

Civil Participation in Decision Making in the Eastern Partnership Countries

Part Two: Practice and Implementation

Study

Editor: Jeff Lovitt

Partnership for Good Governance



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I. INTRODUCTION

by Jeff Lovitt*

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Civil Society as a Policy Actor

The difference between laws and procedures as written and their realisation in practice is one that has both thwarted greater inclusion in democratic life, and also inspired civil society groups to call authorities to account, urging them to uphold the standards set out in laws and international commitments. A memorable example of the latter was that set out by the signatories of Charter 77, who called out the government of then communist Czechoslovakia for failing to implement the human rights provisions of the Helsinki Accords (as well as the Constitution of Czechoslovakia). More recently, we have seen examples where civil society has either launched protests against the perceived unaccountability of government, such as the Electric Yerevan movement in Armenia in 2015, or has taken the initiative in proposing policy reforms and drafting laws and amendments to existing legislation, most notably the Reanimation Package of Reforms (RPR) in Ukraine since 2014.

In all six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, and Ukraine), as outlined in the study, ***Civil Participation in Political Decision-Making in the Eastern Partnership Countries – Part One: Laws and Policies***¹, there are "shortcomings in the clarity, effectiveness, and inclusiveness of their policy-drafting and evaluation procedures". The first publication in this project charted the laws and policies that provide the framework for civil participation in political decision-making.

In this second publication, ***Civil Participation in Political Decision-Making in the Eastern Partnership Countries – Part Two: Practice and Implementation***, analysts in the six countries examine the extent to which those laws and policies are indeed applied and implemented. The authors first assess to what extent the statutory procedures have been followed in the policy-making cycle in recent years, and then look at a set of case studies in each country to examine in detail how participatory policymaking is working in practice. For each country, two case studies examine participation in the law-making process, and another two case studies consider civil society initiatives in policy-making. Some of the latter category include engagement in law-making processes through civil society initiatives – sometimes working to unblock particular law-making processes

¹ *Civil Participation in Political Decision-Making in the Six Eastern Partnership Countries - Part One: Laws and Policies* (Editor: Jeff Lovitt), Council of Europe, May 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168065755a>

– while others involve more systemic initiatives to reform policies, and others amount to civil society protest movements in response to controversial decisions or unaccountable practices by public authorities.

Part One assessed the state of freedom of information in the Eastern Partnership countries, considered the enabling environment for civil society organisations (CSOs) and the capacities of public authorities to organise public consultations, and outlined the existence of laws and established procedures to ensure that participatory policymaking can take place. **Part Two** examines through case studies to what extent those procedures are followed in practice. Through the perspectives of the different stakeholders – from the side of government ministries and MPs, and also from the side of CSOs – another vital aspect of the consultation process is taken into consideration, namely the need for a strong culture of consultative communications. That culture of communications needs to be backed up by a commitment to transparency with clear, consistently applied timeframes that provide enough space for all interested parties to study policy concepts, for instance Green Papers, to review draft laws, and to be able to provide informed feedback and recommendations.

This study is published within the *Regional Project on Civil Participation in Decision Making in the Eastern Partnership Countries*, carried out as part of the **Partnership for Good Governance**², funded by the European Union (EU) and the Council of Europe, and implemented by the Council of Europe in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus. The regional project has also generated **Measures for Strategic Development of Civil Participation in Decision Making in the Eastern Partnership Countries** (included as an Appendix to this publication).³ These measures, and the recommendations set out in them, are an important accompanying document to **Part One** and **Part Two**, and have been developed in the same time period as a separate initiative of the Council of Europe, the public consultation for drafting the **Guidelines on Civil Participation in Political Decision-Making**⁴.

International Standards

Participation features as one of the five principles of "good governance" highlighted by the European Commission in its 2001 **White Paper on European**

² <http://partnership-governance-eu.coe.int>

³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680709710>

⁴ http://www.coe.int/t/dgap/localdemocracy/CDDG/Guidelines-civil-society-consultation_en.pdf

Governance.⁵ Just as participation strengthens the legitimacy of policies – through inclusivity and wider ownership of the outcomes – it also makes the resulting laws and policies more robust and sustainable when carried out professionally and transparently, such that decision-making embraces stakeholder analysis and impact assessment as indispensable components of participatory consultations. It is likewise essential that the public, civil society and interested stakeholders are included at the different stages of drafting of policy concepts, impact assessment, draft legislation, the final law-making phases, and the subsequent stages of monitoring and evaluation of policy implementation. Participatory policy-making "has led governments to draw on the experience of NGOs to assist them in policy development and implementation", according to the Council of Europe's **Code of Good Practice for Civil Participation in the Decision-Making Process.**⁶

In the framework of the Council of Europe, it is worthwhile considering how public participation in policymaking works in other Council of Europe member countries. In Croatia, for example, Article 133 of the Constitution explicitly includes the right to public participation at the local level: "Citizens may directly participate in the administration of local affairs through meetings, referenda and other forms of direct decision-making in compliance with law and local ordinances."⁷

In Croatia, the **Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts**, adopted in 2009, applies to draft laws, regulations and other acts of state bodies at national, regional and local level. The Code applies to the *interested public*, comprising "citizens, civil society organisations (informal civic groups or initiatives, associations, foundations, funds, private institutions, trade unions, associations of employers), representatives of the academic community, chambers, public institutions and other legal entities performing a public service or who might be affected by the law, other regulation or act which is being adopted, or who are to be included in its implementation"⁸ The code sets out criteria for the selection of members of expert working groups (expertise, previous public contributions and other qualifications relevant to the matter to be regulated), and stresses the importance of involving experts at the stage of drafting laws and regulations, and the monitoring of their implementation.

5 COM(2001) 428. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0428>

6 <http://www.coe.int/en/web/ingo/civil-participation>

7 <http://www.sabor.hr/fgs.axd?id=17074>

8 <http://int.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia.pdf>

The scope of participation in Croatia is supported by the Office for Co-operation with NGOs,⁹ which developed and implements the guidelines for implementation of the code, and runs trainings for civil servants at local and national level on co-operation with CSOs, and also by the Council for Civil Society Development,¹⁰ an advisory body to the Government to support development of co-operation between the Government and CSOs. The Council's 27 members include 12 representatives of non-governmental, non-profit organisations. The NGO representatives are democratically elected through a public call for proposals and transparent voting procedure.

Notably, the Council has the power to initiate statements on draft laws and national plans regarding civil society development.

The Policy Cycle

The example of Croatia is important for the current challenges facing civil society and the general public across all the Eastern Partnership countries, both in the processes and channels available for participation in the policymaking process, and also in the culture of communications. Participatory policymaking is not intended to challenge the democratic mandate of elected politicians to implement their campaign commitments, but to ensure that democracy is exercised in a more holistic way, where politicians are accountable for their actions throughout their tenure, and not only every four or five years at election time.

The illustration, *Model Policy Cycle - Key Steps in Participatory Law-Making Process* (see page 14), sets out the key stages in a participatory law-making cycle, and it is important to stress that clear timeframes should be provided for the different stages in the cycle, including adequate time for review of draft policy concepts, draft laws, and finalised laws, and advance notice of consultation hearings.

⁹ <https://udruga.gov.hr/>

¹⁰ <https://udruga.gov.hr/highlights/the-council-for-the-civil-society-development/163>

CROATIA: Minimum standards and measures for conducting consultations with the interested public according to the Code of Practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulations and Acts

1. Timely information about the plan for enactment of laws and adoption of other regulations and acts

The interested public should be informed in good time about the plan to enact laws and adopt other regulations and acts through the publication of a single list of laws and other regulations which are being drafted and proposed for enactment and adoption in the calendar year, with a statement of the authorities competent for the drafting and the tentative time limit for the drafting and enactment of the law or adoption of other regulation or act.

2. Access to and clarity of the content of the consultation process

Bodies responsible for drafting laws, other regulations and acts make a public announcement of drafts on web sites or in another appropriate manner. Notifications of and invitations to consultations about publicised drafts must be clear and concise and contain all information necessary to facilitate collection of observations from the interested public.

3. The time limit for the implementation of Internet and other forms of consultations

Public announcements of invitations to conduct consultations about draft laws and other regulations and acts must contain a clearly defined time limit for observations from the interested public. It is desirable for this time limit to be not less than 15 days from the public announcement of the draft on the website of the body competent for the drafting, so that the interested public has sufficient time to study the draft in question and to form its opinion.

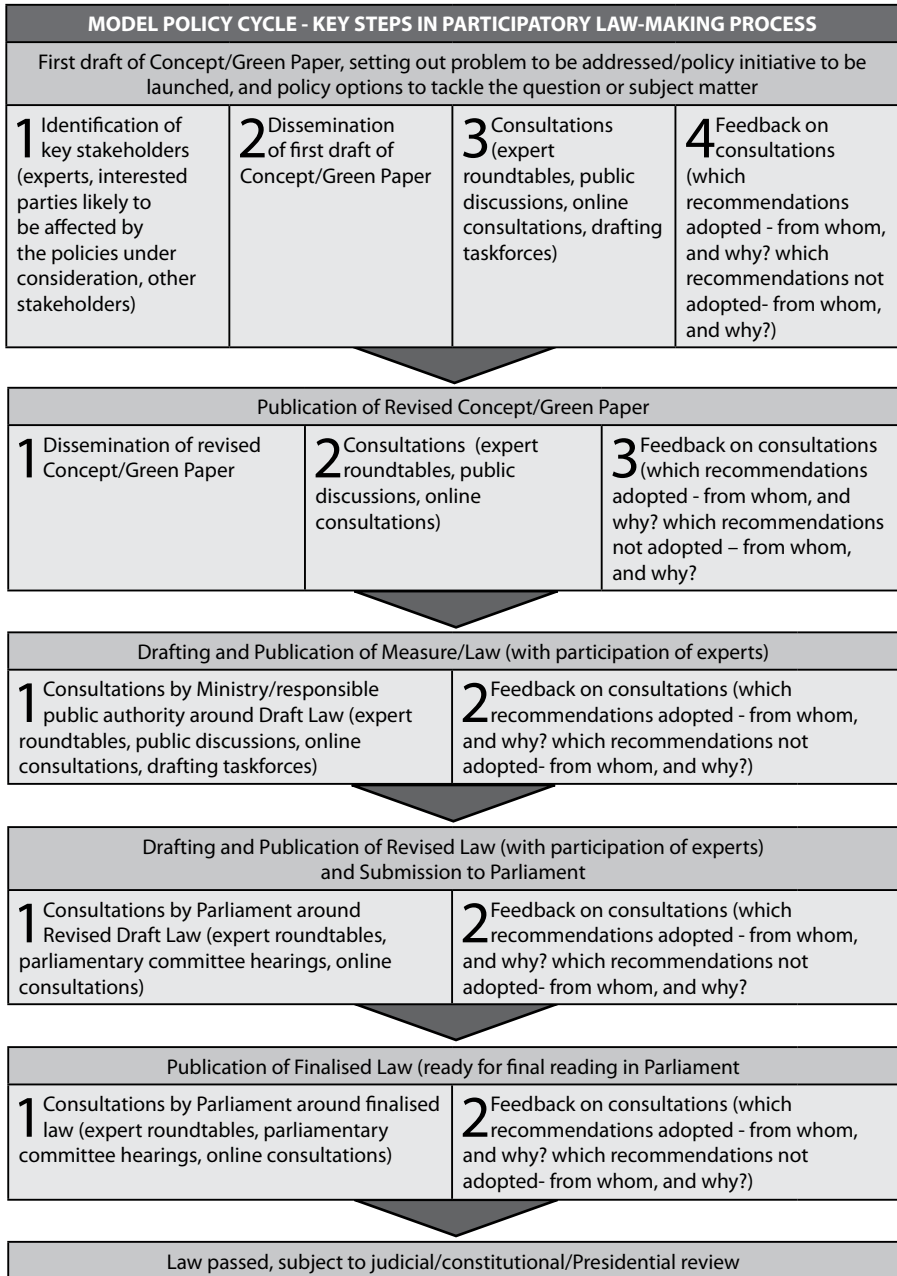
4. Feedback information about the effects of the consultations conducted

The observations by the interested public, as well as a summarized, unified explanation of the rejection of comments on certain provisions of the draft, shall be announced publicly on the website of the body competent for its drafting, or in another appropriate manner, so that the effect of conducting consultations in the procedure for the enactment of laws and adoption of other regulations and acts is visible.

5. Harmonisation of the application of standards and measures of conducting consultations in state bodies

In order to ensure the harmonised application of the above-mentioned standards and measures by state bodies, co-ordinators for conducting consultations shall be appointed as contact persons in all central bodies of state administration, or in the Government offices responsible for drafting laws, other regulations and acts, in order to consistently monitor and co-ordinate the procedures for conducting consultations with the interested public.

Source: *Input to OHCHR based on resolution 27/24 of the UN Human Rights Council. Best practices in equal participation in political and public affairs*, 12 March 2015, European Center for Not-for-Profit Law (ECNL), <http://www.ohchr.org/Documents/Issues/EqualParticipation/contributions/ECNL.pdf>



Green Papers

The first stage outlined in the preceding illustration is the drafting and publication of policy concepts or Green Papers. While applied on an ad hoc basis in some of the Eastern Partnership countries, the use of Green Papers is not mandatory in any of the six countries. (A Green Paper – an analytical study or policy concept circulated in the initial stages of the policymaking process – is designed to launch consultations among different stakeholders and to provide a set of choices and arguments in order to kick-start debate before a commitment is made to draft legislation.)

In **Armenia**, there is no mandatory practice of issuing Green Papers, although they are prepared on an ad hoc basis, and sometimes published on **www.justice.am**, but not always during the period of consultation. In 2014, for instance, there were seven green papers, all of which were published – six from the Ministry of Justice, and one from the Specialised Commission on Constitutional Reforms under the President. However, civil society was not involved at all in the process of shaping the constitutional reforms. There is no prescribed deadline for feedback and recommendations to a Green Paper, and the timeframe is determined by the initiating body, for instance a decision of the government or a presidential order.

In **Azerbaijan**, there is a non-binding recommendation to ministries to issue Green Papers before drafting legislation, but the majority of ministries do not follow this recommendation. Consultation around a Green Paper takes the form of engagement with government-selected expert working groups or taskforces. There is no process for gathering feedback and recommendations to a Green Paper. Feedback reports that set out which recommendations were accepted and which were not, and from whom, are not published. Green Papers themselves are rarely published.

Green Papers are published only in isolated cases in **Belarus** and **Georgia**.

In **Moldova**, provisions exist for the elaboration of Green Papers before legislation is drafted, but these are not mandatory and are rarely applied in practice, being left at the discretion of the authorities. When a Green Paper has been prepared, publication is not mandatory. A Government Decision adopted in August 2016 provides that the Green Paper has to be published only at the moment of public consultation on the existing draft law.

The following Green Papers have been recorded in Moldova in recent years:¹¹

	Green papers prepared in Moldova	Ministry	Green papers published (% of total prepared)	Ministry
2013	4	<ul style="list-style-type: none"> ▪ Ministry of Culture (1) ▪ Ministry of Education (1) ▪ Ministry of Youth and Sport (2) 	3 (75%)	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Youth and Sport (2)
2014	3	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Health (1) ▪ Ministry of Youth and Sport (1) 	2 (66.7%)	<ul style="list-style-type: none"> ▪ Ministry of Education (1) ▪ Ministry of Health (1)
2015	3	<ul style="list-style-type: none"> ▪ Ministry of Education (3) 	3 (100%)	<ul style="list-style-type: none"> ▪ Ministry of Education (3)

In **Ukraine**, the practice of publishing Green Papers is not mandatory, but the concepts or strategies on particular reforms and the concepts of laws are similar to Green Papers, and are often subject to public hearings.

The subsequent stages of the policy cycle are addressed in the six country chapters that follow. From the publication of the first draft of a law to its passage at the final reading in Parliament, the chapters look at the overall implementation record in each respective country, and then in the case studies look in much more detail at how the procedures were followed in the case of particular draft laws.

Eastern Partnership Countries: the Highs and Lows of Participatory Policymaking

In **Armenia**, the closed process of drafting major constitutional changes from 2013-2015 is contrasted with the Law on Public Organisations (the law on CSOs), which evolved over seven years with a high level of civil society participation from the early concept stage right through to parliamentary review of the legislation. Co-operation between CSOs and the Ministry of Justice also took place over the draft Law on Equality, while the final case study focuses on the Electric Yerevan

11 The data on Green Papers is based on answers received by Sorina Macrinici from 10 (out of 16) Moldovan government ministries. The information on Green Papers is not reflected in mandatory annual transparency reports published by ministries.

protest movement against the Government's approval of electricity price rises, which brought together diverse civic groups, and did result in a decision by the Government to subsidise electricity consumers to the amount of the price increase.

The Constitution of **Azerbaijan** enshrines the right of 40,000 eligible voting citizens to initiate draft laws, but stipulates that the manner in which they can exercise this right shall be defined by law. The first case study examines the efforts of CSOs to promote such a law. The second study describes a case where CSOs initiated the Law on Public Participation, and it was adopted in 2014. The third study considers the role of the Civil Society Defence Committee in 2009-2013 in raising international support over key issues in the legislative framework for civil society's operations, and the final study focuses on the Open Government Partnership initiative and the fate of a series of recommendations submitted by CSOs.

In the case of **Belarus**, the first study looks at the process leading up to the Decree on Regulation of Entrepreneurial Activity in 2014. Following a six-year process and discussions held in public advisory councils, restrictions were lifted on self-employed entrepreneurs hiring employees. The second study into law-making processes also considered a sustained, long-term effort, namely a 10-year campaign by animal rights activists towards the enactment of a Draft Law on Treatment of Animals, currently under consideration by a parliamentary committee. An initiative by the International Educational non-governmental organisation ACT, examined in the third case study, has already contributed to the establishment of a legal mechanism enabling local authorities to commission the implementation of social services by CSOs. In the final study, the efforts of environmental CSOs to ensure public participation around the environmental impact assessment of construction of a nuclear plant in 2008 resulted in a campaign of outreach to both international organisations and the Ministry of Natural Resources, culminating in the extension of mandatory public consultations to include all environmentally significant decisions.

The text of unanticipated Amendments to the Law Concerning Constitutional Court in 2016 in **Georgia** were not made public before the parliamentary committee hearings, and the Parliament adopted the amendments through a hasty procedure. As set out in the first case study, however, the persistence of CSOs in challenging the law in the Constitutional Court resulted in declaring several articles of the law unconstitutional. The second study examines the "It Affects You Too" campaign, which was initiated by CSOs in response to electoral code amendments ahead of the 2013 parliamentary elections in Georgia. The

campaign resulted in some changes before the 2013 elections and, after the elections, the creation of a multi-party working group that initiated further reforms. The third study charts the establishment by CSOs of a working group to redress the shortfalls in the new Local Government Code, and their achievement of amendments to provide for the establishment of a new mechanism for citizens' participation in local government. The final case study considers the challenges in the long overdue reform of the Prosecutor's Office. While CSO participants were not included in the working group that prepared the draft law in 2015, they did have access to the draft law and strategy, and could therefore propose from a highly informed perspective recommendations at both the drafting phase and parliamentary review phase. On the other hand, the reforms failed to "depoliticise" the Prosecutor's Office.

The first case study on **Moldova** outlines how CSOs were engaged during 2012-2015 in an inclusive law-making process, the Amendments to Law on Tobacco and Tobacco Products, from the drafting phase to the parliamentary review phase. The second study looks at a non-consultative case where the Amendment of the Electoral Code was pushed through Parliament in an (unannounced) urgent procedure in 2016. The third case outlines the process whereby a public policy paper was elaborated by a CSO, resulting through consultation with state authorities and other CSOs in the adoption by Parliament in 2015-2016 of a draft law to amend the so-called "2% Law" and an accompanying 2% Regulation subsequently adopted by the Government, giving the right to individuals to re-direct 2% of their income tax to CSOs. The final case study concerns the campaign, launched by CSOs in 2013, for a law on social entrepreneurship. The law, still pending parliamentary review in early 2017, emerged from a process where CSOs produced a series of studies into the shortfalls of existing legislation, conducted roundtables, and launched a CSO platform, resulting in an inclusive working group to draft a new law.

In **Ukraine**, the first case study, on the Law on Civil Service, charts how – due to political will for reform – the process included all the necessary stages with the maximum involvement of civil society in an expert advisory group to draft the law and in the working group attached to the parliamentary committee reviewing the law in 2015. The second study focuses on a law-making process with limited success in terms of inclusivity, despite the positive use by the Ministry of Finance of an open platform and an industry platform to deliberate on models of tax reform. The Amendments to the Tax Code, 2014-2015, involved two competing draft laws, and the final compromise law managed to introduce only a fraction of the much-needed reforms. The third study assesses the Draft

Law on Public Consultations, which is intended to regulate at the legislative level the procedure for holding public consultations during the preparation of draft laws, government decisions, and draft regulatory acts. The use of roundtables and regional meetings has made it an inclusive process, but political will is needed to finalise the law's passage in Parliament. The concluding case study examines a single CSO coalition, the Reanimation Package of Reforms (RPR), which dates from the beginning of 2014. The RPR brought independent expertise to the policymaking table, turned regular meetings with civil activists and independent experts into standard practice for both the Government and the Parliament, and facilitated the adoption of more than 60 laws.

Each country chapter includes a set of country-focused recommendations, and **Part Two** concludes with the formulation of a set of **Lessons Learned** from the case studies, drawing some examples of where civil participation models can be improved or further developed, or where key components – not least a regulatory framework for public participation and a culture of transparency and accountability, and engagement with civil society stakeholders – are needed to ensure that public consultations are a regular feature of policymaking, not just an ad hoc element introduced upon the whim of one or more public agencies.

II. CIVIL SOCIETY PARTICIPATION IN DECISION-MAKING:

PRACTICE AND CASE STUDIES

ARMENIA

by Haykak Arshamyan*

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Introduction

In Armenia, as set out in the Law on Legal Acts, there is a requirement for the Armenian Government or legislators to hold public consultations with civil society and other stakeholders to consider the impact of a draft law or decision. Working groups and committees can be created, in line with the Guide to the Methodology of the Elaboration of Draft Legal Acts, but this usually happens only after a draft law has already been prepared. Draft laws are published, and accompanied by an accompanying explanatory note, but before publication there is no participatory process during the period of drafting the concepts underpinning a new law.

While the Guide includes general directions on the selection of participants in public discussions, it does not specify a role for civil society. Public hearings and roundtable discussions often do not take place at all. When they do, the hearings are rarely announced to the public in advance, although CSOs active in the particular field of law are sometimes invited. While feedback submitted by government bodies during the discussions period is published, feedback from CSOs is not disclosed, so there is no record of which proposals from CSOs are adopted, and which are not.

Parliamentary committees sometimes consult civil society and independent experts when considering draft laws, but feedback reports are not published during the review stages in the Parliament.

ARMENIA: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Yes</p> <p>Were all draft laws indeed published? Yes, in 2013, 2014, 2015</p> <p>For each year, where available, list the percentage of draft laws published per ministry? Ministry of Justice: 100%</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
<p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? Yes, in the case of state agencies (although the Guide to the Methodology and Elaboration of Draft Legal Acts prescribes 15 days)</p> <p>If so, how long do interested parties have to provide their input? 5 days for the respective/interested ministries, 15 days for the Ministry of Justice</p> <p>Is this observed in practice? Yes</p>	<p>Public hearings</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
<p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No. All feedback from government bodies is published at www.e-gov.am, but in the case of CSO recommendations feedback is not provided.</p> <p>If so, how soon after the end of the consultation period are these published? There is no deadline according to the legislation, but right after the final discussion of the first draft the feedback reports are published.</p> <p>Is this observed in practice? Yes</p>	<p>Agencies send the draft via post or email, and request comments</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations (sometimes) ▪ Open invitation to all business associations ▪ Government-selected CSOs

Parliamentary review of legislation	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? Yes</p> <p>Is a timeframe provided to announce the review meeting with advance notice? No</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? Yes, in the case of government agencies</p> <p>If so, how long do interested parties have to provide their input? 30 days</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Committee hearings</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
Review of parliamentary committee amendments	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee's proposed amendments is: Rare.</p> <p>As a rule, all committee-stage amendments are published on the www.parliament.am website.</p> <p>Is a timeframe prescribed from publication of committee amendments to deadline for feedback and recommendations before the legislation goes to a final vote in parliament? Yes</p> <p>If so, how long do interested parties have to provide their input? 30 days</p> <p>Is this observed in practice? Yes</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Public hearings</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs

Case Studies

The experience of public participation in law-making processes has to date been mixed. The constitutional amendments resulting in the change from a semi-presidential system of government to a parliamentary one, where a two-year process of development of the changes was largely closed, and allowed very little time for public debate – even once the draft bill was published and then put to a vote by citizens in a national referendum. This lack of consultation with civil society, and also with opposition political parties, was a serious shortfall in the adoption of what amounted to a radical change to the system of government.

In contrast, the Law on Public Organisations (the law on CSOs) evolved over seven years with a high level of civil society participation at all stages, from the initial concept stage right through to drafting of the law and parliamentary review of the legislation, when around 60 out of 70 recommendations made by CSOs were adopted and featured in the final law adopted by the National Assembly. In the case of the draft Law on Equality, close co-operation among CSOs and the Ministry of Justice took place in a working group to study international practice and to elaborate the draft law.

The final case considered is the Electric Yerevan protest movement that took to the streets in 2015 in protest at the Government's decision to approve a 17% increase in electricity prices. The movement did result in a decision by the Government to subsidise electricity consumers to the amount of the price increase. The protests brought together diverse groups, not least because of a growing lack of trust in government and concern at high levels of corruption and unaccountability – manifested in this case by the approval of the price rise without public consultations of any kind.

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Constitutional Amendments, 2013-2015

1. Objective

A transformative change to Armenia's Constitution was introduced through legislation designed to initiate extensive constitutional amendments that have an impact on the majority of laws and regulations. The ruling Republican Party of Armenia (HHK) and incumbent President Serzh Sargsyan initiated the legislation, which was confirmed by a referendum held on 6 December 2015. Although the drafting process lasted two years, the scope for participation in the process leading up to the referendum was limited, and irregularities marred the results of the referendum.¹²

The most significant amendment in the constitutional changes brings about the shift from a semi-presidential system of government to a parliamentary one.

The Concept Paper on Constitutional Amendments¹³ covered 11 core areas, introducing fundamentally new approaches to constitutional questions, including:

- A shift from an authority-centred constitutional system to a human-centred one;
- Specific constitutional guarantees for the consistent application of the constitutional principle of the social state and clear programme- and goal-oriented policies;
- The consistent application of the constitutional principle of separation and balance of powers as a part of systemic integrity;
- The exclusion of any performance of state and authority powers by state agencies not authorised to perform such powers by the Constitution;
- The reduction of the apparent imbalance between the actual scope of powers vested in various constitutional authorities and their political accountability.

12 *Final Report: Observation Mission for the Constitutional Amendments Referendum of the Republic of Armenia on December 6, 2015*, Citizen Observer Initiative and European Platform for Democratic Elections (EPDE), 2016: <http://transparency.am/files/publications/1454523289-0-754489.pdf>

13 http://moj.am/storage/uploads/Sahmanadrakan_barepokhumner.14.10_.pdf

2. Civil society participants involved

The level of public participation in the process of introducing and passing the Constitutional Amendments was low. The low level of interest in the amendments decreased further over time, and reflected the fact that the changes were not driven by public demand. Similarly, there was a low level of public trust both in the process around the constitutional amendments and towards referenda and elections in general.

According to the findings of a public opinion poll carried out by Advanced Public Research Group in August 2014, 46.8% of respondents were aware that the amendments had been pushed by the authorities and only 25.4% agreed that the amendments had been a necessity.¹⁴ In addition, in 2015, 83.3% respondents were informed about the upcoming amendments and 39.5% took the view that the amendments were being imposed by the authorities. Only 2.8% of respondents thought the country's problems would be substantially reduced by the amendments.

The level of public trust decreased, and familiarity with the amendments was negligible. During the campaign period in November 2015, only 2% of respondents were overall familiar with the proposed amendments, while 19% were rather familiar. Only 14.5% of the respondents mentioned that the proposed draft brought significant advantages over the current constitution. The constitutional referendum was planned in a situation where, according to surveys, only 13% of women and 12% of men believed in the honesty of elections,¹⁵ and about 81% of people either did not trust at all or rather did not trust the constitutional reform process.¹⁶

Civil society was excluded from the process both in the stages of development of the concept paper and development of the draft amendments. However, civil society representatives with the support of international organisations initiated several public discussions and roundtables in Yerevan and in the regions. Several statements were delivered to the government and to the commission during different stages of the process.

14 Findings of public opinion poll on the Constitutional Amendments, Armenia 2014-2015, APR Group: http://aprgroup.org/images/Library/Constitution/Constitution_survey_ppt_2015-25-11-Q-Eng.pdf

15 <http://www.gallup.com/poll/157997/women-worldwide-less-confident-men-elections.aspx>

16 <http://aprgroup.org/images/Library/Constitution/research%20report-eng-q.pdf>

3. Public authorities involved

The following state authorities were involved in the legislative process:

- The President, Decree No 207-N of 4 September 2013, to launch the process of the Constitutional Amendments;
- The Special Commission on Constitutional Amendments adjunct to the Office of the President, headed by the Chairman of the Constitutional Court, to develop the concept paper and the draft amendments;
- The Ministry of Justice as the lead ministry responsible for draft amendments;
- The National Assembly Standing Committee on State and Legal Affairs to consider the draft amendments;
- The National Assembly, which passed the draft and adopted a decision about putting the draft Constitutional Amendments to a national referendum.

4. Stages of potential consultation

The process of developing the legislative initiative did not exhibit productive co-operation between the different branches of the government and representatives of civil society and the general public.

Main stages of legislative process:

1) The process of drafting the Constitutional Amendments was launched by the Presidential Decree No 207-N of 4 September 2013,¹⁷ a day after President Sargsyan declared that Armenia was joining the Eurasian Customs Union instead of signing an Association Agreement with the European Union.¹⁸ The decree stated that the Constitutional Amendments were necessary for “the improvement of constitutional mechanisms to ensure the application of the principle of the rule of law and to guarantee fundamental human rights and freedoms, to secure the full balance of powers and improve the efficiency of public administration”.¹⁹ According to the decree's timeline, the Special Commission on Constitutional Amendments adjunct to the Office of the President was to submit the Concept

17 <http://www.president.am/en/decrees/item/947/>

18 The Eurasian Customs Union, formed between Belarus, Kazakhstan and Russia in 2010, was enlarged to include Armenia on 2 January 2015 and Kyrgyzstan on 6 August 2015. The original treaty establishing the Customs Union was terminated by the agreement establishing the Eurasian Economic Union, signed in 2014, which incorporated the Customs Union into the EEU's legal framework.

19 <http://www.president.am/en/decrees/item/947/>

Paper for Constitutional Amendments by 20 April 2014 and, within ten months following the President's approval of the Concept Paper, the Commission was to present the draft constitutional amendments to the President.

2) On 14 October 2014, the Special Commission for Constitutional Amendments,²⁰ headed by Gagik Harutyunyan, Chairman of the Constitutional Court, approved the Concept Paper for Constitutional Amendments, which was published and presented to the President on 15 October 2014 (six months later than the deadline).²¹ The Venice Commission, an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law, subsequently issued an opinion on the Concept Paper at its 100th Plenary Session in Rome on 10-11 October 2014.²²

On 15 July 2015, the Special Commission published a draft of Chapters 1-7 and 10 of the constitutional amendments on the website of the Ministry of Justice,²³ and on 4 August 2015, published a draft of Chapters 8-16, along with the revised draft of Chapters 1-7.²⁴ On 17 July 2015, the Venice Commission released its preliminary opinion on the draft amendments to Chapters 1 to 7 and 10.²⁵

3) On 20 August 2015, the Special Commission approved the full revised text of the draft Constitutional Amendments,²⁶ and presented the document to the President. The Venice Commission published its opinions on Chapters 1-7 and 10 of the revised draft on 10 September 2015 and its opinion on Chapters 8-16 on 11 September 2015.²⁷ In particular, the Venice Commission concluded that “the work carried out by the Constitutional Commission of Armenia is of extremely high quality and deserves to be supported and welcomed. The atmosphere of genuine dialogue and fruitful exchanges with the Venice Commission has continued and has enabled the Constitutional Commission to produce a text which is now in line

20 The other members of the Special Commission were: David Harutyunyan, Chairman of the National Assembly Standing Committee on State and Legal Affairs, Hrayr Tovmasyan, Minister of Justice, Gevorg Kutoyan, Assistant to the President, Gevorg Kostanyan, Military Prosecutor, Gagik Ghazinyan, Chairman of the BAR Association and Dean of the Law Faculty, Yerevan State University, Gevorg Danielyan, Chair of the board of “Constitutional Law Center” NGO and Chair of Constitutional Law at the Law Faculty, Yerevan State University, and Vardan Poghosyan, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

21 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2014\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)033-e)

22 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)027-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)027-e)

23 <http://www.moj.am/article/1326>

24 <http://www.moj.am/article/1353>

25 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)015-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)015-e)

26 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2015\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2015)034-e)

27 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)019-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)019-e)

with international standards... The Venice Commission stresses once again the importance of an open and continued dialogue with all the political forces and with the civil society of Armenia in order for these constitutional amendments to be adopted by parliament and, subsequently, by referendum, which would represent a further important step forward in the transition of Armenia towards democracy."²⁸

4) On 21 August 2015, the draft Constitutional Amendments, with accompanying justifications, were submitted to the National Assembly. The draft was discussed at the National Assembly Standing Committee on State and Legal Affairs at its 4 September hearing. The Committee recommended putting the draft on the agenda of the 8th session of the National Assembly to be held on 15-17 September 2015. Discussion of the draft Constitutional Amendments was launched in the National Assembly on 15 September 2015, and lasted four days (15-18 September), with only one day allocated for public debate.

5) On 5 October 2015, the National Assembly adopted the decision to submit the draft Constitutional Amendments to a national referendum. According to the President's Decree of 8 October 2015, the Constitutional Amendments referendum was set to take place on 6 December 2015.

6) The official referendum campaign was launched on 9 October 2015. The amendments were passed in the referendum with the support of 66.2% of voters. Voter turnout was 50.8%, passing the 33% threshold necessary to validate the results.

5. Forms of participation at each stage

The Special Commission on Constitutional Amendments, adjunct to the Office of the President, developed the draft Constitutional Amendments over a period of two years, but the public at large had less than two months to become familiarised with the draft. During May-July 2014, a series of discussions were organised by CSOs, international organisations and embassies on the concept paper with political parties, civil society organisations, representatives of international organisations – such as the Yerevan office of the Organization for Security and

28 Ibid

Co-operation in Europe (OSCE) and the United States Agency for International Development (USAID) – as well as embassies based in Armenia (including the EU Delegation).

The initiators neither held public discussions on the draft amendments, nor did they consider any amendments proposed by CSOs, nor did they participate in the debates organised by civil society members until the moment of the draft's final approval by the Special Commission for Constitutional Amendments, after which the draft was submitted by the President to the National Assembly. Only after the draft's submission to the National Assembly did members of the ruling Republican Party, Members of Parliament, government representatives, members of the Special Commission for Constitutional Amendments, and members of the Armenian Revolutionary Federation party, start participating in discussions.

Civil society representatives presented their concerns about the Constitutional Amendments to the Venice Commission members during a meeting of the representatives of political forces and civil society with Venice Commission experts on 25 August 2015.²⁹ A joint submission from CSOs was formulated in a statement published by the Transparency International Anti-Corruption Center.³⁰ The Venice Commission experts promised to publish their final opinion on the draft amendments on 26-28 October, and stated that they had gathered impressions and new information from the meeting that could be considered in their subsequent opinion.

The National Assembly deputies had four days to consider the draft, and the National Assembly held only a one-day public debate on it. Furthermore, the final draft was delivered to them only one hour prior to voting. The document adopted by the National Assembly on 5 October 2015 appeared to be a revised text, published the same day, hence providing no opportunity even for parliamentarians to read and digest the new text.³¹ This haste to push the Constitutional Amendments through the Assembly – after two years of drafting – exacerbated the lack of debate around, and participation in, the draft amendments and consideration of their implications.

29 <http://transparency.am/en/news/view/1055>

30 <https://transparency.am/en/news/view/995>

31 <http://www.osce.org/odihr/191676?download=true>

6. Level and timeframe of access to information

September 2013 - October 2014: The Special Commission on Constitutional Amendments developed the initial draft of the Concept Paper (green paper) of Constitutional Amendments. On 4 April 2014, the Special Commission announced that the initial Concept Paper had been finalised, and it was published on the website of the Ministry of Justice.³² Between May and July 2014, several public discussions took place on the initial draft concept paper, both in Yerevan and in the regions of Armenia.

First of all, the Special Commission had a working meeting with representatives of the Armenian Revolutionary Federation party on 7 May 2014. This was followed by public discussions on 27-29 May with CSO representatives, lawyers, journalists, political parties and international organisations with the support of the OSCE Yerevan office and USAID. Another public discussion, organised by the OSCE Office in Yerevan and the EU Delegation to Armenia, took place on 5-6 June 2014 with representatives of political parties, CSOs, and media in Yerevan. Subsequently, the Special Commission started public discussions in the regions of Armenia where, with the support of regional administrations (*marzpetaran*), public discussions were held in the cities of Ashtarak, Artashat, Armavir, Gavar, Vanadzor, Ijevan, Yeghegnadzor, and Kapan.

The final concept paper was finalised and submitted to the President on 14 October 2014 and published on the website of the Ministry of Justice a day later.³³

21 August - 4 December 2015: The awareness-raising actions around the contents of the resulting draft Constitutional Amendments were rather limited. The public at large was deprived of a chance to receive comprehensive information regarding the draft amendments, which were made accessible electronically on the website of the Ministry of Justice on 21 August 2015. The draft Constitutional Amendments were considered by the National Assembly and the final version, after its passage in the National Assembly, was published on the same website on 29 October 2015.³⁴

CSOs that had concerns regarding the process of constitutional changes, and members of opposition political parties who opposed the shift from the semi-

32 <http://www.moj.am/article/897>

33 <http://www.moj.am/article/1063>

34 <http://www.moj.am/news/constreforms>

presidential to a parliamentary system of government, issued several statements, voicing their concerns, organised public debates and roundtables, and gave dozens of interviews to the media.³⁵

The public was given only seven weeks to become familiar with the final version of the draft before the referendum vote on the Constitutional Amendments. Unlike the 2003 and 2005 draft constitutional amendments, which were printed in advance with hundreds of thousands of copies disseminated to the public, the 2015 draft Constitutional Amendments were made accessible only on the websites of the National Assembly,³⁶ the Ministry of Justice, and the Central Electoral Commission,³⁷ and in the *Hayastani Hanrapetutyun* daily newspaper (which has a print run of up to 3,000 copies).³⁸

The amendments were also printed by the Central Referendum Commission – 4,500 copies to ensure that there were two copies available in each Precinct Referendum Commission and District Referendum Commission. According to official data, 2,547,916 citizens had the right to vote in the 6 December 2015 referendum. In regional awareness-raising meetings organised by CSOs, citizens complained about the lack of opportunity to become familiar with the text of the draft constitutional amendments when many representatives of the public administration campaigned for citizens to vote in favour of a draft with which they were not familiar.

Debates and roundtables were organised by the majority of broadcast, print and online media outlets, and there was substantial coverage of the main features of the amendments when the final draft was published. From September to December 2015, there was daily media coverage.³⁹

The report of the observation mission conducted by the Citizen Observer Initiative and the European Platform for Democratic Elections summarised the information gathered from the media on the evident or alleged abuse of administrative resources, creating uneven conditions between proponents and opponents of the constitutional amendments, during the official referendum campaign.⁴⁰

35 <https://transparency.am/en/news/view/1027>; <https://transparency.am/en/news/view/995>; <https://transparency.am/hy/news/view/1055>; <http://www.aravot.am/2015/09/18/610333/>

36 http://www.parliament.am/law_docs5/Sahmanadrutyun_06.12.2015.pdf

37 <http://res.elections.am/images/doc/draft06.12.15.pdf>

38 <http://www.mediamax.am/am/news/media/2358>

39 <http://ypc.am/studies/monitoring-of-armenian-broadcast-media-coverage-of-the-december-6-2015-referendum-on-amendments-to-the-ra-constitution/>

40 <http://transparency.am/files/publications/1454523289-0-754489.pdf>, p. 14-22

7. Comparison against stated stages of policy cycle in Parliament

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation		The draft bill was published on the website of the Ministry of Justice on 21 August 2015.
	Expert working groups	<p>The Special Commission on Constitutional Amendments developed the draft Constitutional Amendments. The Commission was chaired by Gagik Harutyunyan, Chairman of the Constitutional Court.</p> <p>Other members:</p> <p>David Harutyunyan, Chairman of the National Assembly Standing Committee on State and Legal Affairs,</p> <p>Hrayr Tovmasyan, Minister of Justice,</p> <p>Georgy Kutoyan, Assistant to the President,</p> <p>Gevorg Kostanyan, Military Prosecutor,</p> <p>Gagik Ghazinyan, Chairman of the Bar Association and Dean of the Law Faculty of Yerevan State University,</p> <p>Gevorg Danielyan, Chair of the board of "Constitutional Law Center" NGO and Chair of Constitutional Law, Law Faculty,, Yerevan State University,</p> <p>Vardan Poghosyan, Deutsche Gesellschaft für Internationale Zusammenarbeit ((GIZ).</p>
	Online consultations	The bill was published on the website of the Ministry of Justice on 21 August 2015, and the final version was published on the same website on 29 October 2015. On 21 August, the final draft was published also on the website of the National Assembly. ¹ No online consultations took place.
	Public hearings	Public hearings organised by the Government were held only on the initial draft of the concept paper. CSOs and political parties initiated several discussions, round-tables and press conferences.

Stages of the legislative process	Forms of consultation	Practice
Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend		An announcement was made on the website of the National Assembly on 31 August 2015 about hearings on the draft amendments to be held on 4 September. Some external experts, representatives of civil society and political parties, and lawyers were invited to the hearing.
	Committee hearings	The National Assembly Standing Committee on State and Legal Affairs considered the bill at a hearing held on 4 September. Representatives of political parties and CSOs, media, and lawyers were invited to participate.
Publication of the proposed amendments to the bill following its consideration by the parliamentary committee		Since the opposition was against the constitutional changes as a whole, they did not submit amendments to the bill.
	Public hearings	Talk shows and debates were initiated by the media
Interested parties have 30 days after the publication of parliamentary committee amendments, during which they can submit feedback and recommendations before the legislation goes to a final vote in parliament		These deadlines were not observed. The legislation was pushed through quickly.
Publication of feedback report, explaining which recommendations from whom were/were not accepted, and why		No feedback report was published.

8. The process - from the perspective of participants/stakeholders

Sona Aivazyan, Executive Director of Transparency International Anti-Corruption Center NGO

"The proposed amendments to the Constitution embrace a large volume of issues and change all but the first two articles, which means that the proposed changes qualified for a new constitution rather than amendments. Most importantly, the proposed amendments introduced a plan to change the governance system of the country from a semi-presidential to parliamentary one, strengthen and make sustainable the majority rule in the parliament, radically change the system of checks and balances, dilute some critical responsibilities and weaken the state's role in the protection of a number of human rights.

