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ASSESSMENT OF THE LEGISLATIVE PROCESS IN GEORGIA

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INTRODUCTION

BACKGROUND

1. By letter of 27 January 2014, the Parliament of Georgia asked OSCE/ODIHR to conduct a comprehensive assessment of the legal framework governing the legislative process in Georgia (hereinafter referred to as the “Assessment”). Based on a Memorandum of Understanding, signed between the OSCE/ODIHR and the Parliament of Georgia on 24 February 2014, OSCE/ODIHR initiated the process of conducting a comprehensive assessment of the legislative process in Georgia in March 2014.
2. As a first step, an OSCE/ODIHR Assessment Team, consisting of OSCE/ODIHR experts and staff, thus travelled to Tbilisi and Kutaisi on 31 March – 4 April 2014 to interview senior officials from the Government and Parliament, and other relevant interlocutors, including civil society, on the practice of the law-making process (for more information on the interlocutors, see Annex 2 to this Assessment).

SCOPE AND METHODOLOGY OF THE ASSESSMENT

3. This Assessment describes the constitutional, legal and organizational framework governing the law-making process in Georgia and aims to provide an accurate account and assessment of the legislative process in the country. It includes recommendations for reform, to improve the effectiveness, efficiency and transparency of the law-making process.
4. The present Assessment is based on a thorough review of the domestic legal framework governing the lawmaking process in Georgia, as well as on field interviews conducted by the OSCE/ODIHR Assessment Team with pre-identified interlocutors from the Government and Parliament, and civil society, among others.¹ The field interviews aimed at gathering information on the actual practice of law making in Georgia, as well as on international assistance efforts in related areas². Prior to the interviews, questionnaires³ were sent out to interlocutors from Government and Parliament outlining the purpose and scope of the visit. The information gathered in the above manner was then analysed in light of generally accepted democratic law-making standards.
5. This Assessment describes the entire legislative process in Georgia and analyzes some particularly critical aspects.⁴ The Assessment is based principally on an analysis of the

¹ For the full list of interlocutors, see Annex 2 to this Assessment.

² An overview of international assistance is included in Annex 5 to this Assessment.

³ The questionnaires are included in Annex 3 to this Assessment.

⁴ The description of the system is included in Annex 1 to this Assessment.

Constitution, relevant domestic legislation and legal documents. Not all Georgian 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.

6. The Assessment is based on unofficial English translations of key Georgian legislation; errors from translation may consequently result. It is also possible that recent amendments to key laws were not yet taken into account in the English translations.
7. 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

8. The Assessment is based on unofficial English translations of the following legal texts:
 - The Constitution of Georgia
 - Law of Georgia on the Constitutional Legal Proceedings
 - Organic Law on the Constitutional Court
 - Law of Georgia on Normative Legal Acts
 - Rules of Procedure of the Parliament of Georgia
 - Rules of Procedure of the Government of Georgia
 - Administrative Code (extracts related to access to information)

EXECUTIVE SUMMARY

9. The present Assessment is a situational analysis of the formal procedures and the actual practices in Georgia that apply to the preparation, drafting, enactment, publication, communication and evaluation of legislation. It discusses the salient aspects of the legislative drafting / law making process in the country and identifies the 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 high-quality legislative outcomes. Based on its analysis and findings, reached *inter alia* during meetings held in Tbilisi and Kutaisi with governmental and parliamentary

officials, non-governmental organisations and think-tanks, and a scrutiny of relevant Georgian legislation, this Assessment provides recommendations for reform. These focus largely on enhancing the effectiveness, efficiency, transparency, accountability and participatory nature of the law-making process, while outlining a proposed strategy for possible law-making reform efforts and ODIHR assistance to such reform efforts, as desired and beneficial.

10. The following concerns and risks have been identified, which the Georgian authorities may wish to consider addressing:

- **Policy making.** There is a need for a better understanding of the importance of good policy making for good law-making, which may be achieved by ensuring greater familiarity with modern policy making techniques. At present, the policy making process would benefit from further development and systematization. As it is, action plans and legislative agendas seem to substitute proper policy making. International obligations and national policy needs are often the main drivers for an imperative policy making effort, but also do not substitute policy making as such. In addition to the insufficient consideration that is given to adequately developing the policy behind a given piece of legislation, relevant law-drafting authorities appear to place an overwhelming emphasis on legislation as the principal and only means of achieving policy goals.
- **Coordination and verification.** A certain legislative planning and coordination mechanism is in place, but is not always adequately implemented. The Government makes use of an e-government system, to support policy making and coordination. Basic features of this system are helpful for consultation with stakeholders, but the assessed lack of established policies, and the overall weak coordination between counterparts within Government also reduce the effectiveness of the system. The existing legislative planning and coordination mechanism would thus benefit from improvement. Most notably, the political process of implementing government policy often begins by drafting a law. This early choice of legislation as the primary means selected to resolve upcoming issues and challenges limits the possibility of debating, and choosing from different (including non-legislative) identifiable problem-solving alternatives. There is thus little if any space for weighing the various pros and cons of different options, and then choosing the most optimal and cost-effective approach. The ministries seem to lack the necessary policy-making methodology that would be required to draft laws of a requisite standard. Moreover, the frequency in which laws are amended suggests that legislative proposals may not always be properly thought through. The high number of draft laws prepared annually may be both the cause, and the result of insufficient prior conceptual thinking: working on concepts and alternatives is time-consuming and the current process does not seem to allow for it.

Further, existing mandatory verification checks conducted by the drafters of laws are focused on assessing the conformity with higher ranking legal norms but do not appear to extend to the operational features of the legislation. Such additional checks would involve, for instance, ensuring the inclusion of provisions needed to make the law operative and enforceable, or the use of expressions that would reduce the likelihood of diverse interpretations of the law, and ensuing disputes.

- **Stakeholder consultations.** The need for and main features of stakeholder consultation are underlined in legislation regulating the law-making process, but practice is generally of an ad-hoc nature, and coincides largely with the wide discretionary powers of the decision-makers in Government and the Parliament. Moreover, there is little to no consultation with stakeholders and the public at the pre-legislative stage. There is no regulatory framework in place that outlines the procedure for consulting stakeholders in detail. A comprehensive approach, including a proper methodology, guidelines or work-plans, has so far not been undertaken. Time constraints in the legislative procedure additionally affect the proper conduct of consultation, both by the Government and the Parliament. The distance between Kutaisi (the location of the Parliament) and the capital Tbilisi, where the Government and most of the civil society organizations are placed, appears to constitute an additional serious obstacle for stakeholder organizations to engage in advocacy with and at the Parliament. The absence of a respective electronic information system in the Parliament places further serious constraints on the conduct of credible consultation.
- **Regulatory impact assessment.** Government and Parliament stakeholders recognize that regulatory impact assessment is an imperative part of the formal legislative procedure; however, such assessments are not embedded in an institutional mechanism and not effectively implemented. A proper evidence-based approach to regulatory impact assessment that is supported by the use of researched data and proven strategies is lacking. Furthermore, the Government and the Parliament lack sufficient human resources to conduct regulatory impact assessment in an adequate manner. The current manner of conducting *ex-ante* evaluation of draft laws, as currently practiced by the government ministries, varies from the use of the standard cost model (SCM), to more or less comprehensive modes of regulatory impact assessment. Explanatory notes attached to draft legislation tend to remain quite basic, and often do not provide proper information on the reasons for preparing the draft Law, or on cost and other impact assessments undertaken. This is a widespread practice, both in the Government and in the Parliament that needs to be addressed.
- **Lack of guidance on legislative drafting, and of specially trained legal drafting staff.** There needs to be a greater concentration of the specialist skills

and resources required for legal drafting within the Government and individual ministries, and more guidance on such drafting, apart from the basic minimum standards provided for by the relevant laws. No written guidelines or manual for drafting legislation are currently in place, though certain efforts to develop such guidelines are reportedly underway. This can reduce the quality of individual pieces of legislation. The unavailability of a drafting manual further exacerbates the problem, which cannot be adequately addressed through legislative provisions alone. So far, little effort appears to have been invested in making legislation clear, unambiguous and its language accessible for the lay person.

Another pressing issue is the fact that inadequate resources are made available for the drafting process. Next to the lack of specialist drafting resources, there appear to be few professional development opportunities for the existing staff. The requirement of a university degree in law for a potential employee in positions dealing with legal drafting seems to be the only criterion that is clearly articulated (based on the interviews conducted with key counterparts), but there is no real education in actual legislative drafting. Staff receives no professional training in legal drafting techniques: the learning process for drafters is almost completely confined to “learning by doing”. The legislative work of both the Government (the Ministry of Justice in particular) and the Parliament suffers from a lack of human resources that would provide adequate technical support to the stakeholders in the legislative procedure. This appears to be a broadly shared concern. This lack of human resources, in combination with the assessed lack of guidance, knowledge and skills of drafting staff, has a significant influence on the quality of drafts and needs to be addressed urgently.

- **Legislative overload.** The legislative system seems to be overloaded with initiatives that are to be translated into a law. Such legislative overload appears to arise from the pressure to complete numerous legal reforms in the shortest possible time and carries with it the risk of lower quality legislation. This situation inevitably places enormous pressure on the combined law-making resources of the Government and the Parliament and leaves little time for essential elements of a well-ordered law-making process, such as regulatory impact assessments or proper consultation with civil society. When other normative legal acts (e.g. sub-legal acts) are added, the scale of the problem becomes even greater. Further, the Parliament does not have a comprehensive electronic system to support its functions adequately. This major flaw is experienced by all stakeholders of the Parliament, including Members of Parliament from all factions and the staff. Thus, the Members of Parliament, parliamentary staff and stakeholders do not always have access to updated electronic versions of documents. The current practice, whereby different

versions are distributed in hard copy, falls dramatically short of the informational needs of the actors involved in the legislative procedure.

- **Balanced Rules of Procedures.** The legislative procedure within the Government and the Parliament is regulated with strict deadlines for consideration, comments and review. The question for the right balance between efficiency and effectiveness of the legislative procedure surfaces in particular in cases where the accelerated procedure is applied for the adoption of draft laws. In order to provide a better quality of draft laws, the currently codified terms in the respective Rules of Procedure would need careful reconsideration.
- **Discussion of amendments submitted in Parliament.** Submitting an alternative draft law or a list of amendments once the draft Law is in Parliament seems to be problematic, as article-based amending processes and discussions in the Parliament are apparently not foreseen. This considerably restricts the legislative possibility of minority parties, but could potentially limit coalition partners who are part of the majority as well. In particular, the situation may be aggravated in case a draft law is not opposed as a whole, but only in part.
- **Presidential veto.** Under the current legal procedure, the President may decide to veto draft laws adopted by the Parliament, and make proposals for amendments. The Parliament then either adopts or rejects the President's proposals for amendment in their entirety. This procedure, which does not foresee discussions of the President's proposals for amendment (in part, or in their entirety) may account for the Parliament's tendency to overrule this veto in the past. Such reaction on the part of the Parliament may be avoided, if the President's proposals for amendment could be discussed and voted on during a second and a third reading. However, this would require a modification of the Rules of Procedure of Parliament.
- **Electronic legal database.** The Legislative Herald of Georgia called Matsne, run by the Ministry of Justice, is the repository of all normative legal acts issued in Georgia, and is also supported by an electronic online legal database. This electronic system enables the publishing of draft laws and consolidated laws, and is accessible to the public free of charge. Some acts are also available in other languages (English and Russian); however, the translation process is not properly regulated, no standardized legal terminology is available, and translations are not acknowledged as official ones. So far, the system reportedly does not coordinate data and information flow properly: though use of the Matsne website is free for users, the Internet is not accessible equally throughout Georgia, while charges are imposed for printing services (with some exceptions). Further, Matsne is currently not supported by a back-

office that would conduct an analysis and validation of the comments received from citizens. It appears that the staff of the Ministry of Justice, for instance, does look at these comments for inspiration, but this is a random practice. Besides, after having posted a draft law, the system does not appear to indicate once the draft law has been adopted. Another flaw is that reportedly, the adopted and the electronic versions of laws are not always identical. Matsne does not re-number the final version of the draft: this bears a substantial risk for error in cross references to other laws.

- **Problems of implementation.** There seem to be problems of implementation of laws. This might be attributable to defects or shortcomings in the laws themselves, which are to be expected given the pressure under which they appear to be prepared and enacted. There is a need for a system to evaluate the operation and effectiveness of existing laws on a constant basis.

