the Members of Parliament can ensure that the substance of the adopted law has not been changed as a result of these verifications. In this light, it might be more advisable to provide for such check before the third reading and not thereafter.

#### ***REGULATORY IMPACT ASSESSMENT***

47. Regulatory impact assessment is an important tool to ensure good quality legislation throughout the entire cycle of policy-making, beginning from a proper in-depth problem analysis and ending with evaluation and monitoring of enacted legislation. It aims at assisting policy makers in adopting efficient and effective regulatory options (including the “no regulation” option), by using evidence-based techniques to justify the best option. In this light, it might be more efficient and cost-effective to conduct an impact assessment at the earlier, policy-making stage: if the wrong policy is opted for, the subsequent regulatory measures might prove to be ineffective in the end. Where relevant, the costs of regulation should not exceed their benefits, and alternatives should also be examined: this tool helps the authorities to ensure that administrative burdens stemming from newly adopted regulations will not outweigh the current burden.
48. The National Assembly and the Government, also due to a lack of available resources, may consider applying in-depth regulatory impact assessments only to draft laws of high importance, in particular those having significant impact on fundamental rights, and those regulating specific aspects of a draft law. Currently, the envisaged application of this tool seems to be too broad, which could also be one of the reasons

why it is frequently simply not applied. A more focused use of this tool may increase the quality and the effectiveness of impact assessment, leading to more effective laws that are less prone to additional frequent amendments. If a focused application is envisaged, the law should specify the criteria based on which draft laws will undergo an impact assessment, which should then also indicate which aspects of a draft law should be subjected to such an in-depth impact assessment.

49. The Armenian authorities may also consider the possibility of introducing unified guidelines for conducting regulatory impact assessments that may include the following elements: problem analysis with a brief description of the issue; an outline of the purpose of intervention by a draft law; addressees and stakeholders of the intervention; the justification of an intervention along with a risk assessment; a brief description of the available intervention (or non-intervention) options, while weighing their justification, effect and feasibility; the impacts for citizens (including the impact on both men and women), businesses, the Government and the environment; cost and benefit analysis.

#### ***ABROGATED OR EXTENDED PROCEDURE***

50. The National Assembly may consider whether the same legislative procedure is appropriate for every draft law. If indeed the Armenian legislator is very active, and produces many laws, it is questionable whether three readings and an extensive exchange of drafts, comments and opinions are necessary in all cases. If a draft is of minor importance and is undisputed in substance, an abrogated procedure may be considered. On the other hand, the use of further parliamentary instruments may be considered for highly complex legislation. A debate on a draft law or a conceptual discussion prior to plenary discussions may help Members of Parliament concentrate on key questions and may prevent extensive legal drafting that will not survive a debate before the National Assembly.

#### ***URGENT DRAFT LAWS***

51. Similarly, the lack of criteria for defining legislation as urgent may create some difficulties between the executive and legislative branches. Urgent draft laws, usually initiated by the President or the Government, will displace other business on the parliamentary agenda. Whilst there must certainly be a possibility and space for consideration of urgent draft laws, it may be expedient for the Government to elaborate relevant criteria and to ensure that these criteria are agreed with the National Assembly. The identification and application of such criteria may help to encourage restraint in the use of this mechanism and provide for safeguards against the possibility of its abuse.

**QUALITY OF LEGISLATIVE DRAFTING**

52. Legislative drafting is a process requiring extensive skills. Elected deputies are expected to aptly identify the needs of their constituents and skilfully debate policy considerations in the development of legislation; however, on the whole, they are not particularly qualified or trained to translate policy decisions into legislative language. At the same time, not all deputies possess sufficient knowledge of the legal context to appreciate the impact of any proposed legislation on the existing legal regime, a matter which must be carefully assessed and elaborated before any final decisions are made as to the content of legislation.
53. It is imperative that those who wish to propose draft legislation are able to freely draw on the resources of skilled law-drafters with suitable experience. It is necessary to have in place professionally qualified and politically neutral staff to fulfil this task. It is also essential that such staff periodically undergoes advanced training sessions on such issues as, for instance, legal language, the composition and structure of concept papers, draft laws and explanatory notes, special legal requirements and regulatory impact assessment methods.
54. A Legal Drafting Manual was elaborated and adopted by the Government quite recently which provides official guidance on drafting. It demonstrates how to deal with the kinds of difficulties that may arise during the drafting process, for instance the logical structure and style of a legal act, use of references, or the rules for substantiating the need for adoption of the regulatory act. If all law drafters would refer to the manual while dealing with their tasks, the result might be a system in which the quality of legislation does not vary (at least markedly) from Ministry to Ministry and from the Government to the National Assembly.
55. Legal drafting is a skill that is acquired through experience in combination with specific result-oriented training courses. The requirement of a university degree in law for a potential employee dealing with legal drafting currently seems to be the only clearly articulated requirement. At the same time, staff does not appear to receive any professional training in legal drafting techniques. Moreover, the quality of legal education *per se* seems to be a subject of concern. Consequently, on top of the already identified insufficient effective policymaking, there is a lack of specialist drafting resources, in addition to minimal to no professional development opportunities for drafters. To ensure better quality legislation, the Government and the ministries should invest in changing this situation, also by developing relevant and ongoing professional training and workshop sessions for legal drafters.
56. Next to the above, it is also important to ensure that the specialist nature of drafting skills and the importance of high-quality drafting is reflected in suitable compensation arrangements for law-drafters. Otherwise, the qualified and able lawyers who are required for such work are likely to leave the public service.

**ROLE OF THE NATIONAL ASSEMBLY**

57. The legislative procedure in Armenia appears to be a system in which the Government - and behind the Government, the President - plays the leading role. Most laws are initiated by the Government, with few laws coming from individual Members of Parliament. Initiatives of Members of Parliament from opposition parties reportedly have very little prospect of becoming laws if the Government is opposed to them. If the President objects to a law, it can allegedly be stopped during the legislative process, without any need to resort to a special presidential veto prior to promulgation.
58. As in most systems, initiating and implementing legislation is a function of the Government. If the Government cannot secure the legislation it needs, it cannot function as a government. However, if the law-making system is to be improved and progress is to be made, the Government will need to undertake further measures to secure the adoption of effective and operational legislation that, as a rule, does not need to undergo further revision within a short period of time.<sup>8</sup>
59. The National Assembly, by contrast, plays a distinctly secondary role with little or no independent capacity to take legislative proposals from whatever source available, and turn them into law. In the end, all legislative proposals have to be steered through the National Assembly, which is no small task given the scale of the Government's legislative ambitions. Key policy decisions are nevertheless taken within the Government. The National Assembly may have some means to put pressure on the Government, especially by forestalling legislation, but Members of Parliaments appear to consider such measures inappropriate. This leads to a situation where the National Assembly is held responsible for lacking or belated legislation, even where this was caused by the authors of draft laws, which in most cases is the Government. This limits the powers of the National Assembly, which still remains under constant pressure to deliver.
60. The National Assembly is a representative and not a homogeneous institution, where different interests, ideas and opinions are and should be represented. There will always be a distinction between the majority and the opposing minority. Indeed, "[l]egal regulation of opposition and minority rights still matters, in different ways. For the daily running of parliamentary politics it can matter a lot to the opposition how the procedures are regulated, and whether or not they give the opposition reasonable participation and influence. On a deeper level, ensuring legal protection for the opposition can give it a secure basis for its activities, and may contribute to forming a political culture of tolerance for opposing opinions. This can be of particular

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<sup>8</sup> One positive feature that came out of the visit in this regard is that the Ministry of Justice seems committed to securing the reforms leading to the overall improvement of the legislative process and, consequently, of the quality of adopted legislation.



importance in countries that are still in the process of developing and cementing their democratic and parliamentary traditions.”<sup>9</sup>

61. Perhaps the most important challenge may be what seems to be a fundamental lack of agreement between Government and opposition over what might be termed the “rules of the game” or the basic common understanding of the ways in which laws should be made. As already stated, the Government has a strong position in the lawmaking process, and the governing parties at the same time hold a strong majority in the National Assembly. For this reason, draft laws, which are frequently prepared by the Government, can then be easily passed by the majority in the National Assembly. In this situation, there is often insufficient dialogue, or compromise discussions with the opposition on individual draft laws. Opposition parties thus often feel frustrated or side-lined, as they perceive their impact on the legislative process to be minor. According to some interlocutors, laws which are initiated by opposition Members of Parliament are at times allegedly quashed by the Government, sometimes only to re-appear as Government initiatives.
62. In order for the National Assembly to function, a working majority is necessary, with relevant procedures foreseeing guarantees of minority/opposition rights that might include, for example, the right to call a special session in the National Assembly or the right to contest legal acts before the Constitutional Court. Rights of the parliamentary minority may also be anchored in the Constitution or parliamentary rules of procedure.
63. For such a system to function, there has to be a broad consensus and a willingness to act responsibly on the part of both the majority and the minority groups in the National Assembly. This implies that the Government should do more to enter into dialogue and seek compromises with the opposition parties in the National Assembly, while the opposition should likewise engage in the ongoing law-making processes in a constructive and active manner.
64. Parliamentary control of the executive appears to be one aspect of a complex relationship of checks and balances. The National Assembly is both a legislative institution and a scrutinizing institution; however, the National Assembly currently appears to exercise mainly its legislative function, and much less of its oversight function. This may be attributed to the fact that legislation is a clearly identifiable product, while scrutiny is in itself more amorphous, with less clarity as to how it should be exercised, and what the outcomes shall be. Moreover, too much supervision could be mistakenly perceived as an attempt to usurp the Government’s constitutional role to govern. In reality, parliamentary control is necessary to help improve the transparency of the Government’s actions and enhance public trust towards the Government.