"Though there have not been any political preconditions or a public demand for changing the governance system of the country and there exists a strong discontent on the part of opposition political parties, many civil society groups and legal experts, the referendum was pushed forward by the authorities rather quickly and aggressively. The planned constitutional changes are naturally believed to be designed for the incumbent president's desire to stay in power, given that his second term in office expires in 2018. The constitutional changes will allow him to continue his leadership role in the position of the speaker or prime minister as well as secure the monopoly power of his political party – the Republican Party of Armenia.

"Hence, it is natural that the proposed amendments are designed to serve the interests of the incumbent President rather than those of the people and society. First, there has not been any objective necessity, such as a political crisis or public demand, which could justify such a hasty change of the governance system. In the absence of objective preconditions, such a controversial transformation should have been subject to broad and lengthy consultations with political and civil society actors and promotion through a general consensus and strong rationalisation, which did not take place.

"As the chronology of the constitutional amendments process indicates, the Constitutional Commission took about two years to draft the text, while the public had extremely little time and opportunity to participate in the drafting or react to the proposed amendments. Moreover, the scope of awareness raising on the constitutional draft was so limited that one may state that the necessary and sufficient conditions for forming free opinion on the draft were not ensured. The document was

published at the most passive time in terms of public participation, when many NGOs were on leave and could not appropriately react to the rushed process. As the Special Commission on Constitutional Amendments had not organised public discussions of the Draft Constitutional Amendments, and as the Concept Paper drafting-stage discussion was limited to a narrow circle, it can be said that the Armenian public was not provided with any real possibility to participate in drafting or presenting comments and proposals on the Draft Constitutional Amendments as well as forming an opinion.

“The views and suggestions provided by certain public groups and experts were fully ignored by the authors of the Draft Constitutional Amendments, the Special Commission, and subsequently the National Assembly. It is worth mentioning that the opinions issued by the Venice Commission, too, ignored the concerns voiced by civil society.”

***Aram Manukyan, Secretary of the Armenian National Congress
opposition faction of National Assembly***

(quotes taken from interview⁴¹)

“We will not enter into any discussion on constitutional changes, it is not necessary, and we will do everything to prevent them being accepted. We say that these changes will destroy Armenia; it is an adventure, an adventure destroying the system of government. That’s why we do not want to enter into a substantive discussion. Today Armenia is not in a position to make such changes. There are hundreds of pieces of evidence, such as Armenia’s economic and political challenges, the challenge of corruption, flawed electoral system and emigration. We can’t leave these challenges aside, and go for a constitutional amendment that won’t give us anything. How can we implement constitutional changes when they do not respect the current Constitution? Which constitution is being violated – the old one or the new one? The bill of amendments that has been introduced represents a shock to all sectors of the state - parliamentary, local government, educational and judicial systems.”

41 <http://www.parliamentmonitoring.am/news/480.html#.WEQ0Z6J95PM>

Hrant Bagratyan, opposition Member of Parliament from the Armenian National Congress

(quotes taken from interview⁴²)

“The reforms proposed in the draft text of Armenia’s new Constitution are not likely to promote a higher level of democracy in Armenia”. The politician said he believes that the reforms would be promising if they envisaged procedures for creating a bicameral parliament. According to him, one-chamber parliaments lead to dictatorship and even fascism, making the situation uncontrollable. “Constitutional changes with such an option will lead to a single party rule,” he noted. The opposition MP said that he had earlier discussed his concerns with the Speaker of the National Assembly.”

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The process was neither driven by the public nor participatory in a way that could have created ownership and trust in the process among the public.

Under the Constitutional Amendments, the most crucial amendment covers the shift from a semi-presidential system of government to a parliamentary one. Although a parliamentary system of government theoretically ensures a greater scope of representative participation and checks and balances on executive power, in the current political context, it was always unlikely that the ruling Republican Party would not secure a majority in the parliamentary elections in April 2017. The electoral system in Armenia has been repeatedly manipulated to strengthen the position of the current authorities, i.e. the Republican Party. The violations that have marred national elections cast doubt over the legitimacy of the referendum on the Constitutional Amendments.⁴³

This context explains the apparent contradiction between the actual and declared goals of the amendments, and demonstrates that there were substantive reasons underpinning the lack of public trust and interest in the process.

42 <http://www.tert.am/en/news/2015/11/02/Hrant-bagratyan/1833057>

43 *Republic of Armenia Constitutional Referendum 6 December 2015: OSCE/ODIHR Referendum Expert Team Final Report*, OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), 5 February 2016: <http://www.osce.org/odihr/elections/220656?download=true>

The campaign and referendum itself were administered against a background of extensive abuse of administrative resources, unbalanced media coverage, and a lack of pluralism. Irregularities recorded included vote buying and voter intimidation, falsification of voting results and voters' lists, and ineffective consideration of complaints. The referendum was notable for large-scale violations and an unprecedented volume of intimidation against election participants: observers, mass media representatives, proxies and Commission members.⁴⁴

The draft, which included 250 amendments to the Constitution, was put to voters as a single package, instead of providing voters with a chance to vote on each amendment separately.

The public at large did not have the opportunity to receive comprehensive information regarding the Amendments, because the draft law was made accessible only online on 21 August 2015, and the final version was published on 29 October 2015, more than three weeks after voting in the National Assembly.

Upon the launch of the official referendum campaign, the Republican Party and the Armenian Revolutionary Federation Party began actively campaigning in favour of the Constitutional Amendments, and even Prosperous Armenia declared its support for the "Yes" campaign.

High-ranking state officials were enrolled in the Republican Party's Constitutional referendum campaign, including the Prime Minister, Chief of Presidential Administration, Republican Party parliamentary faction leader, the Minister for Regional Administration and Emergencies, the Head of the Oversight Service of the President and the Deputy Head of the Chamber of Control. Regional governors (*marzpets*) were appointed as co-ordinators of all the regional "Yes" campaigns, while community mayors were appointed co-ordinators in many communities. The Constitutional Amendments' supporters did not conduct their campaign through rallies, but through behind-the-scenes and hall meetings with targeted audiences. Such meetings were made public only after they were over, or not publicised at all. Educational establishments were mostly involved in such meetings.

Based on the observation findings revealed during both the campaign and on the day of the referendum, the Citizen Observer Initiative (a coalition formed in

⁴⁴ *Final Report: Observation Mission for the Constitutional Amendments Referendum of the Republic of Armenia on December 6, 2015*, page 9; Citizen Observer Initiative and European Platform for Democratic Elections (EPDE), 2016: <http://transparency.am/files/publications/1454523289-0-754489.pdf>

May 2013, consisting of the following NGOs: Transparency International Anti-Corruption Center, Europe in Law Association, Journalists' Club "Asparez," Helsinki Citizens' Assembly (Vanadzor Office), and the European Platform for Democratic Elections (EPDE)) concluded that:

- a. The referendum campaign was marred by large-scale misuse of administrative resources in favour of the Constitutional amendments, which affected the process of voting and vote counting.
- b. The inaccuracy of voter lists remains the most crucial issue considering the confidentiality of voter participation that leaves room for further manipulations.
- c. On the voting day, observers reported an unprecedented number of systemic violations of the Electoral Code and international standards.
- d. Manipulations of the voter lists, violations spotted during the voting and the vote count, as well as the high number of cases of direct falsifications of results by electoral commissions, influenced the final outcome of the referendum.
- e. Considering the great number of electoral violations and crimes, including intimidation of voters, falsification of protocols and numerous reports on ballot box stuffing, Citizen Observer Initiative and the European Platform for Democratic Elections believe that the referendum results do not reflect the free will of Armenian citizens and hence cannot be deemed legitimate.⁴⁵

The observations conducted by the above-mentioned groups and domestic missions provided sufficient grounds for EU representatives in Armenia to negatively assess the administration of the referendum, casting doubt over the credibility of the referendum results prior to a comprehensive independent investigation of the electoral violations.⁴⁶

The US Embassy in Armenia disseminated a statement, reiterating "the credible allegations of irregularities in the referendum". According to the statement, "the US Embassy can also draw upon the information contained in such reports to

45 <http://hcav.am/en/events/07-12-2015-02/>

46 http://eeas.europa.eu/delegations/armenia/press_corner/all_news/news/2015/2015_12_10_2_en.htm

help assess whether any individuals who directly interfered in the integrity of the 6 December electoral process can participate in Embassy programmes or activities".⁴⁷

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Overall, the process of Constitutional Amendments was non-democratic and non-participatory and international observers' reports indicate that the results of the referendum held on 6 December 2015 were marred by serious violations.

The haste with which the text of the Amendments was approved in the National Assembly without amendments – despite a two-year drafting process – demonstrates the lack of open consultation on what was essentially the introduction of a new constitution and a fundamental shift in the form of government in Armenia.

47 U.S. Embassy's Additional Statement on Armenian Referendum. 14 December 2015, <http://armenia.usembassy.gov/news121415.html>

Law on Public Organisations, 2009-2016

1. Objective

The current Law on Public Organisations (the law on CSOs) was adopted in 1998 and amended in 2002. The new draft law on public organisations, the first draft of which was published by the Government in December 2014, aims to regulate the internal management and registration issues of CSOs. The process is aimed at further liberalisation of CSO legislation and solving a series of legal problems hindering the development of CSOs, including issues connected with the engagement of volunteers, securing of finance, and scope for more liberal regulation of internal management issues.

2. Civil society participants involved

The level of public participation in the process of drafting the amendments was high. More than 300 CSOs participated, including some platforms (such as the Armenian National Platform of the Eastern Partnership Civil Society Forum). One CSO, the International Center of Human Development (ICHD), was active in the initial phase,⁴⁸ With the support of Counterpart International Armenia, ICHD conducted a research study in 2011 with the goal of developing comprehensive and consensual recommendations for improving policy, regulatory and institutional frameworks that would enable further progressive development of civil society in Armenia). At a later stage, the Civic Development and Partnership Foundation (CDPF) was more active.

The British Council supported CSOs to ensure their involvement in public consultations. However, the involvement of several organisations – for instance, Transparency International Anti-Corruption Center (TIAC), Open Society Foundations-Armenia (OSFA), Eurasia Partnership Foundation (EPF), ICHD and others (10 in total) – was very limited. This lack of involvement was criticised by the British Council, the EU delegation in Armenia, and CSOs involved in the process, after which the Deputy Minister of Justice, Arsen Mkrtychyan, established a working group including ICHD, EPF, CDPF, OSFA, Save the Children, Helsinki Citizens' Assembly Vanadzor office (HCAV), TIAC and others. It became a regular

48 <http://ichd.org/?laid=1&com=module&module=static&id=1037>

working group in February-April 2015.⁴⁹ This working group, as well as the Deputy Minister, held consultations with other CSOs. The draft law was also discussed in the Public Council of the Republic of Armenia (the Public Council is formed by the President of Armenia as a non-political advisory body aimed to enable societal engagement in the process of policy-making carried out by the Government, which in turn ensures that the Government's activities are in line with societal demands) in conjunction with the Ministry of Justice.

3. Public authorities involved

The Ministry of Justice was the main stakeholder from the side of the Government, and on minor issues the Ministry of Finance and the Ministry of Labour were also involved in the process.

At the beginning of 2017, the draft law was under consideration by the National Assembly's standing committee on Protection of Human Rights and Public Affairs.

4. Stages of potential consultation

The Government initiated and proposed amendments to the Law on Public Organisations on 23 September 2009, which implied additional requirements for CSOs, such as a complicated format for publishing reports and other data, which would have required additional human and financial resources on the part of the CSOs. The draft law was sent to the National Assembly in autumn 2009. The proposed amendments were not discussed with CSOs or with the general public. Once the CSOs learnt about the amendments, on 29 September they issued a statement and they started a campaign to stop the process.⁵⁰

After a lengthy advocacy campaign, the amendments were weakened considerably and were waiting for review by the National Assembly's Standing Committee on Protection of Human Rights and Public Affairs. In 2010-11, the Government repeatedly tried to moderate solutions to address the problem, but failed to implement them.

49 <http://www.aravot.am/2015/02/19/543913/>

50 <http://transparency.am/en/statements/view/115>

At the end of 2011, Counterpart International, in an advisory and support role with a coalition of CSOs, began to work with the Ministry of Justice to move the common agenda forward.

The following agreements were made with the Government:⁵¹

Short-Term Measures:

- Easy registration and reporting;
- Allow some form of non-membership operational foundation;
- Allow CSOSs to engage in direct entrepreneurial activity;
- Allow CSOs to invest their funds in different instruments;
- Introduce specific regulation on how ministries can contract services to CSOs (and allow CSOs to receive payment for provision of these services);
- Design an NGO Fund;
- Create an online database of state grants to NGOs;
- Regulate volunteerism.

Long-Term Measures:

- Adoption of a government strategy on civil society development;
- Evaluation of the environment for philanthropy and charitable giving in Armenia;
- Analysis of the need to introduce specific regulation on endowments;
- Evaluation of the Law on Charity.

These measures and other conceptual matters were enshrined in a Civil Society Concept Paper produced through the Counterpart/Civil Society Initiative, which was then reviewed by the Deputy Minister of Justice.

In September 2012, an agreement was reached between the Ministry of Justice on one hand, and USAID and Counterpart on the other, to move ahead with the Concept Paper in collaboration with the Civil Society Initiative Network and the

⁵¹ Based on an unpublished working document.

Ministry, for subsequent approval by the Government.⁵² Counterpart organised public discussions on the amendments with various CSOs, and discussions began with the Ministry of Justice on the provisions of the concept paper.

The Public Council's Civil Society Committee developed an alternative strategic concept in October 2012.⁵³ Consultations had started between the Civil Society Initiative and the Public Council to discuss the Strategic Concept on Civil Society Development in Armenia. The concept developed by the Public Council was rather philosophical and provided a general summary of the current state of affairs in the civil society sector and broad recommendations, while the concept developed with Counterpart's support focused on specific legislative changes.

Hovhannes Hovhanissyan, head of the Public Council's Civil Society Committee, suggested that the Public Council would go ahead with its concept and present it on 26 October 2012, and that it would be open for suggestions from CSOs, after which the Concept would be sent to the Office of the President (the concept was actually developed at the President's request), which would subsequently send it to the Government for approval. Meanwhile, the Public Council would participate in the discussions around the Counterpart-sponsored concept that was to be circulated in November 2012. On 10 December 2012, the final draft of the CSO-developed concept was submitted to the Ministry of Justice.

On 18 April 2013, a public discussion on the concept was organised by the Ministry of Justice in co-operation with the Civil Society Development Network.⁵⁴ Representatives of approximately 35 CSOs participated in the discussion. The Ministry of Justice, which had already posted the concept on its website, circulated the concept among members of the Government in April 2013.

However, as of October 2013, the Civil Society Initiative concept had not been adopted yet by the Government. The delay in adoption was caused by the fact that the Ministry of Justice had also officially received the concept developed by the Public Council, which was re-directed to the Ministry of Justice by the Office of the President.

On 22 October 2013, representatives of ICHD and two representatives of the Ministry of Justice took part in the second meeting of the working group on CSO legislation reform at the Ministry. The topic of discussion was the first draft of the Law on Public Organisations, which was developed by the experts of ICHD,

52 http://moj.am/storage/files/legal_acts/legal_acts_9633814191381_Hayecakarg.Iramshakvac.3.pdf

53 <http://www.publiccouncil.am/en/documents/item/2013/03/28/doc01/>

54 <http://moj.am/article/688>

and was developed taking into account the main elements outlined in the Civil Society Initiative's concept.

On 15 November 2013, the Ministry hosted a third meeting of the working group took place. The working group submitted a revised version of the draft law, which addressed issues such as the liberalisation of CSOs' charters and operational requirements, the right to entrepreneurial activity, transparency, etc.)

Concerns voiced by CSOs culminated in a series of public discussions with the Ministry of Justice from December 2013 until March 2014.

On 10 January 2014, Counterpart received an updated version of the Civil Society Initiative's concept, which had been adapted in line with the Government's requirements for official concepts, and slightly modified based on comments and recommendations received from the Public Council. It was shared by members of the working group (representatives of the Civil Society Initiative Network, including CDPF, the Professionals for Civil Society NGO, ICHD, and the Armenian *Sakharov* Human Rights Protection Center) who had developed the Concept. One of the members submitted critical comments alongside the revised Concept. Those critical comments were passed to the Ministry of Justice.

The final Civil Society Initiative concept paper was published on the website of the Ministry of Justice on 5 February 2014.⁵⁵

On 7 March 2014, a public discussion on the draft law was organised by the Ministry of Justice. About 50 CSOs participated in the meeting, addressing their concerns, questions and recommendations to the working group who had developed the draft law and to Deputy Minister of Justice Orbelyan.

From February to April 2015, at least eight working group meetings were organised between the CSOs representatives and the Ministry to discuss the draft law.

On 29 October 2015, the draft law was finalised and published on the website of the Ministry of Justice.⁵⁶ After its submission to the National Assembly, on 10 November, the text of the draft was published on the website of the National Assembly.⁵⁷

55 <http://moj.am/legal/view/article/614>

56 <http://moj.am/legal/view/article/713>

57 <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=38981>

On 1 February 2016, the draft law was included on the agenda of the National Assembly. On 17 February, a public hearing took place in the Parliament's Committee on Human Rights with the participation of MPs, and government and CSO representatives. The Minister of Justice, Arpine Hovhannisyán, was the principal participant.

On 6 September 2016, a final, revised version of the draft was submitted to the National Assembly. On 24 October 2016, the draft was adopted at the first reading. On 15 December 2016, the draft was adopted at the second reading, and the next day the law was adopted at the third reading and was sent to the President for his signature. The President signed the law on 16 January 2017.

5. Forms of participation at each stage

The Ministry of Justice, working together with Counterpart International, launched the participatory process, inviting CSOs to join a working group on the draft law. In both the concept paper stage and the stage of development of the draft law, working groups, including CSO representatives, helped in drafting and amending the drafts, while more than 300 CSO representatives participated in a series (more than 10 at each of the stages) of public consultations and debates, hosted by the Ministry of Justice and then by the National Assembly. Throughout the process, the Ministry took into account inputs from the Civil Society Initiative concept, and the Ministry actively engaged with the CSOs at all stages.

6. Level and timeframe of access to information

The process started in 2009, when a draft law was submitted to the National Assembly without any prior consultation with CSOs. The Civil Society Initiative Concept, developed between 2011-2013, was made available on the website of the Ministry of Justice in April 2013.

The first draft of a new law, developed by ICHD, one of the CSOs involved, was presented at a Ministry of Justice working group, whose members included CSOs, on 22 October 2013. A revised draft was discussed at a subsequent working group meeting on 15 November 2013. The draft was made public on 23 November.⁵⁸

58 <http://moj.am/legal/view/article/547>

The finalised draft law was published on the Ministry of Justice's website on 29 October 2015, then on the website of the National Assembly on 10 November.

The National Assembly Standing Committee on Human Rights and Public Affairs held a meeting, including CSO representatives to discuss the legislation on 17 February 2016. Following the 30-day feedback period, 60 of more than 70 recommendations from CSOs for amendments were accepted by the Committee. These amendments were preserved in the final bill.

On 6 September 2016, a final revised version was submitted to the National Assembly. The revised version was published on the website of the National Assembly.⁵⁹

7. Comparison against stated stages of policy cycle and participation

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation		The draft bill was published on the website of the Ministry of Justice on 29 October 2015, then on the website of the National Assembly on 10 November 2015.
	Expert working groups	CSO working group (five CSO representatives), convened by the Ministry of Justice, met more than 10 times to discuss both the concept paper and the draft law both with the members of the working group and representatives of wide range of CSOs.
	Online consultations	Online consultations took place between the working group members and Ministry of Justice representatives in 2013-2015.
	Public hearings	CSOs and the Government initiated many open discussions, roundtables, consultations and press conferences. The concept and the draft were discussed at the regional level as well with the support of CSOs organisations.

59 <http://parliament.am/drafts.php?sel=showdraft&DraftID=8267&Reading=0>

Stages of the legislative process	Forms of consultation	Practice
Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend		An announcement was made on the website of the National Assembly on 15 February 2016 about hearings on the draft amendments to be held on 17 February. External experts, media and representatives of CSOs were invited to the hearing.
	Committee hearings	The National Assembly Standing Committee on Human Rights and Public Affairs considered the bill at a hearing held on 17 February. External experts, media and CSO representatives were invited to the hearing.
Publication of the proposed amendments to the bill following its consideration by the parliamentary committee		The amended version of the draft law was published on the website of the National Assembly.
	Expert working groups	Consultations held with participation of CSOs representatives.
Interested parties have 30 days after the publication of parliamentary committee amendments, during which they can submit feedback and recommendations before the legislation goes to a final vote in parliament		On 6 September 2016, ca 60 out of 70 recommendations submitted by CSOs were accepted by the committee.
Publication of feedback report, explaining which recommendations from whom were/ were not accepted, and why.		No feedback report was published.

8. The process from the perspective of participants/stakeholders

Elinar Vardanyan, Chair of the Standing Commission on Protection of Human Rights and Public Affairs

“The Government initiated some amendments to the Law on Public Organisations in 2009, putting additional burdens on the shoulders CSOs this concerns the format of publishing reports and other data by NGOs, which would necessitate additional human and financial resources). The consistent efforts of CSOs and international organisations secured a halt to the implementation of these amendments. In the following years (2010-2011 years), the Government repeatedly tried to soften solutions to address the problem, but failed to implement them.

“After 2012, the Government organised a series of public meetings represented by the Ministry of Justice, in which the Standing Committee on Protection of Human Rights and Public Affairs of the National Assembly actively participated, together with CSOs and international organisations, including by organising parliamentary hearings and workshops. The Committee has continually accepted suggestions from CSOs, which are discussed and presented in accordance with the law, to the author of the draft law.

“I consider it extremely important that through the influence of CSOs and the package of amendments CSOs will have access to the courts in the sense of protection of the rights of beneficiaries, will be able to secure their right to engage in business activities, and have legislative regulation in place governing volunteering issues.

“Based on the dynamics of the past 10 years, I can say that public participation in decision-making processes is slowly increasing when it comes to the involvement of non-governmental organisations.”

Arpine Hovhannisyan, Minister of Justice

“The requirement of adoption of the new Law on CSOs was due to the lack of legal regulations in the previous law. For example, there was no classification of organisational-legal form for non-profit organisations that could serve for individuals and legal entities. In order to ensure the financial stability of CSOs, it was important for CSOs to carry out business activities for the purposes specified in the charter of

the organisation, which was not permitted in the previous legislation. A mechanism of public control and accountability of CSOs is introduced in the new law, which also provides regulations for the engagement of volunteers.

"In order to ensure public involvement in the process of development of the new law, the Ministry of Justice initiated discussions and roundtables, as well as using online tools such as social platforms and the Discussions section of the website of the Ministry, to gather online comments and suggestions on the draft law.

"Discussions on the draft were organised in different formats, including within the Public Council under the Minister of Justice, online forums, and public discussions organised by international organisations and CSOs. In 2016 alone, more than ten meetings were organised to discuss the draft.

"During the revision process of the draft law, the Ministry of Justice widely used all possible electronic tools to facilitate the involvement of CSOs in the drafting process. Initially, the draft law was posted both on the Ministry's official website and on social platforms for public discussions. Most of the comments and suggestions provided by interested CSOs were taken into consideration and included in the draft.

"Taking into account the concerns of civil society, the draft law that was on the agenda of the National Assembly session on 1 February 2016 was amended on the basis of proposals submitted by CSOs and on 6 September 2016 was presented for voting in the National Assembly.

"Given that the process of drafting the law included active involvement of CSOs, as well as the fact that the CSO representatives confirmed that the law, in its final form, was acceptable to them, we can confidently say that the joint drafting of the bill can be considered as a stable foundation for co-operation and dialogue.

"In the context of stable co-operation and dialogue, it should also be noted that the decision taken by the Government, initiated by the Ministry of Justice, to establish public councils under the ministers has created an institutional mechanism to reinforce co-operation between ministries and NGOs.

"The need for public discussions on the draft law on CSOs and other legal acts created a basis for the Ministry of Justice to develop and launch a unified website named www.e-draft.am, which is an online portal for publication and discussion of draft legal acts. The website enables CSO representatives and other interested citizens to actively participate in the discussion and drafting of bills."

**Heriknaz Tigranyan, Legal Adviser at Transparency International
Anti-Corruption Center NGO**

"The Government initiated this process in 2009 in the framework of the international commitments of Armenia. The involvement of CSOs was mainly expressed in the form of research and studies that were ordered by international organisations. In addition, CSOs created a network for needs assessments, which later served as the basis of the concept paper.

"After the draft was developed, CSOs were actively involved in the process of consultations. The Government was eager to listen to all suggestions and to accept most of them. The capacities of the European Center for Not-for-Profit Law were used to substantiate the positions of the CSOs. The engagement in the law-making process in the sense of the level of co-operation and involvement of CSOs was unprecedented and very effective. It's probably a unique example of co-operation with the Government, because the Government adopted around 80% of recommendations submitted by CSOs. This was a good example of practice both for the Government and CSO sector.

"If bills are not acceptable for the public sector, the beneficiaries must immediately react and sound the alarm. In the case of the 2009 draft law, the CSOs were well organised. Moreover, since their recommendations were legally well substantiated, they had an impact that changed behaviour. The support provided by international organisations also had an impact."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

Overall, the process corresponded to requirements of the Article 27.1 of the Law on Legal Acts that refers to organising public debates on the law-making process.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

On 6 September 2016, the National Assembly's Standing Committee on Human Rights and Public Affairs approved the draft Law on Public Organisations with the inclusion of over 80% of the CSOs' recommendations (60 out of 70 recommendations). This can be considered as a major success. The changes introduced to the legislation will provide opportunities for CSOs to engage in entrepreneurial activities, involve volunteers in their work, ensure the transparency of public funding of CSOs, and provide access to justice in environmental affairs. Subsequently, the CSOs closely followed the legislative processes in the National Assembly and continued their advocacy efforts to ensure that the text maintained the positive achievements and did not incorporate risks for CSOs. This kind of co-operation and public participation can serve as a unique template for long-term partnership between the public authorities and civil society.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

Draft Law on Equality, 2014-2016

1. Objective

Armenia still lacks a comprehensive anti-discrimination law. The Action Plan for the National Strategy on Human Rights Protection adopted by the Government on 27 February 2014 stated in paragraph 8 the necessity of studying the compatibility of the legislation of Armenia with non-discrimination norms of international law and examining the appropriateness of the adoption of a separate anti-discrimination law.⁶⁰

Based on international assessments, as well as on the findings of a legal research study prepared by the Eurasia Partnership Foundation in 2015, a Joint Working Group of EPF and the Armenian Ministry of Justice elaborated the draft Law on Equality.

The Eurasia Partnership Foundation⁶¹, at the request of the Ministry of Justice, conducted a legal research study, entitled: "Is it expedient to adopt a separate 'non-discrimination law'?"⁶² The research, finalised in 2015, was conducted by independent experts in the field, represented the first comprehensive assessment of anti-discrimination issues in Armenia. The study revealed that the legislative provisions on guaranteeing equal rights and freedoms in Armenia and on anti-discrimination provide fragmented regulation that failed to guarantee the effective protection of human rights. Therefore, the adoption of a unified law was required that should ensure not only the prohibition, but also respective prevention of discrimination and all its manifestations.

The necessity for the adoption of a comprehensive law prohibiting discrimination is not only affirmed by the above research, but is also addressed in the reports of international organisations, including the European Union and the United Nations.

The 2015 report on Armenia of the Working Group on the Universal Periodic Review for the UN Human Rights Council mentions the need for the adoption of

60 <http://www.coe.int/t/commissioner/source/NAP/Armenia-National-Action-Plan-on-Human-Rights.pdf>

61 The Eurasia Partnership Foundation is an Armenian non-governmental organisation with long-standing experience of implementing anti-discrimination and religious tolerance programmes with the financial support of the Government of the Netherlands. See: www.epfarmenia.am

62 http://www.epfarmenia.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination_-21.05.15-ENG_Final-1.pdf

comprehensive anti-discrimination legislation.⁶³ Concern was already expressed about the absence of a comprehensive law prohibiting discrimination in the 2012 concluding observations on Armenia of the UN Human Rights Committee.⁶⁴ The EU, in turn, addressed the issue of the adoption and implementation of a comprehensive legal framework against discrimination, proper implementation of the Law on Ensuring Equal Rights and Equal Opportunities for Women and Men in the Joint Staff Working Document on the Implementation of the European Neighbourhood Policy in Armenia – Progress in 2015 and Recommendations for Actions,⁶⁵ In addition, the adoption of a comprehensive stand-alone anti-discrimination law by the end of 2017 is envisaged in the EU budget support financial agreement on Support to Human Rights Protection in Armenia as a specific condition for disbursements.⁶⁶

2. Civil society participants involved

- Eurasia Partnership Foundation, and other CSOs engaged in the field co-ordinated by Open Society Foundation (OSF) Armenia.

3. Public authorities involved

- Ministry of Justice;
- Human Rights Defender's Office (Ombudsman).

4. Stages of potential consultation

Based on the international assessments by UN bodies and the EU, as well as on the findings of the EPF legal research, which was conducted from 2014 to 2015 and finalised in April 2015, a Joint Working Group of EPF and the Ministry of Justice elaborated the draft Law on Equality. Two independent experts from CSOs and two representatives of the Ministry of Justice and EPF staff were engaged in the group from September 2015-February 2016.

During elaboration of the draft, the relevant national legislation was studied, and the draft Law Against Discrimination previously elaborated by the Human Rights

63 http://www.upr-info.org/sites/default/files/document/armenia/session_21_-_january_2015/a_hrc_29_11_e.pdf

64 <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/AMIndex.aspx>, page 8

65 http://eeas.europa.eu/enp/pdf/2015/armenia-enp-report-2015_en.pdf, page 8

66 <http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/20141124-armenia-aap.pdf>, p. 3, 18, 23

Defender (Ombudsman) of Armenia was taken into account.⁶⁷ Besides, the anti-discrimination laws of various European countries (for example, Georgia, Moldova, Bosnia and Herzegovina, Estonia, Croatia, Hungary, the former Yugoslav Republic of Macedonia, Romania, Serbia, and Austria) were studied in detail, as well as a number of UN conventions on the elimination of certain forms of discrimination. Further materials consulted included a series of judgments of the European Court of Human Rights (including with regard to Armenia), various guidelines developed by the Council of Europe and the EU concerning discrimination, as well as other documents and theoretical sources.

The draft was submitted to EPF by the working group on 15 February 2016. Following the completion of the draft by the working group, it became evident that more detail-oriented working discussions with key stakeholders were required to ensure its high quality, compliance with international standards, acceptance by civil society and international organisations, and the willingness of the Government to present the draft to the National Assembly. The draft was circulated among key stakeholders.

The draft law resulted from the joint activities of the Ministry of Justice, EPF, and civil society representatives. In co-ordination with Open Society Foundation (OSF) Armenia, 11 CSOs submitted a consolidated paper highlighting their major concerns and recommendations, which EPF examined to make sure they were in line with international human rights law and national legislation, and then incorporated the majority of them into the draft law.⁶⁸

After completion of these incorporations, EPF organised a working discussion of the revised draft, inviting NGOs, Ministry of Justice representatives and international organisations. In total, 22 representatives from CSOs, the Council of Europe, the EU Delegation, OSCE, United Nations Development Programme (UNDP), and the US Embassy participated in the discussion.

The discussions concluded with the engagement of a limited number of 11 CSO representatives with sufficient experience and expertise to provide credible recommendations on the improvement of the draft. The discussions were not held in a more public setting due to a concern of unwanted speculations around

67 http://www.parliament.am/news.php?cat_id=2&NewsID=5715&year=2013&month=02&day=13&lang=eng&view=print

68 The network includes the following CSOs: Unison, Helsinki Citizens' Assembly-Vanadzor, Women's Resource Centre, Helsinki Committee of Armenia, Centre for Rights Development, Society without Violence, Collaboration for Democracy, PINK Armenia, Women Support Centre, Real World, Real People, New Generation, and Agate Center for Women with Special Needs.

the draft and the adverse effect they might have on the entire process of further negotiations and adoption – which had previously happened with the draft Law Against Discrimination elaborated by the Human Rights Defender of Armenia,⁶⁹ resulting in its termination. (The draft Law Against Discrimination was prepared by the Human Rights Defender's office in 2013, but it was not sent to the Ministry of Justice or discussed among government stakeholders due to the lack of political will.)

To facilitate the process in the case of the draft Law on Equality, it was agreed by the end of discussions in mid-February 2016 that the participants would submit a finalised consolidated package of recommendations to be included into the draft by the end of March 2016. As a result, almost all recommendations by key stakeholders were incorporated into the draft at the beginning of April 2016.

In total, eight formal working meetings and roundtable discussions relating to anti-discrimination policy and anti-discrimination law were conducted with the Ministry of Justice, CSOs, independent experts, and media representatives.

On 30 May 2016, based on the number of comments and recommendations received from stakeholders during the discussions, EPF submitted to the Minister of Justice the revised draft Law on Equality, a revised draft bill on Supplements to the Law on Human Rights Defender, a revised rationale for the adoption of drafts, a summary list of changes made by EPF to the draft laws submitted by the working group with explanations and an official letter describing the overall process of drafting and revising the drafts and indicating readiness for further collaboration with the Government.

The Government intends to work on the draft laws during 2017.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

As shown in the case of the draft Law Against Discrimination, it has been difficult to build political will to tackle an issue where conservative voices in politics and society raise controversy around issues such as non-discrimination on grounds of sexual orientation or gender identity. For this reason, some of the expert meetings held between the Ministry of Justice and CSOs were closed events.

69 <http://hanun.am/wp-content/uploads/2013/07/Anti-Discrimination-Law.25.03.2013.pdf>

6. Level and timeframe of access to information

September 2015: Formation of joint working group comprised two experts from NGOs and two experts from the Ministry of Justice.

15 February 2016: Submission by the working group of the draft law to EPF.

February-March 2016: EPF organised discussions and consultations on the draft law with CSOs and international organisations.

March-April 2016: First revision of the draft law.

April 2016: EPF organised discussions and consultations on the revised draft law with CSOs and international organisations.

April-May 2016: Second revision of the draft law.

30 May 2016: Draft law submitted to the Minister of Justice.

7. Comparison against stated stages of policy cycle in Parliament

The bill had not yet been published by the Ministry of Justice as of March 2017.

8. The process from the perspective of participants/stakeholders

Lusine Martirosyan, Head of Information and Public Relations Department, Ministry of Justice

"The development of the draft Law on Equality has been driven by the need for a definition of legal safeguards and procedures in accordance with the Constitution. The absence of these safeguards and procedures may present obstacles for citizens defending their violated rights. A number of international and human rights organisations have also focused attention on this issue.

"Since 2014 the intention was to conduct a study on the necessity for such a law in the framework of the Human Rights Action Plan of National Strategy. As a result of this study, as well as taking into account the international commitments to human rights

and the opinions of civil society, EFP initiated a study in 2015, with the involvement of a group of independent experts, with a view to presenting a draft law to the Ministry of Justice. EFP organised discussions with the involvement of representatives of interested CSOs. As a result, they formulated a series of recommendations, which were presented to the Ministry of Justice.

"The Ministry of Justice anticipated starting to draft the law during 2017. In the course of this work, the draft developed by EFP, as well as the recommendations of other CSOs, will be considered.

"In this regard, it is noteworthy to mention that according to Government Decision N 296-N of 25 March 2010 on the organisation and implementation of public discussions, public discussions are carried out according to open, accessible and transparent principles. The main objectives of this decision are the identification of public opinion on issues submitted for consideration, as well as the receipt of alternative opinions, estimating potential costs, benefits and risks, and ensuring public participation in the law-making process."

Isabela Sargsyan, Project Director, Eurasia Partnership Foundation

"It is early to speak about the final outcome of the process – i.e. the Law on Equality – since it has not been adopted yet, and we don't know in which version it will be eventually adopted by the Parliament after the inevitable revisions.

"However, the process itself is one of the most important outcomes for us. By saying that, I mean a) trust-building efforts between the governmental actors and the civil society (watchdog CSOs), and b) the co-ordination and information-sharing process through regular meetings and consultations (also online) with all counterparts and strategising efforts – for instance, targeted work with the media."

Hovhannes Manukyan, former Minister of Justice

(interview with *Aravot* daily)⁷⁰

“For success in the fight against discrimination, we need to promote tolerance. We should be able to create an atmosphere of tolerance, both in terms of social mentality and person-to-person. Discrimination is not only the problem of so-called marginalised groups, and there is a need to understand and address the broader, universal rights and democratic context of it. This is an ongoing struggle in all countries, including European countries. We should be tolerant towards each other and accept each other as we are. This also shows that the fight against discrimination does not apply to marginalised groups, this applies to the whole society. Parallel to the law-making process, it is important to work with the public to spread tolerance. It would be naive to think that an anti-discrimination law will be smoothly adopted at all levels of society.”

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The draft law has yet to go through the process of being passed in the National Assembly, but the participation of CSOs in expert working groups and in drafting the law has proceeded in line with the Law on Legal Acts that refers to organising public debates on the law-making process.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Despite the efforts to develop a comprehensive anti-discrimination law, there is a risk that the conservative, religious organisations will campaign against the anti-discrimination legislation, and that controversy will be sparked around a few important issues, such as the inclusion of sexual orientation and gender identity in the list of protected grounds.

⁷⁰ <http://www.aravot.am/2015/04/28/565901/>

There might be other terms and notions where agreement will not be reached between EPF and the Ministry of Justice. There is also a risk that the Government will not provide adequate financing for the unimpeded operations of the Equality Councils, and that the provisions on Equality Councils will be redrafted so as to be less independent from the Human Rights Defender's Office. This might create a situation similar to the National Preventive Mechanism (NPM), when within the Human Rights Defender's Office an NPM department was established on torture prevention with an adjunct independent advisory council of CSOs, which in practice appeared to be totally dependent on the decisions of the Human Rights Defender, and in fact was of nominal nature.

Electric Yerevan, 2015

1. Objective

In May 2015, Armenia's electricity monopoly, Electric Networks of Armenia (ENA), asked the Government for approval to raise tariffs by 40% – the third price hike in recent years.⁷¹ Since 2006, ENA – formed from the previously state-owned electric utility company – has been owned by a Moscow holding company, Inter RAO.

ENA claimed it had no other way to pay off more than \$250 million in debt it had accumulated due to inefficiencies in Armenia's outdated energy infrastructure.⁷² ENA justified the price hike by citing the fall in Armenia's currency that had generated a huge debt for the company. At the same time, reports published by Inter RAO showed that the company was actually quite profitable, with reported profit of more than \$100 million in for 2014.⁷³

Several Armenian media, opposition politicians (David Sanasaryan, Andreas Ghukasyan and others), and CSOs launched independent investigations into the price question. As a result, reports of alleged corruption and misuse of funds at ENA were published in the media. After debates and discussions, the government, in particular the Public Services Regulatory Commission, approved a lower price increase of 17%. Afterwards, on 19 June 2015, the "No to Plunder" civic initiative took the protest movement to the streets to launch demonstrations against the Government's decision to approve the price increase.

2. Civil society participants involved

- "No to Plunder" civic initiative;
- "Rise up Armenia" initiative.

71 <http://times.am/?p=128184&l=am>; <http://www.a1plus.am/1387824.html>; <https://goo.gl/84OxvB>

72 <http://hetq.am/arm/news/60169/inchu-e-tanknum-elektraenergian-hec-i-vnasneri-odisakany-1.html/>

73 Ibid

3. Public authorities involved

- Public Service Regulatory Commission;
- President;
- Riot police;
- Government.

4. Stages of potential consultation

In late June 2015, thousands of protesters took to the streets of Armenia's capital, Yerevan, to protest the planned hike in prices. The protesters came from across the political spectrum, and all ages and social groups were represented. The movement was very diverse. The participants ranged from activists talking about regime change, to some trying to start a large anti-corruption movement, and others who insisted it was about electricity prices and nothing more.

Protesters demanding the government revoke the price rises began blocking Baghramyan Avenue right in the centre of Yerevan. The protesters resisted police attempts to clear them from the streets in the early morning of 23 June, which drew local and international attention to the protests. On that morning, police used water cannons against the protestors. According to the police spokesperson, 237 citizens were arrested, 25 people were injured, including 11 police officers,⁷⁴ in the clashes, three protesters were hospitalised, and several journalists covering the protests were allegedly attacked by the police,⁷⁵ further galvanising the confrontation.

The movement was named “Electric Yerevan”. Tweets and Facebook posts with the hashtag #ElectricYerevan began trending on Twitter and Facebook, and international media began to debate the movement's relationship with Ukraine's Euromaidan protests.⁷⁶ The attempts to stop the movement by force backfired as many more Armenians came out in solidarity the next day. The protesters detained by the police were accused of “hooliganism and disturbing police order”.⁷⁷ Police apparently destroyed or confiscated media equipment and badges from journalists covering the rally.

74 <http://www.civilnet.am/news/2015/06/23/police-press-release/272700#.VYj-GUaOLcs>

75 <http://ypc.am/expertise/statements-of-yerevan-press-club-and-partner-organizations-h/%D5%B0%D5%B8%D6%82%D5%B6%D5%AB%D5%BD%D5%AB-23-2015/?lang=hy>

76 <http://www.rferl.org/a/armenia-electricyerevan-protesters-chafe-at-euromaidan-comparison/27095421.html>

77 <http://www.civilnet.am/news/2015/06/23/police-press-release/272700#.VYj-GUaOLcs>

After this, more people started attending demonstrations. Civic activists brought their families, parents brought their children, supporters brought food and water for the participants, and some artists entertained activists in-between night rallies. Famous figures from the worlds of politics, art, and public life formed human walls during several nights to prevent possible clashes between police and protesters. Protesters demanded that the Government cancel the decision to increase electricity prices in August 2015.

On 27 June, President Serzh Sargsyan announced that his Government would subsidise electricity bill-payers to the tune of the difference between the old electricity rates and the new ones. The “No to Plunder” initiative urged the protesters to accept the offer, but most demonstrators refused. At the same time, the police was threatening to break up the protests almost every evening. Eventually, the police backed down. Both the police and the Government preferred to wait for the protests to run out of steam.

This was a turning point for the street protests, as the Government's proposal caused divisions inside the protest movement. The “No to Plunder” group was removed from the movement leadership and a new group of organisers took over the movement, demanding that the Government do away with the price hikes completely. In the following days, the protests began to lose steam as the Government refused to change its position, and exhaustion began to set in among the protesters. By 6 July, the number of protesters had fallen to a few hundred. As a result, the police were able to demolish the barricades and open Baghramyan Avenue without significant resistance. The rallies ended on 10 July.

After the streets were cleared, the Government began to take measures to rebuild public trust. The police involved in the clashes were criticised, and the Special Investigative Service announced that it was looking into attacks on journalists.⁷⁸ ENA was fined \$126,000 for violating consumers' rights.⁷⁹ (Earlier in 2015, ENA had demanded advanced payments from residents of newly built houses and apartment buildings needing access to electricity.)