11. 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 Georgian authorities, rather than handed down by the international community, and should be embarked upon only after a full process of consultation; only in this way can there be any confidence that the reforms will fit the specificities of the local legislative and political cultures.
12. The Assessment, based on its findings, recommends the following:
 - A. In relation to the law-making process within the Government, the inter-ministerial coordination mechanisms should be improved, by balancing the ministries' need for flexibility in their overall legislative planning, with the need to ensure coherence of legislative planning within the Government; this could be achieved by avoiding simultaneous initiatives by different parts of Government with similar aims and regarding similar issues. It may also be expedient to spell out such coordination mechanism in a written procedure, and designate one institution (the Prime-Minister's Office, for instance) that would be responsible for the coordination and monitoring of deadlines and implementation of the procedure;
 - B. The Georgian authorities may wish to develop a cross-governmental policy-making strategy, supported by facilitated strategic planning; such a strategy should be accompanied by relevant training for those involved in its implementation;
 - C. The Georgian Government may wish to consider introducing a systematic procedure by which ministries publish policy strategy papers for civil society consultation before policies are finalised within ministries;

- D. The Georgian Government is recommended to explore procedural means to delineate policy development within ministries more clearly starting from the stage of policy discussions, to the drafting of legislation to implement developed policy; it may wish to elaborate clearly articulated internal rules on communication and coordination in policy making at the inter-ministerial and ministerial level;
- E. Guidelines for evidence-based policy making, supported by the use of researched data and proven strategies, should be developed, in line with those guidelines that outline the conduct of regulatory impact assessments; more detailed instructions, based upon the guidelines, will serve the policy-maker in practical step-by-step actions.
- F. The Georgian Government should consider developing a drafting methodology, standardized drafting procedure, and clear, well-structured legal drafting guidelines, which should be mandatory for everyone involved in legal drafting; the Government and the Parliament are advised to closely cooperate in the development of such guidelines and ensure uniformity in their implementation, also by providing professional training on how to apply the guidelines;
- G. The Georgian Government and the Parliament should bring the Law of Georgia on Normative Legal Acts into line with the legal drafting methodology and standardized drafting procedure, once these have been established, to ensure uniformity and coherence of all normative legal acts;
- H. The Georgian Government and the Parliament should consider providing legal drafters with a comprehensive training programme to acquire relevant knowledge and skills, in order to enhance their professional performance. The scope of the training should not be limited to the technical aspects of drafting: it is essential to familiarize drafters with all stages of the legislative process and make them aware of certain aspects to be taken into account, such as specifics of gender mainstreaming, or human rights issues.
- I. The Georgian Government should consider establishing cross-governmental consensus on, and strongly commit to the development of a regulatory framework for consultation in policy and law making, to provide a genuine opportunity for stakeholders to engage in the legislative procedure in a meaningful way; the Government and the Parliament may also wish to agree on universal principles for consultation in the law making procedure, based on which clear and concise practical guidelines could be drafted and published, which would ensure access to consultation procedures for a wide range of stakeholder organizations;

- J. The Georgian Parliament should ensure that existing rules on the prior publication of agendas of committee meetings are properly implemented to ensure that adequate consultation in the Parliament can take place; the agendas and minutes of all committees of the Parliament should be published on the website at least two or three days in advance, in order to ensure that all those wishing to contribute have equal opportunities to do so, even if they are located outside Kutaisi;
- K. The Government and the Parliament may wish to examine their respective Rules of Procedure and include rules on posting updated versions of draft laws on their websites as they pass through the legislative process. This will allow all stakeholders to monitor the progress of draft laws in a timely manner. Consideration could also be given to using software which tracks changes in the text, showing both the original and the amended text;
- L. It is recommended that Government officials and parliamentary staff are properly trained to acquire a good understanding of the methodology to be applied while preparing regulatory impact assessments, so as to ensure its correct application in practice: capacity building is paramount, and a precondition for success;
- M. It is recommended to implement the legal framework for regulatory impact assessment in a uniform manner. Such practices as exist can be replaced with a comprehensive new methodology for such assessments and checks, in support of a uniform manner of assessing draft laws, within Government and Parliament; such methodology should be implemented in a step-by-step manner, and should lead to improved coordination in the law-making procedure, thereby creating more time and opportunity to properly conduct full regulatory impact assessments;
- N. The Georgian Government and the Parliament should consider ensuring that there is a greater balance between the efficiency of the legislative procedure and the effectiveness of laws and to review the existing deadlines in the respective Rules of Procedure for submitting reviews, comments or proposals for amending draft legislation; specific attention should be paid to the accelerated procedure whereby ‘urgent laws’ are discussed and adopted: the Government and the Parliament may consider reviewing their Rules of Procedure to provide for clearer criteria for defining when draft laws are considered “urgent”, and to require a justification when the accelerated procedure is applied;
- O. The Georgian authorities may wish to consider introducing the possibility for article-by-article discussion, amendments and voting in parliamentary sessions, which would then also allow for proposals to amend specific articles and/or larger, structural parts of the draft law; a detailed process for this new

amendment procedure needs to be agreed on within the Parliament and its Rules of Procedure should be changed accordingly;

- P. The Parliament may wish to consider introducing procedures that would allow its committees to take written and oral evidence on draft laws, and if possible on significant amendments to draft laws, to facilitate more structured civil society consultation;
- Q. It is recommended to reconsider the procedure related to the presidential veto: the decision to veto a draft law should either contain only motivated arguments concerning the draft law as a whole or, in cases where the veto is accompanied by an amending draft proposal, the latter should be placed on the parliamentary agenda and subsequently discussed;
- R. The Georgian Government should consider modifying its e-Government system and add features to address the current shortcomings, such as weak coordination, and the practice of diverging from the established legislative plans and initiating draft laws independently from them, in line with the prescribed procedures; furthermore, the system should be consistent with the future inter-ministerial coordination mechanism;
- S. The Georgian Government should consider introducing further improvements to Matsne, the system used to publish enacted legislation and draft laws, in terms of coordinating simultaneous data and information flows, filling possible gaps between adopted and electronic versions of legal acts, and providing for correct cross-references. Ideally, all by-laws should also be collected in the online database. Free access to the system for all is crucial, and needs to be addressed accordingly.
- T. It is recommended to provide Matsne with a back-office that would analyse and validate the comments posted on published draft laws and enacted legislation, and ensure the involvement of capable editing staff. The Georgian Government should also encourage all ministries and other governmental institutions to upload draft laws on the Matsne website for public consultation. The Georgian Government may further wish to consider establishing standards and a procedure for translating source documents into other languages, as required, which may then be considered “official” translations.
- U. The Parliament may consider developing a comprehensive electronic information system, with a searchable database and document revision options; this electronic system should cater to all stakeholders of the legislative procedure, including parliamentary factions, committees, Members of Parliament, the Bureau of Parliament, parliamentary staff, as well as the Government, civil society organizations, and the wider public;

- V. It is recommended that all stakeholders involved in the legislative procedure be extensively consulted throughout the process of developing terms of reference for the above-mentioned electronic system.

THEMATIC ANALYSIS

INTRODUCTION

13. This Assessment outlines a condensed version of the legislative process in Georgia, 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.
14. The Assessment is based on written law as well as on information collected during interviews with key stakeholders. It further explores certain discrepancies between the law and its implementation, in relation to how they affect the many positive aspects of the legislative process in Georgia.
15. This Assessment aims at providing an illustration of the legislative framework and practice in the process of law-making in Georgia, so as to promote greater legislative efficiency to ensure good quality and enforceable legislation in all fields. It tries to achieve this by making recommendations on how to improve the overall effectiveness and transparency of the legislative procedure.

PLANNING AND COORDINATION

16. At the level of the executive branch, there is a legislative planning and coordination mechanism in place within the Office of the Parliamentary Secretary of Georgia, which in itself is an encouraging fact. However, this mechanism could be further developed and improved, as outlined further in the following paragraphs.
17. The inter-ministerial discipline for coordination in law-making, that would oblige the members of Cabinet to keep in line with the overall legislative plan of the Government, appears to be quite weak. Furthermore, individual ministers have the ability to pursue legislative initiatives to adjust to upcoming social and economic developments in an appropriate and timely manner.
18. Admittedly, some flexibility allowing individual ministries to diverge from the overall legislative plan may serve the public interest. On the other hand, this room to manoeuvre may result in the proliferation of legislative initiatives that could interfere with the implementation of the overall legislative plan. Additionally, such a large amount of legislation may result in a greater application of accelerated procedures, especially if in some cases a draft law needs to be adopted by a certain deadline. This may overburden the Parliament and lead to gaps in the legislative procedure by, for

instance, leaving out key stages of the legislative process, e.g. consultation with stakeholders, or regulatory impact assessments.

19. In this light, it is recommended that the overall process of intergovernmental law-making be strengthened. The inter-ministerial coordination mechanism needs to be improved, by balancing the need of individual ministries to deviate from the overall legislative planning, with the need for coherence of the Government's planning. Simultaneous initiatives of different ministries with similar aims and regarding similar dossiers should be avoided, or could be replaced with joint legislative proposals of multiple ministries in relation to different provisions of a given law.
20. The Georgian Government may also wish to modify its e-government system and add features to address the current shortcomings, such as weak inter-ministerial coordination, and the extensive freedom for ministries to diverge from the legislative plans and to independently initiate draft laws.

POLICY MAKING

21. Though some efforts for improvement have been noted, the policy making process within Government requires further development. Not much time appears to be dedicated to discussing different policy solutions to tackle a given issue. Further, it seems that policy objectives are frequently dictated by the current political agenda or pressing international obligations, and not always on a proper needs assessment and problem analysis.
22. As in many other countries, one prominent feature of the preparation of legislation in Georgia is the lack of a clear distinction between the process of discussing and elaborating the policy which legislation should implement and the process of converting that policy into law. This has a number of possible consequences. One is that insufficient emphasis may be placed on getting the policy right, before the drafting of laws begins. Another is a tendency to treat legislation as the principal or only means of achieving policy goals. This may derive from the way in which policy goals are set. If these goals can only be achieved via a legislative solution, then this determines the manner in which the problem is resolved, already at the beginning of the process.
23. The Law on Normative Acts stipulates that a draft normative act must be accompanied by an explanatory note, which is a document that explains the purpose and background of the act. This seems to be the only explicit recognition of the need for a clearly stated policy goal, as a prerequisite for initiating a law. However, the Law on Normative Acts does not mention additional requirements for the explanatory note including, for example, an explanation as to why legislation should be preferred to other means of achieving policy goals. Without such requirements, the preparation of explanatory notes risks being treated as an essentially formal exercise.

24. Draft laws are in practice prepared either by the relevant government ministry or by an expert working group established for this purpose, usually on the basis of a concept paper that sketches out in general terms what the law should achieve. However, frequently such concept papers focus only on one available option and do not discuss possible alternative ways of tackling upcoming issues. It is difficult to say whether the solutions found are, in most cases, based on a proper decision-making process, which would, next to identifying the problem, also involve identifying criteria for achieving results, considering all possible solutions, and their consequences versus the criteria of achievement and on this basis, choosing the best option. Moreover, the existing analytical units in the ministries are able to analyze international obligations, but may at times lack the ability to develop policies to implement these obligations. In the majority of cases, policy decisions are made at the ministerial level, but may not always be properly communicated within the ministerial apparatus.
25. Further, as a rule, draft concept papers are not widely discussed with other stakeholders or the public prior to becoming a guiding document for the drafting team. This approach, while saving time, again *a priori* prevents any other possible solutions from being considered except for the one already identified. A more open and transparent manner of policy making would avoid this, and would also demonstrate that the Government recognises the value of public opinion in helping to identify problems and develop solutions. As it is, public opinion is seldom requested when deciding on a policy option, which may derive from the fact that policy-making is not treated as a distinct exercise, but may also be due to a lack of awareness of the benefits of involving key stakeholders, including the public, early on in the law-making process.
26. In this context, it should be noted that the governmental action plans and legislative plans, which undoubtedly serve their purpose, are not adequate substitutes for policy making. International obligations and national policy needs appear to be the main drivers for an imperative policy making effort, but also do not substitute policy making as such. In combination with the weak coordination between ministries, this lack of proper policy making at the beginning of the law-making process may be one of the reasons for the huge amount of legal amendments that are introduced on a regular basis, which overburden the Parliament (especially its Legislative Committee) and the individual Members of Parliament (for more information on this, see par 58 under the section on Quality of Legislative Drafting).
27. Further, the analytical units of different ministries that may be called upon to coordinate their efforts to pursue policy implementation do not follow formalised procedures, and as a result, do not pursue a uniform approach. This may prove to be particularly challenging during the upcoming approximation process of a number of EU directives at the national level, as required by the ratified Association Agreement on 18 July 2014.