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<sup>9</sup> See Report on the Role of the Opposition in a Democratic Parliament, adopted by the Venice Commission, at its 84th Plenary Session.

65. The Government, as all public bodies, must act within the law. It must also be politically accountable for its actions to the National Assembly: it is its duty to explain both the progress achieved and the failures and, where appropriate, indicate possible remedies. Parliamentary oversight, i.e. the review of government administration and the progress on its action plans, in that sense promotes better administration. It is necessary to ensure that policies announced by the Government and authorized by the National Assembly are actually pursued in a proper way and that the goals set by legislation and the Government's programmes are achieved.
66. Budgetary oversight conducted by the National Assembly is a necessary but complicated function that, due to the complexity of the issue, requires detailed monitoring and permanent attention on the part of the National Assembly. This type of oversight may easily be affected by inherent tensions between the executive and the legislature, and is, to some extent, of limited impact, especially since the latter receives the actual draft budget only at the end of the calendar year, with little time to adopt it, as required, by the next year. In any case, the National Assembly's role is mainly to provide recommendations (though, as a measure of the last resort, it can initiate a vote of no-confidence). To reduce the pressure on the National Assembly, and enhance cooperation between the executive and the legislature, the Armenian authorities may consider conducting public consultations on the draft budget law while it is under preparation, which Members of Parliament could then also be involved in.

#### ***PARLIAMENTARY COMMITTEES***

67. As stated earlier, the Government controls possible amendments to draft legislation before the National Assembly, since no amendments can be introduced into draft laws initiated by the Government without the consent of the latter. This extensive governmental control strips the National Assembly of one of its core functions, by significantly limiting its possibility to amend draft laws and forcing it to either accept or reject draft laws in their entirety.
68. Parliamentary committees, whose role it is to review and discuss draft laws before they reach the plenary of the National Assembly, should have the power to amend laws proposed by the Government. In this context, the National Assembly may consider whether parliamentary committees should be assigned a more active role in shaping legislation, especially whether parliamentary committees should perhaps have the power to initiate legislation, or whether they may request additional information on draft legislation from the Government.
69. Under the current system, committees play a (possibly important but) mainly reactive role. If the National Assembly wishes to strengthen its role vis-à-vis the Government, it could do so best by strengthening the role of the parliamentary committees. Parliamentary committees, as well as individual Members of Parliament, should be able to develop their own legislative initiatives, also directly via parliamentary staff.

***OVERLY DETAILED LEGISLATION***

70. The National Assembly and the Government may consider whether laws (primary legislation adopted by the National Assembly) are indeed reserved for "the most significant, typical and stable social relations" (Article 9 par 3 Law on Legal Acts) or whether its use is too extensive. Currently, legal provisions require a wide range of topics to be regulated by law (see Article 9 par 4 of the Law on Legal Acts) and foresee only limited possibilities of delegation by way of secondary legislation. It is, of course, fully understood that measures delegating certain topics to secondary legislation must give due consideration to the rule of law and constitutional requirements, particular when restricting fundamental rights and freedoms.

***ACCESS TO LEGISLATION***

71. Unhindered access to legislation is one of the basic conditions for the functioning of a rule of law-based society. The main way to achieve this goal is to ensure publication of all official texts of laws and other regulations. The current system of online publication of legislation, ARLIS (the Armenian legal information system), appears to be well thought through, accessible and widely used by legal professionals, courts and the public. To make official versions of consolidated legislation widely accessible as well, the Armenian authorities might consider vesting ARLIS with the right to consolidate the legislation and publicize it on its website: this is topical also in light of the frequency with which legislation in Armenia tends to be amended.

## **ANNEX 1: OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED, ADOPTED AND PUBLISHED**

### **1. Constitutional Powers**

#### **1.1 Overview**

1. This overview depicts the basic political institutions and their interaction. Roughly speaking, the political system can be described as a *presidential system*, with similarities to the system in place in France. Many interactions between the National Assembly and the Government are orchestrated and overseen by the President. The Constitutional Court bears resemblance to the US Supreme Court, being composed of nine members and endowed with powers of full constitutional review (see *infra* pars 56-60).
2. The citizens' main basis for democratic participation is their right to elect the President and the members of the National Assembly over a five years' period, as envisaged in Articles 50 par 1 and 60 par 2 of the Constitution. Furthermore, a popular referendum is mandatory for constitutional amendments (Article 111 of the Constitution) and possible for laws upon request of the National Assembly or the Government (Article 112 of the Constitution).

#### **1.2 The President**

3. The President appoints the Prime Minister and the Government. Article 55 par 4 of the Constitution envisages that the President "shall, on the basis of the distribution of the seats in the National Assembly and consultations held with the parliamentary factions, appoint as Prime Minister the person enjoying confidence of the majority of the Deputies and if this is impossible, the President of the Republic shall appoint as the Prime Minister the person enjoying confidence of the maximum number of the Deputies". The President appoints the other Ministers based on recommendations of the Prime Minister.
4. The President may dissolve the National Assembly if it fails to approve the program of the Government twice within two months (Article 55 par 3 of the Constitution in conjunction with Article 74.1 of the Constitution). He or she may also dissolve the National Assembly on recommendation of its Chairman or the Government if it fails "to resolve on a draft law deemed urgent by the Government" or in other cases of inactivity (Article 74.1 par 2a of the Constitution). Dissolution is prohibited during a state of martial law or state of emergency, or once an impeachment procedure has been initiated against the President (Article 63 par 3 of the Constitution).

### **1.3 The National Assembly**

5. The National Assembly is composed of 131 members and is elected for five years (Article 63 pars 1 and 2 of the Constitution). Members of the National Assembly work on a full-time basis (Article 65 of the Constitution). They may only be accused of a crime or detained with the consent of the National Assembly, unless caught in the act of committing a crime (Article 66 pars 3 and 4 of the Constitution).
6. The National Assembly passes laws and resolutions by majority vote, provided that half of the members have participated in voting (Article 71 of the Constitution; some exceptions are provided in Article 111 of the Constitution for the procedures for adopting and amending the constitution). The laws passed by the National Assembly may be subject to a presidential veto which may be overcome by the National Assembly with the majority votes of the total number of Deputies (Article 72 par 1 of the Constitution).
7. The National Assembly also oversees budget execution and usage of loans received from foreign countries and international organizations (Article 77 par 1 of the Constitution, for the indirect supervision via the Control Chamber, an independent budgetary oversight body, see Article 83 par 4 of the Constitution). It may submit questions to the Government and express its lack of confidence in the Government with a majority vote of the total number of members of parliament (Articles 80 and 84 par 1 of the Constitution).

### **1.4 The Government**

8. The Government shall "develop and implement the domestic policy" (Article 85 par 1 and Article 89 pars 4-7 of the Constitution). It submits its "program" to the National Assembly for approval (Article 89 par 1 of the Constitution; see also Article 74.1 of the Constitution for possible consequences of repeated rejection<sup>10</sup>) and appoints regional governors (Article 88.1 par 1 of the Constitution).
9. The major functions of the Government are defined in Article 75 of the Constitution. It is authorized to propose legislation, and also "determine the sequence of the debate for its proposed legislation and may demand that they be voted only with amendments acceptable to it". The Government may also put forward a motion of confidence in conjunction with proposed legislation; the draft law will then be deemed accepted unless one third of the total number of members of the National Assembly brings

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<sup>10</sup> Article 74.1 of the Constitution vests the President with the right to dissolve the National Assembly if the latter fails to approve the Government's program twice in succession within two months. The National Assembly may also be dissolved upon the recommendation of the Chairman of the National Assembly or the Prime Minister if the National Assembly fails within three months to resolve on the draft law deemed urgent by the Government's decision or in case when during the session no sittings were convened for more than three months or the National Assembly fails to adopt a resolution on issues under debate for more than three months.

forward a draft motion of no confidence within twenty-four hours. This procedure may only be applied twice during each session of the National Assembly.