However, ENA was still receiving subsidies from the pockets of Armenian taxpayers, and questions persisted about how the price hike would be financed. In response to official attempts to renege on the statement that the Government would bear “the full burden” of the rate hike,⁸⁰ about 100 protesters attempted to

78 <http://www.civilnet.am/news/2015/07/16/prosecutor-general-june-23-protests-criminal-case/274281>

79 <http://www.rferl.org/a/russia-armenia-electricity-/27117963.html>

80 <http://www.azatutyun.am/a/27102266.html>

restart Electric Yerevan by taking over Baghramyan Avenue on 11 September.⁸¹ They failed to overpower local riot police, and six protesters were detained, then released the same day.

Amid reports that the government would subsidise small and medium-sized businesses rather than cover the hike altogether, “No to Plunder” called for a protest march on 11 September 2015 to again demand a full repeal of the price rise.⁸² During the march, a group of protesters broke off from the approved protest route and moved towards Baghramyan Avenue. Although the protesters succeeded in blocking the street, their numbers were smaller in comparison with the July events, and the riot police were able to clear the street by the end of the day. In total, 48 people were detained, but all were soon released.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

The Electric Yerevan movement emerged in a mid-term situation where the Government was seen as acting in an unaccountable manner at the expense of ordinary taxpayers. Given the majority of the ruling party in Parliament, a mass street protest was considered the most effective way to raise attention.

6. Level and timeframe of access to information

May 2015: ENA asked the Government for approval to raise tariffs by 40%. The news was announced by the Government.

19 June 2015: Public Services Regulatory Commission approved 17% rise in price of electricity (no public consultations preceded the decision).

81 <http://www.azatutyun.am/a/27242878.html>

82 Ibid

7. The process from the perspective of participants/stakeholders

Tevan Poghosyan, (then) Member of Parliament, Secretary of “Heritage” Faction

“Civil society must get to the point where it sets the political agenda. Civil society needs to ensure the creation of foundations and organisations that can solve various social problems as well as raise urgent issues. Since 2008, we have had a few cases, such as Mashtots Park, the “100 drams” movement and others that had success.⁸³ We have both successful and unsuccessful experiences, but I am glad that the new generation is able to raise issues. What happened during Electric Yerevan in June was a victory, as they were able to challenge the public authorities, forcing them to work and to seek solutions.

“An important function of civil society is to constantly challenge the state authorities. The public can’t be deactivated or activated solely prior to elections, but should always be involved in the decision-making process. I hope that the next generation will continue to engage.

“This protest was a unique one. Curbing electricity price increases is in the interests of every citizen of Armenia. The movement was speaking from the hearts of people. There was a positive aura and our young people were clearly voicing their demands, showing a determination and acting correctly from the beginning. This was a historical movement.

“As for the fight against the increase in electricity prices, the objective was not civil but political. When they say “No to Plunder”, it definitely becomes a political problem, because we are expressing dissatisfaction with the whole system. If they would say “No to Seven Armenian Drams”, it could be considered a social issue. I am sure that young people have done the right thing by raising not only the problem of 7 AMD, but also the necessity to improve the whole system.”

83 The Mashtots Park Movement in February 2012 was initiated by “This City Belongs to Us” civic initiative, and grew into a full-scale movement against the destruction of green zones in Yerevan, and against corruption. The 100 drams movement comprised protests against a 100% rise (to 100 Armenian drams) in the price of public transportation fares in Yerevan. The protests from 20-25 July 2013 resulted in cancellation of the fare rise.

Babken Ter-Grigorian, civic activist⁸⁴

“People were talking about the electricity rate hike, but really they were talking about the fact that they have a Government that does not listen to them. Thus, one of the main slogans of the movement was: “We are the owners of our country”. And this really encapsulated what was going on. People were standing up and saying that you (i.e. the Government) have to be accountable to us. You can’t pass measures like this without consulting us. This was also taking place against the backdrop of a country where elections don’t work, and where corruption is rampant.

“There are layers of real issues here, underpinned by the fact that we have a governance system where public opinion is not taken into account. It’s not really about the money. Of course, for a lot of people it would be more difficult to pay the higher charges, but that’s not the reason why so many people came on to the streets. This was just another manifestation of corruption and unaccountable government. Of course, this is a Russian company and the Armenian government can’t stand up and say “no we are not going to raise the fees”, but with these protests Armenian society went through a really big change.”

9. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Overall, the demonstrations did achieve something significant. The Government did not reverse the hike, but addressed concerns about the way ENA is being run and asked an international audit to look into its financial books. Eventually, ENA was sold to an opaque Cypriot shell company owned by Samvel Karapetyan, a billionaire Armenian living in Russia. The issue of high prices for electricity still exists on the current agenda of society. On 23 December 2016, the Public Service Regulatory Commission decided to reduce the price for electricity by 1.22 Armenian drams/kWh,⁸⁵ which of course was linked with the upcoming parliamentary elections of April 2017. The decision was to come into force on 1 February 2017.⁸⁶

84 <https://soundcloud.com/jared-goyette/babken-dergrigorian-explains-his-views-on-the-electricityerevan-protest-in-armenia>

85 <http://www.azatutyun.am/a/28193142.html>

86 <http://galatv.am/hy/news/1-22-2/>

Recommendations

- Laws should be subjected to wide consultation and an adequate timeframe to enable debate, formulation of proposals and amendments, at the level of an initial concept for a law, the drafting stage of the law, and the review of the law before and during its passage through the National Assembly.
- The consultation process on the Law on Public Organisations (law on CSOs) should serve as a model for consultations around other laws, and should be codified into the law and guidelines on public participation in policymaking to ensure that all legislation follows a consultative approach, building in stakeholder analysis and impact assessment with the input of a wide cross-section of stakeholders. This will help also to build a stronger culture of co-operation and mutual understanding between public authorities and civil society.

AZERBAIJAN

Introduction

The Constitution of Azerbaijan regulates a set of procedures that directly relate to citizens' participation in state affairs. The 2009 Constitutional amendments created new opportunities in terms of law-making initiatives and broadening the number of actors who have the right of legislative initiative.¹

The overall process of drafting of legislation comprises several steps leading up to final adoption by the Parliament. A draft law can be initiated by the actors stipulated in the Constitution and, after it has been prepared, it is submitted to the corresponding Parliamentary Committee for expert review by legislators. The Committee hearings and forums for discussion around draft laws are mainly held with only the limited participation of civil society.

In addition to draft laws, the preparation of an accompanying explanatory note, concept paper or Green Paper is also possible. Such documents contain proposals for future government policy to be raised for debate and discussion within Parliamentary Committees.

Each draft law undergoes three hearings in plenary sessions of the Parliament. Feedback on draft laws can be submitted via the website of the Parliament and via MPs in the Committee review stages.

1 <http://www.justice.gov.az/referendum.php?page=ref4>

AZERBAIJAN: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? No. The authors of the draft laws do not provide an explanatory note.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? Yes</p>	Expert working groups or taskforces	<ul style="list-style-type: none"> ▪ Government-selected CSOs
<p>If so, how long do interested parties have to provide their input? Interested parties can submit their comments up to three weeks before the last public hearing in the Parliament.</p> <p>Is this observed in practice? Draft legislation is published only on the Parliament’s website. Feedback is accepted up to three weeks before the last hearing on all draft laws.</p>	Roundtables	<ul style="list-style-type: none"> ▪ Government-selected CSOs
<p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No. Feedback reports are not published by Parliament.</p>	Online consultations inviting input	<ul style="list-style-type: none"> ▪ General public

Parliamentary review of legislation	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? No</p> <p>Is a timeframe provided to announce the review meeting with advance notice? Yes</p> <p>If so, how far in advance is the meeting announced? There is no standard advance announcement procedure.</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No. No information is made available on whether the committees take into consideration feedback and suggestions.</p>	<p>Roundtables</p> <p>Online consultations inviting input</p> <p>Committee hearings</p>	<ul style="list-style-type: none"> ▪ Government-selected interest groups ▪ General public ▪ Government-selected CSOs
Review of parliamentary committee amendments	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee's proposed amendments is: Mandatory</p> <p>Were all committee-stage amendments indeed published? Proposed amendments appear on the final draft law when it is submitted for voting in the Plenary session.</p> <p>Is a timeframe prescribed from publication of committee amendments to deadline for feedback and recommendations before the legislation goes to a final vote in parliament? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Expert working groups or taskforces</p> <p>Roundtables</p> <p>Online consultations inviting input</p>	<ul style="list-style-type: none"> ▪ Government-selected CSOs ▪ Government-selected CSOs ▪ General public

Case Studies

Public participation in policy- and law-making processes are essential rights of citizens in order to establish oversight of government and to be involved in state governance. Citizens and civil society should have the right and possibility to participate in law-making processes. According to the Constitution, the right to initiate draft laws can be exercised by 40,000 eligible voting citizens. According to clause VI of Article 96 of the Constitution, the manner in which 40,000 citizens with voting rights can exercise their right to initiate legislation shall be defined by law, which is lacking up to date.² The study in this chapter on the right to legislative initiative underlines the importance of this initiative and the need for the Government to take into consideration a draft law to realise this right of citizens, since the manner of exercising this right has to date not been defined by law.

The second case study describes a case where civil society organisations (CSOs) had some success in participating in law-making. The Law on Public Participation was initiated by CSOs, and it was adopted in 2014. The participation process included consultations between MPs and civil society, as well as discussions with the Parliamentary Committee on Social Policy. The overall process was in line with the rules and procedures set out in legislation. On the other hand, it fell short when it came to the consideration of feedback from CSOs on the text of the law at the parliamentary stage.

The studies on civil society engagement in policy-making indicate the broad representation of civil society as coalitions and other groupings. The Civil Society Defence Committee is one example of how the CSO community was able to engage in policymaking processes in 2009–2013. It had an impact on state policy by addressing promptly and with international support key issues in the legislative framework for civil society's operations.

The final study focuses on the Open Government Partnership initiative and related issues with CSO participation. The OGP Action Plan for 2016–18 included a series of recommendations submitted by CSOs, although a number of them were not taken into consideration. Overall, the OGP process lacks a substantive CSO-Government partnership in Azerbaijan, as major parts of the Action Plan were the work of government institutions without CSO inputs. Furthermore, the joint CSO-Government Platform on OGP has not incorporated concepts for public participation, and the platform was formed on the basis of invitations to a limited group of CSO representatives.

² <http://www.president.az/azerbaijan/constitution>

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Draft Law on the Right to Legislative Initiative of 40,000 Voting Citizens, 2012-2013

1. Objective

The draft Law on the Right to Legislative Initiative of 40,000 Voting Citizens was drafted in 2013 by the Law and Development Public Association, in close partnership with other local CSOs and a partner from Georgia.

The right to initiate draft laws can be exercised by 40,000 eligible voting citizens. This right was introduced in a constitutional amendment adopted in 2009 following a referendum.³ According to the Constitution, a legislative initiative can be launched by a Member of Parliament, the President, the Supreme Court, the Prosecutor's Office, the Supreme Council of the Nakhichevan Autonomous Republic, or a group of 40,000 citizens with voting rights. According to clause VI of Article 96⁴ of the Constitution, the manner in which 40,000 citizens with voting rights can exercise their right to initiate legislation shall be defined by law. However, no law has been adopted to regulate the procedures of this initiative.

The objective of this proposed law was to realise the potential of the right to initiate draft laws set out in the Constitution. It is important to consider this initiative as an example of CSO participation in law-making process and its further implications for CSO development in Azerbaijan.

2. Civil society participants involved

The Law and Development Public Association (LDPA) took up the challenge and proposed a draft law in accordance with the Article 96 of the Constitution. The draft law drawn up by LDPA was submitted to Parliament in 2013, but the Parliamentary Committee for Legal Affairs and State Building had not even begun to review the law.

Human rights and democracy CSOs also participated in a coalition of Azerbaijani NGOs established to advocate for the draft law's passage.

3 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)010-e)

4 <http://www.president.az/azerbaijan/constitution>

To analyse the current practice in neighbouring countries, LDPA established a consortium of regional CSOs, which included:

- NGO for Democratic Rights and Liberties "GOLOS" (Russia);
- Article 42 of the Constitution (Georgia).

3. Public authorities involved

Neither Ministries nor Parliament contributed with their assistance or experience in this process. However, during the public Forums organised by LDPA, LDPA invited several MPs to participate and involved them in discussions on the draft law.

4. Stages of potential consultation

During 2009-2013, neither relevant government institutions, nor CSOs and media have implemented significant activities regarding public awareness about the right to legislative initiative. Only the USAID-funded Development Alternatives Initiatives (DAI)⁵ has implemented a parliamentary strengthening programme. This programme was mostly focused on the Parliament and Members of Parliament, but did not cover activities with citizens and CSOs.

LDPA is a nationwide CSO, which focuses on the protection and promotion of civil and political rights in Azerbaijan, mainly focusing on election rights. In 2012, LDPA proposed to implement a set of activities to draft legislation on the constitutional right of 40,000 citizens who are eligible to vote to initiate draft laws.

5. Forms of participation at each stage

In the launch phase of the project, LDPA proposed to conduct research, draft the legislation, and implement public outreach activities in order to create effective public participation around the draft legislation. For comparison with similar procedures in practice in other countries, LDPA engaged expert involvement from Georgia and Russia. Local Azerbaijani experts were also involved in drafting the law and in further consultation with relevant governmental bodies and Parliament.

⁵ <http://democracyinternational.com/projects/azerbaijan-parliamentary-strengthening-program-evaluation/>

From the beginning of the project, LDPA consulted with national CSOs. The following steps were taken by LDPA:

1. *Drafting a Law on the Right to Legislative Initiative of 40,000 Voting Citizens.* The first phase started in September 2012 with the establishment of a consortium consisting of both local and regional experts. The next step was to study international experience and analyse national legislation. After these works were completed, the structure of the draft law was defined. It was followed up by the actual drafting of the law by professional lawyers with relevant expertise in the legislative process. The members of the consortium who worked on the draft law were Hafiz Hasanov and Azer Gasimov of LDPA, and Nikoloz Legashvili of Article 42 of the Constitution.⁶

2. Consultations were held with some MPs. Then the draft law was sent to the Venice Commission of the Council of Europe for expert legal assessment for compliance with international legal norms. Furthermore, the experience of Georgian organisation “Article 42” was utilised. According to Hafiz Hasanov, the chair of the LDPA, the draft law was not considered by the Venice Commission, as the Commission can accept requests only from special subjects, such as states, and members and Committees of the Parliamentary Assembly of the Council of Europe.

3. The draft law, completed in September 2012, was a result of joint working group meetings organised by LDPA and its partner organisations.

4. *Public hearings.* In the second phase of the project, in October 2012 LDPA started to conduct public hearings on the draft law and to gather feedback on how to improve the draft law and to revise it accordingly. The nationwide public hearings also focused on public awareness about the Constitutional amendment providing the right to legislative initiative.

Public hearings were held in Baku, Sumgayit, Ganja, Mingachevir and Shirvan cities with the attendance of MPs, experts, lawyers, CSO and media representatives, as well as political parties and active citizen groups. The draft law was published in print media and posted on online media. The draft law was posted on social networks for discussions.

5. *Establishment of CSO coalition for advocating passage of the draft law, and starting advocacy activities.* The coalition of CSOs, with the participation of non-governmental organisations specialised in human rights and democracy, was established with the purpose of advocating the passage of the draft bill in

⁶ <http://article42.ge/?lang=en>

November 2012. Its activities included articles in the media, consultations with MPs, bringing the issue to the public’s attention, meetings with international organisations, and keeping the issue on the agenda of the wider public. LDPA closely co-operated with the co-reporter of the Parliamentary Assembly of the Council of Europe (PACE) and OSCE Parliament Assembly to advocate passage of the draft law.

The members of the CSO coalition comprised:

- Law and Development Public Association;
- Democracy Learning Public Union;
- Constitution Research Foundation;
- Article 42 of the Constitution (Georgia).

6. A public forum on “Public participation in the Legislative Process: Experience and Prospects” was organised in final stage. In December 2012, LDPA organised this forum in Baku city. The purpose of the forum was assessment of the international experience on public participation in legislative processes and the legal and practical situation in Azerbaijan, as well as final evaluation of the draft law. The forum gathered together representatives of domestic and international organisations and diplomatic representations. The forum was conducted together with the Georgian organisation “Article 42”.⁷

6. Level and timeframe of access to information

The draft law was sent to the secretariat of the Parliament in 2013. According to legislation, a draft law has to be registered and submitted to the relevant Committee for their further consideration. According to the authors of the draft law they have never been informed about the status of the draft law or of interest expressed by Parliament in proceeding with the draft law.

A draft law can be initiated by a Member of Parliament, the President, the Supreme Court, the Prosecutor’s Office, the Supreme Council of the Nakhichevan Autonomous Republic, or a group of 40,000 citizens with voting rights.⁸ LDPA did consult with MPs in order to prioritise the draft law and to gain the support of MPs, but with no result.

7 <http://topnews.az/news/210734/Huquq-va-Inkishaf-Ictimai-Birliyi-Qanunvericlik-prosesinda-ictimai-istirakchiligin-artirilmasina-dastak-layihasinu-yekunlashdirir.html>

8 <http://www.e-qanun.az/framework/897>

7. Comparison against stated stages of policy cycle in Parliament

The draft law has not been presented for any readings at committee or plenary stage in Parliament.

8. The process from the perspective of participants/stakeholders

Fazil Mustafa, MP⁹

"The rights and freedoms stipulated in the Constitution must be regulated by law. The constitutional right of 40,000 citizens who are eligible to vote to initiate legislation should also be regulated by a special law. If there is such a draft law, it would be better if it were initiated by MPs. I don't think that there is any special motive for blocking this initiative."

In terms of participation, LDPA has undertaken significant efforts to propose the current law, including organising a public debate on draft law, sending letters to MPs and raising the issue in the media. Although, according to LDPA, the authors of the draft law did not receive a positive reply from the Parliament, Fazil Mustafa, an MP, responds that such draft law is necessary and can be initiated by MPs.

In almost four years since the draft law was sent to the Secretariat of the Parliament, according to the authors of the Law, LDPA has never been invited by MPs or the relevant parliamentary committee – the Committee for Legal Affairs and State Building – to discuss the draft law.¹⁰

The chairman of LDPA, Hafiz Hasanov, pointed out that "the Constitution requires that the right to legislative initiative is regulated by law. However, over the past four years, no action has been taken towards new legislation."

Azer Qasimov, author of the draft law, and an expert with LDPA, confirmed that despite forming a legislative initiative group "in line with the law", after LDPA and its partners submitted the law to parliament, "we have not been informed about its progress".¹¹

9 Interview with Fazil Mustafa (19 March 2017).

10 Interview with Hafiz Hasanov, chairman of LDPA. According to Hasanov, the draft law was submitted to the Parliament in 2013 and LDPA has never been informed about any further action on it.

11 Interview with Azer Qasimov (17 February 2017).

Nikoloz Legashvili, the legal expert from Article 42 of the Constitution, said that "the Georgian experience is worth considering for Azerbaijan. In addition to this, citizens can use models of public participation from other European countries and drawn on the case-law of the European Court of Human Rights."¹²

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

Existing legislation does provide possibilities for citizens and CSOs to participate in the legislative process. According to the Constitution, 40,000 citizens can put forward a legislative initiative, and CSOs can submit proposals to Parliament on improvement of legislation, present their opinions on draft laws, participate in the drafting of laws in parliamentary committees, conduct public hearings on draft laws, as well as conduct independent expertise on draft laws. The Constitutional Law on Normative Legal Acts provides that draft laws can be suggested for public discussion.¹³ In practice, citizens and CSOs have very little information about the possibilities established by the legislation and, until a law is in place to realise the right of citizens to initiate legislation, this constitutional right is not available to the citizens of Azerbaijan.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

The lack of progress on the draft law of legislative initiative demonstrates that on the part of civil society there is a need for a clear plan of engagement with Parliament or the Executive authorities to ensure that draft laws or amendments are adopted. Similarly, for the constitutional right to legislative initiative to be realised, a law to regulate the procedures for such legislative initiative is long overdue, and the Parliament and Executive authorities have neither initiated the required legislation nor taken into consideration the draft submitted to Parliament – thus leaving this constitutional right without any effective avenue for citizens to realise the rights accorded to them to initiate legislation.

¹² Interview with Nikoloz Legashvili, (6 March 2017).

¹³ <http://az.president.az/articles/1616>

Law on Public Participation, 2011-2014

1. Objective

The main objective of this law was to establish civil society participation in decision-making processes, and to involve citizens and CSOs in the overall preparation and implementation of state policy at both local and central levels of government.¹⁴ Additionally, the law aimed at to conduct an oversight function concerning the work of local government and the executive authority.

2. Civil society participants involved

The draft law has been prepared by the following group of CSOs:

- Constitution Research Foundation;
- Citizens' Labour Right Protection League;
- Law and Development Public Association (LDPA);
- Transparency Azerbaijan;
- National NGO Forum.

3. Public authorities involved

- The Council on State Support to NGOs under the Auspices of the President of the Republic of Azerbaijan;
- Parliamentary Committee on Legal Affairs and State-Building;
- Parliamentary Committee on Labour and Social Policy;
- Parliamentary Committee on Human Rights.

14 <http://www.commission-anticorruption.gov.az/upload/file/Law%20on%20Public%20Participation.pdf>

4. Stages of potential consultation

In April 2011, an expert group was established by the Constitution Research Foundation and the Council of State Support to NGOs. The experts who participated included: Hafız Hasanov, chairman of LDPA, Alimamad Nuriyev, chairman of the Constitution Research Foundation, Sahib Mammadov, member of the Council of State Support to NGOs, Abil Bayramov, co-ordinator of NGO Alliance on Municipal Development, and Novella Jafaroghlu, chairwoman of the Women Rights' Defence Centre named after Dilara Aliyeva.¹⁵

A roundtable was then organised by the Council of State Support to NGOs on 1 November 2011.¹⁶ The following experts participated: Adil Valiyev, head of the Social Legislation Department in the Administration of the Parliament, Alimammad Nuriyev, chairman of the Constitution Research Foundation, Ali Huseynov, chair of the Parliamentary Committee on Human Rights, and Hafız Hasanov, chairman of the Law and Development Public Association. The event was public and open for participation to all. The law was drafted by the Constitution Research Foundation and its experts.

The draft law was introduced to the public on 1 November 2011 by Adil Valiyev, head of the Social Legislation Department in the Administration of the Parliament, and Alimammad Nuriyev, chairman of the Constitution Research Foundation.¹⁷

5. Forms of participation at each stage

The draft law was submitted to the Parliament in late 2012 by Azay Guliyev, Chair of the Council on State Support to NGOs. He used his right to legislative initiative and submitted this law to the Committee on Human Rights.

20 February 2013: The draft law was discussed at a meeting of the Parliamentary Committee on Human Rights and Labour and Social Policy.¹⁸

March 2013: Roundtable discussions were held in the Parliament, and CSOs were invited to these discussions. Only one hearing was held on the draft law.

15 <http://www.cssn.gov.az/news.php?id=1334&lang=az>

16 <http://www.cssn.gov.az/news.php?id=1334&lang=az>

17 <http://www.cssn.gov.az/news.php?id=1334&lang=az>

18 <http://www.meclis.gov.az/?/az/content/224>

5 April 2013: The first plenary hearing was held in Parliament.¹⁹ The Parliament adopted the draft law on its first hearing on it.

15 May 2013: Further discussions were held by the Parliamentary Committee on Legal Affairs and State-Building and the Parliamentary Committee on Labour and Social Policy, then the bill was submitted to the plenary session of the Parliament.²⁰

13 June 2013: The second plenary hearing on the law was held.²¹ During the hearings, several MPs spoke in support of the draft law, such as Azay Guliyev, Fazil Mustafa, Gudrat Hasanguliyev, and Ilyas Ismayilov.

22 November 2013: The third hearing was held on the draft law, and the law was adopted.²²

6. Level and timeframe of access to information

The draft text of legislation is published before the plenary hearings in the Parliament and all interested stakeholders, including citizens, can provide suggestions via the website of the Parliament.

Feedback can be provided both in the form of written observations and suggestions during the hearings in both Committee meetings and plenary sessions. Unfortunately, information has not been made public describing the process, and consideration of feedback, in the case of the Law on Public Participation.

19 <http://az.trend.az/azerbaijan/society/2135974.html>

20 <http://olaylar.az/news/siyaset/41012>

21 http://apa.az/daxili_siyaset/milli-meclis-ictimai-istirakciliq-haqqinda-qanun-layihesini-ikinci-oxunusda-qebul-edib.html

22 <http://www.president.az/articles/10813>

7. Comparison against stated stages of policy cycle in Parliament

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation		February 2013, www.meclis.gov.az
	Online consultations inviting input	No data on the consultation is available on the Parliament's website.
Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend		The agenda and schedule of the hearings of the Parliamentary Committee can be found at the website of the Parliament (http://www.meclis.gov.az/?/az/content/224)
	Roundtables	CSO representatives were invited to the roundtables within the Parliament on March 2013.
	Online consultations inviting input	No data is available on the website of the Parliament.
	Committee hearings	The Parliamentary Committee on Human Rights and Social policy organised a hearing on the draft law on 20 February 2013. Only members of the Committee participated in this hearing.
Publication of the proposed amendments to the bill following its consideration by the parliamentary committee		Proposed amendments and comments were not published on the website of the Parliament.

8. The process from the perspective of participants/stakeholders

The draft law was the result of a joint working group established by a civil society organisation and the Council of State Support to NGOs. The participants in the group comprised local experts, and the United States Agency for International Development (USAID) and the International Center for Not-for-Profit Law (ICNL) also contributed with their suggestions and expertise.

From the perspective of stakeholders, this initiative was a successful public participation model for CSOs in the law-making process.

Sahib Mammadov, member of the Council of State Support to NGOs²³

“The working group was established by CSOs and International organisations, such as, International Center for Not-profit Law and USAID. In the meantime, ICLN had conducted an expert study of the draft law. As, representative of the working group, we organised a numbers of skype conferences with ICNL and, later on, an ICNL representative joined us in our first public discussion on 1 November, 2011. The Law on Public Participation was submitted to Parliament by Azay Guliyev, who supported the draft law and, as an MP, enjoyed the right to legislative initiative. This was an example of a law that was adopted on the initiative of civil society and is being implemented by local and central executive authorities.”

Fazil Mustafa, MP²⁴

“Before the official hearing on this law, the draft law had been discussed with the wider public, and this was considered as a positive indicator. However, the draft law includes consideration of legal acts by independent experts. Legal acts are prepared by legal experts of the Parliamentary Committees, and cannot be sent for consideration by independent experts.”

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

CSOs and independent experts were the main actors in this drafting process, and a wide range of stakeholders contributed with their respective expertise.

First, the drafting process was led by CSOs in close co-operation with the Council of State Support to NGOs and, partially with support from the Parliament. In

23 Interview with Sahib Mammadov (6 March 2017).

24 Interview with Fazil Mustafa (6 March 2017).

addition, international organisations, such as ICNL, contributed their expertise on this draft law, and USAID joined the roundtables held in Baku.

As a result of these processes, the Law on Public Participation was adopted in November 2013, and CSOs' role in law-making and participation in policy- and decision-making was enhanced.

According to the Law on Public Participation, public participation should take place in the preparation and implementation of state policies in different fields of state and society, including the participation of citizens and civil society institutions in decision-making at national and local level. The law states that forms of public participation include the following: public councils; public discussions; public hearings; studies of public opinion; public discussion of draft legal acts; and written consultations.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

This example of public-civil society co-operation can be considered one of the first participatory initiatives with a positive outcome in Azerbaijan. The role of civil society was taken into consideration both by government and international organisations. The members of the working group increased their efforts and expertise on how to develop draft laws and to create a participatory environment around this law.

However, several negative aspects and omissions remained during the process. The selection of experts and CSOs was not public, and the selection criteria was not clear for CSOs.

The roundtables within the Parliament lacked the participation of the general public, and the participation of CSOs. The limited nature of participation in law-making remains the major problem of this law. CSO participation in law-making has been granted only to certain CSOs selected by the Government.

Online consultations were held on the website of the Parliament. Information on the outcomes of the roundtables, debates and hearings in Parliament was not published. In addition to this, the expert inputs and suggestions of MPs were not published before or after the draft law was adopted.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

CSOs' Participation in Formulation of the Open Government Partnership Initiative and its Action Plan for 2016-18

1. Objective

Azerbaijan joined the Open Government Partnership (OGP) in 2011 and adopted its first Action plan on OGP in 2012.²⁵ OGP is an international initiative, steered by governments and civil society, working to promote public participation and transparency in governance. In this regard, governments are obliged to undertake a set of measures, including adoption of legislation and holding consultations with civil society on shaping annual action plans.

Azerbaijani CSOs sought to promote and formulate the OGP initiative and its Activity Plan for 2016-2018, and to establish an OGP Initiative Group for Civil Society Platform

Countries applying for OGP membership are required to achieve 12 out of a maximum score of 16 from a set of indicators measuring countries' performance in four areas of open government.²⁶

According to the assessment by OGP, the position of Azerbaijan on primary eligibility criteria required for OGP representation did not change during the period when the "2012-2015 National Activity Plan on Open Government Promotion"²⁷ and "2012-2015 National Activity Plan on Struggle against Corruption" were in force. Despite the lack of changes in its overall position, according to the outcomes of the annual "Democracy Index" report developed by the Economist Intelligence Unit (EIU) for 2012-2015, the position of Azerbaijan on Citizen Engagement criteria worsened a bit in 2015 and the score of the country of this criteria fell from 4.71 in 2012 to 3.82 in 2015 out of a maximum of 10.²⁸

25 <http://www.opengovpartnership.org/country/azerbaijan>

26 See OGP minimum eligibility criteria, available at: <https://docs.google.com/spreadsheets/d/1HG66aDuf16BK0RnG-gOruWR8Lz-oVzwZde-tsTaZHrw/edit#gid=869039115>

27 <http://www.commission-anticorruption.gov.az/upload/file/OGP%20AP%20Azerbaijan%202012-2015%20Eng.pdf>

28 See The Economist Intelligence Unit, *Democracy Index 2015: Democracy in an age of anxiety*, Available at: http://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2015

Azerbaijan Primary Eligibility Assessment by OGP²⁹

	2012	2015
Budget Transparency	4	4
Score	4	4
Access to Information	law	law
Score	4	4
Asset Disclosure (Law)	Yes	Yes
Asset Disclosure (Public Access)	No	No
Score	2	2
Citizen Engagement score (Economist Intelligence Unit Democracy Index's Civil Liberties sub-indicator)	4.71	3.82
Score	2	2
Total Score	12	12
Total Possible Points	16	16
Share of Total Points	0.75	0.75

The role of civil society in decision-making and law-making processes was referenced in the OGP (Independent Reporting Mechanism) Progress Report 2012-13 on Azerbaijan.³⁰ According to the Progress Report, only a few central and local authorities regularly invite CSOs or citizens for consultation on the preparation of draft laws.

For example, according to its 2012 Annual Report on Progress in Implementation of the National Action Plan, "public hearings are not often held by local authorities in regard to draft laws and policies".³¹

The Government's own OGP Self-Assessment Reports on the implementation of 2012-2013 and 2014 Activity Plans, as well as official and independent websites and the Government reports submitted to Parliament in 2013-2015 on the

29 [http://www.opengovpartnership.org/sites/default/files/Azerbaijan_OGP_IRM_Public_Comment_\(English\)_0.pdf](http://www.opengovpartnership.org/sites/default/files/Azerbaijan_OGP_IRM_Public_Comment_(English)_0.pdf)

30 [https://www.opengovpartnership.org/sites/default/files/Azerbaijan_OGP_IRM_Public_Comment_\(English\)_0.pdf](https://www.opengovpartnership.org/sites/default/files/Azerbaijan_OGP_IRM_Public_Comment_(English)_0.pdf)

31 Ibid.

outcomes of its annual activities, provided no information about public hearings, discussions, or forums.³²

In 2015, several international organisations, such as Publish What You Pay, CIVICUS and Article 19 raised concerns about the threats faced by CSOs in Azerbaijan. Article 19 sent a letter to the Open Government Partnership to request action in relation to Azerbaijan under the "*Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration*" (OGP response policy)³³, which was adopted on 25 September 2014.³⁴

The aim of the OGP response policy is "to help re-establish an environment for government and civil society collaboration" and to "safeguard the Open Government Declaration and mitigate reputational risks to OGP". Article 19 stated that the situation in Azerbaijan has developed such that an appropriate response is required from OGP to ensure that the space for civil society is protected.

Following this process, the OGP Criteria and Standards Subcommittee (CS) developed five specific recommendations for the Government of Azerbaijan in order to address these concerns.³⁵ These recommendations were sent to the Government on 5 July 2015. The following main issues had to be solved by the Government:

i) Timeline for the next National Action Plan. In its 5 July letter, the CS requested that the Government of Azerbaijan submit its new plan by 30 December 2015, to begin implementation on 1 January 2016.

ii) Consultation with civil society. The Government of Azerbaijan was asked to meaningfully consult with CSOs and citizens in the creation of its new action plan according to OGP requirements. The CS subcommittee offered to prepare recommendations on how to conduct an open and representative consultation process. CS recommendations also called for an independent assessment of the consultation process to be reported back to the CS following the conclusion of the National Action Plan consultation process.

32 <http://www.opengovpartnership.org/country/azerbaijan>

33 See *Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration* (OGP response policy), available at: <http://www.opengovpartnership.org/dataset/response-policy-page-documents/resource/9e2aef1b-6cf3-4ef0-809e-00e99002f4fe>

34 <https://www.article19.org/resources.php/resource/37913/en/azerbaijan-joint-letter-to-the-ogp-to-ensure-civil-society-organisations-can-participate-in-and-influence-action-plan>

35 See *Open Government Partnership (OGP) Criteria & Standards Subcommittee Meeting Minutes*, Open Government Hub, Washington, D.C, USA, February 23-24, 2016, Annex 1: <http://www.opengovpartnership.org/sites/default/files/February%202016%20Criteria%20and%20Standards%20Subcommittee%20Meeting%20-%20Minutes%20and%20Resolution%20-%20Washington%20DC.docx>

iii) Commitments to improve the operating environment for civil society. CS requested that the Government of Azerbaijan consider including commitments in the new action plan that specifically address the functioning of the Law on Grants, Law on Non-Governmental Organisations, Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offences.³⁶

On 4 May 2016, the OGP's international Steering Committee resolved that Azerbaijan will be designated as inactive in OGP due to unresolved constraints on the operating environment for CSOs.³⁷ It was first time that OGP had taken such a step since its launch in 2011. The main reason for this decision was an unresolved issue regarding restrictive legislation concerning CSOs. Only one week before the inactive status, on 27 April 2016 Azerbaijan adopted its second OGP Action Plan.³⁸

2. Civil society participants involved

The following organisations were closely involved in preparation of recommendations and further establishment of the Civil Society Platform of OGP:

- Economic Research Center;
- Public Association for Assistance to Free Economy;
- Support to Economic Initiatives Public Union;
- Center for Legal Initiatives;
- Natural Resource Governance Institute.

3. Public authorities involved

- State Commission on Combating Corruption (the national Point of Contact for OGP implementation);
- Ministry of Education;
- ASAN (State Agency for Public Service and Social Innovations);
- Ministry of Finance;
- Commissioner for Human Rights;

³⁶ Ibid.

³⁷ <http://www.opengovpartnership.org/blog/open-government-partnership/2014/11/27/2014-ogp-eligibility-criteria>

³⁸ <http://www.president.az/articles/19581>

- Ministry of Economy;
- Ministry of Labour and Social Policy of Population;
- Ministry of Health;
- Parliament.

4. Stages of potential consultation

Only a small number of CSOs in Azerbaijan carry out projects on the OGP. Currently, five local CSOs and five independent experts are working on OGP initiatives. During the preparation of the Activity Plan on the Promotion of 2016-2018 OGP Initiatives, the Natural Resource Governance Institute (NRGI) – an international organisation – and its local partners initiated a set of proposals and they managed to establish an OGP Initiative Group for Civil Society Platform. The initiative group planned to reach a common agreement on the establishment of the Civil Society Platform with the participation of national CSOs.

On 30 June 2016, a group of CSOs organised a public event on OGP.³⁹ The aim of this event was to discuss the inactive status of Azerbaijan, challenges in CSO-Government partnership on the new OGP Action Plan for 2016-18, and ways to restore the country's OGP status.

It is evident that CSOs are interested in transparent collaboration with the Government on key OGP issues. First of all, prior to the adoption of the 2016-18 OGP Action Plan, several CSOs made a proposal in order to include issues regarding transparency and accountability, as well as an enabling environment for civil society.

OGP participating countries are required to "co-create a National Action Plan (NAP) with civil society. Action plans should cover a two-year period and consist of a set of commitments that advance transparency, accountability, participation and/or technological innovation".⁴⁰

The preparation of the OGP Action Plans was conducted by the Government, and involved several governmental and non-governmental actors,⁴¹ including the following NGOs:

39 <http://budget.az/en/main?content=1218>

40 <http://www.opengovpartnership.org/how-it-works/develop-a-national-action-plan>

41 <http://www.e-qanun.az/framework/32647>

- Transparency Azerbaijan;
- Law and Development Public Association;
- Support to Economic Initiatives Public Union;
- Economic Research Center.

5. Reasons as to how and why this participatory dialogue process came about

The development of the Action Plan was initiated by the State Commission on Combating Corruption in conjunction with relevant ministries, and CSOs were also involved in the process. A group of CSOs had drafted recommendations for inclusion in the Action Plan. For example, Economic Research Center, Support to Economic Initiatives Public Union, Transparency Azerbaijan, Center for Economic and Social Development, and Law and Development Public Association individually sent draft suggestions.

According to Samir Aliyev, expert of the Support to Economic Initiatives Public Union, "several recommendations were not taken into consideration, but several had positive impacts. For instance, the recommendation about transparency of state institutions, fiscal transparency and public participation in budget affairs did not appear in the resultant Action Plan."

"We suggested to have a shorter timeframe for the Action Plan, as the previous plan was for 2012-15. This time, our suggestion was considered, and the new Action Plan was adopted for the period 2016-18."⁴²

42 Interview with Samir Aliyev (23 March 2017).

6. Forms of participation and engagement adopted, tools deployed, and how these evolved

The latest OGP Action Plan raised concerns over previous CSO efforts to include more reforms and to co-operate with initiative groups. The Support to Economic Initiatives Public Union started an online awareness-raising campaign on open government and created a website to accompany the campaign.⁴³

7. The impact of their engagement in terms of political accountability/ changes in policies/laws/office-holders

Rovshan Agayev, an expert with **Support to Economic Initiatives**, noted that a group of CSOs proposed a set of recommendations for the Action Plan – some of which were included, some not, in the final draft of the Action Plan.⁴⁴ He states that the Government considered three main proposals submitted by the Civil Society OGP Initiative before adoption of the plan.

They were as follows:

- a) to ensure an open and transparent Civil Society Platform of the OGP;
- b) to ensure fiscal transparency; and
- c) to guarantee the proper implementation of the rules on disclosure of information about the assets of public officials.

According to Agayev, "the most recent Activity Plan developed by the Government (2016-2018) includes no measurable obligations. The obligations include ones that are not possible to monitor or assess, along with general or technical obligations that would not lead to any fundamental improvements in any specific field. For instance, the new plan includes the following obligation: "Measures on strengthening the control over the fulfilment of duties of Human Rights Ombudsman related to the requirements of Law on Access to Information."

The plan includes no explanation as to how this obligation will be executed, and how it will be measured.

43 <http://opengovernment.az/>

44 Interview with Rovshan Agayev (March 2017).

8. The process from the perspective of participants/stakeholders

Azer Mehtiyev, Support to Economic Initiatives Public Union⁴⁵

“The main problem on implementation of the Action Plan is lack of will on the part of the Government to establish transparency and accountability in government, combined with a lack of commitment to make the Plan an effective one.”

Gubad Ibadoglu, Economic Research Center⁴⁶

“The experience of other countries shows that the development of the National Action Plan (NAP) should go through an open and broad consultation process. Additionally, an ambitious NAP should focus on Open Government priorities, and make commitments that are meaningful and measurable to deliver a genuinely more open, transparent and participatory government.

“A negative development in the second NAP compared with the first one is that its main focus is a move away from public participation towards institutionalisation. Moreover, the inactivity of the Government-Civil Society Dialogue Platform, which was founded on 9 September of 2016, will shrink opportunities for public participation during the implementation phase of the second NAP.

“The Economic Research Center monitored the NAP on OGP in 2012-2015 and published its findings three times– and submitted a request to the State Council on Support to NGOs to be able to attend the Action Plan consultation meetings. The Center was not invited to participate at the meetings. The majority of the organisations that had submitted proposals concerning the content of the new Action Plan were excluded from participation.

“The Platform mainly focuses on simulating awareness-raising activities rather than providing input or feedback, and evaluation and monitoring in order to make contributions that lead to more responsive, innovative and effective governance.

“The Government has negatively impacted on the spirit of integration of independent CSOs and active civil society representatives to promotion of OGP through imposing administrative hurdles and crippling pressures over the activities of Azerbaijan civil society institutions in 2014-2015, further curtailing the implementation of the first

⁴⁵ Interview with Azer Mehtiyev (March 2017).

⁴⁶ Interview with Gubad Ibadoglu (February 2017).

Action Plan and CSO participation in the adoption process of the second Action Plan. The draft of the second Action Plan – which was previously planned to be introduced to the public with the involvement of government and CSOs on 1 June 2015 – was finalised only on 14 March 2016.

"Despite these obstacles, prominent representatives among sidelined independent NGOs drafted and published their positions on participation in the consultation process and representation in the dialogue platform.

"OGP member countries are obliged to foster an enabling environment for civil society, to develop an Action Plan with the involvement of stakeholders, and actively engage citizens and civil society institutions in this process. While assessing the implementation of these recommendations in Azerbaijan, it can be inferred that the government did not set up consultation planning prior to preparation of the second NAP, and consequently it did not create an enabling environment in order to foster the meaningful participation of CSOs holding different opinions and visions. Instead, a series of formal consultations were held with the involvement of selected CSOs.

"Regarding recommendations, first and foremost, the Government should maintain an enabling environment and uphold the value of openness so that civil society institutions can function without any difficulties. While ensuring public participation in the OGP process, the government should be also committed to granting increased access to information for CSOs. Furthermore, the Government should make consultation opportunities available to all civil society members by complying with its transparency and accessibility commitments."

Civil Society Defence Committee, 2009-2017

1. Objective

The Civil Society Defence Committee (CSDC) was established on 11 June 2009 to achieve the complete withdrawal of the proposed amendments to Azerbaijan's Law on Non-Governmental Organisations (Public unions and Foundations) from the agenda and work plan of Parliament, which was due to be discussed at its extraordinary session on 19 June 2009. The Committee was composed of CSOs working in various spheres.

A group of prominent civil society representatives and groups created the CSDC in order to conduct research, formulate policy advice, and communicate with the Government on civil society legislation and public participation.

2. Civil society participants involved

On 11 June 2009, representatives of 50 national CSOs gathered together to establish the CSDC. The Committee established a working group composed of CSO representatives whose main aim was to deal with the proposed amendments to the Law on NGOs. In the initial phase, the Committee's composition included the following civil society organisations:

- Helsinki Citizens Assembly National Committee;
- Economic Research Centre;
- Centre for National and International Studies;
- Center for Legal Initiatives;
- Election Monitoring and Democracy Studies Public Union;
- Republican Alternative Movement;
- Human Rights Club;
- Democratic Institutions and Human Rights Social Union;
- Law and Development Public Union.