28. In this light, a policy making strategy needs to be developed, and strategic planning needs to be facilitated. Internal rules on communication and coordination at the inter-ministerial and ministerial levels must be elaborated and guidelines for evidence-based policy-making need to be developed, which are in line with those for the conduct of regulatory impact assessments. More detailed instructions, based upon these guidelines, will help guide the policy maker through the policy making process in a practical step-by-step manner. The adoption of such instructions should be further supported by practical training sessions on their application, delivered to the respective staff on a regular basis.

CONSULTATIONS

29. A proper and timely consultation process promotes both transparency and accountability of the law-making process, improves awareness and understanding of the policies pursued among relevant stakeholders and the public, and encourages public ownership of these policies, thereby increasing public commitment to them. The ODIHR Assessment Team observed a general commitment on the side of Parliament and Government to involve stakeholder organizations in the legislative procedure. At the very beginning of the drafting process, civil society representatives, experts and lobbyists may have access to drafts prepared by the ministries and the Parliament. However, a number of obstacles stand between the commitment to conduct stakeholder consultation and a smooth practice.
30. As regards such practice, it is fair to say that consultation is currently generally of an *ad hoc* nature, and coincides largely with the discretionary powers of the decision makers in Government and Parliament. There is no unified regulatory framework in place for the consultation of stakeholders⁵. For this reason, there is also no comprehensive approach to consultations, which would require a proper methodology, guidelines or work-plans.
31. This all amounts to a rather diverse consultation practices within different parts of the Government and Parliament. Potential stakeholders and experts are chosen from a list of experts and civil society organizations operating in Georgia, based on who is considered relevant for the topic or the issue. This practice was at least identified within the Ministry of Justice.⁶ It is not confirmed whether this is a cross-governmental practice, or whether the same applies in the Parliament. At times, a lack of clearly articulated criteria was observed for selecting civil society organisations to be part of the process or in relation to modalities for interaction between, for instance, civil society and a parliamentary committee.

⁵ Consultation and coordination is done through various inter-agency coordination councils and commissions, such as Criminal Justice Reform Council, Gender Equality Council, Inter-agency Councils on persons with disabilities, domestic violence, trafficking in persons and etc.

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32. In the presidential administration, there is a special unit tasked to communicate with stakeholder organizations. However, there is no established procedure outlining consultation with such organizations, leaving open how this should be organized and who should be invited to consultation events. It is also not clear how, and to what extent the presidential administration will take stakeholders' viewpoints into consideration, when, for instance, formulating comments on draft laws. This could be relevant when the President is considering imposing a political veto on a draft law. It would help if here, rules on consultation with stakeholders would be introduced that are compatible with the new constitutional role of the President (no legislative power, but the possibility to issue a veto).
33. One benefit of conducting public consultation at the stage when a draft law has already been elaborated, is that it is often only at this stage that citizens and affected groups can begin to properly understand what is being proposed. At the same time, there may be some merit in having public consultation conducted at an earlier stage, when the Government's proposals have formed sufficiently to make consultation meaningful, but the policy has yet to be fully worked out and translated into a draft law. The Georgian authorities may therefore wish to consider extending the practice of public discussion, in appropriate cases, to include consultation on main policy issues already articulated in a concept paper, before the preparation of the actual draft law begins. Further, a draft law, in the process of its development, may undergo significant changes. In such cases, it may thus prove useful and important to conduct consultations on a finalised version of the draft law at a later stage as well.
34. The lack of time provided by law to individual stages of the legislative process is a critical issue for consultations. Other stakeholders are often unable to form a proper opinion on a draft law due to a lack of transparency and timeliness of agenda-setting and information practices within Parliament. Moreover, the distance between Tbilisi (where the Government sits and where the most prominent civil society organizations, professional associations and think-tanks are concentrated) and Kutaisi (where the Parliament is located) often prevents stakeholders from attending committee hearings, in particular when they are only informed about them on short notice.
35. In cases where constitutional amendments are submitted to the Parliament, consultation needs to be organized by law. It would be advisable to ensure that civil society organisations participate in the working groups elaborating the amendments (another form of consultation), following an open and transparent selection procedure. In cases involving other legal reform activities, there is no such obligation for the Government or the Parliament to consult. While Members of Parliament have stressed that no stakeholders are excluded from the law-making process, committee members do not play an active role in inviting stakeholders to committee meetings. Such invitations are apparently only issued by the Committee Chair.

36. Advisory councils established under certain parliamentary committees also generally do not reach out pro-actively to the public. In case an advisory council is established, features such as its functioning or membership do not seem to be fully transparent: for instance, this information is not published on the parliamentary website. Further, the Parliament does not have a sophisticated electronic system that could track and immediately reflect all changes introduced to draft laws. This poses a serious obstacle for the stakeholders and the wider public that seek an involvement in the law-making process, or simply would like to monitor developments. A timely publication of both general and detailed information about new draft laws in such a system is likely to foster greater opportunities for consultation with the public, lobbying groups, political organisations and parties, as well as civil society generally.
37. In this context, a feedback mechanism is also important: if the results of consultations are not acknowledged, the risk of “consultation fatigue” is quite high. At present, there is no institutionalised feedback mechanism for stakeholders involved in the policymaking and law drafting process, both in the Government and the Parliament. One of the reasons for this may again be the absence of a proper electronic system, but also insufficient documentation of the consultation meetings. It would therefore be advisable to keep public records on whether proposed amendments were taken into consideration and the reasons for accepting some amendments, and rejecting others. Similar considerations apply in cases where individual citizens submit comments on a draft law through the online legal database Legislative Herald of Georgia Matsne, or directly to a parliamentary committee.
38. As only hard copies of draft laws are made available, stakeholders as well as Members of Parliament may not always possess the latest version of the draft law that is the topic of committee hearings, even one day prior to the hearing. Also, the minutes of committee hearings are not public, and are only provided upon request. This practice renders it very difficult to effectively monitor events in the committees and hampers effective follow-up action. Further, interlocutors from civil society pointed to the lack of opportunity to properly follow and comment on legislative initiatives proposed by Members of Parliament before they are discussed in the parliamentary committees.
39. Though the public is free to attend committee meetings, it is often hindered by the afore-mentioned distance between Kutaisi and Tbilisi, or other regions, and the fact that agendas of these meetings are often not published well in advance. Many Members of Parliament also experience the distance between Kutaisi and Tbilisi as a twofold handicap. On the one hand, it hinders the Parliament in its law-making activities, and on the other, it inhibits the exercise of the Parliament’s oversight functions, by which the latter can ensure a balance of power and assert its role as a representative of people’s interests. Since the majority of Members of Parliament also resides in Tbilisi, and travels to Kutaisi only for sessions and meetings, the legislative agendas are quite tight, which means that there is less time available for Members of Parliament to deliberate draft laws in committee meetings and in plenary sittings.

Moreover, though draft laws are submitted in electronic format, minutes of the committee sittings indicating the committee's decisions on debated draft law need to be submitted in hard copy, complete with relevant signatures, which can only be effected if the signatory is physically present. This could lead to delays, since signatures may need to wait until the signatory is next in Kutaisi.

40. The distance between Kutaisi and Tbilisi also poses a substantial challenge for Members of Parliament to engage in fruitful contact with stakeholder organizations. The latter, in turn, feel that they cannot make their voices sufficiently heard, due to the distance to Kutaisi and tight agenda setting⁷.
41. The location of the Parliament in the city of Kutaisi is laid down in Article 48 of the Constitution. A temporary relocation, with the purpose of arranging a plenary meeting or session elsewhere, is possible, but only in cases of state emergency or wartime. The Constitution thus clearly limits the freedom of the Parliament to physically and permanently relocate outside Kutaisi. By majority consensus and special procedure, the Constitution could be amended to change the critical constitutional provision. At the same time, such constitutional changes could only be brought about if there is a clear political will on the side of all relevant stakeholders to do so, and could take time. Another –easier and faster – option to improve the situation would be to amend the Rules of Procedure of the Parliament to state that agendas of sessions and committee meetings should be available at least two or three days in advance, in order to allow also those stakeholders, especially from civil society, who are not located in Kutaisi to contribute to deliberations on draft laws.
42. Moreover, it is advised to investigate to what extent electronic tools could be a substitute for relocation, or could at least enhance contacts and exchanges between the Parliament, the Government and stakeholder organizations. Two examples serve as an illustration: video conferencing could be a powerful feature to allow for consultation with stakeholder organizations not located in Kutaisi, and the introduction of an electronic signature could substitute the physical signature of draft laws, and with it the obligatory physical presence of the signatory.
43. To address the above-mentioned challenges in relation to consultation procedures, it is recommended to establish consensus and a common commitment within the Cabinet to developing a cross-governmental regulatory framework for consultation in policy and law making. The regulatory framework for consultation has to be based on international acknowledged methodology and practices, while at the same time taking into consideration Georgian administrative and cultural specifics. Such regulatory framework will provide a genuine opportunity for stakeholders to engage in the

⁷ See Transparency International assessment of the performance of the Georgian Parliament in the first year issued in April 2014: the general opinion is that the Parliament should reside in Tbilisi. As for the wider public, a survey indicates that 66% of the interviewees share the opinion that the Parliament should be located in Tbilisi, while 20% think it should remain in Kutaisi. A remaining 13% does not have a preference, or abstained from commenting. The report can be accessed at <http://transparency.ge/en/node/4147>.

legislative procedure. Access to such procedure, coordination within different parts of the Government, staff capacity, monitoring of the evolutions of the draft laws at different stages of the legislative process and (electronic) feedback mechanisms would need to be ensured in this context.

44. A step-by-step approach to designing a procedure for credible consultation would be expedient under these circumstances. This would provide space for flexibility, and allow for the most appropriate and effective format of consultation (for instance, roundtables, focus groups, online forum, etc) in each respective circumstances. Such procedure will connect all stages of the consultation process into a coherent sequence of events. On the basis of the regulatory framework, the Georgian Government may wish to consider drafting and publishing online clear and concise practical guidelines to ensure easy access to consultation procedures by stakeholder organizations and provide space for meaningful contributions to the process of preparing draft proposals and to the quality of the supporting analyses. This could include, for example, regulatory impact assessments. Access in this case should not be limited only to those groups that, due to various reasons, are favoured or selected by the drafters. The current practice and experience of establishing advisory and inter-agency councils could be applied accordingly. Such in-house process can also be institutionalised within ministries and the Parliament, thereby making it mandatory.
45. The regulatory framework for consultation should be implemented uniformly, so that (with the exception perhaps of national security matters) proper consultation is ensured. Existing procedures of consultation have to be amended in a comprehensive manner. Ideally, all existing procedures should be substituted with the newly developed methodology, to ensure uniform consultation procedures. Such procedures should also envisage, *inter alia*, the availability of minutes of consultation meetings and of the results of consultations to the public, also online.
46. The Parliament may also wish to develop a regulatory framework for consultation, preferably based on the same principles as the cross-governmental regulatory framework. Also here, access to the procedure, coordination within different parts and committees of the Parliament, staff capacity, monitoring and electronic feedback mechanisms are among the most relevant aspects. The consultation procedure could be embedded in the Rules of Procedure of Parliament.
47. In support of the consultation procedure in the Parliament, rules on the timely publication of agendas of committee meetings need to be properly implemented. Additionally, it is advised that the agendas and minutes of all parliamentary committees are published on the website; printed copies, if necessary, should be obtainable free of charge as well.