10. The Government is led by the Prime Minister (see Articles 86 and 87 of the Constitution), who is appointed by the President on the basis of support by the National Assembly (Article 55 par 4 of the Constitution, see *supra* par 3). The President also appoints the other ministers on recommendation of the Prime Minister (Article 55 par 4 subpar 2 of the Constitution; see Article 85 par 3 of the Constitution for the appointment of a Deputy Prime Minister).

### **1.5 The Constitutional Court**

11. The Constitutional Court is a specialized court for constitutional review. It enjoys full independence (Article 94 par 1 and Article 87 of the Constitution). Its nine members are elected by the National Assembly (five members) and by the President (four members). They may not be removed and hold their office until the age of 65 (Article 96 of the Constitution).
12. The Court "shall administer the constitutional justice" (Article 93 of the Constitution, see Article 100 of the Constitution for a more detailed list of tasks), and determines the constitutionality of laws (*see infra* pars 56-60).

## **2. Legislative Process: Laws**

### **2.1 Definitions**

13. The definitions of laws and other legal acts, as well as many of their material and procedural requirements are to be found in the *Law of the Republic of Armenia on Legal Acts* of April 3, 2002 (hereafter, "the Law on Legal Acts"). It defines "laws" as a subcategory of legal acts, passed by from the National Assembly of the Republic of Armenia (Article 4 par 1 and Article 9 par 1 of the Law on Legal Acts, in conjunction with the Article 62 of the Constitution). According to Article 2 par 2 of the Law on Legal Acts, a law must be normative (in contrast to individual and internal legal acts), meaning that it must contain at least one legal norm. The term legal norm itself is defined in Article 2 par 4 of the Law on Legal Acts as a "rule of conduct adopted by the people of the Republic of Armenia, state or local self-government bodies within the scope of their authority and in cases established by law and pursuant to procedure established by this Law, which is of temporary or permanent character, is designed for one-time or repeated application and is mandatory for everyone or selected categories or persons (but not selected individuals)." Laws may have the form of codes, which "in a systematized and structured fashion states all or fundamental norms of the law regulating similar social relations" (see Article 9 par 5 of the Law on Legal Acts).
14. A law may concern any legal relation but is designed to "regulate the most significant, typical and stable social relations" (Article 9 pars 1 and 3 of the Law on Legal Acts).

As a concrete expression of the principle of the rule of law guaranteed in Article 1 of the Constitution, only laws may restrict constitutional rights (under certain strict conditions, see Article 43 of the Constitution<sup>11</sup>). More specifically, Article 9 par 4 of the Law on Legal Acts lists areas which may be regulated only by law such as restrictions on rights and freedoms of natural and legal persons, including taxes, business regulation, sanctions and liabilities, elections and referendum, state spending, political parties, and the federal organization. Delegation of powers is possible under the premises of Article 9 par 4.1 of the Law on Legal Acts.

15. Article 3 of the Law on Legal Acts provides that a law as a legal act must satisfy various general requirements such as public adoption by the competent body as well as respect of the hierarchy of norms and of legislative technique. All laws are subject to drafting principles and quality measures (Articles 26-45 of the Law on Legal Acts). The law – as any state action – must be in accordance with basic constitutional principles such as the rule of law (Articles 1 and 5 of the Constitution), equal protection and respect of human dignity (Articles 14 and 14.1 of the Constitution), judicial protection (Article 18 of the Constitution), and respect of fundamental human and civil rights vested in the Constitution as well as in international treaties (Article 43 pars 1 and 2 of the Constitution). The law must also be in compliance with customary international law (Article 21 par 2 of the Law on Legal Acts).
16. In the hierarchy of legal acts, laws are second in line, being inferior to the Constitution only. All other legal acts must comply with laws (Article 8 par 2 subpar 2 of the Law on Legal Acts). Within the category of laws, laws adopted by referendum (*see infra* pars 47-53) are higher in hierarchy than ordinary laws (Article 24 par 6 of the Law on Legal Acts) and may only be amended by a new referendum (Article 112 par 2 of the Constitution).
17. In cases where laws of equal standing conflict, the older law prevails over the newer one (Article 24 par 3 of the Law on Legal Acts). A newer law, however, may establish an exception from a more general rule (*lex specialis*) (Article 24 par 9 of the Law on Legal Acts). In its application by state and municipal authorities, the newer law also prevails over the older one if it is more beneficial for natural or legal persons (Article 24 par 7 of the Law on Legal Acts). Retroactive effect of new legislation is likewise permissible when improving the legal status of an individual (see Article 78 of the Law on Legal Acts).

## 2.2 *Legal Initiative*

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<sup>11</sup> Article 43 of the Constitution provides that certain fundamental human and civil rights and freedoms may be temporarily restricted only by the law “if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as honor and reputation of others” and that these limitations may not exceed the scope defined by the international commitments assumed by Armenia

18. The right to initiate the legislative process is vested in the National Assembly and in the Government (Article 75 par 1 of the Constitution and Article 47 par 1 of Law of the Republic of Armenia on the Rules of Procedure of the National Assembly of February 20, 2002 (hereafter, “the Rules of Procedure”), see also Article 48 of the Rules of Procedure). The legal sources do not mention parliamentary committees as possible initiators of law.
19. The decision-making process within the Government before submitting a draft law is subject to the Rules of Procedure of the Government of the Republic of Armenia (hereafter, “the Rules of Government Procedure”). Resolutions of Government are adopted by a simple majority of the Ministers (Article 49 of the Rules of Government Procedure), with a casting vote of the Prime Minister if necessary.
20. Draft laws (or a package of draft laws) must be submitted to the Chairperson of the National Assembly (Article 50 par 1 of the Rules of Procedure), by the initiator, whether it is the Government or a Deputy of the National Assembly. Article 47 pars 4 and 5 of the Rules of Procedure provide that if submitted by a Deputy, the draft law shall be accompanied by a "substantiating note" (presumably an explanatory note) concerning the adoption of the legal act. Information on the necessity to adopt other legal acts in relation to the proposed one should also be added, as well as proposed amendments to current laws or a note confirming that the adoption of additional laws or normative legal acts in connection with the legal act in question is not required. Justification for the adoption of a draft law and the names of the drafters are mandatory (Article 47 par 4 sup par 1(a) of the Rules of Procedure).
21. In addition to the above-mentioned materials, the Government must provide for a regulatory impact assessment (Article 47 par 4 subpar 1 (c) of the Rules of Procedure) and "a summary sheet of comments and suggestions concerning the draft in question, its acceptance or non-acceptance [of these comments and suggestions by the drafters], with substantiation of non-acceptance; the summary sheet shall also include accepted comments and suggestions made in the course of civil society consultation" (Article 47 par 4 subpar 1 (d) of the Rules of Procedure). These rules are *lex specialis* to the more general provisions in Article 28 of the Law on Legal Acts specifying which documents shall be supplied along with draft normative legal acts. Government must also provide a statement regarding the effects of the new legislation on the state budget (Article 50 par 3c of the Rules of Procedure).
22. A special procedure applies if the Government decides to combine legislation with a *motion of confidence in the Government*. The legislative process is then abrogated in so far that if the National Assembly does not immediately propose a motion of no confidence, submitted by no less than one third of the total number of Deputies and subsequently supported by more than half of the total number of Deputies (Article 75 par 4 and Article 84 par 1 of the Constitution), then the governmental legislative draft is considered adopted. Further discussion in the National Assembly will not take



place; the law is directly forwarded to the President for signing. This procedure may be applied only twice during a session in the National Assembly (Article 75 par 5 of the Constitution).

23. The "legal initiative" is the beginning of the legislative process within the National Assembly. The requirements in Article 47 of the Rules of Procedure make it clear that preparatory work must be done by members of the National Assembly or the Government before submitting a draft law; an initiative requires a *formulated* proposal. A right to initiate the legislative process with an unformulated proposal or a concept note (see Article 27 par 2 of the Law on Legal Acts) requesting the preparation of a draft by the Government or Parliamentary committees or staff is not possible (such a request may not be made in the form of a resolution, see Article 52 of the Rules of Procedure).