3. Public authorities involved

The following authorities were involved in the policy formulation process in relation to CSDC's suggestions:

- Parliament;
- Parliamentary Committee on Legal Affairs and State-Building;
- Presidential Administration.

4. Stages of potential consultation

On 12 June 2009, the working group of the CSDC held a press conference to provide the media and the public with detailed information about the proposed amendments to the law and their planned activities.⁴⁷

The CSDC conducted a series of public debates, round-tables and seminars on the issue. Although their efforts to engage public and private TV channels in broadcasting TV debates on the issue were not successful, several forums and debates were held with the participation of CSOs and international organisations.

The Committee also sent letters to the President and to Parliament, requesting that the proposed amendments not be adopted. The CSOs also planned to conduct a protest action in front of Parliament on 19 June 2009, but the Baku Mayor's Office refused to authorise the rally, and it was banned by local police.⁴⁸ Participants requested to meet officials from the President's Administration in order to discuss the legislation prior to its final adoption.

5. How and why this form of action came about

On 19 June 2009, Parliament planned to vote on a package of amendments to five laws including the Law on NGOs).⁴⁹

47 <http://www.mediaforum.az/az/2009/06/12/V/%C6%8FT%C6%8FNDAC5%9E-C%C6%8FM%C4%B0YY%C6%8FT%C4%B0N%C4%B0-M%C3%9CDAF%C4%B0C6%8F-KOM%C4%B0T%C6%8FS%C4%B0-M%C3%9CRAC%C4%B0C6%8FT-055619681c.html>

48 <http://www.azadliq.org/a/1757910.html>

49 The Law on Mass Media, the Law on Grants, the Law on State Fees, and the Code of Administrative Offences.

The Law on NGOs, if amended as initially planned, would have restricted freedom of assembly and of expression, and threaten the development of civil society in Azerbaijan in breach of Articles 10 and 11 of the European Convention on Human Rights and other relevant European democratic standards, namely as regards:

- the considerable complication of the registration procedure;
- the administrative limitation of the geographical area of activities of CSOs;
- the restriction of international activity;
- the limitation and strict regulation of financial activities and the independence of non-governmental organisations.

The proposed amendments also included changes to the Law on Mass Media and to the Law on State Fees. In this regard, Council of Europe officials issued a statement on this situation, saying that they "are very concerned about some of the proposed changes to the legislation regulating non-governmental organisations and media in Azerbaijan. Amendments as proposed, which may create serious obstacles for the freedom of expression and normal functioning of the civil society in Azerbaijan..."⁵⁰

6. Forms of participation and engagement adopted, tools deployed, and how these evolved

The draft amendments to the above-mentioned laws were put on the agenda of Parliament in a hurry and without any prior debate or consultation with civil society or international organisations. This unexpected and unilateral action gave rise to prompt reactions from Azerbaijani civil society, as well as many international organisations. At the national level, CSOs took immediate action and organised a public debate around the proposed amendments to NGO legislation. On 30 June 2009, the proposed amendments were withdrawn by the Parliamentary Committee on Legal Affairs and State-Building.

50 Samuel Žbogar, Minister of Foreign Affairs of Slovenia and Chairman-in-office of the Committee of Ministers of the Council of Europe, Lluís Maria de Puig, President of the Parliamentary Assembly of the Council of Europe, and Terry Davis, Secretary General of the Council of Europe.

7. The impact of their engagement in terms of political accountability/ changes in policies/laws/office-holders

Ali Huseynli, the chair of the Parliament's Committee on Legal Affairs and State-Building, stated that the NGO legislation had been withdrawn as a result of the increasing protests of CSOs.⁵¹ Finally, in July 2009, the Parliament amended the 2000 Law on NGOs (Law No. 401).⁵² In March 2011, a Decree "on approval of rules for state registration and rules related to the preparation for negotiations with foreign non-governmental organisations and representations in Azerbaijan Republic"⁵³ (Decree No. 43) was adopted by the Cabinet of Ministers in order to ensure the implementation of the amended law. As a result of the CSDC's protests, the Parliament dropped the provisions on "non-registered NGOs and criminal liability for activities of non-registered groups".

The main changes pertain to the registration of branches and representatives of international CSOs in Azerbaijan, which is newly conditioned by an agreement signed by such organisations with the Government. The agreement should be an outcome of a negotiation process between the Ministry of Justice and the NGOs, in the course of which the NGOs have to accept a series of conditions and pledges.

In 2011, the Standing Committee of the INGO Conference of the Council of Europe asked an Expert Council to review all these matters and prepare an Opinion on the amendments in 2009 to the NGO Law in Azerbaijan.⁵⁴ The NGO Expert Council issued its Opinion and stated that "the 2009 amendments suffer from a lack of clarity in their formulation which is inconsistent with the requirement of international standards that the regulatory 44 framework governing the establishment and operation of NGOs should be sufficiently precise and foreseeable".⁵⁵ Subsequently, in 2011, the Venice Commission of the Council of Europe issued an Opinion on the 2009 NGO law amendments.⁵⁶

The role of CSDC in policymaking processes continued in 2013 in response to a second round of legislative amendments to NGO legislation imposed by the Government.⁵⁷ A public event on this issue was organised jointly with the

51 <http://humanrightshouse.org/Articles/11206.html>

52 http://www.justice.gov.az/07.htm#_edn22

53 <http://e-qanun.az/framework/21447>

54 <http://www.coe.int/en/web/ingo/t-council-on-ngo-law-country-study-on-ngo-legislation-in-azerbaijan>

55 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306ff5>

56 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)035-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)035-e)

57 <http://eap-csf.eu/en/national-platforms/azerbaijan/news/civil-society-defence-committee-was-restored-in-azerbaijan/>

Azerbaijan National Platform of the Eastern Partnership Civil Society Forum and Human Rights House Foundation on 12 February 2013.⁵⁸

The CSDC had a crucial role in the developments following the NGO legislation. In 2013, the CSDC sent a letter requesting a meeting with the Presidential Administration in order to discuss the current challenges and draft NGO law. The CSDC also sent a special letter to mass media to call for close co-operation and to raise the issue on the media's agenda.⁵⁹

The Parliamentary Assembly of the Council of Europe adopted a resolution (1917(2013)),⁶⁰ calling upon the Azerbaijani authorities to, among others, "review the law on NGOs with a view to addressing the concerns formulated by the Venice Commission; improve and facilitate the registration procedures for international NGOs; and create an environment conducive for NGOs to carry out their activities, including those expressing critical opinions" (par. 18.8).⁶¹

On 17 December 2013, the first package of comprehensive amendments to a number of laws regulating NGO activities was adopted by Parliament. According to Alasgar Mammadli, a NGO Law expert, "the NGO legislation had been amended 22 times. Four additional amendments were introduced in 2014." The previous amendments made in 2009 and 2011 regulated only several aspects of the legislation.⁶²

The package entered into force on 1 February 2014 with the adoption of the presidential order.⁶³ This was followed by another set of amendments adopted on 17 October 2014 resulting in further restrictions on the operations of CSOs.

On 13 December 2014, the Venice Commission adopted an opinion on the Law on NGOs as amended.⁶⁴ This crucial Opinion presented a clear assessment as to how the amendments were not in line with international standards. The CSDC held its first meeting after the latest amendments and stressed that "the new

58 <http://archive.eap-csf.eu/en/national-platforms/azerbaijan/news/civil-society-defence-committee-was-restored-in-azerbaijan/>

59 <http://m.deyerler.org/185946-vjtjndae-cjmiiyyiti-fjallard-vj-qht-rjhbjrjri-mjtbuata-mgracijt-etdi.html>

60 Resolution 1917(2013), 'The honouring of obligations and commitments by Azerbaijan', 23 January 2013.

61 Ibid.

62 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306ff5>

63 The Law of Azerbaijan on Making Amendments to the Law "On non-governmental organizations (public unions and funds)" dated on 17 December 2013 (№ 849-IVQD), The Law of Azerbaijan on Making Amendments to the Law "On State Registration of Legal Entities" dated on 17 December 2013 (№ 848-IVQD), and the Law of Azerbaijan on Making Amendments to the Law "On Grant" dated 17 December 2013 (№ 852-IVQD)

64 [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)043-e)

legislative amendments would weaken civil society and bring new restrictions on our activities."

In 2015, a series of rules was adopted to secure the implementation of the new laws on funding to NGOs:

- a) On 5 June 2015, the Cabinet of Ministers adopted new rules on registration of grant agreements;⁶⁵
- b) On 21 October 2015, the Cabinet of Ministers adopted a decree "on registration of contracts on provision of services and works at the expense of foreign financial sources by non-governmental organisations, as well as branches or representative offices of foreign non- governmental organisations",⁶⁶ and
- c) On 22 October 2015, the Cabinet of Ministers approved the "Procedure on obtaining the right to give a grant by foreign donors in the territory of Azerbaijan".⁶⁷

All these amendments led to new restrictive policy towards to civil society in Azerbaijan.

8. The process from the perspective of participants/stakeholders

Mehman Aliyev, Director of Turan Information Agency, member of CSDC⁶⁸

"The CSDC could save the consultation environment within the coalition during the crackdown on CSOs in 2013-14. During that time, the CSDC defended civil society, journalists, activists and human rights defenders, and raised issues regarding challenges and legislative amendments to NGO legislation. The work of the CSDC against the repressions and crackdown can be considered a success. However, it was not possible to avoid the arrest of prominent journalists and human rights defenders. With regard to positive responses from the Government, only the Presidential Administration replied to calls. Nevertheless, that did not change the negative results, and the legislation was not improved despite the alert raised by the CSDC."

65 <http://www.e-qanun.az/framework/doc/30212>

66 <http://e-qanun.az/framework/31055>

67 <http://e-qanun.az/framework/31488>

68 Interview with Mehman Aliyev (18 February 2017).

Hafiz Hasanov, Chairman, Law and Development Public Union, CSDC member⁶⁹

“The CDSC was established in 2009 as a response of civil society to the repressive amendments to NGO legislation. During its creation, the CSDC sought to prevent several negative developments, and suggested a set of amendments to legislation. In the meantime, the CDSC organised several protest events and rallies in front of Parliament and showed its real intent to negotiate with the Government on the improvement of legislation. It helped to halt the process and succeeded in attracting the attention of the international community. The main success of the CSDC was that the Government did not adopt the legislative package in full, and some measures were dropped from the agenda. The involvement of embassies and international organisations, such as ICNL, in advocacy work had a positive impact on the process. In addition to this, one of the successes of the CDSC was about some positive response from the Government. The chair of the Legal Affairs and State-Building Committee of the Parliament reacted to this issue, and the State Council on Support to NGOs organised a discussion on the suggestions of the CDSC. The Parliament dropped the provisions on “non-registered NGOs and criminal liability for activities of non-registered groups” at the suggestion of the CSDC.”

69 Interview with Hafiz Hasanov, 19 February 2017.

Recommendations

- Implement a genuine partnership between decision-makers and civil society, as equal partners, through a structured dialogue between CSOs and government around the policy-making at national, regional, and local levels.
- Set out a clear and reasonable minimum timeline for public participation that will involve CSOs as early as possible in the process and provide associations with sufficient time to prepare, discuss and submit recommendations on draft policies and draft legislative acts.

BELARUS

by Tatiana Kouzina*

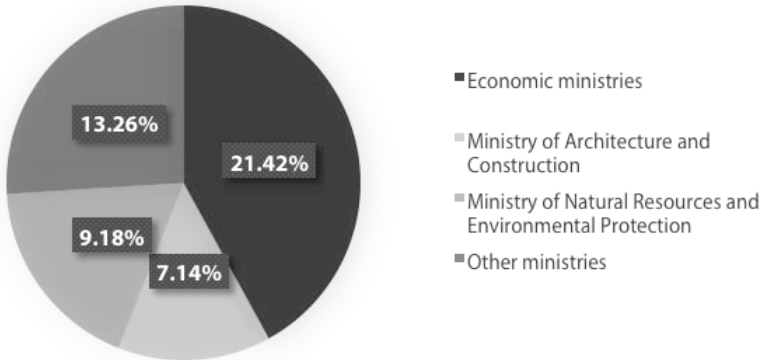
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Introduction

Although the degree of the engagement of citizens in policy decision-making in Belarus is rather low, and most regulatory legal acts, including those concerning socially significant issues, are developed without the involvement of a broad range of stakeholders, some positive changes took place in 2016:

- There was an increase in the number of public discussions of regulatory legal acts and better availability of information. In 2016, 50 draft regulatory legal acts were published on the websites of ministries for broad public consultation. Some ministries introduced a section “Discussing Draft Laws” on their websites, where they post draft regulatory legal acts proposed for discussion, along with deadlines for making proposals, and contact details. Most of the draft laws opened up for public discussions (37 out of 50) pertained to the spheres where public consultations are mandatory (entrepreneurship, urban planning, environmentally significant issues).

Belarus: Public Consultations on Draft Regulations, 2016



Source: Author's calculations based on data of Belarusian ministries' official websites.

- Legislation on environmentally significant issues was included into the list of areas where public discussions are mandatory following the adoption of Resolution No. 458 of the Council of Ministers¹, dated 14 June 2016. The provision on the procedure for the organisation and holding of public discussions was developed with the involvement of civil society organisations.
- The Ministry of Economy developed the draft Decree of the President “On regulatory impact assessment of draft regulatory legal acts (individual provisions thereof) that influence the conditions for carrying out entrepreneurial activities”². The preparation of the draft included both expert consultations and the collection of proposals from the wider public. However, as of February 2017, the decree had still not been issued.
- Whereas insufficient awareness and lack of mutual trust between the public sector and civil society persist on the whole, more open relationships – with the potential to transform into partnerships – are beginning to emerge in areas where public participation has a legal framework and has taken institutional forms.

The draft Law on Regulatory Legal Acts, adopted by the lower chamber of parliament by resolution No. 799-П15/IX³, dated 28 June 2016, contains:

- Provisions on public consultations and impact assessments for adopted regulatory legal acts, regulatory environmental impact assessment for entrepreneurial activities, and explanatory notes accompanying regulatory legal acts;
- The expansion of public discussions over not only laws, but also to other regulatory acts;
- The inclusion of information about the results of a completed public discussion and consideration of remarks and proposals as a requirement for the adoption of a legal act;
- The introduction of a minimum timeframe for holding public consultations (15 days);
- The assignment of a single on-line platform – the website *Legal Forum of Belarus*⁴ – for the organisation of online public discussions of regulatory legal

1 <http://www.government.by/ru/solutions/2522>

2 http://www.economy.gov.by/nfiles/001708_705996_Proekt.pdf

3 <http://pravo.by/document/?guid=3941&p0=2016004024>

4 <http://forumpravo.by/>

acts. Information about public discussions also has to be published on the National Legal Internet Portal (pravo.by), in the media, and on the official websites of state authorities.

However, the practice of public discussions of regulatory legal acts will remain selective, and, if the law is adopted, the procedure for public consultations will be determined by the Council of Ministers. There are no plans for publication and open public discussion of the envisaged concept papers to precede the development of draft laws, and there are no provisions for mandatory publication of the substantiation for the need to adopt a regulatory act and information about the results of a completed public discussion and consideration of remarks and proposals.

BELARUS: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Ad hoc</p> <p>Were all draft laws indeed published? Yes, in 2013-2015.</p> <p>Draft Laws published in 2013-2015</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts
<p>In Belarus the publication of draft laws is mandatory, but the process of the publication is a very centralised. Draft laws are mostly published after internal discussion within the state institutions involved on the National Legal Internet Portal pravo.by around the date of its submission for parliamentary review. The practice of public participation in parliamentary committee meetings is very rare. Once a draft becomes law, the text is no longer available at pravo.by or on ministries' websites.</p>	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
<p>In 2016 the situation changed and on many ministries' websites there is a special area where draft laws, as well as the invitation to submit proposals, are published.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Online consultations inviting input</p>	<ul style="list-style-type: none"> ▪ General public
	<p>Public hearings</p>	<ul style="list-style-type: none"> ▪ General public

<i>Parliamentary review of legislation</i>	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? No</p> <p>Is a timeframe provided to announce the review meeting with advance notice? No</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>		
<i>Review of parliamentary committee amendments</i>	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee’s proposed amendments is: Non-existent.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>		

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Decree on Regulation of Entrepreneurial Activity, 2014

1. Objective

Self-employed individual entrepreneurs are the most numerous group of entrepreneurs in Belarus (approximately 250,000). The ban prohibiting such individual entrepreneurs from hiring workers other than family members created obstacles primarily in the provision of services and manufacturing, and de facto placed such entrepreneurs on the same footing as craftsmen.

Presidential Decree No. 222 “on the regulation of entrepreneurial activity and sale of goods by private entrepreneurs and other individuals”;⁵ dated 16 May 2014, enshrines in the applicable legislation the entitlement of self-employed individual entrepreneurs operating in accordance with the general taxation scheme to employ any number of workers, and of private entrepreneurs paying a flat, lump-sum tax to employ up to three workers regardless of family connections.

Business associations had originally sought to place on the agenda of the Government the abolition of the ban on hiring by self-employed individual entrepreneurs, and then have the authorities remove the hiring ban altogether. From the perspective of government agencies, the decree was developed with a view to “improving the procedure for the regulation of entrepreneurial activity and sale of goods by private entrepreneurs”. Furthermore, in the course of consultations and negotiations, President Alexander Lukashenko instructed the Government to finalise the draft decree they had submitted to him in order to “accommodate the interests of stakeholders and create equal conditions for all, as well as to facilitate the development of transparent civilised trade”.⁶

2. Civil society participants involved

- The Republican Confederation of Entrepreneurship;
- Minsk Capital Association of Entrepreneurs and Employers, a non-governmental organisation;

5 <http://www.pravo.by/document/?guid=3871&p0=P31400222>

6 <http://bdg.by/news/economics/28185.html>

- Belarusian Union of Entrepreneurs, the nationwide non-governmental organisation of representatives of big, medium-sized, and small businesses, with approximately 800 full members and 17,000 associated members.

3. Public authorities involved

- President;
- Council of Ministers;
- Ministry of Economy;
- Ministry of Taxes and Levies;
- Ministry of Trade.

4. Stages of potential consultation

Business unions participated in the preparation of the decree at the phase when its substance was being identified. Originally, there was no plan to include the provision cancelling the ban on hiring workers by self-employed individual entrepreneurs; the agreement to include the provision was reached at a meeting between Deputy Prime Minister Petr Prokopovich and representatives of business unions. Furthermore, experts were invited to work on the text of the draft decree by preparing written comments.

5. Forms of participation at each stage

Most of the efforts and, consequently, diverse forms of participation were implemented at the phase of the inclusion of the regulation under analysis in the legislative agenda. In 2011, 2012, 2013, and 2014, the abolition of the ban on hiring by self-employed entrepreneurs was included in the “National Business Platform of Belarus” – the annual document developed by Belarusian business and analytical communities, in which these stakeholders identify priority dimensions for reforming Belarus’s business environment.⁷ The document is prepared by the co-ordinating committee on the development and promotion of the National

⁷ <http://www.rce.by/index.php/национальная-платформа-бизнеса-беларуси>

Business Platform. In total, 50-60 business associations, public associations, non-profit organisations and individual experts contribute to and discuss the “National Business Platform”.

The need to cancel the ban on hiring was voiced repeatedly at meetings of public advisory councils for the development of entrepreneurship operating under government agencies (specifically, the Council for Entrepreneurship Development in the Republic of Belarus, and public advisory councils under ministries), as well as in the course of meetings of the Assembly of Business Communities. Written petitions were prepared and submitted to the President and Government.

Meetings of representatives of the business community were held at the Council of Ministers under the chairmanship of Deputy Prime Minister Prokopovich, along with numerous consultations at various levels. In order to be able to put forward arguments based upon empirical facts, the Analytical Centre for Study of Issues of Concern in the Operation of Private Entrepreneurs, which was established as part of the Republican Confederation of Entrepreneurship, developed a series of analytical documents. Further on, during the phase envisaging work with the text of the draft decree – which was obtained from the Ministry of Trade for comments – experts of business unions provided comments to the text. A representative of the Belarusian Union of Entrepreneurs participated in the meeting between President Lukashenko and state authorities, where the decision was made on the adoption of the final version of the text.

6. Level and timeframe of access to information

February 2014: Inclusion of the removal of the ban on hiring workers by self-employed entrepreneurs into the draft decree; the text was made available to some stakeholders.

March 2014: Consultations on the text of the draft decree following the achievement of the compromise agreement on the abolition of the ban on hiring by self-employed entrepreneurs (while the ban on hiring was abolished, the decree contained requirements for self-employed entrepreneurs to have certificates of origin for goods imported from the territory of the Eurasian Economic Union. These norms aggravated the conditions faced by many self-employed entrepreneurs, particularly those working in the light industrial goods sector, because their suppliers from other countries in the Eurasian Economic

Union don't provide these documents. After protests from self-employed entrepreneurs, the entry into force of this norm was postponed until 1 January 2016.

7. Comparison against stated stages of policy cycle and participation

According to Presidential Directive No. 4, dated 31 December 2010, "on the development of entrepreneurial initiative and encouragement of business activity in the Republic of Belarus", public discussions must be held when preparing draft regulatory legal acts focusing on the development of entrepreneurship.⁸ The procedure for holding public discussions is determined by Resolution No. 247 of the Council of Ministers, dated 20 March 2012.⁹ According to the Resolution, "the period for mandatory public discussion and co-ordinated approval of draft acts that can have significant influence on conditions for carrying out entrepreneurial activities shall be determined by the government agency and another organisation that develop the draft act based upon the specific character of the regulated public relations". In other words, despite the fact that the organisation of public discussions has been enshrined in the applicable legislation, this legislation failed to identify specific procedures and timeframes for holding such discussions.

8. The process from the perspective of participants/stakeholders

The initiative was promoted during the period from 2008-2014. The issue was included in the agenda exclusively through the efforts of business unions. Representatives of business unions participated in two meetings with Deputy Prime Minister Prokopovich and one meeting with President Lukashenko. For example, in 2013, experts were included in 16 public advisory and expert councils, nine working groups, and three committees under government agencies. The issue of the ban on hiring workers by self-employed entrepreneurs was voiced upon at those meetings, and arguments were explored in favour of its abolition, supported by research studies and analyses.

Unlike most of the laws and resolutions of the Council of Ministers that are submitted to business unions for review, decrees, edicts, and directives are almost never brought up for public consultation even in the form of expert consultations.

8 http://president.gov.by/ru/official_documents_ru/view/direktiva-4-ot-31-dekabnja-2010-g-1400/

9 <http://www.government.by/ru/solutions/1799>

This case was arguably the first example of a presidential decree going through the process of consultation with non-governmental actors.

The Republican Confederation of Entrepreneurship

“Presidential decrees are sent to us a bit more often now, but again, when we know [that the document is being prepared].

“Frequently these documents are prepared very fast and sent for comments ‘today for today’: today I receive the document, today I have to send my review and opinion.”

Arguments in favour were consistently presented and promoted via all the available instruments and mechanisms, including a written submission to the President. Initially, the idea to allow private entrepreneurs to hire workers met considerable resistance at all levels of the state authorities.

Deputy Prime Minister Prokopovich stated on 7 February 2014 that "nobody bars self-employed entrepreneurs from creating private enterprises, such enterprises also have certain privileges... If they grow, then let them create microenterprises, and if they grow even more they can form small businesses, later medium-sized businesses."¹⁰

The Republican Confederation of Entrepreneurship

“For several years, the idea of allowing self-employed entrepreneurs to hire workers was rejected. Even when the Deputy Minister for Taxes and Levies was ‘for,’ the Administration rejected the proposal. But afterwards we managed to convince them by presenting arguments that it was a very important question not only for those who are engaged in trade, but also for those who are in services and production. Finally our position was supported by the Ministry of Economy, Ministry of Taxes and Levies, and the Ministry of Trade. They agreed with our arguments.”

¹⁰ https://ej.by/news/economy/2014/02/06/ip_ne_poluchat_prava_nanimat_rabotnikov.html

By 2014, the Presidential Administration remained the only exception where the idea had not been embraced. However, the consultation process eventually resulted in a compromise.

Minsk Capital Association of Entrepreneurs and Employers

“We were constantly elaborating our common position. We established an informal body: the consultative-co-ordinating meeting of business associations, which is convoked in an ad hoc manner. The Council on Entrepreneurship Development [a consultative body under the President] is also engaged. We elaborated a common position, than it was finalised in the form of a joint letter, which we sent to the respective state body.”

The initiative was promoted by the business unions in a collaborative endeavour and with co-ordination of their respective campaigns.

The proposals to allow self-employed entrepreneurs to employ up to three workers were all accepted in full. This was the option that was promoted by business associations. Along with the hiring permission, Decree No. 222 contained provisions that tightened conditions for the operation of self-employed entrepreneurs associated with the regulations of the Eurasian Economic Union. The entrepreneurial community managed to have those provisions postponed until 2016; however, the campaign to abolish them for good never achieved the desired effect. The cancellation of the ban on hiring became, to some extent, a measure that made up for the tougher operating conditions for self-employed entrepreneurs.

Considering the diversity of the applied participation approaches and mechanisms, the consultation process went beyond the framework identified by the applicable legislation.

The Republican Confederation of Entrepreneurship

“We participate in various public advisory councils ... and often state authorities' representatives inform us that they are working on various documents. Often this is the only way we can receive this information.”

In order to ensure successful advocacy, it is important that the broadest possible range of instruments is used, along with collective action and accumulation of pressure, as well as permanent monitoring of legislative processes via personal contacts.

In order to improve the participation process, it is necessary to have the public included in the consultation process at the earliest possible phase, to maximise the publicity around the process, and to ensure implementation of regulatory impact assessment for all categories of legislation.

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

This process matched the legislative norms, but the processes of public consultations in Belarus are not clearly defined or regulated. Resolution No. 247 of the Council of Ministers identifies two forms of public engagement:

- consideration of draft regulatory legal acts at public advisory (expert) councils for the development of entrepreneurship established under the said government agencies (organisations);
- publication of draft regulatory legal acts on official websites of the said government agencies (organisations) that are responsible for the development of these regulatory legal acts.¹¹

¹¹ Resolution No. 247 of the Council of Ministers, dated 20 March 2012, “on certain aspects of the organisation of public discussion of draft regulatory legal acts on the development of entrepreneurship and making amendments to Resolution No. 2070 of the Council of Ministers of the Republic of Belarus, dated 31 December 2008”.

Discussions at public advisory councils were held, and the range of state authorities engaged was broader than prescribed by the applicable legislation; however, the text of the draft document was never made available to the public.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

This process is an example of continuous, consistent, and (in terms of the forms and instruments used) diverse engagement between the state and CSOs focused on consolidated collective actions. Considering that legislation regulating entrepreneurship is one of the first areas in which public consultation was organised during the preparation of draft regulatory legal acts, this process – alongside other initiatives of Belarusian business unions – produced a positive impact on the establishment of dialogue between organisations operating in the business sector and government agencies.

Draft Law on Treatment of Animals, 2015-2016

1. Objective

In Belarus there is a significant number of homeless animals subjected to cruelty at the hands of society. To address this problem, CSOs aimed to secure the introduction of amendments to the Criminal Code on cruelty to animals and the adoption of the Law on Treatment of Animals.

On 28 January 2015, Article 339-1 on Cruelty to Animals was introduced to the Criminal Code following the campaigning efforts of animal rights activists. The attempts to adopt the Law on Treatment of Animals have been underway for 10 years. The draft law was discussed several times in the Parliament, but every time it was sent back for further revision, mainly because of criticism on the part of civil society. When the current process started, the draft law elaborated in 2011 was taken as a basis.

2. Civil society participants involved

- Civic campaign “NO to Cruelty to Animals”;
- Animal protection public association “Egida”.

3. Public authorities involved

- Ministry of Housing and Communal Services (co-ordination of the working group);
- Ministry of Natural Resources and Environmental Protection;
- Ministry of Foreign Affairs;
- Ministry of Agriculture;
- National Centre of Legislation and Legal Research.

4. Stages of potential consultation

The development of the draft Law on Treatment of Animals represents an example of the organisation of public consultation in a field where public consultations are not mandatory, but can be held on the initiative of the state body responsible for the elaboration of the draft law.

Despite the lack of a clearly defined procedure for such cases, consultations were held at the stage of draft law development, as well as at the stage of parliamentary review. In the second stage, public consultations were organised by the Parliament upon the instruction of the President to the Chairman of the House of Representatives.

5. Forms of participation at each stage

At the very early stages of the process, CSOs initiated meetings with officials and prepared electronic inquiries to different public authorities.

At the stage of draft law development, an interagency working group was created under the Ministry of Housing and Communal Services. The working group included representatives of the aforementioned ministries (see 3. Public authorities involved), CSOs representatives (animal rights activists), dog specialists, veterinarians, and other professionals.

At the stage of parliamentary review, the draft law text was published for online public consultations on the website Legal Forum of Belarus.¹² The announcement about public consultations was also published on the National Legal Internet Portal and widely reposted by the media. Interested parties could also send their comments to the National Centre of Legal Information.¹³

¹² <http://forumpravo.by/>. In the Law on Regulatory Legal Acts, this website is designated as the single on-line platform for the organisation of online public discussions of regulatory legal acts.

¹³ <http://ncpi.gov.by/>

6. Level and timeframe of access to information

April-May 2015: Elaboration of the draft text by the working group under the Ministry of Housing and Communal Services with the involvement of CSO representatives.

June-October 2015: Work on the draft text by the National Centre of Legislation and Legal Research.¹⁴ The new version of the draft text was not made available to non-state interested parties until it was published on the day of its submission to Parliament.

26 October 2015: The draft law was sent to the Parliament and published on the National Legal Internet Portal **pravo.by**. On the same portal, a two-week online survey on the authorised number of pets was launched.¹⁵ A total of 5,500 people participated in the survey, which revealed that 70% of respondents opposed limitations on the number of pets, a hotly debated question. In June 2015, animal rights activists sent a request to the Council of Ministers and launched a petition via **zvarot.by** – an online platform for citizens' appeals to state bodies – to cancel the limitations or make them more differentiated (depending on size or weight). The survey provided additional arguments ahead of the Parliamentary discussion.

November 2015-March 2016: Public campaign organised by animal rights activists, particularly by the participants of the working group. The purpose of the campaign was to reinstate the input of the working group into the draft, which had been discarded in the text submitted to Parliament and published on official web portals.¹⁶

28 March 2016: Meeting of President Lukashenko and the Chairman of the House of Representatives, Vladimir Andreichenko, where the issue of the Law on Treatment of Animals was discussed. The President secured the commitment of Andreichenko to organise public consultations.¹⁷

29 March - 20 April 2016: The text of the draft law was published for public consultations. The total volume of proposals received totalled nearly 800 pages.

14 <http://center.gov.by/>

15 http://naviny.by/rubrics/society/2016/03/29/ic_articles_116_191314

16 <http://www.mesto-pod-solncem.org/2016/03/blog-post.html#more>

17 http://naviny.by/rubrics/society/2016/03/29/ic_news_116_472681

3 May 2016: Discussion of the draft law in Parliament's Permanent Committee on Housing Policy and Construction. CSOs' representatives were not invited to participate in the discussion.

The Permanent Committee on Housing Policy and Construction was continuing to prepare the draft for the first reading during the spring 2017 session.¹⁸

7. Comparison against stated stages of policy cycle in Parliament

Stages of the legislative process	Forms of consultation	Practice
<p>Publication of first draft of legislation</p> <p>When a draft law has been prepared, the publication of the draft law is mandatory</p>		Published
	<p><i>(Voluntary)</i> Expert working groups or taskforces:</p> <ul style="list-style-type: none"> ▪ Selected experts ▪ Government-selected interest groups ▪ Government-selected NGOs 	Created
	<p><i>(Voluntary)</i> Online consultations inviting input:</p> <ul style="list-style-type: none"> ▪ General public 	Held

18 <http://www.house.gov.by/ru/interview-ru/view/obraschenie-s-zhivotnymi-do-chego-dogovorilis-razrabotchiki-zakonoproekta-1304/>

8. The process from the perspective of participants/stakeholders

Alona Valyniec-Čarniajeva, Co-ordinator, Civic campaign “NO to Cruelty to Animals”¹⁹

“When we worked on the Criminal Responsibility campaign [advocating for the introduction of amendments to the Criminal Code on cruelty to animals], we paid three visits to officials and deputies.

“When we were included into the working group under the Ministry of Housing and Communal Services, we worked together for several months. First, at the invitation of the ministry, we negotiated on how to proceed and formulated a work plan. Then in the broader meeting of the working group, all participating ministries were invited, and each submitted its proposals.

“Then, over approximately two months, we worked on the text: on each section, on each word. One month we met almost every day, then later the meetings were held less frequently.

“The facilitation from the side of the authorities of the participation of a wide range of stakeholders in the discussion on the draft law was an innovation. From the perspective of the campaign, we used standard and simple methods. We very actively used e-petitions on the zvarot.by website,²⁰ and prepared a lot of electronic inquiries: to the Council of Ministers, the House of Representatives, the Presidential Administration, Ministry of Foreign Affairs. And they were really grounded ... it was not amateur stuff. They were well prepared documents, which could not be brushed aside. Officials had to react. In particular, as a response to one of the inquiries, before the working group was launched, we received information that the draft Law on the Treatment of Animals would be considered.

“Then, after the draft of the law was elaborated, I wrote an email to each MP with a request to assist in the adoption of the document, indicating which points in the draft law are the most important – gave them some 'hints' – and sent it to their official emails. I received about 20 responses thanking me.

19 interview with author.

20 <http://zvarot.by/ru/obshhestvennoe-obsuzhdenie-zakonoproekta-ob-obrashhenii-s-zhivotnymi/>

"While preparing the electronic enquiries, lawyers from two other CSOs helped us to work with zvarot.by. During the law-drafting process (working group), we established a good relationship with a lawyer from 'Egida'.

"At the stage of amendments to the Criminal Code, CSOs were not directly involved in the work on the text. We sent a large number of inquiries, but the draft text was not discussed with animal rights activists. We sent a scenario of which cases should be included, but not exact wordings.

"At the first working group meeting on the draft law, we voiced which principal elements should be included. In the process, the proposals of other departments and organisations were given to us in the form of printouts.

"My approach was: it is better to keep the old draft and add a few important points. Then, it is very probable that the document will be adopted.

"These fundamental points included:

- *the number of possible ways to regulate the population of homeless animals was expanded;*
- *educational, value-based features;*
- *simplification of the process of creating a shelter.*

"These points remained in the draft law, while proposals from other organisations were rejected. Once the law is in place, you can later make more far-reaching changes to it. Even in its current version, it will save a lot of animals.

"On some issues, the Ministry of Foreign Affairs was more radical than animal rights activists. The ministry conducted an analysis of international experience in the field of legislation. They talked about the reaction, for example, of the EU - even we have decided not to use this argument.

"It is always necessary to have clear, specific, achievable goals. The rest is a matter of tools. Often civil campaigns are organised by people who don't have relevant experience, and don't analyse what has been done before. It is necessary to share experience, and get advice.

"A lot depends on the issue you work on. In case the problem is more societal as in our case, it is much easier and, if you act correctly, you can achieve your goals.

"There is a need for greater transparency with respect to the publication of documents: the successive versions of the draft laws, and consideration of the proposals from the public. We would like to see the entire spectrum of the proposals from public, and conclusions that explain which proposals have been included/excluded, and why."

Yuri Dolgokupets, MP, Head of the Permanent Committee on Housing Policy and Construction, House of Representatives²¹

"The fact that this draft law is not easy is recognised both by those who have been involved and those who have not been involved in its development. We tried to take into account the opinion of the majority in this document. I would like to see how it will prove to work in practice."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The process described above matched the legislative norms. However, the main problem is not compliance with the norms, but the lack of regulation providing for public participation in decision-making. At the stage of draft elaboration, CSOs could influence the text in the frame of the interagency working group discussions, but after the adjustments within state institutions and final redaction at the National Centre of Legislation and Legal Research, many of the CSO proposals were excluded from the text. Public consultations are also not compulsory, but the wider public could make the proposals during the public consultations organised by the Parliament on the order of the President. Irregular and ad hoc application of participatory mechanisms contributed to the current situation, whereby the law has still not been adopted and the main stakeholders have not reached agreement on the content of concrete norms.

21 4 March 2017, <http://www.house.gov.by/ru/interview-ru/view/obraschenie-s-zhivotnymi-do-chego-dogovorilis-razrabotchiki-zakonoproekta-1304/>

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

This process was characterised by the very pro-active position of the CSOs involved, with intensive campaigning, and wide-ranging and productive co-operation between state authorities and CSOs within the working group at the stage of the elaboration of the draft law. However, the results of this co-operation suffered from the absence of clear regulations.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

Revisions to Laws on Provision of Social Services

1. Objective

The International Educational non-governmental organisation ACT set out to ensure the financial stability of CSOs providing social services through diversification of their sources of financing. The state social commission, alongside charities, social entrepreneurship, and foreign aid, is the principal instrument to achieve this purpose, and was considered to be the top priority when it comes to exerting influence on the establishment of interaction between the state and CSOs.

The specific purpose of ACT with regard to addressing this challenge has been modified several times since 2007. During the first phase, it was formulated as “the expansion of the practice of state financial support for Belarusian non-governmental organisations within the framework of the applicable legislation”.²² During that period, provisions of the existing Law on Social Services enabled local authorities to engage CSOs and act as a customer that commissions social services. However, in practice, the participation of CSOs in state-led tenders for providing social services was considered by tax authorities as a commercial activity. According to Article 20 of the Law on Public Associations, commercial activity is allowed for CSOs only if it is within the pursuit of their statutory goals and carried out through the establishment of special for-profit organisations. This resulted in a situation where it was de facto impossible for CSOs to be contractor for commissioning social services.

During the second phase, the purpose was reworded as “the introduction of amendments to the applicable legislation, which would make it possible to exercise the practice of commissioning by the state.”²³ ACT elaborated amendments on state social commissioning to nine legislative acts, along with a package of draft regulatory documents that govern the procedures for commissioning by the state of social services. These documents were sent by ACT to the relevant ministries – the Ministry of Justice, the Ministry of Labour and Social Protection, the Parliament, and the Administration of the President.

Finally, during the third phase, the purpose was reformulated as “the development of a conceptual mechanism of the legislative framework for social commissioning

²² interview with ACT representative.

²³ *ibid*

– the Law on State Social Commissioning”.²⁴ ACT's experts developed the draft Law on State Social Commissioning. However, the state authorities considered that approach as premature, and a decision was taken by the Ministry of Labour and Social Protection to introduce the practice of state social services to the social protection sphere and accordingly to introduce provisions on commissioning by the state of social services to the Law on Social Service. If the application of these provisions proved successful, the mechanism could be applied to other areas as well.

As the objective of the third phase was not achieved, ACT has been continuing its efforts to implement some of the objectives of the second phase, namely, the gradual introduction of state commissioning of social services in sectoral legislation. Through the co-operation with the Ministry of Labour and Social Protection, ACT participated in the elaboration of the draft Law on Amendments and Additions to Certain Laws of the Republic of Belarus on Social Service, which came into effect on 1 January 2013, and which restated in a new version the Law on Social Service.

However, the Resolution of the Council of Ministers No. 1219 on Certain Aspects of State Commissioning of Social Services, dated 27 December 2012, which was enacted in pursuance of the Law, and contains the principal rules on state social commissioning, was elaborated without any consultation with non-state experts or potential CSO contractors. Monitoring of the first year of the implementation of the state social commissioning led by different stakeholders proved the necessity of the changes in these rules (see below).

From the perspective of the state authorities, the main challenge was the fact that the demand of a certain part of the population for social services was not being fully met. Therefore, they faced the challenge of encouraging CSOs to render social services. The Labour Research Institute at the Ministry of Labour and Social Protection was commissioned to study theoretical approaches and foreign best practices in this area, and conduct respective research, in order to formulate the proposals of the bill.

24 *ibid*

2. Civil society participants involved

- International Educational non-governmental organisation ACT, <http://actngo.info/>

3. Public authorities involved

- Ministry of Labour and Social Protection;
- Council of Ministers;
- Labour Research Institute under the Ministry of Labour and Social Protection;
- House of Representatives of the National Assembly (Standing Commission for Labour, Social Protection, Veterans and the Disabled);
- Local authorities (first phase, testing of state procedures for commissioning of social services).

4. Stages of potential consultation

Beginning with the first phase of the process, ACT concentrated its efforts on familiarising the state authorities as well as CSOs with the concept of state commissioning of social services – for the most part through trainings, seminars, tutorials, and familiarisation visits to EU member states organised for the representatives of local authorities.²⁵

During the second phase, following active promotion of amendments and additions to the applicable legislation these instruments were further enhanced by co-operation between ACT and the Ministry of Labour and Social Protection. Subsequently, during the phase envisaging the preparation of proposals for the National Centre of Legislation and Legal Research, the Labour Research Institute was instructed by the Ministry of Labour and Social Protection to develop a mechanism to enable contractual fulfilment of state commissioning of the delivery of social services to the population, and a representative of ACT was included in a temporary research team working under the Labour Research Institute.

ACT and the Labour Research Institute conducted research into national legislation and best international practices to analyse their adaptability. The result

²⁵ <http://www.actngo.info/article/akt-i-socialnyy-zakaz-istoriya-uspeha>

of this work formed a Ministry's proposals for the National Centre of Legislation and Legal Research on the draft of the Law on Social Service.

The representative of ACT was included in an interagency taskforce on the development of the amendments to the Law on Social Service. This taskforce held one meeting and decided that a new version of the Law on Social Service was needed. Further work on the text of the draft law was not made public.

Furthermore, ACT promotes the concept of state social commissioning in the media and directly to CSOs. In addition to performing the direct function of delivering information to the public, the communications in the media help state authorities to formulate arguments for the necessity of further work on the issue of state commissioning of social services. In order to work out a common position with other CSOs engaged in the promotion of commissioning of social services, various formats of consultations were held, including working meetings, discussions, and roundtable meetings.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

At the time when the first objective was stated, public participation in policy- and decision-making was not formalised in legislation pertaining to any of the areas concerned.

6. Level and timeframe of access to information

According to the applicable legislation, public consultation in this area is not mandatory at any phase of the policy cycle.

7. The impact of their engagement in terms of political accountability/ changes in policies/laws/office-holders

The new version of the Law on Social Service establishes a legal mechanism enabling local authorities to finance projects implemented by CSOs working in

social services through the mechanism of state commissioning of social services. Monitoring of the implementation of this law has been conducted, proposals have been developed with a view to improving the process,²⁶ and the process to amend the procedure for the implementation of state commissioning of social services has been initiated.

Progress made as part of this process is being used in the work to promote state commissioning of social services in the healthcare sector.²⁷ However, as of the beginning of 2017, the draft Law on the Prevention of Diseases Representing a Danger to the Population, which should contain provisions on the state commissioning of social services in healthcare, had not been submitted to the House of Representatives.²⁸

8. The process from the perspective of participants/stakeholders

International Educational non-governmental organisation ACT (Valery Zhurakovski, ACT Board Member and expert; Vladimir Korzh, ACT Board Chairman)²⁹

Throughout the entire period of work on the topic of state commissioning of social services, ACT held several dozen awareness-building events and roundtables attended by hundreds of state officials. A significant number of individual and group consultations were held for specialists of various levels to receive clarifications concerning the concept of state commissioning and opportunities for its implementation from their professional perspectives. Where a certain class of specialists was identified as a barrier to implementation, special training programmes were held, designed exclusively for these specialists.