PARLIAMENTARY INITIATIVE

48. In case of a parliamentary legal initiative, the initiator of the draft law is usually an individual Member of Parliament or a faction. Since initiators of draft laws may not always have the necessary knowledge and skills, or access to human resources, e.g. the Bureau of the Parliament, who would be able to conduct financial and fiscal analyses, there is an enhanced risk that draft laws may end up being of sub-standard quality. In particular, a proper inventory of budgetary consequences of such draft laws is usually not provided, nor do they undergo a sound regulatory impact assessment. In the absence of such assessments, draft laws will not always adequately meet the aims and goals of the initiator, and will fall short of the expectations of stakeholders. This will provoke yet more legislative interventions, leading to legislative hyper-activity.
49. The Government is obliged to submit its opinion on draft laws proposed by the Parliament within a period of ten days. This timeframe is, by all standards, too short to develop a proper opinion, consult stakeholders and conduct a regulatory impact assessment. For this reason, it would be expedient to extend the timeframe for submitting and commenting on parliamentary initiatives, to enable the elaboration of quality draft laws that would meet minimum quality standards of form and content.⁸

ACCELERATED PROCEDURE

50. Many of the persons interviewed when preparing the Assessment shared the opinion that the accelerated procedure for debating ‘urgent’ laws is being applied too often, or at times even misused. Statistics assessed in the period between 2012 and April 2014 showed that in this period, 32% of the draft laws initiated by Government and Parliament were processed through the accelerated procedure (4,2% were adopted through the simplified procedure). The relatively frequent use of this procedure places significant pressure on parliamentary actors in the legislative procedure, and has a substantial impact on the quality of draft proposals.
51. It is positive that the accelerated procedure is not permitted in relation to all draft laws; notably, it is only allowed if a draft law does not involve changes to the Constitution or a constitutional law, and does not constitute a completely new draft law (meaning that it proposes amendments to existing laws) (see, for instance, Article 163 of the Parliamentary Rules of Procedure). At the same time, the Parliamentary Rules of Procedure do not specify any additional material criteria for applying the

⁸ 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).

accelerated procedure. In practice, this procedure has at times apparently also been applied to quite complex laws. The request to pass a draft law via the accelerated procedure, as well as the degree of urgency involved, is assessed by the Bureau of the Parliament, based on the arguments of the initiator of the draft law or of the leading committee. Interlocutors from Parliament also pointed out that most of the draft laws that were considered through the accelerated procedure had been included in the annual legislative agenda for adoption at the beginning of the year. According to them, the adoption process is frequently sped up, not because of the urgency of a legislative project, but simply to fulfil the legislative agenda for a given year. Initiating and conducting the accelerated procedure does not appear to require a lot of effort and justification, which could be a reason for its frequent occurrence.

52. The time frame for the accelerated procedure is one week, which places significant pressure on all parties involved: the Government, parliamentary committees, stakeholders, individual Members of Parliament and the parliamentary staff. Given the short amount of time available, it would appear near to impossible for the Government to submit its findings in the course of this procedure, in case the procedure is initiated by the Parliament: the Government expert staff will have little to no opportunity to formulate well prepared opinions or conclusions in only one week. Proper consultation with stakeholder organizations would appear similarly unlikely in such cases. Consequently, the opinion of the Government (and other stakeholders) on a draft law may in a number of instances be submitted during, or even after the discussions have taken place in the parliamentary committees or at the plenary sittings and will then evidently be of limited effect.
53. At the same time, civil society stakeholder organizations seem to have little or no opportunity to advocate their viewpoints to Members of Parliament in the course of the accelerated procedure because it will be virtually impossible for them to keep track of the developments. Further, Members of Parliament themselves have little time to follow the course of events and discussions online related to draft laws, both in the parliamentary committees and in the plenary. During plenary session, the accelerated procedure only provides limited time for an individual Member of Parliament to speak; he/she may only make one intervention, of short duration.
54. An important underlying matter in this respect, affecting all parties involved in the accelerated procedure, is the lack of timely information on the development of the draft law. Subsequent versions of the draft law, following elaboration and amendments in the respective committees and during the plenary sittings in the course of the accelerated procedure, are apparently not updated correctly, nor are they made available in a timely manner on the parliamentary website or through the parliamentary staff. Members of Parliament, parliamentary staff and stakeholders also do not have access to electronic version of the documents. Apparently, printed versions of revised draft laws are made available throughout the procedure, but without giving accurate information on their status. Moreover, the Bureau of the

Parliament does not (and may also not always be able to) physically provide all stakeholders of the accelerated procedure with these printed versions on a rolling basis. Consequently, at the parliamentary committee meetings, and possibly also during the plenary sittings, not all Members of Parliament have the updated documents, or even the correct versions, at their disposal in a timely fashion. This situation could be much improved by installing an appropriate electronic information system.

TRACKING DOWN THE INFORMATION FLOW

55. As already noted in the previous sections, the absence of a comprehensive electronic information system within the Parliament makes it difficult to track amendments to draft laws, access their content and update existing laws automatically after adoption of draft amendments made to them. This renders the entire process quite burdensome for all stakeholders of the legislative procedure, inside and outside the Parliament. The lack of an adequate, comprehensive electronic information system, with a searchable database and document revision options, that would provide ongoing updates, is particularly acute in the accelerated procedure. One way to improve this situation could be using an electronic system that compares two documents and displays only what changed between them in a third separate document (similar to Microsoft Word's legal blackline option), without introducing any changes to the documents compared. Another option to consider would be installing an online system that would combine revisions from multiple authors into a single document.
56. Full supporting documentation of a draft law (e.g. the explanatory note, or results of public consultations or impact assessments, if applicable) is also not always available on the website of the Parliament. Moreover, information on internal rules of the committees, advisory councils to the committees, composition of these councils, minutes of committee meetings, opinions on draft laws, etc. are lacking as well. It would be advisable to devise a procedure whereby the contents of the website are enhanced, and updated regularly.

QUALITY OF LEGISLATIVE DRAFTING

57. Aside from the already-mentioned absence of effective policy making, there seems to be a lack of specialist drafting resources within Government and Parliament, and little to no professional development opportunities for drafters. The situation within the Government appears to be somewhat better than in Parliament, especially in the Ministry of Justice, where staff has access to in-house training and sometimes to external training as well. Parliamentary staff do not seem to enjoy such opportunities. At the same time, *ad hoc* training courses can only have a very limited impact if they are not part of a home-grown and comprehensive policy on legal educational covering, amongst others, law drafting techniques.

58. Usually, a flawed policy-making process will produce draft laws that are not well developed. During the country visit conducted by the Assessment Team in 2014, it was noted that a total number of 638 draft laws was passed during the period of 2012 – April 2014 (2.5 years). This is believed to be quite substantial: in this timeframe, more than 97% of the legal initiatives that ended up being adopted concerned proposals of amendments to existing laws, and a modest 3% concerned new laws. Unless this practice has changed drastically for the remainder of 2014, this shows that the vast majority of laws passed are amendments to already existing laws. Frequent and recurring amendments to legislation are often an indicator for weaknesses in the texts and formulation of the legislation.
59. In Georgia, there are apparently no concrete or uniform guidelines for drafting legislation. The learning process for drafters is predominantly based on practice and is almost completely confined to “learning by doing”. Reportedly, training efforts are few, and only conducted on an ad hoc basis; many are allegedly supported or co-organized by international organizations or agencies. It appears that within the drafting units of the ministries, there is a practice of cooperating with team colleagues, but this is not an organized process, nor is such cooperation legally required. Drafters may also cooperate in inter-ministerial teams or various working groups, but this is also not mandatory. The drafting of laws does not require special qualifications, which most probably stems from the lack of drafting guidelines and of training.
60. Occasionally, stakeholders from civil society organizations are also involved in the drafting process, but the degree of their involvement is not transparent, and is also not defined by law. In addition, it is unclear if, and how quality checks of draft laws take place. Overall, it is noteworthy that the existing mandatory checks are focused on assessing the conformity with higher ranking norms. However, they do not extend to the operational features of the legislation (such as checking the inclusion of provisions needed to make the scheme operative and enforceable, or choice of terminology that would reduce the likelihood of disputes) or other aspects of legal compliance.
61. Due to the lack of comprehensive training, and of sufficient number of qualified staff, both the Government (the Ministry of Justice in particular) and the Parliament suffer from a lack of human resources to deliver adequate technical support to initiators of laws and legal drafters. This appears to be a broadly shared concern. The lack of human resources, in combination with the assessed lack of guidance, knowledge and skills of drafting staff, impacts significantly on the quality of draft laws and should be addressed as a matter of priority.
62. In the Parliament in particular, the parliamentary minority allegedly does not benefit from the support of parliamentary units in the same way as the majority factions do. As a result, minority factions complain that their own staff is burdened with extra tasks, but may not always possess the appropriate knowledge and skills. Apart from that, the Legal Department within the Parliament, which conducts preliminary checks

of the quality of draft laws, does not have the resources and staff to provide additional support in technical drafting matters. The lack of sufficient resources is a concern shared by many committees, factions and Members of Parliament.

63. To improve the overall quality of drafting legislation, the Georgian Government is strongly recommended to develop a drafting methodology, standardized drafting procedure, and clear, well-structured guidelines on how to implement such methodology and procedure. At the time of the country visit (April 2014) the Ministry of Justice had reportedly started elaborating legal drafting guidelines, aimed primarily at legal drafters working for this Ministry. It would be advisable to make the elaboration of such guidelines mandatory for the whole Government, also in close cooperation with the Parliament in order to ensure uniformity in the implementation of the guidelines. The Law of Georgia on Normative Acts should also be brought into line with any newly developed drafting methodology and standardized drafting procedure.
64. It is also recommended to train all potential legal drafters so that they acquire relevant knowledge and skills, in order to perform better professionally. The scope of the training should not be limited to the technical aspects of drafting: it is essential to familiarise drafters with all stages of the legislative cycle, but also to make them aware of gender mainstreaming specifics, human rights issues, and other relevant areas. Legal drafters should be provided 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.

CONSIDERATION OF DRAFT LAWS IN THE PARLIAMENT

65. In the period of 2012 – April 2014, the total number of laws passed by Parliament lay at 33 (in 2012), 467 (in 2013) and 138 (in January – April 2014). The volume of legal amendments (to already existing laws) passed by the Parliament lay at respectively 30 (in 2012), 455 (in 2013) and 131 (in the first quarter of 2014), while the number of completely new laws adopted was 3 (in 2012), 12 (in 2013) and 7 (in the first quarter of 2014). Unless this has changed drastically for the remainder of 2014, the numbers show that the Parliament in most cases mostly corrects the shortcomings of already enacted legislation; frequently, this process is initiated by the Government, though it is not clear whether this is a result of regular ex-post evaluation of the legislation conducted by the executive branch.
66. As to the initiating activity of the parliamentary factions, the figures indicate that the majority factions are overwhelmingly more active than the minority factions. Corresponding figures for the period of 2012 – April 2014 are 71 (in 2012), 331 (in 2013), and 28 (in the first quarter of 2014) draft laws initiated by the majority factions,

versus 0 (in 2012), 15 (in 2013), and 1(in the first quarter of 2014) draft laws initiated by the minority factions. It should be noted that seven legal initiatives conducted in the period 2012-April 2014 were the result of joint majority/minority activities.

67. It is perhaps a usual practice that majority factions initiate more draft laws in Parliament than those of the minority. However, an impressive 99.5% share would indicate that minority factions only play a marginal role in the parliamentary law making process. This may be due to the fact that, as alleged by the minority factions, next to delivering services to the Parliament and its members as a whole, the parliamentary organs, units and staff work mainly for the parliamentarians belonging to the majority factions. Nevertheless, seven joint initiatives of majority and minority factions have been recorded in the period 2012-April 2014.
68. It has been observed that the legislative procedure contains strict timelines for consideration, comments and review of draft laws. Though admittedly, strict terms will support the efficiency of the procedure, it is questionable whether they will equally contribute to the quality of drafts, and ultimately, of laws that have acquired legal effect, in a way that allows these laws / draft laws to adequately meet the existing demands. The question for the right balance between efficiency in the law-making process, and effectiveness of laws becomes relevant in particular in cases where the accelerated procedure is applied.
69. Within the period of 2012-April 2014, the accelerated procedure was applied in 32% of the cases where draft laws were initiated by the Government and the Parliament. The relatively frequent use of the accelerated procedure has revealed itself to be detrimental for the quality of draft laws, as can be seen by the large number of amended laws every year.
70. On the other hand, adopting constitutional amendments seems to follow a procedure that may at times be challenging. According to Article 102 par 3 of the Constitution, a revision of the Constitution is deemed adopted, if it is supported by no less than three fourths of the total composition of the Parliament of Georgia on two subsequent sessions held with an interval of at least three months. This procedure, which is of a most fundamental and sensitive legislative nature, is quite rigid. This raises questions as to the extent to which Article 102 par 3 assumes the right balance between ensuring sufficient consensus among Members of Parliament and practical governability: any imbalance in these areas may easily spark constitutional debates. On the other hand, the previous practices of frequently amending the Constitution may also explain a certain reluctance to make this process too easy and flexible.
71. In cases where other draft laws are considered in Parliament, it appears to be difficult for stakeholders to submit an alternative draft law or a list of amendments, as article-by-article discussions and voting are apparently not foreseen by law. In the committee meetings, article-by-article-based discussions take place, but proposals for amendments to individual articles or sections of a draft law are not possible. Instead, it

is only possible to submit an alternative draft law. An alternative proposed draft law should differ essentially from the main draft law (see the Rules of Procedure of the Parliament, Article 154 par 2).