### **2.3 Drafting and Preparatory Work**

24. Drafting and preparatory work are regulated in Articles 26-45 of the Law on Legal Acts. Article 26 of the Law on Legal Acts reads that legislative drafting takes place within the framework of *normative legal act drafting plans* adopted by the Government and by the National Assembly – not precluding legislation not included in the plan; plans exist for the short (1-2 years) and the long term (3 and more years).
25. There are no procedural rules on how a Deputy of the National Assembly shall prepare a draft law. The process within the Government is regulated mainly in Articles 18 and 19 of the Rules of Government Procedure. Draft laws are submitted for the Government's consideration through Ministers or Deputy Ministers (Article 11 of the Rules of Government Procedure), encompassing basically the materials necessary to submit the draft to the National Assembly (Articles 11 and 18 of the Rules of Government Procedure). Before being introduced to the Government, the draft law must be submitted for comments and objections to the stakeholder Ministers and the Minister of Justice (Article 18 of the Rules of Government Procedure).
26. Complex legislation also requires a concept note (Article 27 par 2 of the Law on Legal Acts). Article 27 par 2 of the Law on Legal Acts provides that it "shall contain a description of the relations subject to regulation and the objectives of the act to be drafted, key provisions thereof, analyze the expected consequences of application of the provisions to be drafted, and may include a tentative structure of the legal act". The concept note is an internal document for the drafters, and is not subject to approval by political bodies or experts, though practice shows that such notes are approved by the Government, especially if they concern significant or voluminous laws.
27. Drafting is subject to the rules of legislative technique according to Articles 36-45 of the Law on Legal Acts. They encompass – *inter alia* – "clear, exact and accessible language" (Article 36 par 2 of the Law on Legal Acts), a structure of chapters, articles

and paragraphs (Article 37.1 par 2 of the Law on Legal Acts), a concluding part containing a list of other legal acts to be amended or terminated (Article 37.3 par 3 of the Law on Legal Acts, see also Article 24 par 3 of the Law on Legal Acts), proper citation, and the avoidance of unnecessary repetition (Articles 39 and 45 par 1-2 of the Law on Legal Acts). Laws may not stipulate rules that cannot be implemented or where there are no legal consequences for non-implementation (Article 45 par 3 of the Law on Legal Acts).

28. Drafting work may be assigned to third parties or to several institutions by competitive procedure (Article 27 pars 3 and 4 of the Law on Legal Acts): the law-making body may delegate the preparation of alternative legal drafts to external legal or natural persons by announcing a call for bids for the winning draft. Funding and public procurement required for such delegation are regulated in Article 30 of the Law on Legal Acts. Anybody may submit a draft law and may participate in the further debate if the draft law is properly brought into the legislative process by the Government or a member of the National Assembly (Article 27 par 5 of the Law on Legal Acts).
29. A draft law is subject to several quality checks. Regulatory impact assessment (RIA) is provided for in Article 27.1 of the Law on Legal Acts. It is defined as "the analysis of potential changes resulting from the adoption of a normative legal act, and in the case of a draft law on the state budget of the Republic of Armenia ". A RIA report must contain the model applied, a timeline of anticipated consequences, and comparative statistical analysis.
30. RIA is conducted by "national executive authorities as determined by the Government". The RIA focuses on "estimated administration-related expenditures on the part of natural and legal persons in the area of the environment, social welfare, health care, economy, including small and medium businesses, anti-trust, anti-corruption, and budget". Further areas may be analyzed by the drafting body or third parties.
31. Governmental draft laws are subjected to RIA before submission to the National Assembly (Article 47 par 4 subpar 1 (3) of the Rules of Procedure), as are draft laws initiated by Deputies (here, RIA is provided via Government opinion, Article 27.1 par 1 subpar 2 of the Law on Legal Acts). RIA must be conducted within fifteen days (or five days in case the draft law has been adopted in first reading (Article 27.1 par 3 of the Law on Legal Acts)). It seems that every draft law is subject to RIA, irrespective of its importance or complexity.
32. Also – as part of the RIA process under Article 27.1 of the Law on Legal Acts – civil society consultation of the draft is provided for in par 4 of this provision. Such consultation takes place simultaneously to the RIA and is designed to "raise awareness of natural and legal persons on the draft normative legal act, as well as collecting opinions and developing on their basis [...] requisite revisions to the draft normative legal act". The draft law and related materials are published on the internet;

stakeholder meetings, polls etc. are possible. The consultation process must last a minimum of fifteen days.

33. Articles 31 and 32 of the Law on Legal Acts provide for expert legal evaluation of a draft law by the Ministry of Justice. Such legal evaluation implies an assessment of compliance with the Constitution and other legal acts. It takes place before drafts are submitted to the Ministry of Justice and subsequently, to the Government, after the first reading of the law in the National Assembly if the law is submitted for opinion to the Government, or after adoption if the law is sent to the President for signature. In conducting the review, the Ministry of Justice "shall enjoy independence and be guided solely by law". Expert legal opinion has an (important) advisory function; only the Constitutional Court may formally declare laws unconstitutional and void. Linguistic evaluations as well as other topical forms of evaluation are optional.

#### **2.4 First Reading**

34. A draft law properly initiated within the National Assembly must be addressed to the Chairperson of the National Assembly who will within a two-day period forward the draft to the Committees of the National Assembly, the parliamentary factions and MPs' groups, as well as the Government, unless the Government is the author of the law (Article 51 pars 1a-1c of the Rules of Procedure; see also Articles 18 par 1a and 50 par 1 of the Rules of Procedure; see also Articles 28 and 31 of the Rules of Government Procedure for the relevant internal governmental procedure). The Chairperson will forward a draft law if it is in compliance with Article 47 of the Rules of Procedure. The draft law can also be submitted electronically (Article 50 par 1 of the Rules of Procedure).
35. The role of a "preliminary review of draft legal acts" is conferred to the committees by the Constitution (Article 73 par 2 of the Constitution). Each draft law is assigned to one Leading Committee. The number of standing committees is limited to twelve (Article 73 par 1 of the Constitution). In the committees, the political composition "must reflect the quantitative ratio of factions, deputy groups and other Deputies not included in a faction or a group" (Article 25 par 2 of the Rules of Procedure). Committees have one secretary and three experts (Article 21 par 7 of the Rules of Procedure). Their rules of procedure are regulated in Articles 26-29 of the Rules of Procedure.
36. The Chairperson of the National Assembly appoints the Leading Committee (Articles 30 and 51 par 1b of the Rules of Procedure) which shall make a report by rendering the conclusion of the Committee on the considered draft law; it shall submit its conclusions within thirty days upon receipt of the draft law, but not before it has received the Government's and National Assembly staff's conclusions (possibly including conclusions on budgetary effects of the draft law).

37. The National Assembly staff are held to submit these conclusions within twenty days after having received a Deputy's draft law (Article 51 pars 1a, 1b and 3 of the Rules of Procedure). The report of the Leading Committee must be available at least two hours before the beginning of a four-day plenary session (Article 51 par 7 of the Rules of Procedure).
38. The author of the draft law may participate in the debate in the Committee (Article 28 par 4 of the Rules of Procedure). Members of Parliament may submit proposals and must be informed at least three days before the meeting (Article 28 par 5 of the Rules of Procedure). The Committee may also organize a hearing (Article 32 of the Rules of Procedure).
39. Draft laws should be included in the agenda of the plenary session no later than 30 days after the conclusions of the Leading Committee (Article 54 par 1 of the Rules of Procedure, some exceptions apply in cases of constitutional amendments and referendum). The Government may consider a draft law to be of high priority. Such a law must be submitted to the National Assembly at least four days prior to the four-day session (Article 105.2 of the Rules of Procedure). The Government may generally determine the sequence of its draft legislation submitted to the National Assembly (Article 75 par 2 of the Constitution). Priority decisions of the Government may trump the 30 days-rule of Article 54 par 1 of the Rules of Procedure, as this time limit only applies "if no other procedure is envisioned in the present law" (Article 54 par 1 of the Rules of Procedure) – or in the Constitution. There is also a constitutional rule giving priority to the deliberation of laws remanded by the President (Article 72 par 2 of the Constitution).
40. The first reading has the form of an initial debate and does not leave room for voting on individual articles; it is mainly a decision on whether the legislative process will continue or not. It begins with a report of the "author" - a Deputy (Article 50 par 2 of the Rules of Procedure and Article 55 par 5 of the Rules of Procedure), or a Government representative (Article 50 par 3b of the Rules of Procedure), also called "main speaker". This is followed by the report of the supplementary speaker, i.e. a representative of the Leading Committee (Article 55 par 5 of the Rules of Procedure), and possibly reports by representatives from other Committees (Article 55 par 5.1 of the Rules of Procedure), questions posed to the presenters and their answers, then an exchange of opinions, final speeches of the supplementary speaker and main speaker, and a vote (Article 55 par 4 of the Rules of Procedure in conjunction with Article 64 par 1 of the Rules of Procedure). In his/her final speech, the main speaker (author) can either make changes to the draft law and propose to pass the law in second reading, or postpone the voting (Article 64 par 2 of the Rules of Procedure). In the latter case, the voting will be postponed until the end of the next four-day session in order to make the relevant amendments to the draft law or the package of drafts. The motion to pass the law in second reading must be supported by a majority of deputies participating in

the voting (a quorum is reached by participation of half of the deputies) (Articles 71 of the Constitution and Article 60 par. 1 of the Rules of Procedure).