Candidacies for participation in visits were selected in such a way that contacts were made at the level of decision-makers, which at that time was innovative practice. Not only the study of best practices, but also the establishment of personal contacts and informal communications ensured that the desired effect

26 http://actngo.info/sites/default/files/files/social_contracting_2014.pdf

27 <http://actngo.info/article/deyatelnost-akta-po-razvitiyu-mehanizma-gosudarstvennogo-socialnogo-zakaza>,
http://actngo.info/bariery_gosfinansirovanie_hiv

28 <http://actngo.info/article/poyavlenie-gosudarstvennogo-socialnogo-zakaza-v-sfere-zdravoohraneniya-poka-ne>

29 The following is based on information gathered from interviews with Valery Zhurakovski and Vladimir Korzh.

was achieved, which subsequently makes it possible to organise a more effective consultation process. For example, currently, ACT is as a rule informed about which bills are developed, and they can be provided on the basis of a request filed with state authorities.

In order for organisations that are active in the sector to reach a common position, ACT organised discussions around documents currently under preparation jointly with other CSOs, as well as the dissemination of proposals. This work helped build trust with many organisations, which started to perceive ACT as the leading organisation focusing on advocacy in the sector of social organisations. Because organisations working in the social sector often fail to engage in advocacy on account of a shortage of resources, as well as insufficient level of competences and expertise, they are ready to provide their support for organisations that are willing to become involved in this activity. Rather than formal partnerships being established as part of the process, instead it resulted in more intense and effective communications, as well as promotion of reputation of the organisation.

Some CSOs have a critical attitude towards the strategy of gradual introduction of state commissioning of social services, citing the lack of uniformity in this approach, and unequal approaches taken to organisations that represent different sectors.

As far as the co-operation with state authorities is concerned, communication and information sharing with state authorities have essentially been established, primarily as a result of ACT's proactive position and the openness of participants in the process, rather than procedures envisaged in the applicable legislation.

Some 80% of proposals made by ACT were included in the text of the bill. However, when Resolution No. 1219 of the Council of Ministers on Certain Aspects of State Commissioning of Social Services was developed, which regulates all of the tendering procedures, ACT's proposals were not adopted. As a result, the document does not account for the specific nature of the work of CSOs and has brought about a series of serious misalignments in the implementation of state commissioning of social services. It was for this reason that in 2016 a process was initiated to make amendments to the law and the resolution.

ACT monitored the application of the law from the point of view of contractors and customers, submitted the findings of its research to all of the state authorities involved, and prepared a package of proposed amendments to both the law and the resolution of the Council of Ministers. According to unofficial information,

ACT's proposals will be adopted to a significant extent in the new version of the resolution. However, no precise conclusion can be drawn before the document is published.

In the absence of legally formalised mechanisms of public consultation, the involvement of non-governmental actors is dependent on informal contacts established with representatives of state authorities. This mechanism, which is frequently used by CSOs in Belarus, appears to be extremely unstable (loss of contacts following a job change is often devastating for the process) and cannot ensure the necessary transparency of the process. Even once co-operation has been established, alongside overall confidential relationships with respective state authorities, the phase of the preparation of a bill or a regulatory legal act is not always clear.

In Belarus, the level of mutual understanding between the state and CSOs is rather low: intersectoral engagement is insufficiently developed. Both CSOs and state authorities need to study principles, trends and patterns of the operation of other sectors, and facilitate the promotion of intersectoral dialogue.

It is necessary to further develop the expert competences of CSOs, and raise their level of policy and law-drafting literacy. CSOs rarely provide written feedback to draft documents, whereas the schedule of the rule-making process is quite tight. Consultations frequently need to be organised in a very short time.

When submitting proposals to state authorities, it is necessary to pay attention to the formalisation and handling of communications: written communication is mandatory, letters must be sent by official channels, and formal legal language must be used. This will increase the likelihood for proposals to be considered and taken into account.

In areas where there is no mandatory consultation, the permanent collection of information about the current status of the process is required, with the use of as many channels as possible. Wherever dysfunctions are identified, additional proposals need to be developed and submitted as soon as possible, and additional explanatory work should be conducted.

If proposals are developed and promoted, it is sometimes necessary to give up on the uniformity of the application of norms based on the estimated possibility of their implementation. However, it is important not to miss the main objective and to use less significant changes to effectively facilitate its achievement.

A shared position on the part of CSOs and absence of disagreements among them can contribute to a situation, where all proposals are considered by the state authorities.

The Labour Research Institute of the Ministry of Labour and Social Protection of the Republic of Belarus³⁰

A temporary research group was established at the Institute to collect information and conduct research in order to prepare proposals pertaining to the bill. The group includes a representative of a CSO (ACT). The Institute was part of the interagency working group dealing with the preparation of the text of the bill under the National Centre of Legislation and Legal Research. Written consultations were held with state authorities and CSOs.

The Institute was commissioned by the Ministry to prepare the substantiation for the bill and conduct research, including of best foreign practices, theoretical approaches to issues, law application practice, and development of guidance documents in furtherance of legislative acts.

As compared with the regular practice of written examination of prepared draft documents, the involvement of a representative of a CSO in the temporary research group and subsequent inclusion in the staff on partial employment terms became innovative practice. The CSO thus becomes an active participant in the process and gained significant leverage.

In the work with CSOs, personal contacts are key. From the perspective of personal contacts, partner dialogue, productive discussions, and exchange of ideas are important. Institutional engagement cannot be characterised as partnership, because organisations have different objectives. It can rather be referred to as interaction as part of efforts to address certain challenges, and recognition of expert competences. The stability of this interaction is moderate due to the fragmentary nature of the involvement of CSOs in the process of the development of regulatory legal documents.

The Institute acted as a contractor commissioned by the Ministry. Where the Ministry needs information to be collected, studied, and analysed in order for it to tackle current tasks, it commissions the Institute to perform this work. The

³⁰ The following is based on an interview with the Head of the Department for the Development of Innovative Forms of Social Service.

process of the preparation of documents comprises the “examination” phase, when drafted documents are submitted to state authorities and CSOs to gather their comments. The Institute has a list of CSOs, with which it has established engagement, and to which it sends, on a regular basis, draft documents to gather their comments. If all tasks are clear, there is no external or internal need to include other entities. Therefore, the process of consultations with CSOs is the initiative of the Institute that goes beyond the framework of mandatory procedures.

The proposals made by the Institute pertaining to the bill were considered and for the most part adopted. The resolution of the Council of Ministers was developed by the Ministry of Labour and Social Protection independently. The Institute was requested to make comments, although virtually none of the proposals were included. The final text of the Resolution was different from the version that had been submitted to the Institute for comments.

In order to be included in the law-making process, CSOs need to thoroughly build up their image, develop their expert capacity and dialogue competences. It is also necessary to actively promote their own expertise and ensure open access to such expertise, engage with the entire range of state authorities, use the broadest possible toolkit, be ready to flexibly change strategies and revise objectives. If the desired significant alterations are impossible, the tactics of lesser gradual changes that lead to the implementation of the main objective should be adopted. Loyalty is more effective compared with a position of criticism.

The format of proposals by CSOs also matters: the elaboration of documents, their availability in open access formats, and consumer-friendly form (bills, amendments and additions to regulatory legal acts).

For CSOs, an understanding of the specific features of the functioning of the state authorities is important – in their work on regulatory documents, they are restrained by a high number of regulations and requirements that impose certain limitations (various types of examination, established practice for earmarking funds), as well as the framework of the current system and procedure for adopting any legislative document.

Consultations with CSOs provide additional arguments, ideas, and alternative vision. In order to further improve the process and involve as many stakeholders as possible, it is necessary to establish a clear procedure for public consultations, when a draft document is published in an open source at a certain phase of its development, comments and remarks are collected for a fixed period of time, and

feedback is published to these remarks if they are not adopted. The work of public consultations may be removed from the jurisdiction of the ministry that drafts a document.

The innovative potential of this case is more significant on the national level than internationally. Important factors in facilitating influence on a law are: favourable political context, high level of expertise provided by CSO experts, pro-active position of CSOs involved, multi-directional and flexible strategy, and openness of the Labour Institute for co-operation with CSOs. In order to counter mutual lack of understanding between the state and CSOs, measures are needed that build confidence and establish dialogue between the two sectors. In the absence of clear rules and procedures for the organisation of participatory consultation in all policy areas, public participation will remain irregular and long-term partnerships between public authorities, and the civil sector will remain highly dependent on informal personal relations.

Reform of Decision-Making on Environmental Impact, 2015-2016

1. Objective

Pursuant to the Law on Environmental Protection of 26 November 1992 (as revised in Law No. 333-Z dated 24 December 2015) and the provisions of the Aarhus Convention,³¹ the Resolution of the Council of Ministers No. 458, dated 14 June 2016, “on the adoption of the provision on the procedure for the organisation and holding of public hearings of draft environmentally significant decisions, environmental impact assessment reports, monitoring of adopted environmentally significant decisions, and introduction of amendments and additions to certain resolutions of the Council of Ministers of the Republic of Belarus” was adopted and came into effect on 1 July 2016.

The resolution determines the procedure for holding public hearings on draft concepts, programmes, plans and schemes which, upon implementation, produce an impact on the environment and/or are associated with the use of natural resources; as well as holding hearings on draft regulatory acts with regard to provisions aimed to regulate relationships associated with economic and other activities classified as environmentally hazardous.

From the perspective of CSOs, the overall purpose of the process corresponds to one of the provisions of the mission of the “Green Network” – to enhance the influence of the public on environmental decision-making.³² However, because this process was originally part of a campaign against the construction of a nuclear power plant in Astravets district, Hrodna oblast, the initial objective was to record and report violations of the Aarhus Convention.³³ Possibilities for the expansion of its own participation in environmentally significant decision-making were assessed by the organisation after its involvement in the work on the resolution.

31 United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

32 <http://greenbelarus.info/about-eng>

33 Interview with representative of Ecohome.

From the perspective of the state authorities, the purpose of the process was to implement the recommendations made by the Aarhus Convention Compliance Committee³⁴ and formalise the provisions of the Aarhus Convention in the applicable legislation.³⁵

2. Civil society participants involved

- Non-governmental organisation Ecohome, member of the “Green Network” community of environmental organisations;
- European ECO Forum – which contributed through assistance in the examination and drafting of documents.

3. Public authorities involved

- Ministry of Natural Resources and Environmental Protection;
- Council of Ministers.

4. Stages of potential consultation

Prior to the adoption of the documents under review, public participation in political decision-making on the environment in Belarus could be implemented at the phase of the discussion of environmental impact assessment reports and decision-making on the removal and relocation of flora in population centres.

A much broader framework for public participation is envisaged in the Aarhus Convention, to which Belarus acceded on 30 October 2001. According to the Convention, public participation must be ensured during decision-making on specific activities (plans, programmes, and policies) and during the development of regulatory legal acts. The public participation mechanism envisages early public participation, proper public information, reasonable public participation terms, provision of access to information about possibilities for participation, access to information pertaining to the issues discussed possibility of making proposals

34 http://greenbelarus.info/files/downloads/otchyot_po_sootvestviyu.pdf

35 <http://www.minpriroda.gov.by/ru/news-ru/view/uchastie-obschestvennosti-povyshaet-kachestvo-prinimaemyx-gosorganami-reshenij-1887/>

and remarks, and access to information about the final decision.³⁶ Resolution No. 458 was designed to facilitate the implementation of the provisions of the Convention.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

The decision-making process regarding the construction of a nuclear power plant in Belarus in 2008 was not inclusive, and did not ensure public participation at all in the development and decision-making phases. The discussion in 2009 of the environmental impact assessment of the nuclear plant became a forum for disputes, and recommendations by Belarusian environmental organisations and international experts were disregarded.

Since the national-level capacity for participation was exhausted, it was decided to make use of international mechanisms. In 2010, Ecohome, under the auspices of the European ECO Forum, prepared and filed a complaint with the Aarhus Convention Compliance Committee. Following the consideration of materials and a series of consultations with concerned parties, recommendations for Belarus were adopted, including measures to comply with the Convention, during the Fifth Meeting of the Parties to the Aarhus Convention in Maastricht (the Netherlands) on 30 June - 2 July 2014.³⁷

The development of Resolution No. 458 of the Council of Ministers served as part of the process of implementation of these recommendations. The process of the preparation of the Resolution was organised by the Ministry of Natural Resources with the involvement of CSOs and experts with relevant expertise and competence with respect to the analysis of best practices.

The next meeting of the parties to the Aarhus Convention is scheduled to be held in Montenegro on 11-14 September 2017, and Belarus is expected to present a report on compliance with the recommendations.

³⁶ Aarhus Center in the Republic of Belarus, <http://www.aarhusbel.com/ecology/>

³⁷ http://greenbelarus.info/files/downloads/otchyot_po_sootvestviyu.pdf

6. Forms of participation and engagement adopted, tools deployed, and how these evolved

All of the following were deployed within the process:

- written consultations;
- submission of comments;
- discussions within the framework of the working group;
- face-to-face working meetings;
- involvement of international expertise and international organisations.

7. The impact of engagement in terms of political accountability/changes in policies/laws/office-holders (e.g. resignation of officials)

Resolution No. 458 came into effect in July 2016, and it is too early to assess the impact of its implementation. The list of areas where public consultations are a mandatory phase of the development of policy decisions has been expanded and includes all environmentally significant decisions. Furthermore, the procedure is spelt out in detail and is appreciated by organisations that have the potential to participate. In addition, the process and several similar initiatives contributed to the establishment of closer co-operation between Ecohome and the Ministry of Natural Resources, which frequently initiates invitations to be involved in teamwork and consultations. Overall, the platform at the Ministry of Natural Resources is one of the most active venues in terms of the engagement between civil society and the state authorities.

8 . The process from the perspective of participants/stakeholders

Ecohome

(Irina Sukhi, Chairwoman)

Ecohome participated in the expert group, provided comments on the draft document, and participated in consultations at the Ministry of Natural Resources to discuss the text.

The process took place within the framework of regular involvement practices. Prior to the meeting of the parties to the Aarhus Convention, where both the official delegation and representatives of civil society participated, a meeting of participants was held in order to exchange information about their respective positions. That was the first time such an approach was applied.

“Since 2001, Ecohome has been a member of the public advisory council under the Ministry of Natural Resources. The effectiveness of this mechanism has varied over time and depends on the Minister’s personality, but it does enable the organisation to present its ideas and position directly to the level of the minister or deputy minister.

“Currently, on a number of issues, we share the same position with the Ministry of Natural Resources. In other cases, even if they don’t want to co-operate, they have to. When they prepare a law, a decree or similar, if we don’t have the document to comment upon, or don’t have enough time to make comments, we will raise our voices.”

The organisation has gained certain weight and authority. For example, when it comes to the issue of access to justice in environmental matters, which is underdeveloped in Belarus, Ecohome possesses the necessary competences, and the Ministry of Natural Resources has initiated a series of seminars, including for the Ministry of Justice, with the participation of Ecohome experts.

“Proposals by the organisation were included to a considerable extent. There is an issue, however. Afterwards, the document goes for review and co-ordination between the ministries. When it arrives back from the Council of Ministers, some unexpected points have been introduced. As for the issues that Ecohome proposed, but could not be incorporated in the final version of Resolution No. 458, explanations were provided by the Ministry regarding possible implementation methods, along with feedback.”

Important aspects that were not fully included in the final text were: the earliest possible provision of information for the public that a certain decision was pending, and the organisation of the process itself; and the rules for the updates of the “Public Hearings” section on the websites of the organisations that are responsible for holding public hearings, publication of information in local newspapers, and compilation of the list of concerned parties to distribute information at the request of a potential stakeholder.

“The most important issue, and one that is the source of most of the conflicts, is the involvement of the public in discussions at the concept/idea phase. It is very important to have space to discuss, find compromise solutions, and avoid conflicts.

“The submission of draft documents for comments often leaves no time for making amendments, because the necessary labour- and resource-intensive document preparation stages have already been completed, and it appears to be impossible to repeat them all over again.

“Whereas in Minsk and at the level of ministries public participation can be ensured to some degree, the further down [the power spectrum], the weaker the degree of public participation in decision-making.”

Closer social ties at the local level can play both positive and negative roles, especially in situations with high conflict potential.

The process that started as a conflict and a campaign contributed to the emergence in Belarus of a series of regulatory documents that considerably expand the range of issues for which public participation in policy decision-making is ensured. The sufficiently inclusive process of work on these documents has produced a positive effect on the engagement between CSOs and state authorities on environmental protection, and facilitated a strengthening of the participants’ respective competences.

It is important to make use of the capacity of international commitments and mechanisms while focusing on the formal requirements for the process and engaging external experts – both Belarusian and foreign – in the areas where an organisation lacks its own competences.

It is advisable to use this mechanism for ensuring the participation of not only CSOs, but also the broader public, as there is a trend towards a faster and more open response to initiatives of the population compared with the activity of environmental organisations.

The Ministry of Natural Resources and Environmental Protection

(based on official comments³⁸)

The procedure for public participation is not new in terms of the discussion of the environmental impact assessment reports and permits to remove/relocate flora in population centres. However, when drafting Resolution No. 458, we set ourselves a task to elaborate a single regulatory legal act that would incorporate procedures for public participation in decision-making associated with environmental impact.

Public participation improves the quality of decisions made by state authorities, their effective implementation, and ensures support for decisions made. At the same time, civil society participation in the decision-making process contributes to raising awareness of environmental protection of both broad public and state authorities.

38 <http://www.minpriroda.gov.by/ru/news-ru/view/uchastie-obschestvennosti-povyshaet-kachestvo-prinimaemyx-gosorganami-reshenij-1887/>

Recommendations

To state authorities:

- To enshrine in the legislation mandatory public consultations during the development of regulatory legal acts with the engagement of stakeholders at the earliest development phases, and to identify a narrow list of areas that constitute an exception to the general procedure.
- To ensure that established deadlines provide sufficient timeframe for the development of a regulatory legal act, necessary state expertise, and public consultations.
- To ensure the full-fledged informed participation of non-state stakeholders and organise public consultations during the development of regulations that determine the procedure for holding public consultations, and assessing the impact of the adoption of regulatory legal acts, etc.
- To study best practices and develop a procedure for compiling registers of stakeholders for holding public consultations based upon thematic priorities on a declarative basis. The practice for drawing up a special list of stakeholders for the development of each regulatory legal act results in excessive administrative burden on state authorities and hampers timely and effective engagement of non-governmental stakeholders in the process of the preparation of regulatory legal acts.
- To improve the availability of information and transparency of decision-making at all phases of the development of draft laws, including mandatory publication by public authorities of concepts of draft regulatory legal acts at the initial phase of the work on a draft law, of reports on the consideration of proposals received in the course of public discussions, regulatory impact assessment reports, the results of preliminary research, and reports on the monitoring of the implementation of regulatory legal acts.
- To carry out monitoring and analysis of the work of public advisory councils under state authorities with the involvement of all stakeholders and develop measures to increase the transparency of their work.
- To grant proposals made in the course of public consultations (prior to the introduction of the practice of the publication of reports on consideration of public proposals) the status of “citizens’ initiatives”, which – subject to proper execution – would envisage a mandatory response to an application within a specified period of time.
- To assess the need for professional development of civil servants in terms of competences related to public participation in decision-making, namely

the development of a culture of dialogue between the state authorities and society, best practices regarding the role and place of civil society in these processes, and the practice of organising public consultations.

To civil society:

- To build up core expert potential in respective areas, and include international experts in advocacy programmes.
- To initiate new coalitions, and be involved in the work of existent coalitions, associations, and partnerships with strong advocacy capacity, study best international practices, and make use of international advocacy mechanisms.
- To study the work of the system of state administration, and available engagement mechanisms, and establish direct contacts with state authorities.
- In parallel with the advocacy of systemic changes, it is important to ensure the study and systemic use of the available mechanisms of interaction and pressure with state authorities – citizens' initiatives, requests, and media campaigns. Even if a campaign or initiative does not achieve direct results, it is important because the citizens' inputs are analysed by the state authorities and can have an influence at least at the level of state-affiliated analytical groups, and then indirectly on the executive level in the adoption of regulatory legal acts.

To international institutions:

- To include the broadest possible range of local stakeholders in framework programmes to support the development in Belarus of public participation and implementation of good governance principles, including incorporation in programmes of stakeholder analysis.

With a view to improving mutual awareness and establishing intersectoral cooperation, programmes to improve competences of intersectoral dialogue and arrangements to build trust between sectors are necessary (including on the basis of best practices): for civil society – advocacy, public administration; for state authorities – organisation of public consultations, engagement with civil society. All actors need to comprehend the mutual focus and mutual influence of the processes.

GEORGIA

by Tamar Gvaramadze and Elene Nizharadze*

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Introduction

The legislation in Georgia does not regulate the complete policymaking process through all policy cycle stages. The only stage in the process that is regulated by legislation is the parliamentary review stage.

At the Government level, there is no obligation or set practice of publishing the prepared draft legislation. There is no uniform practice in this respect, and it depends on the will of different stakeholders. The obligation and applied practice of publishing bills and providing for public participation comes into force only at the parliamentary level. Nevertheless, even at the parliamentary level, public involvement is negligible and does not provide the opportunity for meaningful participation.

GEORGIA: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Standard and applied practice, but only at the parliamentary level. At the government level, there is no obligation or set practice of publishing prepared draft legislation. There is no uniform practice in this respect. Obligation and applied practice comes into force only at the parliamentary level, when all the draft laws (both prepared by the Government and by the Parliament itself) are directly published on the Parliament’s website: http://info.parliament.ge/#law-drafting</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Ad hoc (there are examples from the Ministry of Justice).</p> <p>Were all draft laws indeed published? As there is no legal obligation for the Government to publish draft laws, the whole process is regulated by practice. The exact percentage of published drafts is not available.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? No, there is no prescribed timeframe for receipt of feedback from the general public. There is no uniform practice in this respect.</p> <p>How long do interested parties have to provide their input? Even though there is no set of rules for the proper consultation phase for draft laws prepared by the Government, in practice there are cases when such consultations are held. In this respect, the timeframe for providing input is from five to 30 days. Moreover, there were some cases when in practice the timeframe was one to two days.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No, such practice does not exist.</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed ▪ Selected business associations
	<p>Intra-governmental councils</p>	<ul style="list-style-type: none"> ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed ▪ Selected business associations
	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed ▪ Selected business associations
	<p>Conferences</p>	<ul style="list-style-type: none"> ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed ▪ Selected business associations

Parliamentary review of legislation	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? According to the Rules of Procedure of the Parliament, the timetable of committee hearings is published on the website one or two days ahead of the event. Prescribed timeframes are usually observed in practice. As a general rule, committee hearings are open to the public, therefore all interested persons may attend them – although there are some difficulties observed in practice when applying this right for a member of the public or CSO representatives. A special permit is needed in order to enter the building of the Parliament where the committee hearings are held. Unfortunately, without prior permission and contacts with people working in the committees to issue these permissions, it is almost impossible for ordinary people to attend the hearings.</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected business associations ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed. <p>As a rule, groups are not invited, but the timetable of hearings is public. As a result, interested parties have the opportunity to take part in hearings.</p>
<p>Is a timeframe provided to announce the review meeting with advance notice? If so, how far in advance is the meeting announced? According to the Rules of Procedure of the Parliament, the timetable of the committee hearings are published on the website, one day in advance of the hearing.</p>	<p>Committee hearings</p>	<ul style="list-style-type: none"> ▪ Selected business associations ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed.
<p>Is a timeframe prescribed from the launch of the parliamentary review to the deadline for feedback and recommendations? According to the Rules of Procedure of the Parliament, certain timeframes do exist for receiving feedback. The Government, parliamentary committees, majority, minority, and independent MPs, parliamentary factions, and the Legal Department of the Parliament have the possibility to send their remarks to the Leading Committee no earlier than three days, and no later than 14 days, after the hearing starts. If the aforementioned stakeholders do not send any remarks in the prescribed timeframe, the draft law is considered approved from their side.</p>	<p>Consultative councils</p>	<ul style="list-style-type: none"> ▪ Selected business associations ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed.
<p>As for the other interested parties, such as CSOs, there are no special rules and timeframes for the consultations. In practice, interested CSOs receive draft laws via mail (draft laws can be checked on the Parliament website as well), and they can prepare and submit opinions to the appropriate committees.</p>	<p>Possibility of submitting expert opinions on concrete draft laws</p>	<ul style="list-style-type: none"> ▪ Selected business associations ▪ Open invitation to all CSOs ▪ Academia ▪ Judges/barristers/prosecutors/other public servants or practitioners, depending on the matter discussed.

<p>CSOs have the possibility to attend Committee hearings and usually are given the possibility to express their opinions there. In the absence of special rules and timeframes, sometimes interested parties do face problems in the consultation process, such as for example not enough time for submitting recommendations. An alarming example was observed when in May-June 2016 a very important draft law was adopted related to the functioning of the Constitutional Court of Georgia.</p> <p>If so, how long do interested parties have to provide their input? For the Government, parliamentary committees, majority, minority, and independent MPs, parliamentary factions, and the Legal Department of the Parliament, they can respond no earlier than three days, and no later than 14 days, after the hearings procedure starts. For other interested parties, such as CSOs, there are no special rules and timeframes prescribed.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? There is no such applied practice in Georgia. Therefore, even though interested parties do send their expert opinions to the parliamentary committees, the committees are not obliged to consider the submissions.</p>		
<p>Review of parliamentary committee amendments</p>	<p>Forms of consultation</p>	<p>Participants invited to consultation</p>
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee’s proposed amendments is: Standard practice, but not required</p> <p>Are all committee-stage amendments indeed published? Yes</p> <p>For each year, list the percentage of draft amendments published? Almost 100% of such amendments are published.</p> <p>Is a timeframe prescribed from publication of committee amendments to deadline for feedback and recommendations before the legislation goes to a final vote in parliament? No, such a timeframe does not exist.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No, there is no such applied practice.</p>	<p>None</p>	

Case Studies

Civic participation plays a huge role in the policy decision-making process in any democratic country and it is very important for Georgia. Notwithstanding the importance of all the stages in the policy cycle, there are no guidelines or strict rules for most of these stages or for civic participation in this important process. The opportunities for the public to participate in the decision-making process are completely dependent on the will of the different state institutions.

The only regulations, including rules for civic participation, are set for the law-making process in the Parliament, which is the last stage in the policy cycle.

There has been a positive trend towards improvement of the level of civic participation in the decision-making process during recent years although, without binding regulations, the trend is fragile and varies across different topics and issues.

Moreover, the main challenge is not only having a participatory process, but having a meaningful and influential one.

The following case studies provide some examples of civic participation in policy decision-making processes, led by the state institutions, where public participation is entirely dependent on the will of the state institutions concerned.

The case studies are related to important issues, such as elections, the judiciary, and local government. There was huge public interest in all these issues, although the level of civic participation was different in each case, mostly resulting from the different approach of the initiators of the reforms and the different practice they introduced.

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Amendments to the Law Concerning Constitutional Court, 2016

Objective

According to the Constitution of Georgia, judicial power is exercised by means of constitutional control and the judgements of the courts. The judiciary must be independent and judgements are exercised exclusively by the common courts. The Constitutional Court performs constitutional control and, based on challenges lodged, declares legislative regulations unconstitutional if they are not in compliance with the constitution.

The deficiencies of the justice system have been highlighted in reports published by national and international organisations.³⁹ After the October 2012 parliamentary elections, an important phase of judicial reform was initiated by the new government,⁴⁰ and the future vision and direction of the government regarding justice sector reform were reflected in the Government Programmes for 2012, 2013, 2014, and 2015.⁴¹

Unlike in the case of the overall justice system (concerning which the public has been demanding reform), no research was published evaluating the functioning of the Constitutional Court and constitutional controls. The government had no explicit vision on reform of the Constitutional Court, and the Government Programmes for 2012 and 2013 reflected only general directions regarding the expansion of constitutional controls. There was no indication of plans for legislative changes or other activities in connection with the Constitutional Court – neither in the Human Rights Action Plan (2016-2017) nor in the EU-Georgia Association Agreement's 2016 Action Plan. Despite the substantial attention paid by civil society organisations (CSOs) to the common courts, there was no such interest towards the Constitutional Court.

39 For example, see the reports of the Georgian Young Lawyers' Association - Monitoring Reports of High Council of Justice 2010, 2013, 2014, 2015, 2016; available here: <https://gyla.ge/en/mod/publications>; the report of the Coalition for an Independent and Transparent Judiciary 2012; available here: http://www.coalition.org.ge/article_files/119/The%20judicial%20system%20in%20Georgia.pdf; the annual reports of the Public Defender of Georgia (Ombudsman); available here: <http://www.ombudsman.ge/en/reports/saparlamento-angarishebi> Country Reports on Human Rights Practice in Georgia for 2011-2014; available here: <http://www.state.gov/j/drl/rls/hrrpt/>

40 See the report by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, *Georgia in Transition – Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges* 2013; available here: http://www.minorities-network.org/wp-content/uploads/2014/10/georgia_in_transition-hammarberg.pdf

41 See Government Programmes for 2012, 2013; available here: http://gov.ge/index.php?lang_id=ENG&sec_id=41

On 3 June 2016, the Parliament of Georgia adopted amendments to the Organic Law concerning the Constitutional Court of Georgia. The purpose of the amendments was related to the functioning of the Court, including court decision-making and delivery of judgments.

The amendments were related to changes concerning remedies and ambiguities in the legislation, in particular:

- provisions on electing the President, Vice Presidents and Secretary of the Constitutional Court;
- automatic prolongation of the term of judges of the Constitutional Court (when pending cases are left unfinished after the expiration of their term);
- entry into force of the decisions of the Constitutional Court;
- decision-making and the delivery of judgments by the court.

2. Civil society participants involved

- The Coalition for an Independent and Transparent Judiciary, a coalition of CSOs.

3. Public authorities involved

- Ministry of Justice;
- Parliament, including the Human Rights and Civil Integration Committee;
- President.

4. Stages of potential consultation

The first – unexpected – public statements about possible changes in the legislation concerning the Constitutional Court were made by the Ministry of Justice during television interviews in December 2015. As noted by CSOs, these comments followed the delivery of specific judgements by the Court, oriented towards the protection of human rights, which were unacceptable to the

Government.⁴² Moreover, prior to the launch of the legislative process, several alleged administrative offences committed against judges of the Constitutional Court were not properly addressed and investigated by the state.

During television interviews, the ministry's representatives mentioned only that it was preparing amendments concerning the announcement of judgements by the Constitutional Court, for instance non-attendance of judges, and related issues concerning the delivery of judgements by the Court.⁴³

The ministry announced that it would submit the draft to the government during the coming months. No other information was made available about the future plans of the minister or the Government in this regard.

On 7 March 2016, the Human Rights and Civil Integration Committee of the Parliament took the decision to initiate draft legislation concerning the Constitutional Court. The draft amendments were related not only to the issues mentioned by the Ministry of Justice several months before, but also addressed important issues related to the functioning of the Court. However, the detailed minutes of the Committee hearings did not set out a reasonable justification for launching the legislation. No information about preparatory studies, research, or consultations with the public or with the Constitutional Court itself was provided in the minutes.⁴⁴ Moreover, there had been no indication that the Committee intended or planned to work on such legislation in the Committee's Action Plan for 2015-2016.⁴⁵ The explanatory note that usually accompanies draft laws focused, in this case, mainly on setting out the reasoning as to why the initiative was being submitted by the Committee, and what were the challenges in the existing legislation. The note confirmed that the Committee held consultations with the Ministry of Justice, but referred to no consultations with the public, experts, or interested stakeholders and organisations.⁴⁶

42 See the public statement of the Coalition for an Independent and Transparent Judiciary; available here: <http://www.coalition.org.ge/en/article276/Statement-on-amendments-on-Constitutional-Court-adopted-by-the-Parliament>

43 See the public statements of the Ministry of Justice; available here (in Georgian): https://www.youtube.com/watch?v=LhItrFS1_Nc; <https://www.youtube.com/watch?v=P-Z7lw2sCXs>;

44 See extract from the minutes of the Human Rights and Civil Integration Committee session, dated 7 March 2016; available in Georgian here: <http://info.parliament.ge/file/1/BillReviewContent/114238?>

45 See the Action Plan of the Committee here: <http://www.parliament.ge/en/saparlamento-saqmianoba/komitetebi/adamianis-uflebata-dacvisa-da-samoqalaqo-integraciis-komiteti/komitetis-samoqmedo-gegma>

46 See the explanatory note of the draft legislation (in Georgian) here: <http://info.parliament.ge/file/1/BillReviewContent/114240>

Following the submission of the draft amendments by the Committee, the Parliament adopted the amendments through an expedited and non-transparent process. Unlike the regular law-making process, the draft amendments were not accessible to the public prior to the Committee hearings. As a result, a high-profile amendment of important public interest was adopted with minimal public engagement and discussion.⁴⁷ The whole process lasted from 18 March to 3 June 2016, starting from the parliamentary discussions through the veto proceedings of the President, and the preparation of an opinion by the Venice Commission (an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law), to the second stage of discussions in Parliament and its adoption.

On 10 May 2016, the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE), Boriss Cilevics and Kerstin Lundgren, welcomed the willingness of the Chair of the Human Rights and Civil Integration Committee of the Parliament, Eka Beselia, to seek the Venice Commission's opinion on the Constitutional Court amendments and issued a statement, including the following: "This should allay any fears that, when adopted, these amendments would inadvertently hinder the efficient functioning of the Constitutional Court. The important role of the Constitutional Court as an independent and impartial arbiter should be ensured. By being asked for an opinion in the next couple of days, the Venice Commission would be able to adopt its opinion at its June plenary session, which in turn would allow the parliament to take the recommendations of the Venice Commission into account when adopting the amendments in final reading before the end of this parliamentary session."⁴⁸

However, the Parliament did not seek the Venice Commission's opinion, instead hastened the adoption of the amendments at the second plenary session on 13 May 2016, and adopted them through the Committee hearings just a few hours later (during non-business hours). The changes were adopted at the plenary session the next morning on 14 May 2016. A coalition of CSOs expressed concerns regarding the process and the content of the legislative amendments adopted.⁴⁹

47 See the Public statement of the Coalition for an Independent and Transparent Judiciary; available here: <http://www.coalition.org.ge/en/article276/Statement%20on%20amendments%20on%20Constitutional%20Court%20adopted%20by%20the%20Parliament>

48 See the Statement of the co-rapporteurs of Parliamentary Assembly of the Council of Europe (PACE), made on 10 May 2016; available here: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6155&lang=2&cat=3>

49 See the Public statement of the Coalition for an Independent and Transparent Judiciary; available here: http://coalition.ge/index.php?article_id=71&clang=1

Following the adoption of a law, it is sent to the President who either signs or vetoes the bill. In this case, following the adoption of the amendments, President Giorgi Margvelashvili met the CSOs on 16 May 2016 and discussed their opinions and positions regarding the amendments. Following the meeting, the Secretary of the National Security Council⁵⁰ explained that the law, adopted by the Parliament, raises a lot of questions, in the context that it was sent neither to the Constitutional Court nor to the Venice Commission, even though Georgia's membership in the Council of Europe makes this step obligatory.

On 19 May 2016, in a public statement, the co-rapporteurs of PACE expressed their regret regarding the hasty adoption during the final hearing, and the lack of transparency in the process of the passage of the amendments in Parliament.⁵¹ They urged the Georgian authorities to request the opinion of the Venice Commission without any further delay. If this did not happen, they proposed that the Assembly's Monitoring Committee itself should request such an opinion at its next meeting on 23 May 2016.

On the same day, the President submitted the law to the Venice Commission for review, and the Parliament also submitted it to the Venice Commission. In her public interviews, Beselia explained the reason for not earlier submitting the draft legislation to the Commission, noting that since the draft was constantly changing during the committee hearings, the committee wanted to submit the final version of the amendments, rather than the draft.⁵²

Soon after the President submitted the request to the Venice Commission, on 20 May 2016 the Constitutional Justice Division of the Venice Commission contacted the Coalition for an Independent and Transparent Judiciary (composed of more than 30 Georgian CSOs, which work on judiciary issues) to ascertain the coalition's opinion on the legislative amendments and the process of their adoption. The coalition therefore had an opportunity to share its legal analysis of the amendments with the Venice Commission.

On 27 May, the Venice Commission delivered a preliminary opinion on the amendments, based on which on 31 May the President vetoed the amendments, and returned them to Parliament with his considered reservations.

50 See the official information; available here: <https://www.president.gov.ge/en/PressOffice/News/?p=10282>

51 See the Statement of the co-rapporteurs of Parliamentary Assembly of the Council of Europe (PACE), made on 19 May 2016, available here: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6175&lang=2&cat=3>

52 See the Public statements of the Chair of the Committee; available here (in Georgian): <https://www.youtube.com/watch?v=EZJMQwWy5ml>

Following the Presidential veto, the CSOs both reiterated their concerns regarding issues reflected in the veto and underlined that the President's reservations had described only partially the problematic issues in the legislative changes.

According to the President's objections, the following provisions needed to be amended:

- the provision that reduced the powers of judges during the last three months of their terms;
- the requirement of a minimum of six votes for the taking of decisions in a plenary session should be lowered to the majority of the plenum (and not a simple majority of the plenary session);
- the two-thirds majority of judges required to reject a request made by a single judge for the transfer of a case to the plenary session should be lowered to five judges of a plenary session.

The CSOs responded that even if the President's objections were fully considered by the Parliament, significant problems would still remain.⁵³ In particular, they argued that the requirement for a high quorum to annul organic laws was inconsistent with Georgia's Constitution and international standards. The President was silent regarding the rule whereby the authority to take an interlocutory measure on the suspension of a disputed provision until the final decision was vested only with the plenary session of the court, even though the Venice Commission clearly raised concerns about this question.

After the Presidential veto, no more consultations or meetings were held with CSOs. The Parliament agreed to the reservations of the President, and the law was re-adopted by the Parliament on 3 June 2016.

After the adoption of the Law, the CSOs pressed their continuing concerns regarding the amendments by submitting a lawsuit to the Constitutional Court to recognise the changes as unconstitutional in relation to Article 42 of the Constitution, which upholds the right to a fair trial.⁵⁴

53 See the Public statement of the Coalition for an Independent and Transparent Judiciary; available here: http://www.coalition.ge/index.php?article_id=80&clang=1

54 See the Public statement of the Coalition for an Independent and Transparent Judiciary; available here: http://www.coalition.ge/index.php?article_id=81&clang=1

The Constitutional Court of Georgia ruled on this case on 29 December 2016. The court declared unconstitutional some articles of the law, including provisions on the end of the term of office of a judge once his/her 10-year term expires in the event that the relevant state body fails to elect a new judge within the time required by the law and it is impossible for the Constitutional Court to exercise its authority due to absence of the necessary quorum.

Moreover, the Constitutional Court declared unconstitutional both the Article that necessitated the consent by the majority of the full composition of the plenary session (nine members) for granting a constitutional complaint, and the rule imposing the necessity of consent of at least six members of the plenary session to uphold a constitutional complaint for the annulment of organic laws.

The Constitutional Court also declared unconstitutional the rule whereby the authority to take an interlocutory measure on the suspension of a disputed provision until a final decision has been taken was vested only with the plenary session of the court.

5. Forms of participation at each stage

Throughout the whole process, the basic forms of participation comprised parliamentary hearings and meetings, such as the meeting of CSOs with the President. Due to the accelerated procedures, public involvement in the process was not ensured. In response, CSOs issued public statements through their own channels.

6. Level and timeframe of access to information

Before the initiation of the draft legislation in Parliament, the Human Rights and Civil Integration Committee of the Parliament held consultations with the Ministry of Justice.

Unlike the regular law-making process, the draft amendments were not accessible to the public prior to the Committee hearings. The draft legislation was available only after the Parliamentary Committee hearings were held on 13 May 2016 and after the decisions were made.

Following the adoption of the amendments by the Parliament at the third hearing on 14 May, the President met CSOs on 16 May 2016 to gather their positions regarding the amendments.

After the Presidential veto, no more consultations or meetings were held with CSOs. The Parliament agreed to the reservations of the President, and the law was re-adopted on 3 June 2016.

7. Comparison against stated stages of policy cycle and participation

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation Mandatory		The draft law was published after its submission to the Bureau of the Parliament.
Parliamentary review of legislation Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend.	Committee hearings	The announcement of the meeting of the parliamentary committee should have been published 1-2 days in advance, but it was not in this case. Some comments were provided by other parliamentary committees and MPs, and their considerations were recorded in the information sheets uploaded to the website of the Parliament.
Publication of the proposed amendments to the bill following its consideration by the parliamentary committee Standard practice, but not required.		All the proposed amendments made by MPs and fractions were published on the website of the Parliament.
Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No. There is no prescribed number of days after the publication of parliamentary committee amendments to allow public to submit feedback and recommendations before the legislation goes to a final vote in parliament		The draft was registered on 13 March 2016, and the third reading took place on 14 May 2016.
Publication of feedback report, explaining which recommendations from whom were/were not accepted, and why. No.		No feedback report was published. The alternative suggestions were published, with a comparative table showing the results of voting without explanation.

8. The process – from the perspective of participants/stakeholders

a) CSOs

The main reason that the CSOs engaged in the process was concern at the threat of increasing political influence over the activities of the Constitutional Court as a result of the possible amendments.

In the process, traditional forms of intervention were applied by the CSOs:

- sharing written opinions and making public statements;
- meeting different stakeholders (including the President, different political parties, etc.);
- communicating with the media;
- and submitting their opinion to the Venice Commission.

Attendance at the parliamentary hearings would have provided an opportunity for involvement in discussions with the initiators of the amendment, since no discussions were organised in other formats. Unfortunately, due to the hasty passage of the bill through Parliament, there was no opportunity for CSOs to attend the committee hearings and to share their concerns.

This case was not an example of good co-operation and communication between the Parliament and the CSO community in Georgia.

According to Sophio Verdzeuli of the Human Rights Education and Monitoring Centre, the success in terms of CSO participation in this case resulted mostly from the co-operation with the Venice Commission: "The majority of the remarks and suggestions made by the Georgian CSOs were shared and reflected by the Venice Commission in their preliminary opinion. Moreover, there was huge interest from the international community in the CSO coalition's opinions."⁵⁵ According to the same CSO representative, "their co-operation with the Venice Commission ensured that the initiators of the bill were not able to adopt the damaging amendments that had been planned in the beginning."⁵⁶

55 Correspondence between the representative of the EMC and the author, though – email communication dated 29 July 2016

56 Correspondence between the representative of the EMC and the author, though – email communication dated 29 July 2016

Despite the fact that no law was violated by the Parliament, the adoption of such high-profile legislation without stakeholder engagement runs counter to key democratic principles, namely transparency in the law-making process and civil society engagement in decision-making, principles that are the cornerstones of state policies and even the Constitution of Georgia.

CSO representatives are firmly convinced that "democratic policymaking necessitates that on all important issues the law-making process must comply with the democratic principles underpinned by the Constitution."⁵⁷

b) Human Rights and Civil Integration Committee, Parliament

According to the representative of the Parliament's Human Rights and Civil Integration Committee, the committee "co-operated with CSOs, especially with the members of their consultative-scientific council [an advisory council comprising representatives of several CSOs]", while working on the amendments (which, based on their response, lasted for three months).