72. In order to address these challenges, the Georgian Parliament may wish to consider introducing article-by-article amending processes, discussions and voting, also during plenary sessions. At present, discussions by articles or chapters are possible only if this procedure is suggested by the Speaker upon the proposal of a leading committee's chairperson and supported by the majority of Members of Parliament. Prior to the first committee meeting, it should be possible to submit proposed amendments to articles and bigger structural parts of a draft law. Each amendment would then be discussed and voted on separately in the committee meeting. In committee meetings, further additional amendments could also be submitted as a result of discussions, but only to those parts of the draft law which have already been the subject of amendments. The committee will then decide on the amendments and have its staff prepare a new consolidated version of the draft law for the plenary discussion. More detailed rules for such procedures will need to be discussed within the Parliament.
73. Legal drafters working in the Parliament should undergo appropriate training to acquire knowledge and skills, similar to the type of training offered to ministries' staff members, in order to perform better professionally. The scope of the training should not be limited to just the technical aspects of drafting and should include, for instance, legal terminology, the composition and structure of concept papers, draft laws and explanatory notes, special legal requirements and regulatory impact assessment methods. In light of the Association Agreement that Georgia signed with the EU in June 2014, the burden on parliamentary staff working on international agreements will increase significantly, since the agreement envisages the approximation of a number of EU directives at the national level. The approximation process will thus also require additional training for the affected civil servants.

REGULATORY IMPACT ASSESSMENT

74. Regulatory impact assessment is an important tool to ensure good quality legislation throughout the entire cycle of policy making, beginning from the problem analysis and outline of the assumed outcomes of a legal act and of non-legislative solutions, to determine the most viable solution (*ex-ante* evaluation), and ending with the evaluation and monitoring of enacted legislation (*ex post* evaluation). It aims at assisting policy makers in adopting efficient and effective regulatory options (including the "no regulation" option), using evidence-based techniques to justify the best option. For this reason, it may be more efficient and cost-effective to conduct impact assessment at the earlier, policy-making stage: if the wrong policy is opted for at the outset, then ensuing regulatory measures may in the end prove to be ineffective. Where relevant, the costs of regulation should not exceed its benefits, and alternative options should also be examined: regulatory impact assessments help authorities

ensure that administrative burdens stemming from newly adopted regulations will not outweigh the existing burden.

75. In Georgia, all actors in the legislative procedure acknowledge the relevance of conducting proper regulatory impact assessments. However, this common awareness does not appear to have led to a proper and consistent practice of conducting such assessments. An overall, general observation is that, though the regulatory impact assessment is an imperative part of the formal law-making procedure, it is not embedded in an institutional mechanism and not effectively implemented. Basically, the legislative planning process in Georgia lacks an evidence-based approach that is supported by the use of researched data and proven strategies. Apart from suffering from a lack of proper methodology, staff of the Government and the Parliament lacks the knowledge and skills to conduct regulatory impact assessment properly.
76. The manner of conducting *ex-ante* evaluation of the potential effects of draft laws, as practiced by the ministries, varies on a scale from “rudimentary” to more “comprehensive”; and may involve the use of the standard cost model (SCM), or other, more or less comprehensive modes of regulatory impact assessment. In the Ministry of Finance, complaints, judgments and administrative decisions received are reportedly taken into account while drafting legislation; however, this practice is not based on a specific procedure and can hardly be qualified as a mode of regulatory impact assessment.
77. The results of impact assessments should be reflected in explanatory notes, which are documents that are attached to draft laws and explain their purpose and background; impact assessments serve to explain why a draft law was selected to respond to a specific upcoming problem or challenge. It is imperative to attach an explanatory note to each draft law, as otherwise Members of Parliament and other relevant actors in the legislative process will not have sufficient information on the background to drafting a particular law, and what benefits and changes it will bring.
78. In this context, it is noted that in Georgia, models or procedures for the preparation of explanatory notes are either not available or, even where ministries have passed standing orders with detailed instructions for submitting the required information, reportedly not implemented. Even more, the existing forms for explanatory notes are not adequately filled in, due to time pressure and a lack of understanding of regulatory impact assessments in general. Thus, on many occasions, explanatory notes do not provide sufficient justification and reasoning for the initiation of the draft law. Regulatory impact assessments are also not part of them, although some attempts have been undertaken to introduce them.⁹

⁹ For instance, the Economic Analysis and Policy Department of the Ministry for Economics and Sustainable Development has attempted to perform regulatory impact assessment based on the OECD methodology; anyway, they seem to actually wish to evaluate the market impact rather than administrative costs.

79. Whenever a draft law is considered in the Parliament, the Budgetary Office of the Parliament has to deliver a conclusion which assesses the impact of the draft law on the revenues or expenditures of the state budget. In addition, it also has to identify any new financial commitments implied by the draft. The Parliament attributed such assessment functions exclusively to the Budget Office. Certain Members of Parliament have expressed their doubts as to whether the Budget Office has sufficient capacity to properly conduct financial and fiscal assessments, and whether its staff members possess the required skills and knowledge. As a result, certain committees and factions have thus arranged for adequate resources for conducting their own assessments themselves, as illustrated by the United National Movement faction; it contracted two economists, which serve all members of the associated faction.
80. Moreover, the current focus of the explanatory notes is considered to be too narrow. For instance, the specific gender or environmental impact of a draft law is not covered. Further, a number of interlocutors reportedly observed that frequently, the drafters of laws omit a cost-benefit analysis and statement of required financial allocation in the explanatory note, partly due to a lack of understanding among the relevant institutions of how the costs should be assessed and quantified.
81. To address the above challenges, the Georgian Government may consider developing, via a cross-governmental framework, a methodology and extended scope for conducting such assessments. This should involve the possible budgetary consequences of certain draft laws and amendments, and potential implications for fundamental rights, men and women, or the environment. Draft laws that are merely technical in nature would not need to be subjected to regulatory impact assessment. In the course of developing a framework for regulatory impact assessment, the Ministry of Finance's risk assessment mechanism (identifying which risks represent opportunities and which represent potential pitfalls) could be taken into account, along with other good practice examples. The legal framework for regulatory impact assessment needs to be based on internationally acknowledged methodology and practices, while taking into account Georgian administrative and cultural specifics. In this context, it is advised to take the OECD recommendations on the consultation of stakeholders¹⁰ as a baseline. Additionally, it is recommended to take into account the principles in the Open Government Declaration (issued by the Open Government Partnership).¹¹
82. It is essential that Government officials and parliamentary staff are trained to acquire a good understanding of a (unified) methodology for conducting regulatory impact

¹⁰ OECD, „Background Document on Public Consultations”, can be found at <http://www.oecd.org/mena/governance/36785341.pdf>

¹¹ The Open Government Partnership Initiative is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. - See more at: <http://www.opengovpartnership.org/about/open-government-declaration>; Georgia joined the Open Government Partnership Initiative in 2011.

assessments, and to ensure a correct application of such assessments in practice. Capacity building in this field is a paramount precondition for success.

83. It is essential that the framework for regulatory impact assessment is implemented step-by-step and in a uniform manner. Existing practices of ex-ante evaluation need to be amended, taking into consideration such criteria as, for instance, transparency and public accountability, stakeholder involvement, reliability of the information obtained, costs, and skills that the staff involved need to have. Ideally, the existing practices should be substituted with a completely new comprehensive framework that would be applied in a uniform manner within all parts of Government. Improved coordination of all stakeholders in the law-making procedure will create more time and opportunity for the proper conduct of regulatory impact assessments.
84. Consideration may also be given to extending the competence of the Constitutional Court to conduct ex-ante reviews of normative legal acts in terms of their compatibility with the Constitution. This could also include a mandate for the Constitutional Court to review the conformity of certain draft laws with international treaties ex officio.

PRESIDENTIAL VETO

85. According to the procedure laid down in Article 68 of the Constitution, laws enter into effect upon promulgation by the President. The President of Georgia may, however, decide not to sign a draft law within the deadline established by the Law on Normative Legal Acts and to return it to the Parliament with explanations as to why it was vetoed, and proposals for amendment. In case the Parliament chooses not to adopt the President's proposals for amendment (which may only be accepted, or rejected, in their entirety), the previous version of the draft law is again put to a vote.
86. In the period October 2012-October 2013, the then President made use of his veto right 20 times and returned draft laws with comments to the Parliament. Within this time period, the Parliament did not take into account any of the comments provided by the President.¹² The actual reasons of the Parliament's refusal to consider the President's comments in these cases were not clearly articulated and it is not apparent whether in each case, the suggestions made by the President for amendment or approval were carefully weighted, and subsequently rejected on the basis of differing (quality) opinions¹³. Article 168 of the Parliamentary Rules of Procedures does not seem to require the Parliament to justify the adoption or approval of a draft law when it is voted on. Moreover, no committee sittings seem to be required to consider

¹² See "The Performance of the Georgian Parliament, 21 October 2012-21 October 2013, Transparency International Georgia", 2014.

¹³ The Performance of the Georgian Parliament, 21 October 2012-21 October 2013, Transparency International Georgia, 2014, p. 12.

objections voiced by the President, which would be the proper place for discussing and making amendments to the "comments" of the President.

87. The veto of the President should be taken more seriously, given the President's constitutional status. At present the veto is either rejected or accepted – in the latter situation, the draft law is then adopted with the changes proposed by the President. There would be a better chance for a genuine discussion, if the presidential veto set out in detail in the Rules of Procedure of the Parliament would be modified, in order to allow for his/her proposals for amendment to be debated in an article-by-article discussion. Currently, the veto and the tendency to submit alternate presidential draft laws matches the general parliamentary amendment process, which allows alternative legislative proposals only, and not proposals for amendments related to specific articles or sections of draft laws, which would be discussed individually.
88. To address the issue, two options may be considered. First, the veto decision could only contain arguments stating why the President opposes the draft law, without providing an actually modified draft, since the President, due to his/her changed constitutional status, is no longer directly part of the legislative process; in this case, the veto decision should be placed on the parliamentary agenda and the Parliament would debate whether to accept it or not. Alternatively, the veto decision could be accompanied by specific proposals for amendments to the draft law, which would then also be placed on the agenda and subsequently discussed.

THE LEGISLATIVE HERALD

89. The Legislative Herald (Matsne), is an official body that registers, publishes and systematizes normative acts that come into legal force after having been published on the Matsne website. This repository of all legal acts is maintained by the Ministry of Justice. It enables the publication of enacted legislation, consolidated laws and draft laws and the public is able to access it free of charge. This online legal database allows members of the public to post comments to both enacted laws and draft laws in the course of the drafting process. At present, only the Ministry of Justice is publishing the draft laws that it initiated on this website; the system does not appear to be used proactively by other institutions.
90. IT tools and their use in preparing and adopting legislation are most certainly the way forward, also in Georgia. However, a number of features of the Matsne system would benefit from further development or improvement.
91. Laws are widely accessible to the public only through Matsne, which also publishes draft laws, but does not usually indicate once draft laws have turned into laws after adoption. Matsne exists mainly as an online database (though it does publish some compilations of laws). This places those people at a disadvantage who are not connected to the internet; they are thus not able to easily access applicable legislation, especially since the Internet is not fully accessible everywhere in the country. The

printing of laws is possible upon request, but is charged to the requesting person (though there are exceptions, for instance, for pensioners). Nevertheless, requesting printed versions of laws mostly benefits those living in the capital; those living elsewhere, especially if they have limited financial resources, will have little opportunities to access laws.

92. Matsne does not have a back-office that would analyse and verify individual comments of the public on draft laws published on the website. It appears that certain ministries look at these comments for inspiration, but this is a random practice. In these cases, they may or may not provide feedback to the submitting individual.
93. The Matsne system appears to be error-sensitive for typing and other editorial mistakes, which allows it to detect possible mistakes in legal texts. Reportedly, there are cases when the adopted and the electronic versions of a legal act are not identical. This may be due to the fact that consolidated versions of laws (with amendments incorporated into the original legal text) are sometimes edited after the amendments have been approved and published in the Legislative Herald. Matsne will likely correct the numbering of the final versions of laws, but does not seem to check the (final) consequences for related laws, which bears a substantial risk for errors in cross referencing; it is also not clear who in Matsne actually performs this task. It is advised to appoint an electronic editor, or possibly a team of editors to ensure consistency in legislation, and undertake more elaborate editing tasks. The Ministry of Justice authorities may further wish to consider adopting some rules for Matsne concerning the editorial correction of laws that have been signed, but have not been published yet.
94. Finally, Matsne provides English and Russian language translations of some legal acts. However, the translation process is not properly regulated and does not follow a standardized legal terminology. Moreover, the translations are not acknowledged as official translations. A clear reference to linguistic standards and procedure needs to be developed, so that translations of legal documents conducted by Matsne will constitute official translations.