### **2.5 Second Reading**

41. After the first reading, the Government and Deputies may propose changes to the draft law within a period of 14 days. The proposals are addressed to the National Assembly staff, who within 24 hours forwards these proposals to the author of the draft law and the leading Committee (Article 66 par 2 of the Rules of Procedure). The author must create a list of proposals and add his or her opinion on them (information list). This list, along with the draft law amended in compliance with those proposed changes that are acceptable to the author, must be forwarded to the Leading Committee within 30 days (Article 67 par 1 of the Rule of Procedure), which will in turn form an opinion on the proposals. The Committee's conclusions must be transmitted to the Chairperson of the National Assembly within a period of 14 days in order to schedule the second reading (Article 67 par 4 of the Rules of Procedure). On recommendation of the author of the draft law or the Leading Committee, the National Assembly may adjust the schedule (Article 67 par 5 of the Rules of Procedure).
42. The second reading basically follows the rules of the first reading. Questions may be raised only by those government representatives or Deputies whose proposals were included in the information list (*see* Article 69 of the Rules of Procedure). First, the plenary votes on the whole text of the draft law (with those proposals which the author deems acceptable). If this vote fails, each proposal is voted and decided on separately, if this is proposed by the author (*see* Article 69 pars 5 and 6 of the Rule of Procedure<sup>12</sup>). If no such proposal is made, the draft law is removed from circulation.
43. However, there is at least one substantial exception: according to Article 75 par 2 of the Constitution, the Government "may demand that [draft legislation is] voted only with amendments acceptable to it", as regards legislation proposed by the Government.

### **2.6 Third Reading**

44. After the second reading, the draft law is edited by the author and the Leading Committee within 30 days; changes in substance are no longer permissible at this point (Article 71 par 1 of the Rule of Procedure). The edited text along with an information list outlining the changes made is then presented to the Chairperson of the National Assembly and put to a third and final vote in the National Assembly (Article 72 of the Rules of Procedure); a debate on individual provisions is also no

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<sup>12</sup> The wording of this provision appears to be difficult for understanding, although the difficulty may stem from the translation

longer possible. However, the author of the law may take the draft law back to the stage at which proposals are made prior to the second reading and prepare a new information list if it fails to receive the necessary votes for adoption. If he/she does not do so, then the draft law is rejected and removed from circulation (Article 72 par 4 of the Rules of Procedure)

## **2.7 Presidential Veto**

45. The adopted law is transmitted to the President within ten days (Article 72 par 5 of the Rules of Procedure). Within 21 days (Article 55 par 2 of the Constitution; Article 72 par 5 of the Rules of Procedure), the President signs the law or remands it with objections and recommendations to the National Assembly.
46. Remanded laws must be deliberated in the National Assembly as a priority (Article 72 par 2 of the Constitution); they shall be "included in the agendas of the regular series of sessions and the pending four-day sittings and be put to extraordinary debate" (Article 73 par 1 of the Rules of Procedure). Members of the National Assembly may propose changes connected to the presidential recommendations (Article 73 par 1 of the Rules of Procedure). The procedure follows the rules of the first reading of a draft law, except that a representative of the President now acts as the main speaker of the law (Article 73 par 3 of the Rules of Procedure); only the presidential representative may allow changes to the presidential amendments. If the presidential version of the law fails to gather the necessary votes, the National Assembly may adopt the law in its original version (Article 73 par 8 of the Rules of Procedure). The presidential veto thus has only *delaying effect*. The National Assembly may pass the law again with a majority of votes in the National Assembly, provided that more than half of the total number of Deputies has participated in voting (Articles 71 and 72 of the Constitution) – this is the generally applicable voting mode in the National Assembly (Article 60 par 1 of the Rules of Procedure). A re-adopted law must be signed by the President within five days (Article 55 par 2 of the Constitution, Article 73 par 8 of the Rules of Procedure).

## **2.8 Referendum**

47. Laws may be subjected to popular referendum. A referendum on a law can be initiated by the National Assembly or by the Government (Article 112 par 1 of the Constitution and Article 8 par 1 of the Law on Referendum) – but not by the President (though he/she forwards government draft laws to the National Assembly in these cases). Referenda on constitutional amendments, though, may only be initiated by the President or by the National Assembly (Article 7).
48. The Government may introduce a referendum on its own legislation only with the consent of the National Assembly; Article 8 par 5 of the Law on Referendum speaks of "approval of the National Assembly": "[w]ithin three days after receiving the draft law introduced by the Government, the President of the Republic introduces the draft

to the National Assembly to receive the approval of the National Assembly to submit it to referendum". There is no reciprocal requirement that a call for a referendum by the National Assembly requires the consent of the Government.

49. The referendum initiated by the National Assembly is possible after "approv[al of] the draft law according to the Law of the Republic of Armenia's 'National Assembly Rules of Procedure'" (Article 8 par 2 of the Law on Referendum), by the National Assembly. The draft law is then sent to the President, who shall submit it for referendum. The President may remand the draft law back to the National Assembly for re-examination, but is then held to submit it for referendum if it is reintroduced by at least two thirds of the total number of Deputies of the National Assembly (*see supra* pars 45-46 for other instances of presidential vetoes in the lawmaking process).
50. A referendum requires the majority vote of the total number of Deputies (Articles 111 par 2 and 112 par 1 of the Constitution). A law submitted for referendum to the President may be remanded by the President for reexamination within 21 days (Article 8 par 3 of the Law on Referendum). The National Assembly may insist on a referendum by two-thirds of the total number of Deputies of the National Assembly (Article 8 par 4 of the Law on Referendum).
51. The referendum has to be called by the President within 21 days after the National Assembly has requested, approved or confirmed the referendum (Article 8 par 7 of the Law on Referendum). It shall take place not earlier than 45 days and not later than 60 days after the publication of the President's decree; the draft law must be published at least 30 days before the referendum takes place (Article 8 pars 8 and 9 of the Law on Referendum).
52. The referendum process is mainly in the hands of special commissions (see Articles 9-16 of the Law on Referendum). The political process preceding the vote is reserved for citizens, parties and non-governmental unions (Article 20 par 1 of the Law on Referendum). They may also observe the voting process, together with international organizations, representatives of foreign countries and NGOs (Article 22 of the Law on Referendum). Campaigning by government entities is prohibited (Article 20 par 5 of the Law on Referendum).
53. A draft law passes the referendum when it receives over 50% of the votes by more than one fourth of the registered voters (Article 113 of the Constitution). The outcome of the referendum is subject to appeal to the Constitutional Court (Article 100 par 3 of the Constitution).

## **2.9 Publication**

54. A new law is published by the President (Article 55 par 2 of the Constitution, Article 73 par 8 of the Rules of Procedure). Publication is mandatory (Article 48 par 1

of the Law on Legal Acts). New laws are to be found in the *Official Bulletin* (see Articles 62 and 64 of the Law on Legal Acts for details).

55. A law comes into force as specified therein (Article 48 par 2 of the Law on Legal Acts) or, if such a provision missing, 10 days after publication.