Moreover, the representative of the committee noted that the Committee held meetings with different political parties in the Parliament, other parliamentary committees and representatives of the President and the Government. According to the information provided by the Committee, both closed and open discussions were held with the different stakeholders. The Committee representative mentioned that "CSOs had an opportunity to attend the public hearing and share their comments"⁵⁸

Finally, the Committee's representatives are convinced that the overall outcome was based on a consensus reached between the Parliament, the Government and the President. Moreover, the Committee's representative indicated that "this process was also positively evaluated by the Venice Commission"⁵⁹

57 Correspondence between the representative of the EMC and the author, though – email communication dated 29 July 2016

58 Correspondence between the representative of the Committee and the author, though – email communication dated 8 September 2016

59 Correspondence between the representative of the Committee and the author, though – email communication dated 8 September 2016

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

In contrast to a regular law-making process, the draft amendments were not accessible to the public prior to the parliamentary committee hearings, following which the Parliament adopted the amendments through a hasty procedure. The CSOs' input was possible only through representations to the Venice Commission and to the President. Given the CSOs' dissatisfaction with the final amendments passed after Parliament took into consideration the President's reservations, they have lodged a lawsuit with the Constitutional Court.

The degree of non-transparency in the process was highly non-standard in the context of law-making in Georgia.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

The result of the lawsuit to the Constitutional Court demonstrated that the approach taken by the CSOs does provide lessons for responding to situations where the Parliament bypasses standard law-making procedures.

Changes to the Election Code, 2013

1. Objective

The 2012 parliamentary elections were preceded by the active “It Affects You Too” campaign by CSOs, requesting that the state authorities adopt legislative amendments in order to improve the election environment and to ensure competitive elections. The campaign was prompted in part by the introduction prior to the parliamentary elections of amendments to the Law on Political Unions of Citizens concerning party financing regulations. Implementation of some of these amendments turned out to be controversial and ambiguous, and “prohibitions placed by the law were frequently unreasonable and sanctions were disproportionate”, according to criticism by CSOs.⁶⁰

As a result of the campaign, before the parliamentary elections, the law was improved and problematic regulations jeopardising the right to property and freedom of expression were removed. However, other amendments in respect of party financing and its regulatory authority, the State Audit Office, were not adopted. Other recommendations proposed by CSOs concerning voters’ lists, media coverage of elections, election-day procedures, and so-called special precincts were not taken into account in the amendments to the law before the 2012 elections.⁶¹

The new government that came into power after the parliamentary elections declared its intention to launch substantive electoral reform to resolve the problems in election-related legislation. The new government also expressed its intention to engage all stakeholders in the process, to ensure transparency, and to gather all possible recommendations.

In accordance with the declared intention to undertake comprehensive electoral reform, on 7 March 2013 the Speaker of the Parliament, David Usupashvili, issued Decree No.15/3 about the creation of the Inter-Factional Working Group on Electoral Issues. The purpose of the Working Group was to prepare amendments to

60 Monitoring of 1 October 2012 parliamentary Elections, Final Report, International Society for Fair Elections and Democracy, 2013, p.9, available at: <http://www.isfed.ge/main/330/eng/>

61 In exceptional cases (deployment of military personnel of the Ministry of Defence abroad, penitentiary facilities of the Ministry of Corrections of Georgia, hospitals and other inpatient facilities, shelters for the elderly, homeless shelters, shelters for people with special needs, and other social facilities where the number of voters exceeds 50) an electoral precinct may be set up not later than on the 15th day before the polling day. Article 23 of the Election Code.

the Election Code and other legal acts related to elections in order to improve the election environment and corresponding legislation. In July 2013, amendments were adopted to the organic law “Election Code of Georgia” and the organic law “Political Unions of Citizens”.

2. Civil society participants involved

- Transparency International - Georgia (TI-Georgia);
- Georgian Young Lawyers' Association (GYLA);
- International Society for Fair Elections and Democracy (ISFED);
- Centre for Democratic Development;
- International Centre of Civic Culture;
- Civil Society and Democracy Development Centre;
- Public Advocacy.

3. Public authorities involved

- Parliament, including Parliamentary Committee on Legal Affairs;
- Parliamentary and non-parliamentary political parties;
- Central Election Commission;
- State Audit Office;
- Ministry of Justice.

4. Stages of potential consultation

The Inter-Factional Working Group on Electoral Issues comprised 18 MPs. Each faction in the Parliament at the moment of the creation of the Working Group had the right to appoint two members. The Chair of the Inter-Factional Working Group was appointed from the ruling Georgian Dream coalition.

According to the decree, the other qualified parties⁶² (non-parliamentary political parties) also had the right to appoint one representative to the Working Group,

62 “Qualified party – a party that receives funding from the state budget of Georgia in accordance with Article 30 of the organic law on Political Unions of Citizens”, organic law “Election Code of Georgia”, Article 2, para.t¹

but without the right to vote. They could participate in the discussions, express opinions, and submit recommendations or draft laws to the Working Group.

Civil society and international organisations working on election issues were also invited to participate in the meetings of the Inter-Factional Working Group, to present their recommendations, draft laws, comments, participate in the debates, and express opinions at the meetings of the Working Group. However, as in the case of non-parliamentary political parties, they did not have a right to vote on decisions. The International Society for Fair Elections and Democracy (ISFED), the Georgian Young Lawyers' Association (GYLA), and Transparency International – Georgia (TI-Georgia) were invited, and submitted recommendations on voters' lists, regulation of the abuse of administrative resources, and vote-buying.

Other CSOs invited were the Centre for Democratic Development, the International Centre of Civic Culture, the Civil Society and Democracy Development Centre, and Public Advocacy. International organisations invited included the National Democratic Institute (NDI), the International Republican Institute (IRI), the International Foundation for Electoral Systems (IFES), the Netherlands Institute for Multiparty Democracy (NIMD), and the United Nations Development Programme (UNDP).

The Chair of the Working Group had a right to invite different stakeholders to the meetings, notably the Central Election Commission (CEC), State Audit Office, ministries, and other representatives of public offices. Representatives of the CEC attended all the Working Group meetings.

According to the decree, the Working Group should have started working on 7 March 2013 and submitted the results to the Parliament no later than 31 May 2013. Its mandate was subsequently extended since it could not complete the work by the deadline.

A secretariat was established to provide assistance to the Working Group. The composition of the secretariat was determined by the Chair of the Working Group in consultation with the parliamentary factions. The secretariat disseminated information about the meetings of the Working Group and its agenda, circulated draft laws/recommendations prepared by different stakeholders and submitted to the Working Group. The secretariat provided advance notice to all the participants, including CSOs, about the meetings of the Working Group.

Based on the discussions held at the meetings, and recommendations and draft laws submitted by the different stakeholders, the Working Group prepared and submitted to the Parliament a set of amendments to the Election Code. Stakeholders had the opportunity to attend parliamentary committee hearings as well, where they were able to express their comments on the draft laws under discussion. The hearings took place between June-August 2013, and there was scope for submitting comments at the first, second and third hearings.

5. Forms of participation at each stage

It was set out in Decree No. 15/3 that the meetings of the Working Group would take place in public and that they should be held every two weeks. The attendance of a majority of the MPs of the Working Group was necessary for a meeting to be valid. A majority of members, but no less than one-third of all voting members of the Working Group, had the power to take decisions.

Sometimes the date of the next meeting was agreed at the meeting, and in any event e-mails were sent in advance to provide notice of the meeting. Stakeholders involved in the Working Group were provided with information about the timeframe of the Working Group and they had enough time to provide recommendations and comments.

Meetings of the Working Group represented the basic form of participation. It was also possible to submit recommendations, draft laws, or comments via e-mail to the secretariat. Subsequently, after the prepared draft laws were submitted to the Parliament by the Working Group, all stakeholders had an opportunity to attend parliamentary committee hearings. Representatives of ISFED, GYLA and TI attended the Legal Affairs Committee hearings, as it was the leading committee.

Information about hearings is posted on the Parliament website at least one day before the hearing. It is not mandatory for the parliamentary committee to provide any feedback on why a recommendation was not adopted. But it is possible to receive this information or ask questions about it during the committee hearing. Committee members express their opinions about the recommendations at the hearings, so it is possible to identify why they have supported or not supported any recommendation.

6. Level and timeframe of access to information

Information regarding the meetings of the Working Group, as well as the texts of recommendations, draft laws, or comments submitted by stakeholders, and of draft laws prepared by the secretariat of the Working Group, were shared by email with the interested stakeholders without any restrictions throughout the entire period.

In line with standard practice, the draft laws were posted on the Parliament website ahead of parliamentary plenary debates and parliamentary committee hearings.

7. Comparison against stated stages of policy cycle and participation

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation Mandatory	Expert working groups or taskforces	<p>The draft law was published after its submission to the Parliament.</p> <p>All the recommendations, draft laws, and comments submitted by different stakeholders were available at the meetings of the Working Group and via e-mail communications. It was possible to submit feedback to the circulated recommendations, draft laws, and comments either at the following meetings of the Working Group or via e-mail.</p> <p>Feedback reports, explaining which recommendations from whom were accepted/not accepted, and why, were not published. The arguments for not considering recommendations were usually provided by the Working Group at the meetings.</p>
Parliamentary review of legislation Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend.		<p>The announcement of the meeting of the parliamentary committee should have been published 1-2 days in advance, and this was followed in this case.</p>

Stages of the legislative process	Forms of consultation	Practice
<p>Publication of the proposed amendments to the bill following its consideration by the parliamentary committee Standard practice, but not required.</p>	<p>Parliamentary committee meetings</p>	<p>Usually, draft laws are published after committee hearings, and this happened after the first committee hearing.</p> <p>Comments were provided by other parliamentary committees and MPs, and their considerations were recorded in the information sheets uploaded to the Parliament website.</p>
<p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No. There is no prescribed number of days after the publication of parliamentary committee amendments to allow interested parties to submit feedback and recommendations before the legislation goes to a final vote in parliament .</p>		<p>The feedback/recommendations on the draft law can be submitted for first/second/third committee hearings.</p>
<p>Publication of feedback report, explaining which recommendations from whom were/ were not accepted, and why</p>		<p>After the first and second hearings, the draft laws with amendments are published, but no explanation is provided as to why the recommendations were or were not taken into account.</p>

8. The process – from the perspective of participants/stakeholders

CSOs

In response to the announcement of the intention of the new government, CSOs prepared a set of recommendations on electoral reform for the new Parliament. In November 2012, the heads of ISFED, GYLA, and TI-Georgia met MPs and presented their legislative recommendations. The recommendations related to election legislation, particularly concerning the electoral system, voters' list, the composition of the election administration, use of administrative resources, political party financing, election-day procedures, and so-called special precincts. ISFED, GYLA and TI-Georgia have a long history of working on election legislation and preparing recommendations to improve the election environment. Therefore, after the creation of the Working Group, the three organisations were invited to participate in its meetings.

GYLA, ISFED and TI-Georgia submitted to the Working Group their recommendations on voters' list, regulations on the misuse of administrative resources, and vote buying. They also proposed amendments to the organic law on Political Unions of Citizens. The three organisations attended all the meetings of the Working Group and were actively engaged in the discussions. Where necessary, the Chair and members of the Working Group consulted separately with GYLA, ISFED, TI-Georgia about the proposals the CSOs had submitted.

According to the assessment of CSOs, the creation of the Working Group and the revision of the election legislation within the format of the group was a positive step forward for improving the election environment. It was important that CSOs and other interested parties were able to submit their legislative recommendations to the Working Group.⁶³

Some of the recommendations prepared and submitted by the CSOs were taken into account in the draft laws, which was a very positive development. However, a number of issues were not considered or reviewed at all, even though they were submitted at an early stage.⁶⁴

63 For the detailed information about submitted recommendations see "Monitoring of October 27, 2013 Presidential Elections, Final Report", International Society for Fair Elections and Democracy, 2013, p.6, available at: <http://www.isfed.ge/main/525/eng/>

64 For the detailed information about submitted recommendations see "Monitoring of October 27, 2013 Presidential Elections, Final Report", International Society for Fair Elections and Democracy, 2013, p.6, available at: <http://www.isfed.ge/main/525/eng/>

The recommendations considered and not considered by the inter-factional group were as follows:⁶⁵

Voters' List Recommendations

Recommendations considered:

- The Agency for the Development of State Services will be the body responsible for formation of voter lists.

Recommendations not considered:

- Providing an exhaustive list of grounds for establishing the so-called “special election precincts” and cases when such precincts can be set up.
- Prohibiting military servicemen from participating in majoritarian and local government elections if they are stationed in election precincts outside the place of their registration.
- Improving rules for registration of voters on mobile ballot-box lists.

Abuse of State Resources

Recommendations considered:

- Prohibiting agitation during events funded from the state budget (however, absolute prohibition was recommended, but under the amendments adopted the prohibition applies only to an event organiser, which limits the scope of the prohibition and increases the chances of misunderstandings in practice).
- Incompatibility of the status of a presidential candidate with official position.
- Obligation of local government agencies to elaborate within the period of five days after the launch of the pre-election campaign the list of buildings that can be used as venues for pre-election campaigning, and providing the list to district commissions. The latter should make the list public within two days; posting of the list on the CEC website.
- Defining the meaning of agitation material and amending Article 46 accordingly.

⁶⁵ For detailed information about the recommendations submitted, see “Monitoring of October 27, 2013 Presidential Elections, Final Report”, International Society for Fair Elections and Democracy, 2013, pp.9-12, available at: <http://www.isfed.ge/main/525/eng/>

Recommendations not considered:

- Narrowing the list of political office holders envisaged by the Election Code – in particular, removal of deputy ministers, *Gamgebelis* and state authority representatives – Governors – from the list.
- Providing more specific definition of the term agitation – adding the notion of passive agitation and limiting the right of certain categories of individuals (law enforcement officers, representatives of religious organisations, etc.) to attend campaign events.
- Increasing the duration of the pre-election campaign up to four months.
- Prohibiting agitation near election precincts on polling day.

Organic Law of Georgia on Political Unions of Citizens**Recommendations considered:**

- Legal persons are now able to provide funding for parties.
- Sanctions envisaged by the law were decreased from fines set at five times the size of the illegal financial donation to a political party to a fine double the size of the illegal donation.
- Information about the financial status of an individual based on court warrant.
- Timeframe for administrative proceedings and sequestration proceedings.

Recommendations not considered:

- Institutional independence of the Audit Service.
- Frequency of publishing reports – financial report on an election subject that also entails information about expenses made must be published shortly before the elections.

According to the schedule of the Working Group that was published in advance, it should have concluded its work on seven specific issues by the end of May and tabled subsequent draft laws. Due to the fact that initially the Working Group was rather passive in its work, it failed to conclude all these issues in due time and continued to work through June and July. Nevertheless, the Working Group still did not manage to discuss a number of recommendations submitted by CSOs, citing lack of time as the reason.

The level of influence of the CSOs on the decisions of the Working Group was modest as they did not have any decision-making voice.

According to the CSOs' report,⁶⁶ its representatives attended discussions regarding proposed drafts at the Legal Affairs Committee in Parliament, but without having an opportunity to present the recommendations that were not already reflected in the proposed draft laws. The argument was that the Working Group did not address a particular issue or that an agreement could not be reached, while in fact, the Legal Affairs Committee changed parts of the proposed draft law where the Working Group had already reached agreement.

Secretary of the Inter-Factional Working Group

According to the Secretary of the Working Group, the creation of the Working Group was a good experience and it positively affected the adoption of amendments. The Working Group used different methods of communication with the stakeholders involved in the process. The Secretary prepared amendments to the relevant legislation for consideration and adoption. The Secretary thinks that the Working Group facilitated the dialogue with CSOs.⁶⁷

Central Election Commission

According to the information provided by CEC, after every election, the CEC prepares a draft law or amendments to close loopholes identified in the legislation and submits legislative proposals to the Parliament. Amendments adopted on election legislation have removed ambiguity and technical problems and improved existing procedures. The CEC was involved in the work of the Working Group and attended all its meetings.

The secretariat of the Working Group periodically sent draft laws submitted by different stakeholders to the CEC for comments and "within its competence and experience, the CEC shared its recommendations and opinions with the Working

⁶⁶ "Monitoring of October 27, 2013 Presidential Elections, Final Report", International Society for Fair Elections and Democracy, 2013, p.6, available at: <http://www.isfed.ge/main/525/eng/>

⁶⁷ Correspondence between the representatives of the secretariat and the author.

Group, and in most of the cases they were taken into account”. According to the CEC, “it co-operates with state authorities and civil society organisations actively, transparently and closely”.⁶⁸

Non-parliamentary Political Party – New Rights Party

A certain degree of agreement was reached within the Working Group. However, no substantial amendments were adopted. The meetings of the Working Group did not address the content of amendments in depth, and no additional forms of communication were deployed.

Non-parliamentary parties proposed to the authorities the creation of an interparty working group with the facilitation of international organisations, as had happened in the past. However, the authorities disagreed, and created the Inter-Factional Working Group instead. According to the representative of the New Rights Party, Mamuka Katsitadze, this approach reduced the extent of inclusion of CSOs, international organisations and opposition political parties, who experienced bad communications with the state authorities.

According to Katsitadze, this working group format could be successful if it is opened up more to CSOs, international organisations and political parties. Apart from this, the non-parliamentary political parties held meetings every week within their own interparty format. They also invited the CSOs. The interparty format had been successful in the past in facilitating advocacy for the adoption of amendments. For instance, in 2010, the format of eight opposition political parties advocated for amendments to election legislation.

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The Working Group represented an inclusive, consultative process for gathering and considering recommendations from parliamentary political parties, non-parliamentary parties, and CSOs, with a high degree of transparency in relation

68 E-mail communication between the author and the Central Election Commission, date -12 August 2016

to the discussions and decisions. There was less consultation at the parliamentary committee stage, where the CSOs were not given the opportunity to present amendments that had not been adopted during the Working Group format.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

The Working Group format provides a good model for addressing core legal issues, such as constitutional amendments or election law amendments, and could be used on a range of fundamental legal questions. It will be important to provide sufficient time in Parliament as well so that amendments introduced at the parliamentary committee stage can be reviewed and scrutinised by the original draft's authors and also by other stakeholders, including CSOs.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

Local Government Reform, 2012-2015

1. Objective

Immediately after the 2012 parliamentary elections, the new Government declared local government reform as one of its main priorities in line with its election programme. The reform was needed to address a number of problems that had faced municipal authorities over the preceding years – such as a lack of financial resources, dependence on the central authorities, low level of citizens' participation in local government, and the inefficient delivery of services by the municipal authorities.

The Ministry of Regional Development and Infrastructure was identified as the responsible ministry for working on local government reform. In November 2012, by the Decree of the Minister of Regional Development and Infrastructure, the Council of Advisers on Local Government Development and Regional Policy Issues (hereinafter referred to as the Council of Advisers) was established. In April 2013, the Government approved the 2013-2014 strategy for decentralisation and local development (concept paper).⁶⁹

The Council of Advisers was created to prepare proposals and recommendations on decentralisation and regional policy issues, and to plan and support reforms in this sphere. More than 20 local and international organisations and experts with experience on decentralisation and local government were invited to become members of the Council of Advisers. Several thematic working groups were created within the Council – for instance, on territorial arrangements, citizens' participation, local government in Tbilisi, competences and finances, and local elections. All experts and interested stakeholders had an opportunity to engage in the working groups and present their ideas and proposals about reform.

Based on the concept paper, the Council of Advisers – in consultation with the Ministry of Regional Development and Infrastructure – prepared a draft Local Government Code. The code envisaged a number of reforms, such as territorial decentralisation and an increase in the number of municipalities, regional government, public and district councils as mechanisms of citizens' participation in local government, and financial empowerment of local government. According to the explanatory note accompanying the draft law, the purposes included

69 2012-2014 Main Principles of Strategy on Decentralisation and Local Development (concept paper), Government of Georgia, Decree #223, 1 April 2013

democratisation, decentralisation, and the establishment of an effective system of local government.

The code was submitted by the Government to the Parliament at the end of 2013. The reforms introduced by the draft law prompted much criticism. As a result, some of the proposed changes were removed from the initial draft law or modified following discussions and deliberations in society and in the Parliament. These changes raised suspicions about the effectiveness of the reform. One of the important issues removed from the draft code was the introduction of alternative forms of citizens' participation in local government. A key goal of the reform had been to stimulate citizens' participation in local government.

As a result of this, in September 2014, Open Society Georgia Foundation (OSGF) created a working group on additional mechanisms of citizens' participation in local government. The main purpose of the working group was to prepare a draft law on additional forms of citizens' participation in local government and submit it to the Parliament and Government for consideration and adoption.

The importance of the issue was fuelled by the low engagement of citizens in local government in the past.

The reasons for this were varied. The two main reasons were:

- lack of possibility to influence the decisions taken by local government bodies; and
- lack of information about citizens' rights and the competences of local government bodies.

There was a need to create additional forms of citizens' participation in local government that would be more effective in terms of motivating citizens to engage more actively. To that end, the draft Code envisaged the creation of public councils in the villages that would participate in the development of a strategic plan for the village and the subsequent budget, selection of programmes, and their implementation and monitoring. This was a mechanism for the participation of the local population in decision-making on local issues. The proposal was supported and advocated by CSOs as well.

2. Civil society participants involved

The working group created by OSGF was composed of ten civil society organisations working on local government issues.

3. Public authorities involved

- Ministry of Regional Development and Infrastructure;
- Parliamentary Committee for Regional Policy and Local Government.

4. Stages of potential consultation

During the discussions of the draft Local Government Code in the Parliament, there was disagreement about many of the innovations introduced by the Government within the local government reform. As a result, the Government amended the initial version of the draft Code and removed some of the controversial issues, including the establishment of alternative forms of citizens' participation. Instead, the Code, finally adopted by Parliament in February 2014, introduced a provision obliging the Government to prepare and submit to the Parliament before 1 January 2015 a new draft law including the additional mechanisms of citizens' participation in local government.

Accordingly, the main purpose of the working group on citizens' participation in local government, formed in September 2014, was to prepare the draft law based on the challenges revealed during the discussions in Parliament of the initial draft Local Government Code. The working group was formed as an independent initiative of OSGF.

At the initial stage, the working group – whose membership comprised representatives of CSOs – prepared a concept paper on additional forms of citizens' participation, which was introduced at roundtable meetings in the regions to the citizens and representatives of local government bodies. More than 100 meetings were conducted by the working group members in the regions, mostly in November 2014.

Based on the feedback received, the working group elaborated a draft law. The fact that the draft law was based on the opinions of many interested parties was an additional argument for advocating for its adoption. The draft law was

presented to the Government and other relevant stakeholders (political parties, MPs, CSOs that had not participated in the drafting process, donor organisations, and the media) at the end of December 2014.

The Ministry of Regional Development and Infrastructure prepared its own draft Law on Citizens' Participation in Local Government and presented it to CSOs and other stakeholders in February 2015. Representatives of CSOs were able to send their comments on the draft law to the Ministry. After that, the draft law on citizens' participation in the form of amendments to the Local Government Code was submitted by the Government to the Parliament.

For the discussion of the draft law, interested stakeholders also attended hearings at the Parliament of both the Legal Affairs Committee and the Regional Policy and Local Government Committee.

The amendments concerning additional forms of citizens' participation in local government were adopted by Parliament on 22 July 2015.

The amendments envisage the creation of General Assemblies in villages/settlements/cities as a form of participation in local government and local self-organisation. It ensures citizens' participation in the discussions and decision-making process around issues relevant in the municipalities where they are registered.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

The working group was set up in order to present the recommendations of the CSOs to the Ministry and Government. It also enabled the CSOs to share information and their recommendations with local government representatives and interested citizens in the regions and to reflect their feedback in the recommendations.

6. Level and timeframe of access to information

November 2012: The Council of Advisers on Local Government Development and Regional Policy Issues was created by the Ministry of Regional Development and Infrastructure.

April 2013: A strategy for decentralisation and local development was published by the Government.

February 2014: Adoption by the Parliament of the Local Government Code with provision that the Government should submit to Parliament a new draft law including mechanisms of citizens' participation in local government. The parliamentary committee hearings were announced in advance, and CSOs had an opportunity to express their opinions at the hearings.

September 2014: OSGF created a working group on additional mechanisms for citizens' participation in local government.

October-November 2014: OSGF prepared a concept paper and organised roundtable meetings in the regions with citizens and representatives of local government bodies. The concept paper was not published, but was presented at the roundtable meetings in order to gather feedback.

February 2015: The Ministry of Regional Development and Infrastructure presented the draft Law on Citizens' Participation in Local Government.

February 2015: Consultation with CSOs and other stakeholders on the draft law. The draft law was presented in February and circulated via e-mail to CSOs. CSOs submitted their comments via e-mail, and the Ministry also held meetings with local government representatives in the regions in order to discuss the draft law.

7. Comparison against stated stages of policy cycle

Stages of the legislative process	Practice
<p>Publication of Green Paper/pre-drafting concept paper Not mandatory in Georgia and quite rare in practice as well.</p>	<p>A concept paper on local government reform was approved by government decree.</p> <p>The concept paper was published.</p>
<p>Publication of first draft of legislation Mandatory.</p>	<p>The draft law was published after its submission to the Parliament. Before this the draft law was also presented to the CSOs and other interested parties for their feedback.</p>
<p>Parliamentary review of legislation Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend.</p>	<p>The announcement of the meeting of the parliamentary committee was published 1-2 days in advance.</p>
<p>Publication of the proposed amendments to the bill following its consideration by the parliamentary committee Standard practice, but not required.</p>	<p>The draft laws were published after the committee hearings.</p>
<p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No.</p>	
<p>Publication of feedback report, explaining which recommendations from whom were/ were not accepted, and why No. After the first and second hearings, draft laws with amendments are published, but without explanation as to why the recommendations were or were not taken into account.</p>	

8. The process from the perspective of participants/stakeholders

Vazha Salamadze, Civil Society Institute

"Commencement of the reform was made possible by the fact that a new government came to power that was willing to carry out reform – and had promised reform during the election campaign ahead of the 2012 parliamentary elections. The goal was very ambitious, but the reform was not as substantial as anticipated because agreement could not be reached on all the issues within the government.

"There were two draft laws on citizens' participation in local government prepared by experts, but the Ministry of Regional Development and Infrastructure made modifications that minimised the effectiveness of the mechanism. It is very difficult to stimulate the involvement of citizens if the mechanism envisaged by the law does not have real powers and competences.

"The creation of the Council of Advisers by the Ministry was a good example of civil participation. Everyone could engage in its work. But this model of participation was the exception, rather than a sustained approach to participatory policymaking.

"Participation in the process was interesting, and it shed light on issues from different perspectives. All interested parties had the possibility to participate in the process, but there was a lack of expertise and knowledge of relevant issues. It was interesting to examine the experience of other countries and to be engaged in preparing draft laws, concept papers, and research. On the other hand, the lack of interest in decentralisation on the part of donor organisations was surprising.

"All the recommendations prepared were discussed by the relevant state authorities, and some of them were accepted, for example the direct election of Gamgebelis [mayors, or heads of the executive branch of local government], and the increase in the number of municipalities. But many other recommendations were not adopted by the Government, for instance the whole chapter prepared on Tbilisi local governance that was not accepted.

"The lesson learned from the process was that there were more promises made by the Government than actual achievements. In order to improve co-operation between the state authorities and civil society, political will is necessary from the side of the state authorities. Otherwise, even if mechanisms are created for civil society participation in decision-making processes, the Government will always find a way to circumvent civil society's recommendations."

Mamuka Abuladze, Green Caucasus

"The need for the reform that was evident in 2013 arose from the reforms carried out in 2006 when municipalities were merged, as a result of which communication between local government and population became problematic. The citizens lost trust in local government, there was little scope for citizens' participation in local government, and the responsiveness of local government on local problems was low.

"The new Government realised the need for reform, and decentralisation had been an important issue in the pre-election programme of the Georgian Dream coalition. The new governing coalition focused on fundamental reform and on bringing the population and local government closer together. Dialogue with civil society and consultation in decision-making were considered an important form of participation.

"For participation in the work of the Council of Advisers, besides experts and CSOs from Tbilisi, CSOs from the regions with experience of working on local government problems were also invited. I had experience of working in local government and also in civil society, and I was involved in the work of the Council as a representative of civil society.

"The process was innovative as I do not remember any draft law prepared with the participation of civil society before or afterwards. CSOs are usually involved only after the draft law has already been prepared and agreed within the Government – and even then CSOs are not always consulted.

"The process did contribute to some degree to fostering co-operation between the Government and civil society, but not to the extent that co-operation was established as standard practice. All the recommendations and proposals submitted were discussed, but not all of them were taken into account.

"The legislative initiatives that were prepared were widely discussed with the wider population by both the Ministry and civil society representatives. I attended Council meetings, and I was also involved in two working groups and on the preparation of texts on a variety of issues. The process was a good experience, and I subsequently participated in the preparation of two draft laws and several bylaws.

"In order for civil society to be able to influence the results of the policymaking process and the accompanying consultations, mechanisms of a similar type should be established by law and become standard practice. Mechanisms should be introduced

to ensure CSOs' participation in the preparation of legislative initiatives instead of informing (in better examples, consulting with) society about important decisions only after the public authorities have already prepared draft laws, or after the law has been submitted to the Parliament. Ministries should also always publish draft laws they have prepared on their websites so that all interested parties have an opportunity to comment on them."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

CSOs had an opportunity to present their recommendations to the state authorities. They also had an opportunity to comment on the draft law prepared by the Government before it was submitted to the Parliament, and later to attend committee hearings at the Parliament and express their opinions there.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Although not all the recommendations and comments from CSOs were taken into account, the introduction of General Assemblies in settlements establishes a mechanism for citizens' participation in local government. This positive achievement should contribute to the effective involvement of citizens registered in the given settlement in the discussions and decisions about issues relevant for the respective settlement or municipality.

Reform of the Prosecutor's Office, 2014-2015

1. Objective

In Georgia, like in many other post-Soviet countries, the Prosecutor's Office plays a dominant role in the criminal justice system. Considering its impact on the function of the justice system in general and, as a consequence, on the rule of law, the establishment of an efficient, independent Prosecutor's Office, free of any political or other undue influence, is a critical step in transforming a post-totalitarian state into a truly democratic one. In Georgia, however, despite impressive reforms in several areas in recent years, the Prosecutor's Office has remained resistant to change – in terms of its legislative framework, institutional setting and, most importantly, its function in practice – and thus has been the target of harsh criticism by both domestic and international observers.⁷⁰

The need for an independent and professional Prosecutor's Office has acquired huge importance for Georgia in the context of its recent history of gross violations of human rights.⁷¹ Moreover, part of the international obligations of Georgia remain unmet – namely, establishing an independent and effective investigative institution for effectively addressing human rights violations and crimes in the country.⁷²

The Government undertook the same obligation under the Association Agreement between the EU and Georgia, in particular to “implement the Prosecutor's Office reform following the 2013 amendment to the 2008 law. Identify proper constitutional setting for the Prosecutor's Office with effective oversight – to build public confidence in the Prosecutor's Office and establish

70 See POLICY BRIEF – “Reform of the Prosecutor's Office in Georgia – what is at stake?”, Ana Natsvlishvili, Georgian Young Lawyers' Association; Open Society Georgia Foundation; Riga/Tbilisi, May 2015, <https://www.osgf.ge/files/2015/Publication/EU-Georgia%20Association%20report6.pdf>

71 Ibid

72 See:

a) International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, article 2.5

b) Georgia in Transition – Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges, Assessments and Recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, a report addressed to EU High Representative and Vice-President Catherine Ashton and Commissioner for Enlargement and European Neighbourhood Policy Stefan Fuel, September 2013. The report is available at http://www.minorities-network.org/wp-content/uploads/2014/10/georgia_in_transition-hammarberg.pdf; c) Assessment by the UN Special Rapporteur on Torture, Available at <http://www.un.org/apps/news/story.asp?NewsID=50378#.VUNEMPmqko>; Annual Report by the Public Defender of Georgia (2014), pages 7-8, available in Georgian.

a truly professional prosecution service (including through adequate training) independent from political party or other undue influence.”⁷³

On 17 December 2014, following the signing of the Association Agreement, the Prime Minister, Irakli Garibashvili, officially launched the reform of the Prosecutor's Office and mandated the Ministry of Justice to create a special working group under the Criminal Justice Reform Inter-Agency Co-ordination Council, tasked with preparing the special concept of the reform.⁷⁴

The legislation was then developed by the Criminal Justice Reform Inter-Agency Co-ordination Council, an inter-ministerial body, in whose work both CSOs and international organisations participate, albeit in an unregulated way. The Council serves as a platform for ongoing dialogue between CSOs and the ministries on judicial reform.

The Council was set up in 2008 by the Decree of the President. It is chaired by the Minister of Justice with various relevant ministries represented in the Council, and up to 16 representatives from different ministries are members of the council. The decree also invited eight CSOs and some international organisations to participate in the work of the Council. However, the work of the CSOs in the format of the Council is not regulated by clear rules and procedures; its timeline and modalities of engagement are not formalised. As such, it is quite difficult for the civil society actors to engage in the reform in a meaningful way.⁷⁵

2. Civil society participants involved

- The Coalition for an Independent and Transparent Judiciary, a coalition of CSOs.⁷⁶

73 Association Agenda between the European Union and Georgia, article 2.1. (ii) <http://www.civil.ge/files/files/EU-GeorgiaAssociationAgenda.pdf>

74 See the official statement of the Prime Minister of Georgia available here: <https://www.youtube.com/watch?v=hbnDOEMHoQA>

75 See, POLICY BRIEF – “Reform of the Prosecutor's Office in Georgia – what is at stake?”, Ana Natsvlshvili, Georgian Young Lawyers' Association; Open Society Georgia Foundation; Riga/Tbilisi, May 2015, <https://www.osgf.ge/files/2015/Publication/EU-Georgia%20Association%20report6.pdf>

76 Currently it unites 36 member NGOs. Find the members and details here: http://www.coalition.ge/index.php?article_id=6&clang=1

3. Public authorities involved

- Ministry of Justice;
- Other ministries participating in the Criminal Justice Reform Inter-Agency Co-ordination Council;
- Parliament.

4. Stages of potential consultation

Following the official statement of the Prime Minister, the 13th Session of the Criminal Justice Reform Interagency Co-ordination Council was held on 27 December 2014. The Ministry of Justice – the chair of the Council – informed the members (representatives of the Government institutions and CSOs) about the decision of the Government to start reform of the Prosecutor's Office and that the Council was mandated to work on the issue. At this meeting, the Council launched its work on the reform.

Members of the Council, including MPs, deputy ministers, and CSO representatives, had an opportunity to share their comments concerning the topic and the process. CSO representatives emphasized the importance of conducting a comprehensive reform of the Prosecutor's Office and the acute need to identify the flaws in the system from the outset and to address them properly in the framework of the reform, including the introduction of amendments to the constitution.

Due to the importance of the issue, the Council commissioned the Analytical Department of the Ministry of Justice to conduct a comparative study on various models of prosecution services and their place in the state system. The study was later shared with the members of the Council.

The next session of the Council, dedicated to the reform of the Prosecutor's Office, was held on 8 April 2015. During this session, the members of the Council were informed that the analytical department of the Ministry of Justice had developed the comprehensive comparative study, which provided a review of legislation and practice in various well-established democracies and in the countries of Central and Eastern Europe regarding the Prosecutor's Office.⁷⁷

77 All minutes of the sessions of the Council are available here: <http://justice.gov.ge/Ministry/Index/238>

Members of the Council were also informed by the representative of the Ministry of Justice that, based on the aforementioned study, a concept paper on the institutional model of the Prosecutor's Office had also been developed. However, it was mentioned that the concept was developed by a small working group, consisting only of the representatives of the Ministry of Justice, Parliament, and the Chief Prosecutor's Office. CSO representatives did not participate in this working group.

After presenting the draft of the concept of the reform on 8 April, interested stakeholders were invited to provide their comments before 19 April 2015, but this deadline was extended based on the request of members of the Council. Some representatives of CSOs – Sophio Verdzeuli, Kakhaber Tsereteli, and Lia Mukhashavria – expressed their concerns regarding the scope of the concept, and criticised its parts (among others, that the draft reforms did not depart from existing constitutional regulations and did not reflect the need for constitutional reforms).

At the 16th Session of the Council on 28 April 2015, members were informed that nine members had submitted comments to the secretariat of the Council, regarding the concept of the reform.

During the session, members shared their comments regarding the concept, critiquing its components and exchanging ideas – among others, indicating the need to continue discussions. The CSOs underlined that the genuine independence of the Prosecutor's Office from political influence could be ensured only through constitutional amendments. Without the constitutional amendments, they argued, legal amendments would not ensure substantial changes in the prosecutorial system. During the session, the CSOs once again emphasized the need to discuss alternative models and to avoid hasty decisions.

This session ended with no clarification as to whether the Council was going to revise the draft concept, and whether there would be other sessions of the Council dedicated to this question, and when. The Ministry noted only that the work on drafting the legislation according to the concept was ongoing and, after finishing the draft, it would be presented to the Government, which it was within days of the Council meeting. No further discussions were held in the Council on the issue until the draft law was submitted to the Parliament.

After the Council presented the draft legislation to the Government, the document was sent for expert review to the Venice Commission, the Consultative Council of

European Prosecutors (CCPE), and the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR). In view of the urgency of the matter, the Venice Commission submitted its preliminary Joint Opinion on the draft amendments on 7 July 2015.

During the review process, experts from those international agencies contacted some Georgian CSOs (mainly representatives of the Coalition for Independent and Transparent Judiciary, composed of more than 30 Georgian CSOs working on judiciary issues) and asked for their comments regarding the reform. Moreover, representatives of the Coalition had an opportunity to participate in a working meeting in Venice, Italy, on 20 June 2015 with international experts, including rapporteurs from the Venice Commission, together with representatives of the Ministry of Justice, the Prosecutor's Office and MPs from Georgia.

After finalising the review of the draft law, the Government submitted the draft bill to the Parliament in May 2015. Since parliamentary committee hearings and discussions are open to any interested person and organisation, CSOs – including the ones involved from the beginning of the process – had an opportunity to attend the committee hearings and express their comments. However, the sessions were held not in Tbilisi, but in Kutaisi, at very short notice, so not everyone was able to attend. The Legal Affairs committee hearings were held on 24 July, 3 September, and 18 September 2015 respectively.

During the period from the start of discussions in the Criminal Justice Reform Inter-Agency Co-ordination Council until its adoption by Parliament in September 2015, interested stakeholders had the possibility to make public evaluations and statements.

On 18 September 2015, the Parliament adopted the amendments to the Law on the Prosecutor's Office. The Government presented the amendments as the institutional reform of the Prosecutor's Office, since they covered key issues, such as:

- establishing new procedures for the selection/appointment and dismissal of the Chief Prosecutor and the special prosecutorial council;
- establishing an Annual Conference of Prosecutors and defining their mandate under the law;
- the new position of the ad hoc prosecutor was created.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

Civil society participates in the meetings of the Criminal Justice Reform Interagency Co-ordination Council, so this provided a dialogue forum for their engagement in the reform of the Prosecutor's Office. The further engagement of international organisations in the Council gave the CSOs support in arguing for international best practice in their advocacy for an effective, independent Prosecutor's Office.

The non-inclusion of CSOs in the Council's working group that prepared the draft law, and the continuing constitutional limits on reform, were limiting factors, but their access to the strategy and draft law, and their scope to propose recommendations during both the drafting phase and the parliamentary review phase, allowed them to contribute from a highly informed perspective.

6. Level and timeframe of access to information

Throughout the entire process, information about the forms of participation – such as the Council meetings (minutes were published) and public hearings/debates – were made available. Moreover, CSOs and other interested stakeholders were given an opportunity to provide their comments by sending them to the Council by e-mail, and by participating with ministry officials and MPs at a meeting in Venice with international experts on judicial reform.

8 April 2015: Concept paper developed by a working group of the Council. Comments invited until 19 April.

May-September 2015: Parliamentary committee hearings were held by the Legal Affairs Committee on 24 July, 3 September and 18 September. All drafts were subsequently published on the Parliament website.

7. Comparison against stated stages of policy cycle

Stages of the legislative process	Practice
<p>Publication of Green Paper/ pre-drafting concept paper Not mandatory in Georgia and it is quite rare in practice as well.</p>	<p>The comprehensive comparative study, which reviews the legislation and practice in various well-established democracies and in the countries of Central and Eastern Europe regarding Prosecutor's Office and the concept paper on the institutional model of the Prosecutor's Office was developed.</p> <p>The aforementioned study and the concept paper on the institutional model of the Prosecutor's Office was available for the members of the Criminal Justice Reform Inter-Agency Co-ordination Council through e-mail communication.</p> <p>After presenting the concept and research study, the Council set deadlines for the members for providing their comments.</p>
<p>Publication of first draft of legislation Mandatory.</p>	<p>The draft law was published after its submission to the Parliament.</p>
<p>Parliamentary review of legislation Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend.</p>	<p>Yes, the announcement of the meeting of the parliamentary committee was published 1-2 days in advance.</p>
<p>Publication of the proposed amendments to the bill following its consideration by the parliamentary committee Standard practice, but not required.</p>	<p>Yes.</p>
<p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No.</p>	
<p>Publication of feedback report, explaining which recommendations from whom were/were not accepted, and why. No. There are indications about some comments of other committees and MPs and their considerations in the information sheets uploaded to the Parliament website.</p>	

8. The process from the perspective of participants/stakeholders

Parliamentary Committees

Based on the information provided by the chair of the Human Rights and Civil Integration Committee of the Parliament,⁷⁸ even though the draft legislation was not initiated by the committee, they were involved in the process alongside many CSOs and international organisations from the beginning of the reform. According to the representative of the Committee, "the process was open and the author of the concept and the draft legislation – the Ministry of Justice – provided for wide participation of interested stakeholders in the process".⁷⁹

The representative of the committee admitted that they conducted both open and public committee hearings and gave an opportunity to any interested stakeholder to participate in the discussions. Moreover, they shared the draft with the members of the special Advisory Council of the committee and received some feedback from them (including from other experts and CSO representatives).⁸⁰

Despite the fact that the Legal Affairs Committee was not designated as an obligatory committee for discussions of the draft in the Parliament, the committee conducted public hearings in compliance with the requirements of the legislation. Representatives of both committees noted that the co-operation with CSOs and their involvement in the process is generally very valuable and promotes transparent and inclusive legislative procedures.

CSOs

Sophio Verdzeuli of the Human Rights Education and Monitoring Center criticised the reform process as no consultations or discussions were held until the Prime Minister issued the decision to launch the reform.

The work of the Council was criticised as well, since the format of the sessions did not provide the opportunity for the real involvement of CSOs, the meetings were less constructive, mostly because of the involvement of high-level officials

78 Correspondence between the representative of the Committee and the author, though - email communication dated 8 September 2016

79 Ibid

80 Ibid

(ministers, deputy ministers) in the sessions. Based on her opinion, “real decisions were not taken during the sessions of the Council.”⁸¹

From the CSO perspective, the main purpose of participating in the process was to promote an effective judicial system in the country and an improvement of the legislation in favour of human rights protection.⁸²

Verdzeuli admitted⁸³ that “e-mail communication and meetings with different stakeholders, including – the most important one – with the international experts in Venice, which was the very first such experience, represented the core forms of communications for CSOs. Moreover, CSOs held meetings with different MPs. Unfortunately, participation in the parliamentary committee hearings was challenging, since sessions were appointed in a different city – Kutaisi, rather than the capital, Tbilisi – and not all interested stakeholders were able to attend hearings in the Parliament.”