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

1. The normative framework within which law-making is carried out in Georgia is provided by: the Constitution, the Law on Normative Legal Acts, the Law on the Government, the Rules of Procedure of the Government, and the Rules of Procedure of the Parliament. This brief overview outlines the basic political institutions and their interaction in the law-making process.

The Government

2. The Government of Georgia is the supreme body of the executive branch, which conducts domestic and foreign policy of the State. The Government is accountable to the Parliament. The Prime Minister and other Ministers represent Georgia in foreign relations within the scope of their competences (Constitution, Article 78 par 1).
3. The Government ensures the implementation of the executive power, conducts the internal and foreign policy of the country through the ministries of Georgia and their subordinate state institutions, the offices of the State Ministers, the Chancellery of Government of Georgia, within the framework of the Constitution and legislation of Georgia (see Rules of Procedure of the Government, Article 1). According to Article 2 par 2 of the Rules of Procedure of the Government, in executing its powers, the Government is guided by the Government Programme, an action plan agreed on by the ministries, adopted by the Government and approved by the Parliament in a vote of confidence.
4. Article 3 of the Rules of Procedure of the Government provides that the law-making activities of the Government are conducted on the basis of short-term and long-term legislative plans, on the basis of the Government Programme and international obligations. The short-term list of law-making activities is drawn up twice a year; for the long term, activities have to be developed for a period of 3 years. The law-making plan is drawn up by the Parliamentary Secretary of the Government, who coordinates the proposals submitted by the respective units of the Chancellery of Government, ministries, and offices of the State Ministers. Ongoing activities of the Chancellery of Government are headed by the Head of the Chancellery.
5. Those bodies that may initiate a draft law, including the ministries, offices of State Ministers, Chancellery of Government, and Administration of the President (a full list of competent bodies is listed under Article 8 of the Rules of Procedure of the Government), submit draft laws via the e-government system. The Chancellery of the Government will be notified on such occasion (*ibid*, Article 9).
6. Draft laws generally need to meet a number of requirements, and need to be sent out to members of the Government along with an explanatory note. This is a document that holds key information on the respective individual draft law. The explanatory note should

clarify the essence of the submitted draft, contain general information about it, as well as the reason for preparing it, and its purpose. In some cases, if the drafters of the law require it to be adopted within a short period of time, the reasons for this should also be set out in the explanatory note. These arguments could also provide the basis for requesting an accelerated procedure in the Parliament, as set out in Article 160 of the Rules of Procedure of the Parliament. Furthermore, the expected results of the draft law, as well as the calculation of financial-economic consequences caused by its adoption need to be included in the document. Finally, the explanatory note also needs to indicate the identity of the author(s) of the draft law (see the Rules of Procedure of the Government, Article 10 pars 1 and 2).

7. The other members of the Government are obliged to submit their comments on the draft law and their consent to the authors of draft laws within a period of five days after having received the respective notification via the e-government system. The Rules of Procedure of the Government do not envisage any exceptions to this rule. A lack of reaction on their side will be interpreted as consent (see the Rules of Procedure of the Government, Article 11).
8. Next, the initiator sends the draft law (which will presumably already reflect some of the comments made to the initial draft) to the Chancellery of the Government, which will provide legal expertise on the draft law. In case the formal requirements for submitting the draft law have not been met, the document will be returned to the initiator without having been reviewed by the Chancellery. According to Article 12 of the Rules of Procedure of the Government, if while reviewing the draft law the Chancellery of the Government feels that the initiator failed to incorporate feedback from all interested and relevant bodies in Government, it will reconcile the opinion of the initiating body and dissenting opinions of other stakeholder bodies, thereby presumably creating a revised version of the draft law. The draft law will then be put on the agenda of a Government meeting.
9. ¹ have not been met, the document will be returned to the initiator without having been reviewed by the Chancellery. According to Article 12 of the Rules of Procedure of the Government, if while reviewing the draft law the Chancellery of the Government feels that the initiator failed to incorporate feedback from all interested and relevant bodies in Government, it will reconcile the opinion of the initiating body and dissenting opinions of other stakeholder bodies, thereby presumably creating a revised version of the draft law. The draft law will then be put on the agenda of a Government meeting.
10. Further, in the e-government system, the Chancellery of the Government marks the status of the draft law as being ready for adoption. According to Article 19 of the Rules of Procedure of the Government, the members of the Government now have 24 hours to submit their vote via the system. In case a draft law is supported by the majority of all members of the Government, it is deemed adopted by the Government. In case of a tied vote, the vote of the Prime Minister will be decisive. After adoption, the status of the draft law in the e-system moves automatically to the next stage of “legal acts awaiting signature”. The Prime Minister will then provide his or her electronic signature, within a

¹ According to Article 17 of the Law on Legal Normative Acts, a draft law shall be accompanied by an explanatory note, including general information also on the purpose of the draft law, financial justification, compliance with international legal standards, summary of conducted consultations, if any. The draft law shall also be accompanied by related draft amendments to other legislative acts that results from the adoption of the draft law or which establish liability for violating proposed legal provisions. The draft law shall be accompanied by a copy of the protocol of the relevant Government session.

period of three days (see the Rules of Procedure of the Government, Articles 20-21).

11. Once the draft law has been signed by the Prime Minister, members of Government, a parliamentary secretary of a ministry or an office of the State Minister, shall provide more detailed input (opinions) on the draft law, which shall include reasons for consenting or rejecting the draft law, via the e-government system. If an opinion is not submitted in a timely manner, consent will be considered to have been given. The draft law will be considered to have received consent of the majority of government stakeholders if at least 13 members of Government, a parliamentary secretary of a ministry or an office of State Minister submitted positive opinions on the draft law in the e-government system. At the same time, positive opinions of the Ministry of Justice, the Ministry of Finance, the Ministry of Economy and Sustainable Development, and the Ministry of Internal Affairs are a pre-condition for approval of the draft law. The initiating body, after consideration of the input received from government stakeholders, is then obliged to submit a corrected version of the draft law to the Chancellery of Government (see the Rules of Procedure of the Government, Article 26).
12. When sending the draft law to the Chancellery of the Government, the initiating body will submit a consensual version of the draft law by letter, signed by a member of the Government, the parliamentary secretaries of ministries, or the offices of State Ministers. The draft law will be accompanied by an identical electronic version of the printed version of the draft law submitted, a document summarizing the government consensus on the draft law and substantiated remarks of ministries or offices of State Ministers, if applicable, all of which will be circulated via the e-government system.
13. The document summarising the consensus over the proposed draft law, reached among the members of the Government, will include: the title of the legal normative act and the reasons for adopting it; the name of the body initiating the draft law; opinions of ministries or offices of the State Ministers; and a summary of substantiated objections, if any, of the ministries or offices of State Ministers, as well as arguments for considering/not considering such objections in the draft law. Any draft law that does not meet the requirements of these Rules of Procedure will be returned to the initiating body without review. In such case, a discussion of the consolidated draft law at the next Government meeting is not allowed (see the Rules of Procedure of the Government, Article 27).
14. Within five days after the draft law has been submitted to the Government Chancellery, the Parliamentary Secretary of the Government will ensure examination of the draft law from a legal viewpoint, and will also review whether it will be the appropriate means to address the issues at stake. If necessary, the initiating body will further reconcile opinions from interested bodies. After reviewing the draft law, the Parliamentary Secretary of Government shall then decide whether, taking into consideration the importance of the draft law, to include it in the agenda of the next Government meeting, to adopt it via the e-government system, or to withdraw the draft law and return it to the initiating body.

The decision to submit the consolidated draft law for approval via the e-government system is possible only if the draft law proposes merely terminological or technical changes to existing legislation and does not alter the general principles and main provisions of a law. Moreover, the draft law must be in line with the applicable Georgian legislation and the international treaties that Georgia is party to. Adoption via the e-government system is also possible where the draft law is proposed following a decision of the Constitutional Court of Georgia, or where it follows from the adoption of another draft law that has already been discussed at a Government meeting, provided it does not contradict the principles and main provisions of that draft law.

15. According to Article 28 par 6 of the Rules of Procedure of the Government, in the event that the initiating body fails to reflect the legal comments provided by the Parliamentary Secretary of the Government, the latter's opinion will be also attached to the draft law under consideration, in the e-government system.
16. Government meetings are chaired by the Prime Minister and take place once a month. The agenda is limited to 30 items, and each agenda item (including draft laws) shall not exceed 10 minutes. During the Government meeting, a protocol of the meeting is recorded, which shall include proposals, remarks, specific tasks entrusted to individual bodies/parts of Government with respect to a draft law and, if need be, the time-frame for their implementation (see the Rules of Procedure of the Government, Article 16 pars 4 and 5).
17. The draft law will be adopted, if supported by a majority of the members of Government present at the meeting; the Prime Minister will then sign the adopted legal acts on the same day, or on the day after (see the Rules of Procedure of the Government, Articles 17 and 18). In case of a tied vote, the vote of the chairperson of the governmental meeting shall be decisive.
18. After completion of this procedure, the Chancellery of the Government will again submit the draft law to the other members of the Government via the e-government system, to obtain their consent. Members of the Government will be obliged consent (or not) within 48 hours. The draft will be deemed to have been agreed on by the members of the Government, if it is supported by the majority of all members of Government. In case of a tied vote, the Prime Minister's vote will be decisive. A draft law that has been agreed on in this manner will then be submitted to the Parliament (presumably after having been signed by the Prime Minister). To this end, an electronic protocol of the Government meeting is drawn up reflecting the decision made in relation to the draft law and the decision concerning the submission of the draft law to the Parliament (see the Rules of Procedure of the Government, Article 28 par 2).

The Parliament

19. According to Article 48 par 1 of the Constitution of Georgia, the Parliament is the supreme representative body of the country, which exercises legislative power,

determines the main directions of domestic and foreign policy, and exercises control over the activity of the Government (within the framework set by the Constitution). The Parliament is located in Kutaisi. It is made up of 150 deputies, appointed for a period of four years, with 73 members elected via a proportional system and 77 members elected by a majoritarian system (Constitution, Article 49 par 1).

20. The Parliament exercises supervision over the activities of the Government and determines the country's domestic and foreign policy according to the forms and the rules established by the Constitution, the legislation of Georgia and the Rules of Procedure of Parliament (see the Rules of Procedure of the Parliament, Article 2). The internal structure of the Parliament and procedure of its activity is determined by the Parliamentary Rules of Procedure. Article 57 par 1 of the Constitution allocates the task of organizing the work of the Parliament to the Bureau of Parliament, which consists of the Chairman of the Parliament, the Deputy Chairmen, Chairmen of the Parliamentary Committees and Parliamentary Factions.
21. The law-making process is a joint procedure of preparation and adoption of a draft law, which includes: the preparation of a draft law by a body/institution with the right of legislative initiative, submitting it to the Parliament, and having the Parliament consider, adopt and present the draft law to the President of Georgia. At the end of the process, the adopted law is usually signed by the President and thereby promulgated (see the Rules of Procedure of the Parliament, Article 142). The President receives the draft law within seven days after its adoption by Parliament, and then has 10 days to either sign the draft law and promulgate it, or to return it with substantiated comments/proposals for amendment to the Parliament. If the Parliament adopts the President's comments/proposals, the latter will sign and promulgate the law within the term of seven days upon submission. If the Parliament does not agree with the President's comments, it will reject them; in this case, the Speaker will then sign and promulgate the original adopted draft law no later than five days after the expiration of this seven-day term (Article 10 par 8 of the Law on Normative Legal Acts).
22. The law-making process within the Parliament starts with the submission of a draft Law to the Parliament by those bodies vested with legal initiative. As stated in Article 67 of the Constitution, this includes the Government, a Member of Parliament, a committee, a faction, the supreme representative bodies of the Autonomous Republics of Abkhazia and Adjara, or a group of at least 30,000 voters. However, certain limitations have been imposed on this rule. The President of Georgia is only authorized to prepare draft laws in extraordinary circumstances (see the Constitution, Article 73 par 1 sub pars "g" –"i" and "k").
23. Those with the right to launch a legislative initiative can request public organizations and institutions or NGOs (including organizations of foreign countries), an expert or a group of experts, including foreign nationals, to assist in the drafting of a law. Once the Parliament has received the draft law, it is transferred to the Organizational Department

of the Parliamentary Staff (see the Rules of Procedure of the Parliament, Article 141).