## **2.10 Judicial Review**

56. Adopted laws are subject to judicial review. The Constitutional Court determines the compliance of laws with the Constitution (Article 100 par 1 of the Constitution). The Constitutional Court provides for constitutional review of the law itself ("abstract review") as well as for cases where the law is applied. The former process shall be initiated by state bodies, the latter is open to private parties (Law of the Republic of Armenia on the Constitutional Court of June 1, 2006 (hereafter, "the Law on the Constitutional Court"), see especially Articles 68-69).
57. Articles 100 and 101 of the Constitution envisage that the abstract review of laws can be initiated – *inter alia* – by the President, one-fifth of the deputies of the National Assembly, the Government, and the Human Rights' Defender concerning laws allegedly infringing human rights. The Constitutional Court may invalidate the challenged law or parts of the law (see Article 68 par 8 subpar 2 of the Law on the Constitutional Court). In case of invalidation, individual acts based on that law shall remain in force; however, acts on criminal sanctions and administrative liability matters may be revisited (Article 68 pars 10 and 13 of the Law on the Constitutional Court). Article 102 pars 2 and 3 of the Constitution state that invalidation enters into force immediately after the Constitutional Court decision but also that this may be postponed if severe consequences are expected for the public (see Article 68 pars 15-17 of the Law on the Constitutional Court for details).
58. A review of the constitutionality of laws, when applied in a specific case, may be initiated also by citizens: an application to the Constitutional Court may be lodged by "every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged" (Article 101 par 6 of the Constitution). The National Assembly acts as respondent in proceedings before the Constitutional Court, as the body that adopted the disputed legal act (Article 69 par 3 Law on the Constitutional Court).
59. In the case of individual complaints, the proceedings start with an admission procedure (Article 69 pars 6-10 of the Law on the Constitutional Court; see also Articles 30-32 of the Law on the Constitutional Court). Hearings are public, with some limited exceptions (Article 22 of the Law on the Constitutional Court).



60. The examination by the Constitutional Court clearly includes a review of basic legal principles as well as fundamental rights guaranteed by the Constitution (see Articles 1-44 of the Constitution). A law which is inconsistent with these constitutional rights will thus be declared wholly or partly invalid.

### **3. Legislative Process: the Constitution, Secondary Legislation, International Treaties**

#### **3.1 The Constitution**

61. Revision of the Constitution requires a referendum which may be initiated by the President or the National Assembly (Article 111 par 1 of the Constitution). The processes for the adoption of a completely new constitution and for constitutional amendments are practically identical. The process is likewise similar to the one for referendum on laws (see *supra* pars 47-53).
62. As with the process for laws, the President may veto and remand a draft constitutional provision to the National Assembly (Article 111 pars 2 and 3 of the Constitution); his or her veto may be overcome by the National Assembly by two-thirds of the total number of members of the National Assembly (Article 111 par 4 of the Constitution, see also *supra* pars 45-46). Should the President propose amendments to the Constitution, then his draft amendments require the vote of the majority of the total numbers of members of the National Assembly before they may be submitted for a referendum (Article 111 par 5 of the Constitution).
63. Article 1 (rule of law), Article 2 (democracy) and Article 114 (safeguarding provision) of the Constitution are exempt from any possible revision (Article 114 of the Constitution and Article 4 par 2a of the Law on Referendum). Article 4 pars 2b-2c of the Law on Referendum extends this restriction to " issues of prolonging or reducing the powers of incumbent President and incumbent National Assembly as well as incumbent state and local self-governing bodies" and to " issues related to human and citizens' rights, freedoms and obligations, the elimination or restriction of constitutional guarantees providing their implementation, as well as issues directly bestowed to the exclusive competence of state and local self-governing bodies."

#### **3.2 Secondary Legislation**

64. The National Assembly, the President, the Government and other state bodies may adopt normative legal acts, i.e. regulation at the sub-legislative level. Such regulation must not concern areas which are reserved to primary laws (Article 9 par 4 of the Law on Legal Acts); it has to remain "within the limits expressly provided for by law" and may thus not contain additional restrictions of rights of natural persons or contain additional obligations.

65. Apart from laws, the National Assembly may pass *resolutions* (Article 4 par 1 and Article 12 of the Law on Legal Acts). In contrast, regulations passed by the President have the form of a decree (Article 56 of the Constitution and Article 13 par 4 of the Law on Legal Acts), while regulations passed by the Government are issued in the form of resolutions (Article 14 par 4 of the Law on Legal Acts). In the legal hierarchy, decrees may not contradict laws and resolutions of the National Assembly, while resolutions of the Government may not contradict laws passed by referendum, other laws, resolutions of the National Assembly and decrees of the President (Articles 12-14 of the Law on Legal Acts). This leads to the following top to bottom hierarchy: the Constitution, laws passed by referendum, laws, resolutions of the National Assembly, decrees of the President, and resolutions of the Government.

### **3.3 *International Treaties***

66. The President is responsible for international relations (Article 55 par 7 of the Constitution). He/she recommends international treaties for ratification to the National Assembly (Article 81 par 2 of the Constitution). Ratification by the National Assembly is required for treaties, that "are of political or military nature or stipulate changes of the state borders", "relate to human rights, freedoms and obligations, "stipulate financial commitments for the Republic of Armenia", or lead to legislative activity (Article 81 pars 2a-2d of the Constitution). Other agreements can be directly concluded by the President (Article 55 par 7 of the Constitution).
67. International treaties, as well as customary international law, are directly applicable legal sources in Armenia (Article 21 par 2 of the Law on Legal Acts). In the hierarchy of laws, international treaties are at the same level as other legal acts issued by the body signing or ratifying the treaty in question (Article 21 par 4 subpar 1 of the Law on Legal Acts). In case of conflict between national and the international rules adopted by the same body, international law prevails (Article 21 par 4 subpars 2 and 3 of the Law on Legal Acts).

## ANNEX 2: LIST OF INTERLOCUTORS

### **The Government**

Mr. Hrayr Tovmasyan, then Minister of Justice (currently Head of the Staff of the National Assembly)

Mr. Grigor Muradyan, then Deputy Minister of Justice (currently Head of the Legal Department of the Staff of the President's Office)

Ms Nora Sargsyan – then Adviser to the Minister of Justice

Mr Karen Hakobyan, then Head of Legislation Analysis and Improvement Department, Ministry of Justice (currently Deputy Head of Staff of Ministry of Justice)

Mr Sargis Torosyan, then Assistant to the First Deputy Minister of Justice (currently Adviser to the Head of Legal Department of the Staff of the President's Office)

Mr Karen Khtryan, Head of Legal Acts Expertise Agency, Ministry of Justice

Mr Pavel Safaryan, Deputy Minister of Finance

Ms. Susanna Grigoryan, Director, Official Gazette ARLIS

Ms. Amalia Yengoyan, Head of the Government's Department for Relations with the National Assembly

Mr. Armen Yeghiazaryan, Head, the National Centre for Legislative Regulation, *Guillotine project*

### **The National Assembly**

Ms. Hermine Naghdalyan, Vice Speaker of the National Assembly

Mr. Davit Harutyunyan, then Chair, State and Legal Affairs Committee (currently Minister-Chief of Staff of the Government)

Mr. Gagik Minasyan, Chair, Standing Committee on Financial-Credit and Budgetary Affairs

Ms. Elinar Vardanyan, Chair, Standing Committee on Protection of Human Rights and Public Affairs

Mr. Tatul Soghomonyan, Deputy Chief of Staff

Mr. Arthur Tamazyan, Deputy Head of the Department of Expertise

Mr Tigran Urikhanyan, MP, Prosperous Armenia

Mr Artsvik Minasyan, MP, Armenian Revolutionary Federation

Mr Tevan Poghosyan, MP, Heritage Party

**Control Chamber**

Mr Tital Jindoyan, Member of the Governing Body

Mr Aram Mamikonyan, Head of the Legal Department

Mr Vladimir Baghdasaryan, Specialist, Legal Department

**Office of the Human Rights Defender**

Ms Anna Voskanyan, Legal Department

Mr. Aram Vardevanyan, Legal Department

**International Organisations**

Mr. Shaun McNally, USAID/SANAP

Ms. Oksanna Abrahamyan, USAID/SANAP

Mr. Davit Akopyan, EC Delegation

Ms. Marina Malkhasyan, UNDP

**Civil Society Organizations**

Ms. Sona Ayvazyan -Transparency International

Mr. Aghas Yesayan -Center For Electoral Democracy

Mr. Avetik Ishkhanyan - Helsinki Committee in Armenia

Ms. Mary Khachtryan - Sakharov Foundation

### **ANNEX 3: QUESTIONNAIRES ON THE LEGISLATIVE PROCESS**

*These questionnaires were drafted in preparation for interviews with senior level Government and Parliament officials. All interlocutors in both the Government and the Parliament received the questionnaire shortly before the meetings.*