From the CSO perspective, despite the caveats cited above, the participation of CSOs was still substantial. The co-operation and communication with international experts and the meeting in Venice was underlined as the most valuable experience, resulting in partial success of the CSOs and increased scope for sharing their comments with the Government.

The main lesson learned from the participation was that it would be beneficial if the meetings and sessions with high-level officials had facilitators for efficient discussions. Moreover, a research-based decision-making process must be promoted and further advanced.

The main challenge, mentioned by the CSO representative, was that “despite all possible forms of NGO involvement in the decision-making process, high-level officials and state institutions still express great mistrust and antipathy towards NGOs and their work.”⁸⁴

81 Correspondence between the representative of the EMC and the author, though - email communication dated 29 July 2016

82 Correspondence between the representative of the EMC and the author, though - email communication dated 29 July 2016

83 Correspondence between the representative of the EMC and the author, though - email communication dated 29 July 2016

84 Correspondence between the representative of the EMC and the author, though - email communication dated 29 July 2016

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

Throughout the process, involvement possibilities for the state institutions (the Government, different ministries, MPs) and CSO representatives were formally provided. Although Green Papers/concept papers are not required by law, an analytical study and concept paper were both prepared before the draft law. CSOs had an opportunity to comment on the concept paper and draft law before it went to the Government, and then again were able to submit recommendations at the parliamentary review stage.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Despite the fact that the involvement of CSOs was enabled during the reform, the results were still criticised by different CSOs in Georgia and international organisations, including in the European Parliament's Resolution on Association Agreements / Deep and Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine.⁸⁵

Moreover, it was stated by NGOs several times that the Government did not adequately justify the lack of will and readiness for constitutional changes in the context of the reform of the Prosecutor's Office and, despite certain positive changes, the goal of the draft law – to depoliticise the system – has not been achieved, because the changes presented are fragmented and are not concerned with overarching principles, which would in the future ensure the effective independence of the Prosecutor's Office.⁸⁶ Moreover, the reform concept fails to shed any light on the strategy of the Prosecutor's Office to address the challenging legacy of the past.⁸⁷

85 http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0018&language=EN&ring=B8-2016-0068#def_1_1

86 See - <http://www.coalition.org.ge/en/article249/> -- კობაცია-დამოუკიდებელი-და-გამჭვირვადი-მართლმსაჯულებისათვის-ესმზურება-პარლამენტის-მიერ-პროკურატურის-შესახებ-საქართველოს-კანონში-ცვლილებების-შესამე-მოსმენით-მიღებას

87 See, POLICY BRIEF – “Reform of the Prosecutor's Office in Georgia – what is at stake?”, Ana Natsvlishvili, Georgian Young Lawyers' Association; Open Society Georgia Foundation; Riga/Tbilisi, May 2015

Recommendations

To state authorities:

- The depoliticisation of the entire justice system must be a priority for addressing the legacy of human rights abuses in Georgia, and for ensuring that the functioning of the system is based on the rule of law.
- Draft legislation should be made available to the public in its earliest form, and at all the different stages in the law-making process, ensuring adequate time for feedback and debate by CSOs, other stakeholders, and MPs. Wherever possible, the first drafts should be preceded by a concept paper or Green Paper, and accompanying public consultations.
- Working groups formed to draft laws and decisions can be a highly effective format for gathering proposals and recommendations from different stakeholders, but need to be inclusive and representative of different interest groups. An inclusive drafting phase must be followed by sufficient time for parliamentary committee hearings to ensure that legislative amendments introduced at the parliamentary stage can be reviewed by all relevant stakeholders, including the authors of the original draft texts.

To CSOs:

- CSOs should use all legal appeal mechanisms at their disposal to challenge any attempts by the Government or Parliament to bypass standard law-making procedures.
- To be valued partners in the policy-making process, CSOs should come to the table with expert knowledge of the subject of the policy deliberations, and also bring expertise in drafting laws and decisions, and examples and case studies of comparative international practice.

To international organisations:

- An effective and independent justice system is crucial for the rule of law and democracy. International actors, such as the European Parliament, the Council of Europe, and related international civil society groups, should consistently raise the need for vital reforms to depoliticise the justice system in Georgia.

REPUBLIC OF MOLDOVA

by Sorina Macrinici*

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Introduction

The legal framework in Moldova provides for public participation at the following stages of the law- and policy-making process:

- establishment of a working group;
- elaboration of *ex-ante* analysis;
- public consultations on draft legislation;
- feedback and comments on amendments of draft laws and policies as a result of consultations;
- adoption of draft laws and policies.

The Government has to develop quarterly programmes on the elaboration of normative acts.¹ These programmes have to include the normative acts to be drafted, the areas of regulation, responsible authorities and institutions, and deadlines. In practice, these programmes have never been made public. A new government decision adopted in August 2016 indicates that legislative plans have to be published,² but it is not clear if it refers to the Government or to individual ministries. The Law on Transparency in the Decision-Making Process provides that the Parliament will elaborate legislative programmes that include the legislative acts to be adopted or amended, responsible authorities, and deadlines.³ Even though the Law established that the Parliament has to publish its legislative programme, this has occurred only once.⁴

Before the drafting process is initiated, the authority with legislative initiative creates a working group⁵ or designates the experts to work on drafting legislation.⁶ The working groups can include, besides the responsible public

1 Law No. 317 on Normative Acts of the Government and Other Central and Local Administration, 18 July 2003, article 28 (1).

2 Government Decision No. 967 of 09 August 2016 on the Mechanism of Public Consultation with Civil Society in the Decision-Making Process, p. 14 (3).

3 Law No. 780 on Legislative Acts, 27 December 2001, article 14.

4 Legislative programme of the Moldovan Parliament, September–December 2015, <http://www.parliament.md/LinkClick.aspx?fileticket=Iz29BqWyWz4%3d&tabid=203&language=ro-RO>.

5 Law No. 780, article 16, and Law No. 317, article 30 (6).

6 Law No. 317, article 30 (3) (a).

officials, additional experts, practitioners and interested parties.⁷ The decision to include experts and representatives of civil society belongs to the authority that initiates the draft legislation.

When a piece of draft legislation is produced by the Executive, the legislation provides for an initial "*ex-ante analysis*" (Green Paper) defined as the "process of identification of the problem, the objective, of possible options to solve the problem or to accomplish an objective, and the analysis of the effects or consequences of these options before adopting the decision".⁸ In 2011, the State Chancellery drafted a guideline on elaborating *ex-ante* analysis.⁹

According to national regulations, the *ex-ante* analysis has to be published only at the moment of public consultation on the resulting draft law.¹⁰ The legislation does not provide for publication of the *ex-ante* analysis, deadlines for comments from civil society, or feedback procedures concerning comments received. In practice, the Moldovan authorities very rarely elaborate *ex-ante* analyses and make them public prior to drafting legislation.¹¹ The ministries' reports on transparency in decision-making do not include any information on *ex-ante* analyses.

There are cases when *ex-ante* analysis is initiated by civil society organisations (CSOs) that advocate for the adoption or amendment of a particular legal act.¹² In those cases when the draft legislation affects entrepreneurial activity, it is necessary to elaborate a regulatory impact assessment.¹³

When the draft legislation is ready, the public consultation process starts. The Law on Transparency in Decision-Making Process of 13 November 2008 provides that public consultations organised by the Government and its agencies can be realised by the following means: public debates, public hearings, opinion polls, referenda, expert interviews, and the creation of standing or ad hoc task forces involving

7 Law No. 780, article 16 (1), and Law No. 317, article 30 (7).

8 Government Decision No. 967, p. 2 (1).

9 http://cancelaria.gov.md/sites/default/files/document/attachments/896361_md_ghid_ex_ante_vo.pdf.

10 Government Decision No. 967, p. 18.

11 According to answers received from 10 Moldovan ministries out of 19, only 10 *ex-ante* analyses had been prepared by Moldovan ministries during 2013-2015, and only eight of them had been published.

12 Legal Resources Centre from Moldova, Study on optimisation of the judicial map in the Republic of Moldova, 2014, http://crjm.org/wp-content/uploads/2014/06/2014-Study-Optimis-Jud-Map-MD_en-web.pdf; Impact of the 2% Law on Financial Sustainability of Civil Society Organisations, 2015, <http://crjm.org/en/category/publications/publicatii-societate-civila/>; Center "Partnership for Development", Gender Pay Inequalities in Moldova, 2015, http://progen.md/files/1353_analiza_paygap_moldova.pdf.

13 Law No. 780, article 20 (e).

civil society representatives.¹⁴ The announcement on public consultations shall be made public at least 15 days prior to completion of the draft decision.¹⁵

In 2013, the Government and ministries held public consultations on 85% of draft legislation; in 2014, the proportion slightly increased to 89%, and in 2015 the number dropped to 81%.¹⁶ The ministries organised public debates in 9% of draft legislation processes in 2013 and 14% in 2014.¹⁷

Public consultations are realised in the most of cases through online consultation. The legislative initiatives of the Government and ministries are published on an open data government portal, **www.particip.gov.md**, together with the explanatory note accompanying the draft law, and contacts and deadlines for submitting comments. Law No. 239 stipulates that CSOs and the general public should have at least 10 working days for providing comments on legislative drafts and this deadline can be extended if necessary.¹⁸ In practice, the time provided for submitting opinions varies from one¹⁹ to 30 calendar days, and some are very tight.²⁰

For draft legislation initiated by MPs, the deadline for submitting comments is 15 working days from publication on the Parliament website or from the moment Parliament expressly asks for comments.²¹ In 2013, the Government and ministries received 1,888 comments and accepted 632 of them (33%), in 2014 they received 4,106 comments and accepted 2,575 of them (63%), and in 2015 they received 2,645 comments and accepted 1,621 of them (61%).²²

The Executive has to publish a summary of recommendations received, their authors, the authorities' decision if the recommendation was accepted, partially

14 Article 11 (1).

15 Article 11 (2).

16 State Chancellery, 2015 Report on Transparency in Decision-Making in Public Administration, page 1, http://cancelaria.gov.md/sites/default/files/document/attachments/raport_transparenta_apc_2015.pdf.

17 The study-survey on the implementation of Law 239/2008 on Transparency in the Decision-Making Process, 2016, page 2, <http://www.romaniacurata.ro/wp-content/uploads/2016/04/Raport-aplicare-L239-din-2008-mp-3.pdf>

18 Article 12 (2).

19 <http://particip.gov.md/proiectview.php?l=ro&idd=3577>.

20 <http://particip.gov.md/proiectview.php?l=ro&idd=3569>.

21 The Concept on Co-operation between the Parliament and Civil Society, adopted by the Decision of the Parliament no. 373 of 29 December 2005, p. 4.3.1.

22 State Chancellery, 2015 Report on Transparency in Decision-Making in Public Administration, page 1, http://cancelaria.gov.md/sites/default/files/document/attachments/raport_transparenta_apc_2015.pdf.

accepted or not accepted, and the reasoning for rejection.²³ In practice, the Executive does not usually publish the summary of recommendations, with the exception of the Ministry of Justice.²⁴

After being approved by the Government, the draft legislation is sent to the Parliament for examination and adoption. The procedure of adoption of legislation and public consultations are governed by the Rules of the Parliament, adopted by the Law No. 797 of 2 April 1996 and the Concept on Co-operation between the Parliament and Civil Society, adopted by the Decision of the Parliament no. 373 of 29 December 2005. Within five days from the moment a draft law has been accepted into the legislative procedure, the draft is published on the Parliament website.²⁵

The President of the Parliament designates the responsible parliamentary committee or several committees for each piece of draft legislation.²⁶ The committees have to organise public consultations regarding the registered draft law. The public consultations are realised in most of the cases by publication of drafts on the Parliament website. Interested parties can provide their input within 15 working days from the moment of publication or from the moment the Parliament expressly asks for comments. On the website of the Parliament, there is no indication of the responsible person for a given draft law. No contact details or deadlines for providing comments are provided.

In October 2016, the parliamentary committees published their contact details,²⁷ but the contacts of MPs, their assistants and the committees' staff is still not available on the Parliament website. The responsible parliamentary committee can reduce or extend the timeframe for providing comments. After the deadline for providing comments, the consultation process is concluded. In 2014, the Parliament received 41 comments from CSOs and partially approved 10 of them (24%).²⁸ In 2015, 31 of 52 comments received were approved/ partially approved (60%).²⁹

23 Law No. 239 on Transparency in Decision-Making Process, 13 November 2008, article 12 (5).

24 <http://justice.gov.md/pageview.php?l=ro&idc=230>.

25 Rules of the Parliament, article 48 (2).

26 Rules of the Parliament, article 49.

27 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/language/ro-RO/Default.aspx>.

28 Parliament of the Republic of Moldova, 2014 Annual Report on Transparency in Decision-Making, page 2, <http://parlament.md/LinkClick.aspx?fileticket=objPG%2fZaywg%3d&tabid=109&language=ro-RO>.

29 Parliament of the Republic of Moldova, 2015 Annual report on Transparency in Decision-Making, page 2, <http://parlament.md/TRANSPAREN%c8%9aADECIZIONAL%c4%82/Rapoarte/tabid/109/ContentId/2419/Page/0/language/ro-RO/Default.aspx>. <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/language/ro-RO/Default.aspx>.

The committees can create groups of experts, specialists and interested parties in order to consult them on specific drafts³⁰ and organise public hearings and debates. The announcement of public hearings and debates is usually published on the Parliament website one or two days in advance. In 2014, 46 meetings were organised (meetings of working groups, public hearings and public debates) and in 2015 there were 35 working group meetings, 12 public hearings and three public debates.³¹

Parliamentary committees hold public meetings to examine the legislative drafts within 60 days from the registration of the draft law. In practice, the meeting's agenda is usually published one or two days in advance, which does not allow interested CSOs and relevant stakeholders to plan, request approval from the Parliament for participation, and prepare for the meetings. Sometimes the meeting's announced agenda is not complete.³² The responsible parliamentary committee elaborates and publishes reports on the legal drafts that include the opinion of the committee, separate opinions, and the results of public consultations,³³ and sends it for registration for parliamentary meetings. The draft law is then sent to MPs, parliamentary committees and parliamentary factions, and they have the right to submit amendments within 30 days.³⁴ The proposed amendments are not published, and interested CSOs cannot comment on them.

The responsible parliamentary committees have to publish the summary of the recommendations (feedback reports) received during the consultations with the public, MPs and parliamentary commissions.³⁵ Starting with 2016, the summaries of the recommendations received during the public consultations are published before the adoption of the draft law.

The Parliament can examine certain draft laws in urgent procedure.³⁶ The Rules of the Parliament do not provide any criteria for the selection of drafts to be adopted in urgent procedure. This procedure is decided by the Permanent Bureau of the Parliament, which does not publish a written decision on the issue. The

30 Rules of the Parliament, article 27 (4).

31 Parliament of the Republic of Moldova, 2015 Annual Report on Transparency in Decision-Making, page 2.

32 On 1 April 2016, the parliamentary Legal Committee examined the contentious candidature of a judge proposed by the Superior Council of Magistracy for promotion to the Supreme Court of Justice, and this issue was published only on the day of the meeting in a supplement to the meeting's agenda. <http://parliament.md/LinkClick.aspx?fileticket=vRcNli7ybUI%3d&tabid=84&mid=486&language=ro-RO>.

33 Rules of the Parliament, article 29.

34 Rules of the Parliament, article 59.

35 Rules of the Parliament, article 49 (4).

36 Rules of the Parliament, article 44.

responsible committee has to organise public consultations and present its report within 10 days. This procedure raises serious issues about the lack of adequate public consultations.

The plenary meetings of Parliament are public, but the meeting's agenda is approved only on the last day of the preceding week.³⁷ Therefore, the agenda is uploaded on the website of the Parliament only one or two days in advance, which can impede interested stakeholders from taking part in the meetings.

If during the debates the Parliament accepts amendments that change essentially the essence of the draft law, it can be sent to the competent committee for final drafting before the final reading and adoption.³⁸ At this point, public consultations have been finalised and the committee is not obliged to consult the new amendments and to give reasons for rejecting civil society comments. As a result, the Parliament can essentially amend a draft law without public consultation and without providing reasons, rendering futile the inclusive process of elaboration of the draft law organised by the Executive.

The legal framework provides for disciplinary sanctions in the event of non-appliance of the rules on transparency in decision-making.³⁹ According to the Parliament reports on transparency in decision-making, no public servant has been sanctioned in this respect. The Government reports on transparency in decision-making do not provide such data.

37 Rules of the Parliament, article 45.

38 Rules of the Parliament, article 71.

39 Law no. 239, article 16.

REPUBLIC OF MOLDOVA: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory.</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Yes.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? Yes.</p> <p>If so, how long do interested parties have to provide their input? At the level of the Government and its agencies, at least 10 working days, and this deadline can be extended if necessary. For the draft legislation initiated by MPs, the deadline for submitting comments is 15 working days from publication on the Parliament website or from a Parliament request for comments.</p> <p>Is this observed in practice? In practice, the time provided for submitting opinions varies from one to 30 days.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? Yes.</p> <p>If so, how soon after the end of the consultation period are these published? The legislation does not provide a deadline to publish the feedback reports. In practice, only the Ministry of Justice publishes them when the consultation process has ended.</p>	Expert working groups or taskforces	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	Roundtables	<ul style="list-style-type: none"> ▪ Selected experts ▪ Open invitation to all business associations ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs ▪ General public
	Online consultations inviting input	<ul style="list-style-type: none"> ▪ General public
	Public hearings and debates	<ul style="list-style-type: none"> ▪ Selected experts ▪ Open invitation to all business associations ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs ▪ General public
	Opinion polls and referenda	<ul style="list-style-type: none"> ▪ General public

Parliamentary review of legislation	Forms of consultation	Participants invited to consultation
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? The meetings of the parliamentary committees are public. The meeting's agenda is usually published one or two days in advance, and this does not allow interested stakeholders to plan and prepare for the meetings.</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Government-selected CSOs
<p>Is a timeframe provided to announce the review meeting with advance notice? No.</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? Yes.</p> <p>If so, how long do interested parties have to provide their input? 15 working days from the moment of publication of the draft law on the Parliament website or from the moment the Parliament expressly asks for comments. The responsible parliamentary committee can reduce or extend this timeframe. There is no public announcement in the event that drafts are to be adopted in urgent procedure.</p>	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Open invitation to all business associations ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs ▪ General public
<p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? Yes.</p>	<p>Online consultations inviting input</p>	<ul style="list-style-type: none"> ▪ General public
<p>If so, how soon after the end of the consultation period are these published? The legislation does not provide a deadline for publication of the feedback reports. In practice, the Parliament publishes them after the adoption of the draft legislation.</p>	<p>Committee hearings</p>	<ul style="list-style-type: none"> ▪ General public

Review of parliamentary committee amendments	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee’s proposed amendments is: Not required. The legislation does not provide for the publication of amendments submitted by MPs, parliamentary committees and parliamentary factions.</p> <p>Is a timeframe prescribed from publication of committee amendments to deadline for feedback and recommendations before the legislation goes to a final vote in parliament? There is no such a procedure prescribed.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? Yes.</p> <p>If so, how soon after the end of the consultation period are these published? The legislation does not provide a deadline for publication of the feedback reports. In practice, the Parliament publishes them after the adoption of the draft legislation.</p>	Public hearings	<ul style="list-style-type: none"> ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs ▪ General public
	Public debates	<ul style="list-style-type: none"> ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs ▪ General public

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Amendments to Law on Tobacco and Tobacco Products, 2012-2015

1. Objective

A draft Law was developed to amend the Law on Tobacco and Tobacco Products adopted by the Parliament on 14 December 2007. The amendments were required to bring Moldova in line with international obligations upon ratification of the World Health Organization (WHO) Framework Convention on Tobacco Control.⁴⁰

In 2010, the Convention Secretariat issued a Needs Assessment for implementation of the WHO Framework Convention on Tobacco Control in Moldova.⁴¹ The report found that the legislation in many areas fell short of the obligations of the country under the treaty, with special regard to price and tax measures to reduce the demand for tobacco, protection from exposure to tobacco smoke, the need for measures to reduce tobacco dependence, and illicit trade in tobacco products, as well as research, surveillance and exchange of information. The National Programme on Tobacco Control 2012-2016 and the Government Programme 2013-2014 provided for the amendment of the law, and the Law on Tobacco and Tobacco Products was re-named the Law on Tobacco Control.

2. Civil society participants involved

- Centre for Health Policies and Studies (Centre PAS);⁴²
- Resource Centre "Young and Free";
- Expert-Grup;⁴³
- Resource Centre for Human Rights (CREDO);⁴⁴
- Centre of Journalistic Investigations;⁴⁵
- Moldovan Public Associations;
- National Council of NGOs, a Moldovan non-governmental platform.⁴⁶

40 Law No. 124, 11 May 2007, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=330272&lang=1>.

41 http://www.who.int/fctc/implementation/needs/Moldova_Needs_assessment_report_english.pdf?ua=1.

42 <http://www.pas.md/en/PAS>.

43 <http://www.expert-grup.org/en/>.

44 <http://credo.md/?lang=en>.

45 <http://investigatii.md/en>.

46 <http://www.consiliulong.md/?lang=en>.

3. Public authorities involved

- Ministry of Health;⁴⁷
- Ministry of Finance;⁴⁸
- Ministry of Economy;⁴⁹
- Ministry of Agriculture and Food Industry;⁵⁰
- Ministry of Youth and Sport;⁵¹
- Government;⁵²
- Parliament⁵³ (through its committees, namely:
 - Committee for Social Protection, Health and Family
 - Committee for Agriculture and Food Industry
 - Committee for Economy, Budget and Finance, and
 - Legal Committee for Appointments and Immunities⁵⁴).

4. Stages of potential consultation

The consultation of the draft law included the following stages:

1. Elaboration of the draft law by an interministerial working group;
2. Consultation on the draft regulatory impact assessment to the draft law and consultation on the draft law, organised by the Ministry of Health;
3. Finalisation of the draft law and submission to the Government for its subsequent approval;
4. Registration of the draft law in the Parliament and its adoption in first and second readings.

47 <http://www.ms.gov.md/>.

48 <http://www.mf.gov.md/en>.

49 <http://www.mec.gov.md/en>.

50 <http://www.maia.gov.md/ro>.

51 <http://www.mts.gov.md/>.

52 <http://gov.md/en>.

53 <http://parlament.md/Home/tabid/37/language/en-US/Default.aspx>.

54 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/language/en-US/Default.aspx>.

5. Forms of participation at each stage

The forms of public participation in the process of elaboration and adoption of the draft law were the following:

1. Participation in the elaboration of the draft law by an interministerial working group created by the Ministry of Health;
2. Online publication of the draft regulatory impact assessment of the draft law on the government website **www.particip.gov.md**;⁵⁵
3. Public meetings of the interministerial working group;⁵⁶
4. Online consultation on the regulatory impact assessment to the draft law⁵⁷ and on the draft law, organised by the Ministry of Health;⁵⁸
5. Online consultation of the draft Law by the Parliament;⁵⁹
6. Public debates organised by the Parliament;
7. Adoption of the draft law in the first and second reading by the Parliament.

6. Level and timeframe of access to information

1. The draft regulatory impact assessment of the draft law was published online for consultations – from 4-22 April 2013.
2. The draft law was published for online consultations by the Ministry of Health, requesting comments from 9-29 October 2013.
3. The draft law was published on the website of the Government on 17 December 2013.⁶⁰
4. The draft law was published on the website of the Parliament after its registration with the Parliament on 4 February 2014. No deadline was indicated for submitting comments but, according to the Rules of the

55 <http://particip.gov.md/proiectview.php?l=ro&idd=817>.

56 <http://www.ms.gov.md/?q=evenimente/sedinta-grupului-interministerial-lucru-elaborarea-proiectului-lege-privind-controlul>.

57 <http://particip.gov.md/proiectview.php?l=ro&idd=817>.

58 <http://particip.gov.md/proiectview.php?l=ro&idd=1154>.

59 <http://www.parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/2138/language/ro-RO/Default.aspx>.

60 http://www.old.gov.md/public/files/ordinea_de_zi/17.12.2013/Intr06.pdf

Parliament, comments can be submitted not later than 15 working days from the publication of the draft law on the website of the Parliament.⁶¹

7. Comparison against stated stages of policy cycle

Stages of policymaking	Forms of participation	Practice
Pre-draft stage		In December 2010, the Secretariat of the WHO Framework Convention on Tobacco Control issued a Needs Assessment for implementation of the Convention in Moldova. ⁶² The report contained a detailed overview of the status of implementation of substantive articles of the treaty and identified gaps and areas where further actions were needed to ensure full compliance with the requirements of the treaty. It was also followed by specific recommendations concerning every particular area.
First draft of legislation	Creation of working group and elaboration of draft law	On 26 June 2012, the Ministry of Health adopted Order No. 641 creating an interministerial working group to elaborate the draft law amending the Law on Tobacco and Tobacco Products.
	Online consultation	On 4 April 2013, the Ministry of Health published a draft regulatory impact assessment of the draft law for consultations. ⁶³
		On 9 October 2013, the Ministry of Health published the draft Law for the purpose of consultations. ⁶⁴
Public meetings	On 16 August 2013, the Ministry of Health published the announcement of the forthcoming meeting of the interministerial working group on 19 August 2013 to discuss the final draft of the regulatory impact assessment and the final draft law. ⁶⁵	
Feedback report		The Ministry of Health did not publish the summary of the comments and recommendations received as a result of public consultations.

61 <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/LegislativId/2138/language/ro-RO/Default.aspx>

62 http://www.who.int/fctc/implementation/needs/Moldova_Needs_assessment_report_english.pdf?ua=1.

63 <http://particip.gov.md/proiectview.php?l=ro&idd=817>

64 <http://particip.gov.md/proiectview.php?l=ro&idd=1154>

65 <http://www.ms.gov.md/?q=evenimente/sedinta-grupului-interministerial-lucru-elaborarea-proiectului-lege-privind-controlul>

Stages of policymaking	Forms of participation	Practice
Government approval	Publication of the agenda	On 17 December 2013, the Government examined the draft law during its meeting. ⁶⁶ <ul style="list-style-type: none"> ▪ The agenda of the meeting was published on the Government website (page 6).⁶⁷ ▪ The draft law was also published as an attachment to the agenda.⁶⁸
Registration in Parliament	Online publication	On 4 February 2014, the draft law was registered and published on the website of the Parliament together with the accompanying explanatory note. ⁶⁹
Parliamentary committee meetings and reports	Publication of the agenda and committee reports	On 26 February 2014, the Committee for Social Protection, Health and Family examined the draft law without publishing this topic in its agenda.
		On 18 March 2014, at 10am the Committee for Economy, Budget and Finance examined the draft law without publishing the agenda.
		On 04 June 2014, the Committee for Social Protection, Health and Family examined the draft law and adopted a report. <ul style="list-style-type: none"> ▪ Agenda of the meeting (p. 3)⁷⁰ ▪ Report of the committee.⁷¹
		On 11 June 2014, the Committee for Agriculture and Food Industry examined the draft law and adopted a report. <ul style="list-style-type: none"> ▪ Agenda of the meeting (p. 1)⁷² ▪ Report of the committee.⁷³
		On 11 June 2014, the Legal Committee for Appointments and Immunities examined the draft law and adopted a report. <ul style="list-style-type: none"> ▪ Agenda of the meeting (p. 5)⁷⁴ ▪ Report of the committee.⁷⁵
		On 09 July 2014, the Committee for Economy, Budget and Finance examined the draft law and adopted a report. <ul style="list-style-type: none"> ▪ Agenda of the meeting (p. 10)⁷⁶ ▪ Report of the committee.⁷⁷

66 The meeting was translated online <https://www.privesc.eu/arhiva/19282/Sedinta-Guvernului-Republicii-Moldova-din-17-decembrie-2013> (minute 20:00).

67 <http://old.gov.md/sedintevew.php?l=ro&idc=495&id=7108>

68 http://www.old.gov.md/public/files/ordinea_de_zi/17.12.2013/Intr06.pdf

69 <http://www.parlament.md/ProcesulLegislativ/Proiecteadeactelelegislative/tabid/61/LegislativId/2138/language/ro-RO/Default.aspx>

70 <http://parlament.md/LinkClick.aspx?fileticket=ytAkL25yP60%3d&tabid=130&mid=507&language=ro-RO>

71 <http://www.parlament.md/LegislationDocument.aspx?ld=2289a7c6-9252-4874-95ea-fe9285637f1f>

72 <http://parlament.md/LinkClick.aspx?fileticket=DmMWj4bA2qc%3d&tabid=130&mid=507&language=ro-RO>

73 <http://www.parlament.md/LegislationDocument.aspx?ld=203f005f-cd91-4024-9e4f-9c58b6a06152>

74 <http://parlament.md/LinkClick.aspx?fileticket=fsE7X%2f1wGjo%3d&tabid=130&mid=507&language=ro-RO>

75 <http://www.parlament.md/LegislationDocument.aspx?ld=1567113e-04cf-4694-97d9-8269536d039d>

76 <http://parlament.md/LinkClick.aspx?fileticket=yyDffLlzlINy%3d&tabid=130&mid=507&language=ro-RO>

77 <http://www.parlament.md/LegislationDocument.aspx?ld=352cb242-91ab-4d60-bb7d-7705582daad1>

Stages of policymaking	Forms of participation	Practice
Adoption in first reading	Publication of agenda and public session	On 18 July 2014, the Parliament debated the draft law in first reading. ⁷⁸ The draft law passed the first reading on 21 July 2014.
Parliamentary review	Publication of the agenda and committee reports and feedback report	<p>On 27 May 2015, the Committee for Social Protection, Health and Family examined the draft law for the second reading and published its report.</p> <ul style="list-style-type: none"> ▪ Agenda of the meeting⁷⁹ ▪ Report of the committee and the feedback report.⁸⁰
Adoption in second reading	Publication of the agenda and of the final version of the law and public plenary session of Parliament	<p>On 29 May 2015, the Parliament adopted the draft law at the second reading and published the final version of the law after adoption.</p> <ul style="list-style-type: none"> ▪ Agenda of the session⁸¹ ▪ Final version of the draft law.⁸²

78 <http://www.parlament.md/LinkClick.aspx?fileticket=PuAUa%2fV98%2bl%3d&tabid=128&mid=506&language=ro-RO>

79 <http://parlament.md/LinkClick.aspx?fileticket=TFTlcZ0el38%3d&tabid=130&mid=507&language=ro-RO>

80 <http://www.parlament.md/LegislationDocument.aspx?ld=b79a2e7f-70aa-46d3-849c-8e453060fb45>

81 <http://www.parlament.md/LinkClick.aspx?fileticket=36MnrFpCcyU%3d&tabid=128&mid=506&language=ro-RO>

82 <http://www.parlament.md/LegislationDocument.aspx?ld=ced44880-1e14-4f69-a0ec-43f513264c0f>

8. The process from the perspective of participants/stakeholders

Ghenadie Țurcanu, Program Co-ordinator, Centre for Health Policies and Studies (Centre PAS)⁸³

"In 2007, Moldova ratified the WHO Framework Convention on Tobacco Control. As a result, on 14 December 2007 the Parliament adopted the Law on Tobacco and Tobacco Products. However, this law had many flaws and in fact protected the tobacco industry rather than imposing strict rules on tobacco control. In 2010, the Convention Secretariat assessed the implementation of the Convention and made a number of recommendations for amendments to the law to bring it in line with the Convention.⁸⁴ In 2012, the Government adopted the National Programme on Tobacco Control. Civil society took an active part in drafting the National Programme. Based on it, the amendment of the national legislation began. The Ministry of Health established a mixed working group to elaborate the draft Law to amend the Law on Tobacco and Tobacco Products where several NGOs were represented.

"There were many impediments in the process of adoption of the law. For instance, the Working Group of the State Commission for Regulating Entrepreneurial Activity subordinated to the Ministry of Economy – that gave an opinion on the draft Law – postponed the finalisation of the draft law by six months. The members of this working group were mainly representatives of business organisations and opposed the adoption of the draft law.⁸⁵ The Ministry of Finance, although it was represented in the working group established by the Ministry of Economy, did not attend the meetings and did not take part in the drafting of the law.

"When the draft law was sent to the Government for approval, the Ministry of Finance expressed its concern at the law's impact on the business sector. When the draft law reached the Parliament, representatives of the Ministry of Economy, the National Anti-Corruption Centre, and the Information and Security Services were concerned only about illicit trade in, and smuggling of, cigarettes instead, and suggested measures for efficient implementation of the new amendments. CSOs representative consider that there is no direct link between the prohibition of smoking in public places and the smuggling of cigarettes, and these arguments were not valid and actually favoured the tobacco businesses.

83 Interview realised on 23 August 2016.

84 http://www.who.int/fctc/implementation/needs/Moldova_Needs_assessment_report_english.pdf?ua=1.

85 <http://www.nytimes.com/2015/07/01/business/international/us-chamber-works-globally-to-fight-antismoking-measures.html?ref=collection%2Fbyline%2Fdanny-hakim>.

"The draft law and the regulatory impact assessment were opened to public consultations by both the Ministry of Health and the Parliament. In the Parliament, the draft law was discussed for close to a year and a half before adoption, and many roundtables and public debates were organised. The law was adopted at the second reading with unanimity.

"The Parliament took into account both the suggestions of the CSOs and of business organisations. For instance, the implementation of some provisions that would affect the income of tobacco businesses was postponed."

Svetlana Cotelea, Public Health Specialist, State University of Medicine and Pharmacy "Nicolae Testemitanu", and Deputy Minister, Ministry of Health, at the time of consultations on the amendments to the law⁸⁶

"The draft law to amend the Law on Tobacco and Tobacco Products was necessary to harmonise national legislation with the WHO Framework Convention on Tobacco Control.

"The collaboration between authorities and civil society was formalised at several levels. The Ministry of Health created a working group to develop the draft law and civil society representatives were included. Moreover, civil society representatives were included as members of the National Council of Co-ordination on Tobacco Control (an intersectoral platform for the implementation of the National Programme on Tobacco Control).

"We benefited most from the expertise of civil society representatives who presented best practices and good arguments. The CSOs contributed significantly, bringing the evidence of essential research at the national level, for instance into the quality of the air in public eating and drinking locations. This research was necessary to substantiate arguments in favour of the law. From the experience of other countries, we knew what kind of information would be called for during the legislative process, and together with the civil society representatives we were able to prepare it in advance.

"The collaboration between the Ministry of Health and civil society representatives was based on professionalism and mutual trust. It was a continuous process, even though it lasted several years.

86 Interview realised on 19 September 2016.

"A study visit was organised to Turkey in December 2013.⁸⁷ It was extremely useful as it presented the possibility to see how the provisions of the law worked in practice.

"The process of development and adoption of the draft law lasted about three and a half years, and it was important to have trustworthy allies, to keep the focus on the goals, and to act determinedly and efficiently. The professionalism and promptness of civil society representatives were very helpful throughout the whole process."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The draft law to amend the Law on Tobacco and Tobacco Products was developed and adopted with the active participation and involvement of civil society representatives. The working group that elaborated the draft law included representatives of several ministries, civil society and mass media. The Ministry of Health held consultations on the draft law and the regulatory impact assessment.

A summary of recommendations, outlining which were accepted, and which were rejected, was not published, contrary to the legal provisions on transparency in decision-making.

The Parliament respected the rules of public participation in the law-making process: the draft law was published, and civil society was informed and invited to public meetings and roundtables. The Parliament published a summary of accepted and rejected comments and the final draft law before adoption.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

Civil society was involved during the three-and-a-half year period necessary for the adoption of the draft law. The involvement was realised both through

⁸⁷ <http://www.ms.gov.md/?q=stiri/delegatia-republicii-moldova-facut-cunostinta-experienta-turciei-politicile-control-al>.

taking part directly in developing the draft law, and also putting pressure on the authorities to adopt the draft law.

Firstly, civil society representatives participated in the process of developing the draft law and the accompanying explanatory note justifying the need for the law, and in the institutional framework for implementation of the National Programme on Tobacco Control. At the same time, they promoted the draft law in the Parliament during the legislative process, which took close to one and a half years, taking an active part in the discussions and debates.

Secondly, during the whole period, CSOs pressed the authorities to adopt the draft law, using public appeals, press conferences, public events, and other tools.

Amendment of the Electoral Code, 2016

1. Objective

On 4 March 2016, the Moldovan Constitutional Court declared unconstitutional the amendments to the Constitution adopted by the Parliament in 2000 that had changed the procedure for electing the President of the Republic of Moldova. As a result of the 2000 amendments, direct election of the President had been replaced by the election of the President by a parliamentary vote.⁸⁸ As a consequence of the Constitutional Court ruling in 2016, it became necessary to amend the Electoral Code and introduce new rules for direct presidential elections.

2. Civil society participants involved

- Promo-LEX;⁸⁹
- Association for Participatory Democracy (ADEPT);⁹⁰
- European Institute of Politics and Reforms;⁹¹
- Moldovan CSOs.

3. Public authorities involved

Parliament of the Republic of Moldova⁹² and its parliamentary committees:

- Legal Committee for Appointments and Immunities;⁹³
- Committee for Social Protection, Health and Family;⁹⁴
- Committee for Culture, Education, Research, Youth, Sport and Mass-media.⁹⁵

88 <http://constcourt.md/ccdocview.php?tip=hotariri&docid=558&l=en>.

89 <https://promolex.md/?lang=en>.

90 <http://www.e-democracy.md/en/>.

91 <http://ipre.md/new/?lang=en>.

92 <http://parlament.md/Home/tabid/37/language/en-US/Default.aspx>.

93 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/language/en-US/Default.aspx>.

94 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/CommissionId/8/language/en-US/Default.aspx>.

95 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/CommissionId/3/language/en-US/Default.aspx>.

4. Stages of potential consultation

The process of elaboration and adoption of the draft Law included several stages of potential consultations:

1. Elaboration of the draft law;
2. Public consultation of the draft law by the Parliament;
3. Public debates after the adoption of the draft law at the first reading;
4. Parliamentary review of the draft law.

5. Forms of participation at each stage

The public participation was realised through:

- Online consultation on the draft law;
- Public debates organised at the initiative of CSOs after the adoption of the draft law at the first reading.

6. Level and timeframe of access to information

The draft Law amending the Electoral Code was published on the website of the Parliament after its registration on 7 April 2016, and it was open for comments until its adoption at the first reading in an urgent procedure on 14 April 2016. The Parliament did not announce that the draft was to be adopted in an urgent procedure and did not publish a deadline for submitting comments.

7. Comparison against stated stages of policy cycle

Stages of policymaking	Forms of participation	Practice
First draft of legislation	Online consultations	The draft law amending the Electoral Code was registered on 7 April 2016 as a joint initiative of five MPs – one from each parliamentary faction – and it was published on the website of the Parliament together with an accompanying explanatory note. No deadline was indicated for submitting comments; nor was a contact provided for receipt of comments. The rules of the Parliament provide that the deadline to receive comments is 15 working days from the day of publication of the draft legislation on the website. ⁹⁶
Parliamentary committee meeting	Publication of the agenda	On 13 April 2016, the Legal Committee for Appointments and Immunities examined the draft law. ⁹⁷ On 14 April 2016, the Committee issued its report for the first reading. The Committee's report does not refer to the process of public consultations. ⁹⁸
Adoption at first reading	Public hearing	On 14 April 2016, the Parliament adopted the draft Law at the first reading. ⁹⁹
Parliamentary review	Public debates	On 16 June 2016, the Legal Committee for Appointments and Immunities organised public debates on the draft law as a result of a public appeal from CSOs. The announcement on the debates was published on the website of the Parliament one day in advance, on 15 June 2016. ¹⁰⁰
	Publication of the agenda	On 22 June 2016, the Legal Committee for Appointments and Immunities examined the draft law ahead of the second reading. ¹⁰¹
	Publication of feedback report	On 23 June 2016, the Parliament published the feedback report representing the summary of accepted and rejected amendments submitted by MPs. ¹⁰²
Adoption at the second reading	Publication of final version of the law	On 14 July 2016, the final version of the draft law was published, ¹⁰³ and on the same day the draft law was adopted at the second reading. ¹⁰⁴

96 <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3166/language/ro-RO/Default.aspx>

97 Agenda of the meeting: <http://parlament.md/LinkClick.aspx?fileticket=YkkBdQV3%2foU%3d&tabid=130&mid=507&language=ro-RO>

98 Committee's report <http://parlament.md/LegislationDocument.aspx?Id=8ae10827-1ec8-4c48-a680-84c764fd4414>

99 <http://parlament.md/LinkClick.aspx?fileticket=HwMvm7Txqys%3d&tabid=128&mid=506&language=ro-RO>

100 <http://parlament.md/Actualitate/Noutati/tabid/89/NewsId/1554/language/ro-RO/Default.aspx>

101 <http://parlament.md/LinkClick.aspx?fileticket=uLcHy7Dxl8%3d&tabid=130&mid=507&language=ro-RO>

102 <http://parlament.md/LegislationDocument.aspx?Id=f0601243-b895-43f4-8a51-3e42cc425b6f>

103 <http://parlament.md/LegislationDocument.aspx?Id=64f7add3-5ee8-4d68-8186-6660a4850c9f>

104 <http://parlament.md/LinkClick.aspx?fileticket=ayGfuf8d8iY%3d&tabid=128&mid=506&language=ro-RO>

8. The process from the perspective of participant/stakeholders

Pavel Postică, Programme Director, Promo-LEX¹⁰⁵

"After the decision of the Constitutional Court to re-introduce direct election of the President, on 18 March 2016 the Parliament created a working group in order to elaborate the necessary amendments to the Electoral Code. The working group included one MP from each parliamentary faction. Representatives of CSOs were not invited to the working group. The draft law was registered as a legislative initiative of five MPs on 7 April 2016, and was published on the website of the Parliament on 10 April 2016. It was adopted extremely quickly at the first reading on 14 April 2016. It was impossible to prepare and submit comments in such a short period, and no notification was provided that the draft law was going to be adopted through an urgent procedure. We understood that in the meantime the draft was going to be sent to the Venice Commission (an advisory body of the Council of Europe, composed of independent experts in the field of constitutional law) for comments.

"On 9 June 2016, Promo-LEX and 23 other CSOs issued a public appeal, stating that the Parliament had not consulted civil society before the adoption of the draft law at the first reading, and that there were several problematic provisions that it was necessary to discuss before adoption at the second reading.¹⁰⁶ On 11 June 2016, the Venice Commission issued its opinion on the draft law with its recommendations.¹⁰⁷

"Promo-LEX sent the public appeal to the Parliament and, during telephone discussions with representatives of the Legal Committee for Appointments and Immunities, insisted on public hearings. Finally, the committee agreed, and public debates were organised on 16 June 2016. The announcement was published on the website of the Parliament only one day before. Promo-LEX and two other CSOs submitted written comments.¹⁰⁸ On 22 June 2016, the committee discussed the draft law during its meeting and debated the recommendations from the Venice Commission and from CSOs. After the adoption at the first reading of a draft law, the Parliament is not

105 Interview realised on 7 October 2016.

106 <https://promolex.md/1688-apel-privind-lipsa-de-transparenta-in-procesul-de-adoptare-a-modificarilor-si-completarilor-la-codul-electoral-referitor-la-alegerile-presedintelui-r-moldova/>.