24. The Bureau of Parliament prepares and presents for the Parliament's approval draft weekly agendas for plenary sittings, presents proposals on sittings devoted to the discussion of various issues and to political debates, as well as on the Government's hour – a question and answer session in the Parliament, during which members of the Parliament ask questions of government ministers (including the Prime Minister), which the latter are obliged to answer. The Bureau also considers assessments of the draft laws that shall be presented at the plenary sitting, committees' assessments of a draft law, draft resolutions and appeals of the committees, commissions of inquiry and other temporary commissions (see the Rules of Procedure of the Parliament, Article 117).
25. Organizational and technical support to the activities of the Parliament is provided by the Parliamentary Staff. The Parliamentary Staff renders organizational, legal, document, information, financial, material-technical and social services to the Bureau of Parliament, the Speaker and his or her deputies, the Members of Parliament, committees, factions, committees of inquiry and other temporary committees (see the Rules of Procedure of the Parliament, Article 274, pars 1 and 2). Work is organized by structural units, which include: the Cabinet of the Speaker, the secretariats of the Deputy Speakers, the Secretariat of the Head of the Speaker's Office, the Information Technologies Department, the Legal Department, the Research Department, the Public Relations Department, the International Relations Department, the Human Resources Department, the Logistics Department, the Organizational Department, the Financial Department, the Chancellery Department, the offices of parliamentary committees, and the Budgetary Office of the Parliament.
26. As stated, and according to Article 67 of the Constitution, Members of Parliament are also vested with the right of legislative initiative; a Member of Parliament shall likewise hold membership of at least one parliamentary committee, attend the Parliament's plenary sittings, committee meetings, and faction meetings, and take part in commissions of inquiry or other temporary commissions' sittings (see the Rules of Procedure of the Parliament, Article 14 par 2).
27. For its term of legislature, the Parliament creates committees which shall conduct the preliminary preparation of legislative issues, assist in the implementation of the Parliament's decisions, supervise the bodies that are accountable to Parliament, and control the Government's activities. The committees in turn create working groups to supervise the implementation of the Parliament's and the committees' decisions, conduct the preliminary preparation of supporting documents and other ongoing issues. The committee staff supports the activities of the working groups (see the Rules of Procedure of the Parliament, Article 29 pars 1 and 2).
28. The Parliament of Georgia currently has 15 committees; each committee has at least fifteen members and elects its Chairperson from among the members of the committee (see the Rules of Procedure of the Parliament, Articles 30, 31 par 1 and 32 par 1).

29. Within its competencies, a committee develops, considers and prepares for the plenary sitting of Parliament the drafts of laws, parliamentary decrees and other decisions. Parliamentary committee members participate in the discussions and elaborations of draft laws submitted to the Parliament, prepare the committee's conclusions and submit them to the respective stakeholders within the Parliament and to the authors of specific amendments displaying how these proposed amendments were reflected in the draft law. Furthermore, one committee supervises the activities of state bodies accountable to the Parliament (e.g. the Public Defender's Office), as well as, within the scope of its competence, the activities of the Government. As necessary and relevant, such committees then submit their conclusions on these bodies'/the Government's activities to the Parliament. Committees also have the right of legislative initiative. A full list of committee competences is contained in Article 43 of the Rules of Procedure of the Parliament.
30. Within the committees, decisions are taken by the majority of the committee members present at the respective meeting, by open or secret vote²; no less than half of the committee members need to be present to create a quorum (see the Rules of Procedure of the Parliament, Article 49 par 6). The committee sitting is public; in special cases a committee may, by majority decision, decide to hold a closed sitting. Members of Parliament, members of the Government and invited guests may attend the committee sitting in advisory capacity (meaning that they can contribute to the debates in the committee but cannot participate in the voting process). Interested representatives of the public may be invited to attend the committee sitting, and the Committee Chairman may decide to give them the floor. Accredited mass media representatives may also be invited to attend the committee sitting. TV or radio outlets may be allowed to report on the committee sitting and may then publish the information on the results of the sitting (see the Rules of Procedure of the Parliament, Article 49 pars 10-12).
31. In order to support the work of a committee, the Parliament provides for a specific structural unit of the Parliamentary Staff, which is subordinate to the committee. Committee staff assists work on draft parliamentary decrees and other decisions, draft committee decisions, and in preparing conclusions, comments and suggestions on draft laws, as well as the committee's supervisory, organizational and other activities. In addition, committee staff has consultative and analytical functions, and provides organizational-technical services (see the Rules of Procedure of the Parliament, Article 52 par 2 sub pars "a" and "b"). Committee staff specialists work on issues that lie within the competence of the committee as outlined in its regulations.
32. Once it has received a draft law, the Organizational Department of the Parliamentary Staff then submits it to the Legal Department of the Parliamentary Staff or the Budget Office, depending on the nature of the draft law (see Article 147 par 5 of the Rules of

² On the nature of the issue the Parliamentary Rules of Procedure state that "voting is open except cases determined by the Constitution and Law of Georgia" and that "[b]efore secret voting, the Chairman of the sitting announces the form of voting" (Article 140 of the Parliamentary Rules of Procedure).

Procedure of the Government), to assess the compliance of the draft law and explanatory note with legal requirements. According to Article 146 of the Rules of Procedure of the Parliament, the Legal Department, in its assessment, includes conclusions on the compliance of a draft law with Georgian legislation, respective norms of international law that Georgia is subjected to and EU legislation; the Legal Department also reviews the necessity to adopt a new law (as explained in the explanatory note) and whether the list of normative legal acts that are to be abolished or amended is comprehensive; the Budget Office mainly assesses whether the budget allocated for the implementation of the draft law is accurate. Article 145 of the Rules of Procedure of the Parliament outlines the formal requirements that an explanatory note has to meet. These requirements include general information on the draft law, financial consequences of the draft law, information on the compliance of the draft law with international law standards and recommendations made by different stakeholders during the drafting process. The explanatory note shall be circulated together with the draft law.

33. Once such examination has taken place, the draft law, together with the conclusions of the Legal Department of the Parliamentary Staff or the Budget Office, is included in the agenda of the next sitting of the Bureau of the Parliament by the Organizational Department.
34. At the sitting, the Bureau of the Parliament decides on whether to initiate the procedure of discussing a draft law before the Parliament or not, on the basis of the information received from the Organizational Department of Parliamentary Staff and the conclusions reached by the Legal Department of Parliamentary Staff. If the formal requirements required by the above legislation are not fulfilled, then it decides not to initiate the procedure before the Parliament.
35. After deciding on the initiation of the procedure for discussing the draft law, the Bureau of the Parliament transfers the draft law to the leading committee(s), other committees, factions, majority and minority factions, the Legal Department of the Parliament, and also the Government of Georgia (see the Rules of Procedure of the Parliament, Article 151). Draft laws regulating the work of representatives of the financial sector are also transferred to the National Bank of Georgia.
36. The leading committee discusses the draft law during a sitting that shall take place within 3 weeks of having received it, and thereupon prepares conclusions on the draft law. After having been discussed by the leading committee and other committees, the draft law and the committee(s)' conclusions are then submitted to the Bureau of the Parliament for inclusion in the agenda of the next plenary sitting, no later than one week before the first hearing (see the Rules of Procedure of the Parliament, Article 152).
37. After the sitting of the leading committee, the Parliament then discusses the draft law in three separate hearings. At the first hearing of the draft law, the draft law's basic principles and main provisions are discussed. At the second hearing, it is discussed by article, chapter or/and part and is put to the vote at the plenary sitting of the Parliament

as a whole. The decision on discussing a draft law by parts, chapters, articles, paragraphs, or sections is taken by the Speaker of the Parliament only upon request of the leading committee. At the third and last hearing of the draft law, only editorial corrections are permissible (see the Rules of Procedure of the Parliament, Article 156).

38. Article 157 of the Rules of Procedure provides a detailed description of the procedure during the first hearing, defining, *inter alia*, who may take the floor, and when, and how long such interventions shall last. Clearly articulated deadlines for each intervention are provided, but may be extended by decision of the Chairman of the hearing and by the majority of votes of those Members of Parliament present. Each Member of Parliament may put questions to the Rapporteur regarding the draft law, but only once. However, this does not preclude Members of Parliament from taking the floor once again afterwards to express their views on the draft law. A modified version of the draft law articulated during the hearing is considered adopted, if the presenter agrees with it or the Parliament votes in favour of it.
39. After having been discussed at the first hearing of the plenary sitting of the Parliament, the draft law is transferred to the leading committee. The leading committee incorporates the comments raised at the first hearing into the draft law, and prepares the draft law for discussion at the second hearing of the plenary sitting of Parliament, where it is put to the vote (see the Rules of Procedure of the Parliament, Article 158).
40. Within two weeks of the adoption of the draft law by the first hearing, the leading committee discusses the draft law at a committee hearing by articles, chapter or/and parts (see the Rules of Procedure of the Parliament, Article 159). After that, the draft law, together with relevant conclusions of the committee and alternative proposals, is submitted to the Bureau of Parliament, which shall then place it on the agenda of the next plenary sitting of Parliament for voting at the second hearing. After its adoption at the second hearing of the plenary sitting of Parliament, the draft law is, as adopted, passed to the leading committee for preparation for the third hearing.
41. Within five days after the adoption of the draft law at the second hearing, the leading committee then incorporates the comments added during the second hearing into the draft law and submits it back to the Bureau of the Parliament, which places it on the agenda of the third plenary sitting of Parliament. At the third hearing of the draft law, only editorial corrections are adopted (see the Rules of Procedure of the Parliament, Article 160).
42. Parliament also has the possibility to discuss and adopt a draft law in an accelerated, i.e. urgent procedure (see the Rules of Procedure of the Parliament, Article 163). The consideration and adoption of the draft law in an accelerated manner still passes through three hearings, but these all need to take place within one week. It is even permitted to discuss and adopt the draft law with more than one hearing taking place during one day of the plenary sitting, after consent for this has been received by the Bureau of Parliament.

43. The Bureau of the Parliament decides on the consideration of the draft law in an accelerated manner, based on the proposal of the initiator of the draft law, or the leading committee. If the Bureau does not decide on the consideration and adoption of the draft law in an accelerated manner, then the plenary of the Parliament may discuss and decide on the issue. In case of such decision, taken either by the Bureau of the Parliament or the plenary, all designated bodies should submit their suggestions concerning the draft law to the leading committee (committees), within the time frame set by the Bureau of the Parliament or the plenary.
44. The accelerated procedure is limited in its application: it cannot be applied to changes to the Constitution and to constitutional laws of Georgia. Furthermore, a draft law can be discussed via an accelerated procedure only in case it contains amendments to an existing law. If the decision is taken to discuss a draft law in an accelerated manner, all relevant conclusions submitted by relevant stakeholders for consideration at the plenary sitting, shall be made available within the deadline set by the Bureau of Parliament, as required by the Rules of Procedure of the Parliament.
45. Consideration of and voting on a draft law in an accelerated manner at the plenary sitting of the Parliament is conducted in accordance with the relevant procedure established by the Rules of Procedure of the Parliament. When the draft law is adopted in an accelerated manner, voting can take place after the draft law is discussed at the relevant hearing, possibly even on the same day. The Parliament votes on the draft law at a third hearing only once its final edited version is presented.
46. Within seven days of its adoption, the draft law is presented to the President of Georgia for signing, and promulgation of the draft law within 10 days (see the Rules of Procedure of the Parliament, Articles 158 and 167).

The President

47. The President of Georgia is the Head of State. As provided in Article 69 of the Constitution, he/she is “the guarantor of national independence and unity of the country” and “provides for functioning of the state organs within the scope of authorities entitled by the Constitution”.
48. According to Article 73 of the Constitution, the President of Georgia plays, save in exceptional circumstances, a rather limited role in the legislative procedure, which is confined to signing and promulgating laws in accordance with the procedures prescribed by the Constitution. He/she can also negotiate and conclude international agreements and conventions following the consent of the Government; or declare martial law in the case of an armed attack on Georgia upon the consent of the Parliament. In case of war or state emergency, the President can issue decrees that have the force of law, which will remain in force until the end of the war or states of emergency and will then be submitted to the Parliament for approval once it re-assembles.