#### **EXECUTIVE BRANCH**

1. Does your Ministry have its own specialized unit of law drafters? If not, who undertakes the task of drafting laws? If it is the legal officers of the Ministry, do their job descriptions mention this task? Is experience in drafting laws an asset for candidates applying for these positions? Do they undergo respective professional training?
2. Have you outsourced law drafting projects to consultants? If so, what type of consultants were they, for the most part? (e.g. international consultants/donor agencies, academia, NGOs) What budget paid for these consultancies?
3. Is it common for more than one law drafter to be involved in the drafting of a particular piece of legislation? If this is done by a working group composed of policy advisors, is a law drafter included in that working group from the very beginning?
4. How is the quality of legal drafting monitored? (e.g. by supervisors)
5. Who undertakes the drafting of secondary legislation? Is it the same staff that drafts primary legislation?
6. How are annual legislative plans prepared? Who coordinates the submission of ministry inputs to the presidential apparatus?
7. How are decisions to initiate a new legislative project taken? Does this happen at the Ministry level or at the Cabinet level?
8. How does the government collectively determine its priorities with respect to new proposed legislative projects?
9. Are there fixed time schedules for the preparation of each draft law? Who is responsible for monitoring them, and how?
10. Does each draft law, before it is introduced to the Parliament, have to be approved by the Government (in addition to the Ministry of Justice's review)?
11. At the policy stage, is there a process whereby the compliance of policy proposals or policy options with the text of the Constitution is verified? If so, how?
12. At the policy stage, is there a process whereby the compliance of policy proposals or policy options with the requirements of the existing law is verified? If so, how?

13. Is there an examination of whether new legislation is required at all, as the matter may already be dealt with under the existing law or via alternative measures (e.g. administrative action, public awareness raising, etc.)? In which circumstances could the issue in question be addressed by such other measures? How are decisions on this taken? What factors are taken into consideration?
14. Are outside advisers used in the policymaking process? If so, in which cases?
15. Do you think that stakeholder consultations can be held during initial policy discussions ?
16. Are policy discussions and law drafting undertaken as distinct exercises? Are they undertaken by different units or by the same team? If they are undertaken by different units, at what stage is the law drafter involved? How is the policy decision communicated to the law drafter?
17. How is the process of law drafting carried out? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what would you recommend?
18. During the law drafting stages, is there a process whereby the compliance of draft legislation with the text the Constitution is? If so, at which stage, and how? In your view, is there room for improvement? If so, what would you recommend?
19. During the law drafting stages, is there a process whereby the compliance of draft legislation with the existing law is verified? In your view, is there room for improvement? If so, what would you recommend?
20. How is the cost assessment conducted? Does the assessment focus solely on the impact of legislation on the central Government's budget or does it also assess the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets? Are fiscal/financial authorities part of these consultations? In your view, is there room for improvement? If so, what would you recommend?
21. Are there other assessments /verifications of draft laws, apart from the legal assessment? Does this list include gender assessments, human rights assessments, impact assessments, and/or anti-corruption assessments? Does law and/or policy provide sufficient guidance on how such assessments should be conducted? If so, could you provide us with a copy of such written guidance?
22. Does it happen that staff from more than one Ministry drafts a particular law? How is the process coordinated? Who monitors the progress of law drafting, and how?
23. Are all relevant stakeholders consulted in the law drafting process? If so, are such consultations undertaken in all legal reform processes, or only in some? If the latter, then in which situations? How are the relevant stakeholders identified?

24. How are consultations organized? In your view, is there room for improvement? If so, what would you recommend?
25. How is compliance with public consultation procedures monitored? If such consultations are required, how is this requirement enforced? How are consultations made effective, fair and open?
26. What opportunities does the general public have to comment upon legislative proposals or draft legislation? How is the public made aware of legislative proposals and how are public responses sought, made and considered?
27. Whose responsibility is it to ensure that consultations takes place? How are such consultations usually carried out - via formal or informal meetings, or in writing? What information is provided to the persons being consulted? How, and in what form are responses typically provided?
28. When do the law drafter's responsibilities in connection with a draft law end? Is the law drafter responsible for proofreading all versions of the draft law?
29. What normal steps have to be followed when secondary legislation is being prepared? Do these differ according to the type of secondary legislation?
30. Who decides that secondary legislation needs to be prepared for the purpose of implementing primary legislation? Are there any cases where this requires the collective prior consent of the Government?
31. Is secondary legislation ever prepared as part of the same drafting process as the primary legislation which it is supposed to implement?
32. Who undertakes the policymaking with respect to secondary legislation? Are they the same unit that developed the policy for primary legislation?
33. Are stakeholders consulted in the process of preparing secondary legislation as well?
34. To what extent can the original law drafters be involved in drafting amendments to the draft law put forward by the Parliament?
35. When a rapporteur presents a draft law to a committee, what do such presentations typically involve? Who is normally nominated to present the draft law? Is it one of the actual law drafters?
36. Do officials of the drafting Ministry follow the progress of a draft law in the Parliament? If so, how is this done?

37. If the Government concludes that a draft law currently being considered by the Parliament needs to be altered, can the drafting Ministry itself draft the necessary amendments and submit them to the Parliament? If so, how is this arranged?
38. Which Unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?
39. Does the Ministry have ready access to all legislation that is likely to concern it? Does the staff who undertakes law drafting in your Ministry have access to a full set of legislation? Is there an electronic legal database? How is it maintained? Does the respective staff have access to it?
40. Are any groups of persons eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?
41. In what instances can a draft law be published before it is officially adopted? Who decides that a draft law should be published? Is there a consolidated collection of all applicable primary and/or secondary legislation (containing the law in force at the moment of publication)? How is it published?
42. Is there an official and up-to-date index of legislation currently in force that would also show where amendments were made to earlier legislation that is still in force? What other means of finding applicable legislation are in general use?
43. How do members of the public and lawyers in the private sector acquire access to an authentic and complete collection of legislation in force, or copies of individual laws? Are such texts readily available throughout the country? Are they provided for free, or do they require a fee?
44. Is any entity charged with monitoring the state of current legislation (e.g. with a view to submitting proposals for repealing legislation that is obsolete or spent) or with preparing and publishing consolidated versions of the primary and/or secondary legislation currently in force?
45. Are there any formal instruments that facilitate the impact assessment of policy proposals for legislation or draft laws? If so, please indicate the types of instruments, and the usual circumstances in which they will be applied.
46. Are any formal instruments used to assist in the impact assessment of draft laws? If so, please indicate the types of instruments and the usual circumstances in which they will be applied.
47. If such formal instruments are used when conducting an impact assessment, who developed them, and who usually uses them?



48. To what extent is legislation from other countries used as a model or example for policy makers and/or law drafters? To what extent are international model laws used in these processes?
49. Is a cost assessment standard practice for all new legislation? If not, in which cases is it undertaken? Are there any cases where it is compulsory? Who has the power to decide whether a cost assessment is required? Are such assessments also made with respect to legislation proposed by the Parliament or in respect of amendments to legislation, whether proposed by the Government or by Parliament?
50. Are such cost assessments carried out as part of the initial consideration of policy options, or once a particular option has been selected, or once a draft law has been completed, or at several of these stages? If the latter, what are the differences between cost assessments at different stages? Do law drafters play any part in these exercises?
51. What procedures are followed when assessing the impact of proposed new legislation on the Government's budget, in terms of capital and recurring costs, in particular personnel and organisational running costs? What procedures are followed to assess the impact of such proposals on the budgets of other governmental authorities (such as local government or provincial authorities)? What about procedures for assessing the impact on private sector bodies which are likely to be affected by proposed new legislation?
52. What information on projected costs is provided to the Parliament, and in which form? To what extent is such information made available to the public?

## **NATIONAL ASSEMBLY**

1. We know that the Law on Normative Acts sets out the general principles of law drafting. In addition, there is a Legal Drafting Manual adopted by the Ministry of Justice that details the main drafting standards. Does the Parliament use this tool? Does the Parliament have any other tools that it uses for additional guidance?
2. How are the parliamentary legislative agendas compiled?
3. How are the agendas for committee session prepared? Are these agendas communicated to external actors? Who may be present at committee sessions?
4. How are committee hearings, interpellation sessions, parliamentary question sessions organized? How are committees of inquiry organized?

5. What parliamentary techniques are used when fulfilling the Parliament's oversight function? What oversight tools do the parliamentary committees dispose of and how do they apply them?
6. How is the process of law drafting carried out in the Parliament? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what would you recommend?
7. During the different stages of drafting laws, is there a process whereby the compliance of draft legislation with the contents of the Constitution is verified? In your view, is there room for improvement in this regard? If so, what would you recommend?
8. During the law drafting stages, is the process whereby the compliance of draft legislation with the existing law is verified? In your view, is there room for improvement? If so, what would you recommend?
9. How is the cost assessment done, and at what stage? Does the assessment focus solely on the impact of a proposed law on the central Government's budget or does it also look at the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets? Are these other authorities involved in the consultations? In your view, is there room for improvement? If so, what would you recommend?
10. Are all relevant stakeholders consulted in the law drafting process? If so, are they consulted in all legal reform efforts? If they are only consulted in certain cases, please specify in which cases? How are relevant stakeholders identified? How are consultations organized? In your view, is there room for improvement? If so, what would you recommend?
11. Whose responsibility is it to ensure that consultations take place? How are such consultations usually carried out - via formal or informal meetings or in writing? How, and in what form are responses typically provided?
12. When do the law drafter's responsibilities in connection with a draft law end? Is the law drafter responsible for proofreading all versions of the draft law?
13. Who drafts amendments put forward while the draft law is being reviewed in Parliament? To what extent are the original law drafters involved?
14. When a rapporteur presents a draft law during committee discussions, what does such a presentation typically involve and focus on? Who is normally nominated to present the draft law? Is it one of the actual drafters of the draft law?
15. In cases where draft laws were introduced by the Government, do officials of the drafting Ministry follow the progress of the draft law in Parliament? How is this done?

16. If the Government concludes that a draft law currently being considered by the Parliament needs to be altered, can the drafting Ministry itself draft the necessary amendments and submit them to Parliament? If so, how is this done from a procedural point of view?
17. In which cases does the Parliament use expert opinions from officials, experts or members of the public when considering a draft law? How frequently does this happen?
18. Is any parliamentary body specifically charged with monitoring the preparation of draft laws, to ensure that the domestic drafting and procedural standards are being followed? If so, how does it carry out its responsibilities, and is it effective?
19. Are consultation procedures established? How is compliance with consultation procedures monitored? If consultation procedures are required how is this requirement enforced? How are consultations made effective, fair and open?
20. What opportunities does the general public have to comment on legislative proposals or draft legislation? How is the public made aware of legislative proposals and how are public responses sought, submitted and considered?

#### **ANNEX 4: THE BASIS FOR OSCE/ODIHR'S LAW-MAKING REFORM ASSISTANCE ACTIVITIES**

Scrutiny of individual laws often reveals deep-seated weaknesses in a country's law-making system. Laws adopted with the best intentions in response to pressing social needs may prove inefficient or ineffective because of underlying deficiencies in the system of preparing legislation itself. Frequently, political priority considerations prevail over any other considerations while enacting legislation on substantive issues. The most effective way of rectifying the situation is to address the underlying causes. Often, little work is done in terms of finding methods for rationalizing legislative procedures, whilst considerable resources are devoted to the building or strengthening of institutions involved in law-making. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme<sup>13</sup>, a joint initiative of the European Union and the Organization for Economic Co-operation and Development.

A successful law-making process includes the following components: a proper policy discussion and analysis; an impact assessment of the proposed legislation (including possible budgetary effects); a legislative agenda and timetables; the application of clear and standardized drafting techniques; wide circulation of the drafts to all those who may be affected by the proposed legislation; and mechanisms to monitor the efficiency and implementation of legislation in real life on a regular and permanent basis. Further, an effective and efficient law-making system requires a certain degree of inclusiveness and transparency within the government and the parliament. This includes providing meaningful opportunities for the public, including minority groups, to contribute to the process of preparing draft proposals and to the quality of the supporting analysis, including the regulatory impact assessment and gender impact assessment, which involves the adaptation of policies and practices to make sure that any discriminatory effects on men and women are eliminated. Proposed legislation should be comprehensible and clear so that parties can easily understand their rights and obligations. The efficiency of the legislation in real life should be monitored on a permanent basis.

While reviewing a number of legal drafts pertaining to some OSCE participating States, ODIHR came to the conclusion that some of the stages of the legislative process which are outlined above are either missing, not properly regulated or not implemented. Further, limited attention is paid to ensuring the preconditions for effective implementation of legislation, such as the capacity of the administrative infrastructure, the availability of human or financial resources, etc. There is also insufficient exposure to methodologies that may help minimize the risks of impractical laws, such as broad consultations with stakeholders outside parliament and government so as to increase the probability that the adopted legislation yields consensus and is, thereby, properly implemented. Further, particular attention is given to the concept of

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<sup>13</sup> SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe, <http://www.sigmaxweb.org/>.

“legislative transparency”, which is specifically referred to in two key OSCE documents<sup>14</sup>, and to take into consideration recommendations or special interests manifested in discussions during the OSCE Supplementary Human Dimension Meeting in November 2008, and identified in the assessment reports on various domestic law-making processes that ODIHR has been producing since 2006. Among these recommendations, it is worth recalling the following<sup>15</sup>:

- a) The preparation of legislative proposals needs to be based on an effective policy making process and sufficient time should be allowed for their preparation; it should be recognised that elaboration of policy and law drafting are distinct processes, and that law drafting should follow from policy formation, rather than serve as a substitute for it;
- b) Public consultation should be an indispensable element of legislative process. A clear and well-articulated strategy on promoting the development of civil society to ensure that their input in policy development and law-making is given proper consideration shall be in place: such a strategy can ensure better quality, more widely accepted legislation and more effective implementation of the legislation adopted;
- c) An effective system of legislative verification should be in place to embrace operational features of the legislation as well as questions of legal compliance and to ensure the proper legal wording, clarity and comprehensibility of the draft law; impact assessment, an important and valuable tool in both policy development and in drafting legislation to implement state policy, should be planned and implemented properly and needs to become compulsory, at least in cases involving complex legislation, or laws that have a severe impact on large parts of the population;
- d) The required secondary legislation should be introduced in a timely manner to ensure the effective implementation of primary legislation;
- e) Effective and efficient parliamentary oversight of the implementation of legislation should be ensured;
- f) Governments should monitor the implementation of adopted laws, assess their

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<sup>14</sup> *Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (...) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone;*” (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). *“Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”* (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991).

<sup>15</sup> These recommendations are extracted from the original documents.

impact and publicly report on their findings, formulating specific recommendations for amendments, where necessary; mechanisms for monitoring the implementation of legislation and its effects should become an inherent part of the legislative procedure, based on an analysis of existing practices.

Following an official request from a OSCE participating State, ODIHR, in close coordination with the national authorities, may conduct a full-fledged comprehensive assessment of the country's legislative system and assist the authorities in designing a comprehensive legislative reform roadmap. This work features three main aspects:

1. the assessment is comprehensive, covering the entirety of the process by which legislation is prepared, drafted, assessed, discussed, consulted, adopted, published, communicated, and evaluated;
2. the assessment describes the current law-making system both on paper and in practice;
3. the assessment will provide a sufficiently detailed account in order to support credible recommendations for reform tailored to the particular needs of the country.

The purpose of such assessment is to collect, synthesize and analyze information with sufficient objectivity and detail to support credible recommendations for reform in the area in question. Information for the assessment is collected through semi-structured field interviews with pre-identified interlocutors, as well as through compiling relevant domestic legislation and regulations. The information gathered through field interviews and the collection of domestic laws and regulations is then analyzed in the light of generally accepted international standards in relation to legislation.

Frequently, the comprehensive assessment is preceded by a preliminary assessment that presents a quite detailed description of the current constitutional, legal, infra-legal and organisational framework of the legislative process in the country. Such assessment analyses some particularly critical aspects of the legislative process and formulates recommendations for possible improvements. The purpose of the preliminary report is to provide a description and systematic account of the legislative process in the country and offer an analysis of identified vulnerabilities in the law-making process and the way in which they may be addressed. The preliminary report does not reveal how procedures are used in practice, as it focuses on the legislative framework regulating the law-making process.

The comprehensive assessment reviews both legal and practical aspects of the law-making process and is expected to act as a catalyst for reform. The recommendations contained in the assessment report are to serve as a working basis for conducting thematic workshops that provide a forum for discussing the recommendations and developing more specific recommendations. The topics of the workshops are jointly identified by ODIHR and the national authorities. The workshops aim at creating a platform for inclusive discussions among key national stakeholders, including non-governmental organizations, on methods that

may be employed to make the law-making process more efficient, transparent, accessible, inclusive and accountable. The recommendations, stemming from the assessment and the thematic workshops are then put together in the form of a reform package and officially submitted to the State authorities for approval and adoption.