49. The legal acts of the President (decrees or edicts) have to be countersigned by the Prime Minister, except if they are issued during a state of war or emergency, or in other cases directly prescribed by the Constitution. This concerns for instance the signing of laws and their promulgation, including the return of an adopted draft law with comments to the Parliament (see Constitution, Article Art. 73¹, pars 1, 2 and 4).
50. The President of Georgia may refuse to sign an adopted law within the given timeframe and may then return it to the Parliament with reasoned objections, formulated in a separate draft law. The Parliament will then discuss the alternative draft law, along with the President's reasoning, within 15 days. If the Parliament adopts the President's proposed draft law as a whole, the draft law is sent to the President of Georgia within five days for signature and promulgation, which shall take place within seven days. Should the Parliament decide not to adopt the President's alternative draft law, the previous version of the draft law is once more put to the vote.
51. A draft law is considered adopted if more than half of all appointed Members of Parliament support it. A draft constitutional Law is considered adopted if more than three-fourths of all appointed Members of Parliament have voted in its favour (see the Rules of Procedure of the Parliament, Article 168 par 3).
52. If the draft law does not receive the required number of votes, it is considered rejected. After holding consultations with the President of Georgia, the Parliament may decide to again consider the draft law at the next parliamentary session. The draft will then be discussed as if it were a new draft law (see the Rules of Procedure of the Parliament, Article 171 par 6).
53. In case the President of Georgia refuses or for other reasons does not promulgate a draft law in a timely manner, the Speaker of the Parliament may sign the draft law and promulgate it within five days in the Georgian Legislative Herald of Georgia ("Matsne")³.

³ All legal normative acts are registered and systemized in the Legislative Herald of Georgia (Matsne) through a State Register of Normative Acts, which is maintained in the electronic form on the website of the Legislative Herald of Georgia. The Legislative Herald registers adopted legal normative act in the State Register and assign a state registration code upon its promulgation.

ANNEX 2: LIST OF INTERLOCUTORS

Executive branch

Mr. Shalva Tadumadze, Government's Parliamentary Secretary

Mr. David Pataraiia, President's Parliamentary Secretary

Mr. Alexandre Baramidze, First Deputy Minister of Justice

Ms. Irine Tsakadze, Head of the Legal Drafting Department, Minister of Justice

Ms. Rusudan Mikhelidze, Head of the Analytical Department, Minister of Justice

Mr. Nino Kajaia, Head of Department of Agreements Expertise

Mr. Zurab Sanikidze, Deputy Head of the Analytical Department, Minister of Justice

Mr. Nugar Dundua, Deputy Head of Department of Agreements Expertise

Mr. Sergo Birkadze, Head of Legislative Division, Ministry of Finance

Ms. Nino Atuashvili, Head of Law Drafting Unit, Ministry of Finance

Ms. Lali Gogoberidze, Head of Economic Analysis and Policy Department, Ministry of Economy and Sustainable Development

Public Defender's Office

Mr. Paata Beltadze, Deputy Public Defender of Georgia

Ms. Tamuna Khidasheli, Head of EU Project

Ms. Isabella Osipova, Executive Secretary of the Council of National Minorities

National Bank of Georgia

Ms. Natia Gvazava, Head of Legal Department

Ms. Tamar Goderdzishvili, Deputy Head of Legal Department

Parliament

Mr. Vakhtang Khmaladze, Legal Issues Committee

Mr. Pavle Kublashvili, Legal Issues Committee

Mr. Viktor Dolidze, European Integration Committee

Mr. Giorgi Kandelaki, European Integration Committee

Mr. Giorgi Kakhiani, Procedural Issues and Rules Committee

Ms. Eka Beselia, Human Rights and Civil Integration Committee

Ms. Chiora Taktakishvili, Human Rights and Civil Integration Committee

Mr. Gedevan Popkhadze, Human Rights and Civil Integration Committee

Mrs. Guguli Maghradze, MP, Member of the Gender Equality Council

Ms. Shorena Kakhidze, Head of Office, Budget Department

Mr. David Oboladze, Leading Specialist, Budget Department

Mr. Zurab Marakhvelidze, Secretary General of the Parliament of Georgia

Mr. Archil Zangvarashvili, Head of the Division of legal Expertise and Alignment of Draft Laws

Ms. Eteri Svianaidze, Head of Department, Organizational Department

Ms. Ekatarina Sanashvili, Head of the Public Information Issue Office

Ms. Manana Eliashvili, Leading Specialist, Public Information Issue Office

Parliamentary Factions

Mr. Ruslan Poghosian, Georgian Dream

Ms. Tamar Kordzaia, Georgian Dream

Mr. Zurab Abashidze, Free Democrats

Mr. Malkhaz Vakhtangishvili, National Forum

Ms. Ani Mirotadze, National Forum

Mr. Paata Kiknavelidze, Entrepreneurs

Mr. Giorgi Gozalishvili, Free Faction

Non-Governmental Organisations

Mr Levan Natroshvili, Transparency International Georgia

Mr Gia Gvilava, Transparency International Georgia

Mr Vazha Salamadze, Civil Society Institute

Mr Vakhusti Menabde, Human Rights Education and Monitoring Center

Ms Nino Janashia, ISFED

Ms Natia Imnadze, Georgian Democratic Institute

Ms Tatuli Todua, GYLA

Ms Natia Shavlakadze, Anti-Violence Network

Ms Eliso Amirejibi, Women's Club Peoni

International Organisations

Mr David Stonehill, USAID

Ms Natia Khvichia, USAID

Ms Lina Panteleeva, USAID

Ms Tamar Khulordava, EC Delegation

Mr Luis Navarro, NDI

Ms Tamar Sartania, NDI

Mr Jens Deppe, GIZ

Ms Tamar Zodelava, GIZ

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. Additional questions were sent to the Parliament after the country visit (these concern questions 26-38).

EXECUTIVE BRANCH

1. Does your Ministry have its own specialized unit of law drafters? If so, how many law drafters are engaged in this unit? Do they have separate portfolios based on different areas of law? If there is no specialized unit of law drafters, 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. We know that the Law on Normative Acts sets out the general principles of law drafting. Is the law supplemented by any government regulations or non-binding instruments such as guidelines that would detail the drafting standards? Does your Ministry have any other tools that it uses for additional guidance?
3. Have you outsourced law drafting projects to consultants? If so, who decides on this, and what type of consultants were they, for the most part? (e.g. international consultants/donor agencies, academia, NGOs) What budget paid for these consultancies? In case of amendments to laws, are the same experts used? And how is the quality of their work?
4. Is it common for more than one law drafter to be involved in the drafting of a particular piece of legislation? Is a law drafter engaged on primary legislation a member of a team of Ministry officers charged with policymaking?
5. How is the quality of law drafting monitored? (e.g. by supervisors)
6. Who undertakes the drafting of secondary legislation? Is it the same staff that drafts primary legislation?
7. How are annual legislative plans prepared? Who coordinates the submission of ministry inputs to the presidential apparatus?
8. How are decisions to initiate a new legislative project taken? Does this happen at the Ministry level or at the Cabinet level?
9. How does the government collectively determine its priorities with respect to new proposed legislative projects?

10. Are there fixed time schedules for the preparation of each draft law? Who is responsible for monitoring them, and how?
11. 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)?
12. 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?
13. 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?
14. 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?
15. Are outside advisers used in the policymaking process? If so, in which cases?
16. Do you think that stakeholder consultations can be held during initial policy discussions?
17. 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 does the law drafter step in? How is the policy decision communicated to the law drafter?
18. 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?
19. During the law drafting stages, is there a process whereby the compliance of draft legislation with the text of the Constitution is verified? If so, at which stage, and how? In your view, is there room for improvement? If so, what would you recommend?
20. 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?
21. 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?

22. Are any other assessments /verifications of draft laws conducted, 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?
23. 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?
24. 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?
25. How are consultations organized? In your view, is there room for improvement? If so, what would you recommend?
26. 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?
27. What procedures does the Government need to pursue once the draft law is submitted to the Government for approval?
28. 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?
29. 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? What information is provided to the persons being consulted? How, and in what form are responses typically provided?
30. 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?
31. What normal steps have to be followed when secondary legislation is being prepared? Do these differ according to the type of secondary legislation?
32. 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?
33. Is secondary legislation ever prepared as part of the same drafting process as the primary legislation which it is supposed to implement?

34. Who undertakes the policymaking with respect to secondary legislation? Are they the same unit that developed the policy for primary legislation?
35. Are stakeholders consulted in the process of preparing secondary legislation as well?
36. To what extent can the original law drafters be involved in drafting amendments to the draft law put forward by the Parliament?
37. 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 drafters?
38. Do officials of the drafting Ministry follow the progress of a draft law in the Parliament? If so, how is this done?
39. 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? Does this sometimes involve additional consultations and impact assessment?
40. Which Unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?
41. 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?
42. Are any groups of persons eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?
43. In what instances can a draft law be published before official legislation? Who decides that a draft law should be published?
44. 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?
45. 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?
46. 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 to copies of individual laws? Are such texts readily available throughout the country? Are they provided for free, or do they require a fee?

47. 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?
48. 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 purposes and circumstances in which they will be applied.
49. 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 purposes and circumstances in which they will be applied.
50. If such formal instruments are used when conducting an impact assessment, who developed them, and who usually uses them?
51. To what extent is legislation from other countries used either as a model for policy makers or as a legislative precedent for law drafters?
52. 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?
53. 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?
54. 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 organizational 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?
55. 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?

PARLIAMENT

1. We know that the Law on Normative Acts sets out the general principles of law drafting. Is the law supplemented by any government regulations or non-binding instruments such as guidelines that would detail the drafting standards?
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, 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. Is the drafting of laws ever outsourced to consultants? If so, who decides this, based on which criteria, and which types of consultants are habitually used? What is the quality of their work?
8. 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?
9. 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?
10. 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?
11. 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?

12. 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?
13. 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?
14. Who drafts amendments put forward while the draft law is being reviewed in the Parliament? To what extent are the original law drafters involved?
15. 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?
16. 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?
17. 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?
18. In which cases does the Parliament make use of expert opinions from officials, experts or members of the public when considering a draft law? How frequently does this happen?
19. Is any parliamentary body specifically charged with monitoring the preparation of draft laws, to ensure that the standards set are being followed? If so, how does it carry out its responsibilities, and is it effective?
20. 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?
21. 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?
22. Are any groups of persons in the Parliament eligible to receive free copies of legislation?
23. 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?

24. 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?
25. 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?
26. How many laws are passed per year by the Parliament? How many of these are amendments to existing laws, and how many of them are original new draft laws? (2012, 2013, 2014)
27. How many draft laws per year are initiated by the Government, how many by the Parliament? How many of these are adopted (respectively)?
28. How many legislative proposals received by each committee annually, how many were accepted (and in which cases), and turned into legislative initiatives?
29. How many ad hoc legislative initiatives are considered per year? Initiated by the Parliament? Initiated by the Government? What kind of initiatives are they? Do regulations foresee what kind of initiatives can be proposed outside the approved legislative agendas?
30. What is the burden of work of each committee? Could we ask for a concise step by step overview of the standing practice of one committee, e.g. the Human Rights and Civil Integration Committee?
31. In Parliament, how many draft laws per year are initiated by majority party MPs? How many of these are adopted? How many draft laws are initiated by minority party MPs? How many of these are adopted?
32. How many laws are annually adopted through the accelerated procedure (compared to the entire laws passed)? How many times was the accelerated procedure initiated by the Government, and how many times by the Parliament?
33. How many times, on average, have the same laws been amended within a period of the last 1.5 years?
34. How many external experts are involved in making laws, in general, and by committee?
35. Is there a parliamentary practice of favoring majority MPs? If yes, what does it imply?

36. Which committees have advisory councils? How many? What are the criteria for establishing them? Are there consultations with experts / stakeholders beyond these councils? Do the councils have statutes and are they public?
37. Is there a predetermined end (time-wise) to plenary sittings, i.e. is it possible to have night sessions?
38. Does the editorial unit within the Parliament follow some sort of guidelines in their work?

ANNEX 4: ODIHR'S METHODOLOGY

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 programme⁴, 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

⁴ 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 documents⁵, 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 following⁶:

- 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 impact and publicly report on their findings, formulating specific

⁵ *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).

⁶ These recommendations are extracted from the original documents.

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.