107 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)021-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)021-e).

108 https://promolex.md/old/upload/publications/ro/doc_1474547128.pdf.

obliged to take into account comments from sources other than from MPs. Some MPs took some of our recommendations and submitted them as amendments to the draft law. Only a few of the important recommendations were taken into account. One of our recommendations consisted in excluding the Ministry of Foreign Affairs from the process of establishment of polling stations abroad and leaving this power to the Central Electoral Commission. This recommendation was neglected.

"I do not understand why it was necessary to adopt the draft law so quickly at the first reading just seven days after its registration without organising genuine public consultations on such an important issue, especially since no urgent procedure had been initiated and the draft was adopted at the second reading after only three months."

Elena Prohnițchi, Programme Manager, Association for Participatory Democracy (ADEPT)¹⁰⁹

"The process of consultation of the draft law amending the Electoral Code did not respect the legal requirements. It was realised in a very tight timeframe, and changes were introduced only as a result of the pressure from CSOs. Consultations were not held on the draft law before the first reading, and the extremely short deadline for consultations did not allow time for elaboration of qualitative comments (for instance the provision regarding voting by students was omitted).

"On 14 April 2016, the Parliament adopted the draft law at first reading. At the same time, it was decided to send the text of the draft law for expert review by the Venice Commission. No public debates were organised.

"On 9 June 2016, several CSOs launched a public appeal about the lack of transparency in the process of adoption of the amendments to the Electoral Code.¹¹⁰ In the meantime, the opinion of the Venice Commission was published. As a result of the CSOs' pressure, the Parliament decided to organise public debates on 16 June 2016. The announcement was published on the website of the Parliament only on 15 June 2016. The haste with which public consultations were organised did not allow the full participation of all interested experts and CSOs.

109 Interview realised on 1 November 2016.

110 <https://promolex.md/1688-apel-privind-lipsa-de-transparenta-in-procesul-de-adoptare-a-modificarilor-si-completarilor-la-codul-electoral-referitor-la-alegerile-presedintelui-r-moldova/>.

"At the meeting of the Legal Committee for Appointments and Immunities that took place on 22 June 2016, only some of our recommendations were accepted, namely only those that favoured the position of those MPs who introduced the amendments and that could be used to support their polemics with the opposition on sensitive subjects such as the opening of polling stations abroad. For instance, the MPs introduced the recommendation of the Venice Commission to add one criterion for the opening of polling stations abroad, namely the number of electors who voted in the previous election cycle."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The public consultation on the draft law amending the Electoral Code had several serious flaws.

Firstly, the timeframe between registration of the draft Law and its adoption in the first reading (seven days) was extremely short and did not give CSOs the possibility to submit comments. It was published on the website of the Parliament in the meantime, but not immediately after registration. After the publication of the draft, no deadline was indicated for submitting comments. The Parliament did not announce to interested parties that the usual deadline of 15 working days for submitting comments would not be respected for this draft law. Even though some MPs from the opposition asked for postponement of the adoption of the draft law at the first reading on 14 April 2016, and for public consultations to be held, the Parliament rejected this proposal.¹¹¹

Secondly, the public debates after the first reading were organised by the responsible parliamentary committee, but only after a public appeal, signed by 24 CSOs, was published. The debates were announced very late, only one day before, a limiting factor that affected the quality of the comments from civil society.

Thirdly, according to the rules of the Parliament, after the second reading, there is no mandatory requirement for Parliament to take into account the comments of civil society, and only some of the recommendations presented during the public debates and the meeting of the responsible committee were taken into account.

¹¹¹ Minutes of the Parliamentary session of 14.04.2016, pages 9-10, <http://parlament.md/LinkClick.aspx?fileticket=Ojj6Q5xrTYg%3d&tabid=128&mid=506&language=ro-RO>.

For instance, the MPs introduced the recommendation of the Venice Commission to add the number of electors who voted in the previous election cycle as a criterion for the opening of polling stations abroad. One of the recommendations that was not adopted was the proposal that the Ministry of Foreign Affairs be excluded from the process of establishment of polling stations abroad, and that this power should instead be entrusted to the Central Electoral Commission.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

When authorities disregard the rules of transparency in decision-making and public participation in law-making, it is important that civil society acts and insists on observance of the rules. In the case of the adoption of the draft law amending the Electoral Code, the CSOs acted together and publicly asked for public debates, even though the draft law had already been adopted at the first reading and they were aware that there was no requirement for their comments to be considered by the Parliament. Public debates were organised by the responsible parliamentary committee only after the pressure from the side of the CSOs. Even if not all their comments were taken into account, it was important for the civil society to act when the public participation rules had not been respected.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

Amendment of the "2% Law" and Adoption of Implementing Regulation, 2015-2016

1. Objective

In 2015, a draft law was elaborated and adopted to amend the so-called "2% Law", giving the right to individuals to re-direct 2% of their income tax to CSOs (the "percentage designation mechanism").

The adoption of the percentage designation mechanism was prescribed in the Strategy for Developing Civil Society in the Republic of Moldova for 2012-2015.¹¹² According to the Action Plan of the strategy, this mechanism was supposed to be approved in 2013 and enforced from 1 January 2014. The "2% Law" was adopted on 18 July 2014 as part of amendments to the Fiscal Code and other laws. However, the legal provisions contained several shortcomings that could have negatively affected the existence and development of the percentage designation mechanism, such as unequal conditions for CSOs and religious organisations to access the mechanism, and challenges to applying controls and sanctions in the case of improper use of the mechanism. The shortcomings could also have an impact on the financial sustainability of CSOs. Moreover, it was necessary to develop an implementing regulation to be adopted by the Government in line with the improved mechanism.

2. Civil society participants involved

- National Council of NGOs (a non-governmental platform);¹¹³
- Legal Resources Centre from Moldova.¹¹⁴

¹¹² The Civil Society Development Strategy for 2012-2015, approved by Law No 205 of 28 September 2012, activity 2.1.1, http://www.fhi360.md/docs/MD_Strategy_2012-2015_unofficial_translation_ENG.pdf

¹¹³ <http://www.consiliulong.md/?lang=en>

¹¹⁴ <http://crjm.org/en/>

3. Public authorities involved

- Parliament (including Committee for Economy, Budget and Finance, and the Legal Committee for Appointments and Immunities);¹¹⁵
- Ministry of Finance;¹¹⁶
- Ministry of Justice;¹¹⁷
- State Tax Service;¹¹⁸
- Inspector of Taxes.¹¹⁹

4. Stages of potential consultation

The process of elaboration and adoption of the draft law included several stages of consultations, namely:

1. Elaboration of a public policy paper by a Moldovan CSO in consultation with state authorities and CSOs;
2. Subsequent consultations between authorities and CSOs;
3. Registration of the draft law in the Parliament by several MPs, its online publication and related consultations;
4. Adoption of the draft law at first and second reading in the Parliament.

The implementing 2% Regulation went through the following stages of consultations during its elaboration:

1. Elaboration of the text of the 2% Regulation;
2. Online consultation on the draft regulation;
3. Adoption of the regulation by the Government.

115 <http://parlament.md/Home/tabid/37/language/en-US/Default.aspx>

116 <http://www.mf.gov.md/en>

117 <http://www.justice.gov.md/>

118 <http://www.fisc.md/default.aspx>

119 <http://if.gov.md/>

5. Forms of participation at each stage

Public participation was realised through the following forms:

- Public debates organised by the non-governmental sector;
- Roundtables organised by the Parliament;
- Roundtables organised by the Ministry of Finance;
- Publication of the draft law amending the "2% Law" on the website of the Parliament;
- Publication of the draft 2% Regulation on the website of the Ministry of Finance and on the government platform **www.particip.gov.md**.

6. Level and timeframe of access to information

- Publication of the draft law amending the "2% Law" on the website of the Parliament on 22 February 2016. No deadline was indicated for submitting comments, but according to the rules of the Parliament, comments can be submitted up to 15 working days after publication of the draft law on the website.
- Publication of the draft 2% Regulation on the website of the Ministry of Finance and on the government platform **www.particip.gov.md**, open for comments from 13-19 September 2016.

7. Comparison against stated stages of policy cycle

Stages of policymaking	Forms of participation	Practice
Draft law amending the "2% Law"		
Green Paper	Public debates	A Green Paper ¹²⁰ was drafted by Legal Resources Centre from Moldova, a Moldovan NGO which organised a public debate on 5 May 2015 with the participation of state authorities and civil society representatives. ¹²¹
	Roundtables	The NGO Council organised a roundtable on 18 May 2015 with representatives of the Parliament and Ministry of Finance in order to discuss the reasons to amend the "2% Law". ¹²²
		The Parliament organised a roundtable on 15 September 2015 with representatives of CSOs and civil society platforms in order to discuss the necessary amendments to the "2% Law". ¹²³
First draft of legislation	Online consultations	The draft law amending the "2% Law" was registered on 22 February 2016 as a joint initiative of six MPs representing the Liberal Democratic Party of Moldova, the Democratic Party of Moldova and non-affiliated MPs. It was published on the website of the Parliament together with the accompanying explanatory note. ¹²⁴ No deadline was indicated for the submission of comments; nor was a contact provided for receipt of comments. (According to the usual practice, the Parliament accepts comments for 15 working days following the publication of the draft law on the website.) Two parliamentary committees were responsible for the examination of the draft law, namely the Committee for Economy, Budget and Finance, and the Legal Committee for Appointments and Immunities.
	Government's opinion	The Government issued and published its opinion on the draft law on 20 April 2016. ¹²⁵

120 <http://crjm.org/wp-content/uploads/2015/06/CRJM-DPP-2Ia-suta-eng.pdf>

121 <https://www.privesc.eu/arihva/61572/Prezentarea-Dokumentului-de-politici—Impactul-Legii-2—asupra-durabilitatii-financiare-a-OSC-urilor->

122 <http://parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/2144/Page/43/language/ro-RO/Default.aspx>

123 <http://parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/2253/Page/39/language/ro-RO/Default.aspx>

124 <http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3072/language/ro-RO/Default.aspx>

125 http://gov.md/sites/default/files/document/attachments/intr10_65.pdf

Stages of policymaking	Forms of participation	Practice
Parliamentary committee meeting	Publication of the agenda	On 20 May 2016, the Committee for Economy, Budget and Finance examined the draft law and issued its report ahead of the first reading. ¹²⁶ The Committee's report does not refer to the process of public consultations. ¹²⁷
Adoption at first reading	Public hearing	On 27 May 2016, the Parliament adopted the draft law at its first reading. ¹²⁸
Parliamentary review	Publication of the agenda	On 20 July 2016, the Committee for Economy, Budget and Finance examined the draft Law ahead of the second reading. ¹²⁹
	Publication of feedback report	The Parliament published the summary of recommendations and comments received during consultations, as well as amendments submitted by the MPs. ¹³⁰
Adoption at the second reading	Publication of the agenda and of the final version of the law	On 21 July, the Parliament adopted the draft law at the second reading ¹³¹ and published the final version of the law only after its adoption. ¹³²
Draft 2% Regulation		
First draft	Roundtables	The Legal Resource Centre from Moldova organised three roundtables (10 March, 31 May and 21 July 2016) with the participation of the implementing authorities of the "2% Law" for discussions on the "2% Regulation".
	Online consultation	The draft 2% Regulation was published online on the government platform for consultations. ¹³³ The final version of the Regulation was not published on the webpage of the Ministry of Finance.

126 <http://parlament.md/SesiuniParlamentare/%C5%9Eedintecomisiilor/tabid/130/SittingId/2262/language/ro-RO/Default.aspx>

127 <http://parlament.md/LegislationDocument.aspx?Id=7ce422b0-ff1b-46e7-9f2f-700178e22a32>

128 <http://parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/2272/language/ro-RO/Default.aspx>

129 <http://parlament.md/SesiuniParlamentare/%C5%9Eedintecomisiilor/tabid/130/SittingId/2343/language/ro-RO/Default.aspx>

130 <http://parlament.md/LegislationDocument.aspx?Id=705d3d6b-2513-4db0-b828-c3e7ea5bba58>

131 <http://parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/2351/language/ro-RO/Default.aspx>

132 <http://parlament.md/LegislationDocument.aspx?Id=54163d20-a159-4d44-aa21-b128987407d6>

133 <http://particip.gov.md/proiectview.php?l=ro&idd=3488>

Stages of policymaking	Forms of participation	Practice
Adoption by the Government	Publication of the agenda of the meeting	On 2 November 2016, the Government examined the Government Decision approving the 2% Regulation. ¹³⁴ The final version of the Regulation was published and entered into force on 2 December 2016. ¹³⁵

8. The process from the perspective of participants/stakeholders

Liliana Palihovici, Vice President of Parliament¹³⁶

"The "2% Law" was adopted to ensure the financial sustainability of CSOs and to help them to diversify their sources of funding. The results can be assessed several years after the adoption of the law. The initiative to adopt the law emerged more than 10 years ago, and many CSOs addressed this issue during numerous events and conferences. Unfortunately, the debates were not sustained sufficiently to ensure a result, but about five or six years ago the CSOs became more insistent and their efforts resulted in the adoption of the law in 2014.

"The adoption of the law in 2014 did not have the impact desired by the CSOs, however. Firstly, it did not solve the issue of the financial sustainability of CSOs, but actually left both CSOs and the church facing unequal conditions of access to the mechanism. Secondly, the mechanism was not applied in practice because the Government had not developed the implementing regulation. Subsequently, the Government has now prepared the regulation.

"The draft law to amend the "2% Law" represents a product of co-operation between the authorities and civil society. The draft law was debated in the framework of a common working group, and I was the group leader who registered and promoted the draft law.

134 Agenda of the session (p. 23): <http://gov.md/ro/content/sedinta-guvernului-din-02-noiembrie-2016-ora-1700>

135 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=367801>

136 Interview realised on 27 October 2016.

"We benefited from consultations from international experts through FHI 360 Moldova and USAID Moldova. The representatives of the National Council of NGOs and the Legal Resources Centre from Moldova participated in the meetings of the parliamentary committees and explained the new mechanism to MPs. The CSOs' proposals were taken into account.

"It is important to engage with CSOs as a valuable resources, but they are often not very well known to the relevant authorities. They have to become more visible."

Anastasia Eremeeva, Head of Direct Taxes Legislation Directorate, Tax and Customs Policy and Legislation General Directorate, Ministry of Finance¹³⁷

"We collaborated very well with CSOs' representatives in elaboration of, and consultation on, the "2% Law" and "2% Regulation". In initial consultations, many CSOs were involved and, later on, one CSO took part in drafting and it ensured communication with a CSO platform, the National Council of NGOs. Furthermore, international experts from the European Center for Not-for-Profit Law¹³⁸ helped us with the comparative analysis.

"There are a variety of scenarios concerning the percentage designation mechanism and a study visit was organised to see which countries practice what in the area. It was very useful to see how the mechanisms are working in practice and to learn best practices directly from the source. The tools for participation used included online platforms, emails, roundtables, a study visit, and a skype conference with an international expert.

"CSOs were very involved in the final process of adjustments of the draft law in the Parliament. Difficulties arose in agreeing on a common vision for the 2% mechanism. It would have been useful to have undertaken surveys in order to reach a common vision. The CSOs were the driving force in the process, and the collaboration was very productive."

137 Interview realised on 26 October 2016.

138 <http://ecnl.org/>.

Ilie Chirtoacă, Legal Officer, Legal Resources Centre from Moldova¹³⁹

"CSOs had been promoting the concept of the 2% Law for more than 10 years and they succeeded in securing its inclusion in the Strategy for Developing Civil Society in the Republic of Moldova for 2012-2015. As a result, the law was adopted in 2014. However, it was necessary to amend the 2014 law because it set up different standards of access and responsibility for use of the designated financial sources in the case of CSOs and religious organisations. Moreover, it was necessary to draft and adopt the 2% Regulation that would become the implementing instrument of the law.

"The authorities and CSOs collaborated very well. The organisation I represent ensured communications between the CSO community and state authorities at every stage of drafting of the law and regulation. The initial concept was thoroughly discussed and agreed in the framework of a national NGO Platform – the National Council of NGOs.

"We benefited from a study visit organised by the European Center for Not-for-Profit Law that helped shape the Moldovan mechanism – which I consider a good mixture of existing mechanisms in Europe together with our innovations. Moreover, the study visit, organised at a very early stage of drafting of the law, involved the implementing authorities, so ensuring not only a high-quality draft mechanism, but also good collaboration among the implementing authorities.

"Both the draft Law and the draft Regulation were published for public consultations and initial consultations were organised.

"It is important to have good communications within civil society in order to promote a common concept and to maintain interest during the whole legislative process. Comparative practice was very useful in shaping the new mechanism. Guarantees of public participation have to be directly stated in the law and not left to the discretion of the public institution."

139 Interview realised on 31 October 2016.

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

Both law-making processes were in line with legal procedures in terms of participation. The drafts were published on the official web pages and open for consultations. However, the amendment of the "2% Law" was necessary as a result of flaws in the mechanism adopted in 2014. If in 2014 a concept had been developed according to international good practices and adjusted to the national realities, it would not have been necessary to go through the legislative process again. On 21 July 2016, the amendments to the "2% Law" were adopted by the Parliament and on 2 November 2016 the Government adopted the 2% Regulation. This ensured the application of the percentage mechanism in 2017. Both the amendments to the "2% Law" and the draft 2% Regulation were made possible due to pressure from civil society that ensured legal expertise throughout the entire legislative process.

10. Conclusions concerning innovation in participatory policymaking, lessons learned, and potential for long-term partnerships between public authorities and the civil sector

The adoption of the law did not involve innovations in participatory law-making; it rather used the existing ones – roundtables, meetings, debates, and online consultation. What differentiated it from the classical law-making, however, was the fact that it was strongly promoted by civil society and was inserted on to the authorities' agenda due to the pressure by, and efforts of, CSOs. The adoption of the law was followed by the development of another instrument necessary for its practical implementation – the 2% Regulation. Civil society can better promote its initiatives when it holds internal consultations and then acts as a single voice in interaction with the authorities. It is important that civil society uses its aggregate potential – combining both legal expertise and advocacy campaigns.

Advocacy for the Adoption of draft Law on Social Entrepreneurship, 2013-2016

1. Objective

The legislative regulation of social entrepreneurship is envisaged as a form of financial support from the Government in favour of CSOs. The Strategy for Developing Civil Society in the Republic of Moldova for 2012-2015 (activity 2.1.4) provides for the introduction of social entrepreneurship and the establishment of appropriate facilities. According to the Action Plan of the Strategy, a law on social entrepreneurship was supposed to be adopted by the Parliament in 2013 and enforced from 1 January 2014. A draft law was produced in 2013 by a joint working group – including CSO representatives – set up by the Ministry of Economy. Moldovan CSOs have continued to advocate for the adoption of such a law, and prepared two analytical papers. A working group was again established by the Ministry of Economy, and a new draft law was prepared and submitted to the Government.

The Government submitted its draft law for registration in the Parliament on 23 December 2016.¹⁴⁰ This draft law, which in March 2017 was pending review by two parliamentary committees, did not include provisions for state fiscal exemptions for CSOs – for which some of the CSOs had been advocating.

2. Civil society participants involved

- Motivație;¹⁴¹
- Eco-Răzenj;¹⁴²
- National Platform for Social Entrepreneurship;
- National Council of NGOs;¹⁴³
- Society of the Blind of Moldova;

140 <http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3562/language/ro-RO/Default.aspx>

141 <http://motivatie.md/index.php?!=en>.

142 <https://ecorazeni.wordpress.com/>.

143 <http://www.consiliulong.md/?lang=en>.

- Society of Persons with Disabilities of Moldova;
- Public Association of the Deaf of Moldova;
- East Europe Foundation in Moldova.

3. Public authorities involved

- Ministry of Economy;¹⁴⁴
- Ministry of Finance;¹⁴⁵
- Ministry of Labour, Social Protection and Family.¹⁴⁶

4. Stages of potential consultation

The process of elaboration and adoption of the draft law included several stages of consultations, namely:

1. Preliminary meetings between state authorities and CSOs;
2. Creation of a working group by the Ministry of Economy;
3. Elaboration of the draft law and impact assessment of the proposed regulation by the working group;
4. Public consultation on the draft law organised by the Ministry of Economy.

5. Forms of participation at each stage

The public participation was realised through the following forms:

- Public debates organised by the non-governmental sector;
- Contribution to elaboration of the draft law through participation in the working group established by the Ministry of Economy;
- Online consultations on the draft law.

144 <http://www.mec.gov.md/en>.

145 <http://www.mf.gov.md/en>.

146 <http://mmps.gov.md/>.

6. Level and timeframe of access to information

The draft law was published on the government platform www.particip.gov.md, open for comments from 15-30 March 2016. The Government then submitted its final draft law for registration in the Parliament on 23 December 2016. As of March 2017, the draft law was awaiting review in the Parliamentary Committee for Economy, Budget and Finance,¹⁴⁷ and also the Committee for Social Protection, Health and Family.¹⁴⁸

7. Comparison against stated stages of policy cycle

Stages of policymaking	Forms of participation	Practice
Green Paper		Two analyses undertaken by CSOs were taken into account when the drafting process was initiated: <ul style="list-style-type: none"> ▪ In 2013, the East Europe Foundation published a study on social entrepreneurship perspectives in Moldova;¹⁴⁹ ▪ In 2015, the European Center for Not-for-Profit Law¹⁵⁰ published a comparative analysis of legal frameworks on social entrepreneurship.¹⁵¹
	Roundtables	The National Council of NGOs organised a roundtable on 18 May 2015 with representatives of the Parliament, the Ministry of Economy and Ministry of Finance in order to discuss the arguments for resuming work on social entrepreneurship regulation. ¹⁵²
		Eco-Răzeni organised a conference on social entrepreneurship on 6 October 2016 that brought together CSOs working on this issue, representatives of state authorities, and foreign donors. ¹⁵³

147 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/CommissionId/1/language/en-US/Default.aspx>

148 <http://parlament.md/StructuraParlamentului/Comisiipermanente/tabid/84/CommissionId/8/language/en-US/Default.aspx>

149 <https://ecorazeni.files.wordpress.com/2015/10/studiu-antreprenoriat-social-eef-1.pdf>

150 <http://ecnl.org>

151 http://fhi360.md/docs/ECNL%20Comparative%20analysis%20on%20regulation%20of%20SE_ROM.pdf

152 <http://parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/2144/Page/43/language/ro-RO/Default.aspx>

153 <https://ecorazeni.wordpress.com/2015/10/07/materialele-conferintei-nationale-pentru-antreprenoriat-social-editia-i-2015/>

Stages of policymaking	Forms of participation	Practice
First draft of legislation	Creation of the working group and elaboration of the draft law	On 23 November 2015, the Ministry of Economy created a working group that elaborated the draft Law on Social Entrepreneurship. The working group comprised both representatives of authorities and CSOs. The draft Law was prepared by the Ministry of Economy on the basis of the draft presented by the Platform for Social Entrepreneurship and another one presented by the Society of the Blind of Moldova, the Society of Persons with Disabilities of Moldova, and the Public Association of the Deaf of Moldova.
	Online consultation	On 15 March 2016, the Ministry of Economy published the draft Law on Social Entrepreneurship, together with the explanatory note, on the government platform for consultations. It was open for comments until 30 March 2016. ¹⁵⁴ The Ministry of Economy did not make public the impact assessment of the regulation.
Feedback report		The Ministry of Economy did not publish a summary of the comments and recommendations received as a result of public consultations.

8. The process from the perspective of participants/stakeholders

Viorel Zaboltnic, consultant on small and medium enterprises and export promotion, Ministry of Economy¹⁵⁵

"The working group created in 2013 for the elaboration of the Law on Social Entrepreneurship was reactivated in November 2015 by the Ministry of Economy in response to requests from CSOs.

"The opinions of the representatives of civil society were divided. The representatives of the National Platform for Social Entrepreneurship wanted to include more innovative provisions and facilities. The representatives of three CSOs that have specialised businesses and already receive state fiscal exemptions, namely the Society of the Blind of Moldova, the Society of Persons with Disabilities of Moldova, and the Public Association of the Deaf of Moldova, disagreed with most of the proposals. The representatives of the Ministry of Economy integrated into the draft law proposals

¹⁵⁴ <http://particip.gov.md/proiectview.php?l=ro&idd=3000>.

¹⁵⁵ Interview realised on 16 September 2016.

from both sides. It also finalised the impact assessment of the proposed regulation – which is mandatory in the case of draft laws that affect entrepreneurial activities in Moldova.

"The draft law was published in March 2016 on the government online platform for public consultations. After this, in June 2016 it was sent to the Government for approval."

Igor Meriacre, Executive Director, Motivație¹⁵⁶

"The civil society initiative to promote a law on social entrepreneurship in Moldova started back in 2013 and included the organisation of a study visit with the state authorities to Italy. The importance of this kind of legislative framework is that it helps and protects vulnerable people in society.

"We advocated for the inclusion of this law in the Strategy for Developing Civil Society in the Republic of Moldova for 2012-2015. Later on, in 2013 a working group was created by the Ministry of Economy, and a draft law was finalised in December 2013. After it was sent to the Government for approval, there was no reaction from authorities on this topic.

"In May 2015, the National Council of NGOs organised a roundtable with representatives of the Parliament and debated whether the topic should be placed on the legislative agenda again. In October 2015, 15 Moldovan CSOs created the National Platform for Social Entrepreneurship. In October 2015, a conference on social entrepreneurship was organised by the CSO community and the representative of the Government declared a readiness to start elaborating a draft law.

"In November 2015, the Ministry of Economy reactivated the 2013 working group to elaborate the draft Law on Social Entrepreneurship. We consulted our views and position within the National Platform for Social Entrepreneurship, held seven internal meetings and acted as a single voice. We proposed a draft law to the working group. There were three other CSOs that were not part of the Platform and that took a different approach, and the Ministry of Economy integrated their proposals as well in the final draft law. Unfortunately, the authorities did not agree to have a separate Law on Social Entrepreneurship and the draft law instead introduces amendments to several national laws.

156 Interview realised on 15 September 2016.

"We also contributed to the elaboration of the impact assessment of the regulation that is mandatory for legislative initiatives that affect entrepreneurial activities. In June 2016, the draft law was sent to the Government for approval. As far as we know, the Ministry of Finance – which was included in the working group, but was actually represented at very few meetings – blocked the draft law in the Government and it was sent back to the Ministry of Economy. The main disagreement of the Ministry of Finance concerns the fiscal facilities exemptions.

"The Ministry of Economy involved civil society at every stage of drafting of the law – from membership in the working group to the elaboration of the draft law, explanatory note, and the impact assessment of the regulation."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The process of elaboration of the draft law on social entrepreneurship was open and proceeded according to the transparency regulations. Firstly, it was developed by a working group, created by the Ministry of Economy, which included representatives of CSOs. Secondly, it took into account the different opinions of different CSOs. Thirdly, it was open for public consultations via publication of the draft law on the online government platform. On the other hand, the Ministry of Economy did not publish the impact assessment, nor hold public consultations around it.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

CSOs pressed for a draft law on social entrepreneurship, and the CSO sector produced two analyses on the shortfalls of the national legislation and on comparative international practice on the issue. CSOs also organised roundtables with state authorities and a national conference where they promoted the concept of social entrepreneurship. As a result, an inclusive working group was created to draft the future law. The CSOs organised themselves into a Platform, debated the concept and provisions of the law, and acted with one voice in advocating for the law. It is important to bear in mind and take into account the position and opinion of the Ministry of Finance on this issue from the early stages of drafting of the law.

Recommendations

- Publication of the legislative plans of the Executive and Parliament.
- Implementation of Green Papers (*ex-ante* analysis) as a standard practice before the draft legislation starts to be elaborated, with subsequent publication and adequate public consultation.
- Publication of contacts of the responsible person and deadlines for submitting comments for legislative drafts published on the web page of the Parliament.
- Notification of interested parties about initiation of public consultations (including keeping an updated list of interested parties).
- Provide rules on the adoption of draft laws in urgent procedure in the Parliament.
- Provide for an adequate timeframe for finalisation of public consultations and publication of a summary of recommendations, both on the part of the Government and the Parliament.
- Publication of the feedback report as a standard practice.
- Regulate the urgent procedure of adoption of the legislation in the Parliament.
- Publication of the agenda of parliamentary committees and Parliament plenary meetings at least one week in advance.
- Publication of the amendments to the draft law in the Parliament and regulation of an adequate timeframe from publication of amendments to deadline for feedback and recommendations before the legislation goes for a final vote in the Parliament.
- Provision of a supplementary procedure of public consultations to be activated in the event that the Parliament accepts amendments that change the essence of the draft law.
- Publication of the number of sanctions applied by the Executive for non-compliance with the rules on transparency in decision-making.
- Regulate a procedure of annulment of legislation in the event that the rules of public consultation have not been respected.

UKRAINE

by Viktor Tymoshchuk and Yevhen Shkolnyi*

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Significant input in writing the case on the law-making process on public consultations was provided by Natalia Oksha, Head of the Division for Facilitation of Civil Society Development and Public Communications and Deputy Director of the Department of Information and Public Communications at the Secretariat of the Cabinet of Ministers of Ukraine.

Introduction

Ukraine lacks a unified law regulating the procedures for all state authorities and local government bodies to conduct consultations with the public and interested stakeholders in decision-making processes. Currently, at the level of the law, mandatory consultations for all authorities are stipulated only in certain fields of state policy, in particular when the authorities develop "regulatory acts" related to the business sphere, and acts concerning the environment and nuclear energy. According to Governmental Decree, only the executive authorities are required to hold consultations with the public and interested stakeholders in the process of development of policy decisions and drafts of normative legal acts.

When normative legal acts are developed by local authorities, the President, or MPs, the legislation does not require public debate and consultation around the measures. A juridical approach prevails, the essence of which is to work only with the texts of draft regulations, and includes no requirement for stakeholder consultations around the draft laws.

The case studies that are considered in this chapter show the gaps in the legislation that hinder a more participatory policy- and law-making process. Ukraine needs a law to regulate the procedures of consultation with the public and other stakeholders, and to mandate public participation and its forms at all stages of decision-making by the authorities. This new law should provide opportunities for the early involvement of stakeholders in the development of new laws and policies, and should include legal sanctions for non-compliance in the consultation procedures.

UKRAINE: The Participatory Policymaking Process – Policy Cycle Stages		
First draft of legislation	Forms of consultation	Participants invited to consultation
<p>When a draft law has been prepared, the publication of the draft law is: Mandatory (only for regulatory acts related to business activities). It is also mandatory for executive authorities for all acts initiated by them, according to Decree № 996 of 3 November 2010. But no liability is stipulated for executive authorities for ignoring this obligation. In other cases, publication takes place on ad hoc basis (at the will of the initiators).</p> <p>Is an accompanying explanatory note published, explaining the reasons for the draft law? Yes. All ministries publish the draft laws, and accompanying explanatory notes.</p> <p>Were all draft laws indeed published? Yes, in 2013-2015.</p> <p>Is a timeframe prescribed from publication to deadline for feedback and recommendations? Yes.</p> <p>If so, how long do interested parties have to provide their input? A minimum of one month and maximum of three months for regulatory acts in the business sector; a minimum of 30 days for draft regulations on environmental protection and urban planning documentation; and a minimum of 15 days for draft legal acts, state and regional programmes developed by the executive authorities.</p> <p>Is this observed in practice? In how many cases per year and by ministry? Yes. Ministries, other central executive authorities, region (oblast), and city state administrations (nearly 90 authorities) conducted consultations regarding socially important issues (including the consultations regarding drafts of legal acts)</p> <p>Number of consultations conducted by ministries, central executive authorities, regional and city state administrations (in brackets, the number of draft legal acts considered by the same authorities):</p> <p>2013: 5,428 (1,728)</p> <p>2014: 5,557 (1,753)</p> <p>2015: 5,077 (1,757)</p>	Expert working groups or taskforces	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	Roundtables	<ul style="list-style-type: none"> ▪ Selected experts ▪ Open invitation to all business associations ▪ Open invitation to all interest groups ▪ Open invitation to all CSOs
	Online consultations inviting input	<ul style="list-style-type: none"> ▪ General public
	Public hearings	<ul style="list-style-type: none"> ▪ Selected experts ▪ Business associations ▪ Government-selected interest groups ▪ Open invitation to all CSOs ▪ General public
	Other (innovative forms: open and industry platforms, 'world café', expert-consulting forums)	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Open invitation to all CSOs

<p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? Yes. The publication of reports as the result of consultations is compulsory in the case of legal acts drafted by the executive authorities.</p> <p>Reports on the results of feedback are published in the case of ca 30% of consultations. The reason for the absence of such reports is often the absence of submission of suggestions (in particular, in the case of electronic consultations).</p> <p>If so, how soon after the end of the consultation period are these published? The reports on the feedback on legal acts drafted by the executive authorities must be published at the latest two weeks after the decisions have been taken on which suggestions to accept and which not to accept. The deadlines for publishing reports are not always respected. The reason for failure to publish within the prescribed timeframe is often the large number of suggestions that need to be considered.</p>		
<p><i>Parliamentary review of legislation</i></p>	<p>Forms of consultation</p>	<p>Participants invited to consultation</p>
<p>Are parliamentary committee meetings reviewing draft laws announced in advance with the public and interested parties invited to attend? Yes.</p> <p>The schedules of the parliamentary committees are published in advance. But such announcements don't include an invitation for the public and interested parties to attend.</p> <p>Is a timeframe provided to announce the review meeting with advance notice? No</p> <p>Is a timeframe prescribed from launch of parliamentary review to deadline for feedback and recommendations? No.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No</p>	<p>Roundtables</p> <p>Committee hearings</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected CSOs ▪ Selected experts ▪ Selected business associations ▪ Government-selected CSOs

Review of parliamentary committee amendments	Forms of consultation	Participants invited to consultation
<p>When a draft law has been considered by a parliamentary committee, the publication of the committee’s proposed amendments is: Mandatory.</p> <p>Were all committee-stage amendments indeed published? Yes, in 2013-2015. (However there are exceptions when the Parliament rules are breached.)</p> <p>Is a timeframe prescribed from publication of committee amendments to deadline for feedback and recommendations before the legislation goes to a final vote in parliament? Yes</p> <p>If so, how long do interested parties have to provide their input? 14 days (article 116 of Parliament Rules)</p> <p>Is this observed in practice? Yes, in 2013-2015. If it is not observed, there are no sanctions.</p> <p>Are feedback reports published, explaining which recommendations from whom were accepted/not accepted, and why? No.</p>	<p>Expert working groups or taskforces</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Roundtables</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs
	<p>Public hearings</p>	<ul style="list-style-type: none"> ▪ Selected experts ▪ Selected business associations ▪ Government-selected interest groups ▪ Government-selected CSOs

Case Studies

After the collapse of the Soviet Union, Ukrainians were emerging from a political system where for many years the average citizen had no means to influence the development of political decision-making. After securing its independence in 1991, Ukraine began the process of establishing a stable, free, and influential civil society. A fairly strong civil society began to develop, so a strong response was to be expected from the citizens of Ukraine when in 2013 authoritarian tendencies began to emerge, alongside the rejection of Ukraine’s trajectory towards European integration.

During the Revolution of Dignity of February 2014, representatives of civil society in Ukraine came to the conclusion that no government would provide Ukraine

with the necessary reforms and path to prosperity without the active participation and oversight of citizens in decision-making. Thus, since the change of political power in 2014, the participation of civil society in the adoption of public policy decisions has intensified and become significantly more influential.

In the period from the beginning of 2014 until March 2017, with the significant support of a single civic coalition, Ukraine adopted more than 60 laws, and more than 50 bills passed the first reading stage in the Parliament. Regular meetings between public authorities and civil activists and independent experts are becoming established practice for both the Government and the Parliament. In tandem, the opinions of civil society activists and experts are given more space in leading media outlets.

The case studies selected for this chapter reflect the latest trends in the activism and forms of participation of Ukrainian civil society in the implementation of extremely urgent reforms. The choice of subjects highlights on the one hand the progress achieved regarding citizens' participation in the law-making process, including new forms of participation, and on the other hand illustrates persistent problems that have led to less than fruitful legislative initiatives. Case studies on laws and bills demonstrate the benefits of an open and involved decision-making process, while another of the studies is devoted to the work of a coalition of Ukrainian civil society organisations – the Reanimation Package of Reforms. Today, this civic initiative is a powerful engine driving the participation of Ukrainian civil society in the development of public policy and in political decision-making in Ukraine.

PARTICIPATION IN THE LAW-MAKING PROCESS:

TWO CASE STUDIES

Law on Civil Service, 2015

1. Objective

For the purpose of civil service reform in Ukraine, the Law on Civil Service was adopted on 10 December 2015. The law defines the principles, and the legal and organisational basis, for a civil service that is focused on serving citizens in a public, professional, politically impartial, and efficient manner, operating in the interests of the state and society. The law also sets out procedures for ensuring citizens' rights to equal access to employment in the civil service, based on their own qualifications and experience.

The need for reform of the civil service has long been an extremely important issue for Ukraine. The previous Law on Civil Service dated from 1993, and did not meet modern-day requirements. As a result, the civil service in Ukraine continued to be unprofessional and politically partisan, with high levels of corruption.

The main problems were as follows:

- There was only partial application of competitive selection procedures for civil service positions (no competition took place for positions in the top echelons of the civil service).
- There was no separation of patronage positions (assistants, advisers to MPs, member of the government, etc.) and political positions (ministers, deputy ministers etc.) from civil service posts.
- There was a lack of state secretaries in ministries (professional managers), which reduced the effectiveness of the executive.
- There were no substantial restrictions and sanctions on the political activities of civil servants.
- Civil servants were frequently dismissed as a result of frequent changes in the political leadership of the country.
- A high portion of the "bonuses" in the wages of civil servants was calculated on the basis of subjective factors.

2. Civil society participants involved

During the development of the text of the (then draft) law, a number of civil society organisations (CSOs) were involved. Participants included representatives of:

- Centre of Policy and Legal Reform (CPLR);
- Reanimation Package of Reforms (RPR, a citizens' initiative that includes, in particular, CPLR, CCC Creative Center, and individual experts);
- New Country civic initiative.

3. Public authorities involved

A range of public authorities were involved in the development of the text of the draft law. These included:

- The National Agency of Ukraine on Civil Service (National Agency);
- The Cabinet of Ministers (at different stages of the drafting, this included the Deputy Prime Minister-Minister of Regional Development, and the Minister of the Cabinet of Ministers); and
- The Parliament (Verkhovna Rada), in particular the Committee on State Building, Regional Policy and Local Government.

4. Stages of potential consultation

The process of development and adoption of the draft law should be seen as an example of a difficult, but successful and inclusive legislative process. The process included all the necessary stages with the maximum involvement of civil society and other stakeholders (trade unions, civil servants, and representatives of various public authorities).

The main stages of the legislative process were as follows:

1. The creation of an expert advisory council (virtually as an open working group) by the National Agency, which developed the bill;
2. Discussion of the bill in different forums, including at regional and national roundtables, and expert meetings;
3. Online consultation open to all citizens;
4. Approval of the bill by ministries and other institutions, including the Secretariat of the Government and the Presidential Administration;
5. Introduction of the bill in the Parliament, with the vote on the first reading;
6. The formation of a working group under the corresponding parliamentary committee to finalise the bill for the second reading (the group comprised more than 80 participants, including independent experts, trade unions, civil servants, and representatives of all branches of the state);
7. The refinement of the text of the bill for the second reading, with the active participation of the public and stakeholders;
8. The completion of the bill in parliamentary sub-committees with the participation of the public, and the preparation of the final text;
9. The adoption of the bill in the second reading and as a whole.

5. Forms of participation at each stage

- Creation by the National Agency of an expert advisory council, which included experts from CSOs and representatives of government bodies, for the development of the initial draft of the bill;
- Online consultation: the draft bill was posted on the official website of the National Agency to reach the wider public and to enable every citizen to submit to the National Agency their comments and suggestions (on the text of the draft bill before its submission to the Parliament);
- Regional public events, organised by the National Agency, to foster discussion of the draft law (for example, "Richelieu academic readings" in Odessa);
- Creation of a working group attached to the corresponding parliamentary committee after the adoption of the bill in the first reading to work on its refinement ahead of the second reading.

6. Level and timeframe of access to information

The timeframe for the participation in the legislative process varied for different participants, as follows:

July-August 2014: the development of the draft law by a group of experts from CSOs and the National Agency;

September-November 2014: the opportunity to work with the text of the bill for all the participants in the expert advisory council at the National Agency; Ukrainian citizens had the opportunity to submit proposals online as well as at regional events; approval of the draft law by the experts of the EU SIGMA programme;¹

December 2014 - March 2015: the opportunity to work with the text of the bill exclusively for representatives of the Secretariat of the Cabinet of Ministers and the Presidential Administration;

31 March - 7 April 2015: preparation for the consideration of the bill by MPs in parliamentary committees for the first reading;

23 April - 1 November 2015: preparation of the draft law in the working group of the corresponding parliamentary committee for the second reading.

1 SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the Organization for Economic Co-operation and Development (OECD) and the European Union (EU). Its key objective is to strengthen the foundations for improved public governance through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritisation, sequencing and budgeting. See <http://www.sigmaweb.org>.

7. Comparison against stated stages of policy cycle and participation

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation		The bill was published on the website of the National Agency of Ukraine on Civil Service.
	Expert working groups	The National Agency established an expert advisory council, which included representatives of civil society and representatives of public authorities (Presidential Administration, Ministry of Finance, Ministry of Economic Development and Trade, Ministry of Social Policy, the National Agency and others.)
	Roundtables	A roundtable was held on the draft law. ² There were also regional events to discuss the draft text of the bill.
	Online consultations	The bill was published on the website of the National Agency. Every citizen of Ukraine had the opportunity to submit proposals online.
Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend		The announcement of the meeting of the parliamentary committee (address, date, time) was published on the website of the Parliament ("Weekly Committees' Timetable" section), but no invitation to attend was issued to the public and interested stakeholders. ³
	Expert working groups	After the adoption of the bill at the first reading, a working group was formed under the corresponding parliamentary committee to finalise the text for the second reading. The working group comprised more than 80 participants, including representatives of CSOs, experts, trade unions, and various authorities.
	Roundtables	Roundtables took place in the Parliament and in the regions.

2 <http://www.guds.gov.ua/news/pytannya-profesionalizaciyi-derzhavnoyi-sluzhby-ta-zabezpechennya-prav-gromadyan-na-yakisni>

3 <http://static.rada.gov.ua/zakon/skl8/2session/RK/RK200415.htm>

Stages of the legislative process	Forms of consultation	Practice
Publication of the proposed amendments to the bill following its consideration by the parliamentary committee		The text of the bill for the second reading, incorporating amendments, was published on the website of the Parliament. ⁴
	Public hearings	The bill was debated publicly in the Parliament (at first and second readings). The meetings were broadcast on television, radio and internet. There were no other forms of public hearing.
	Parliamentary committee meetings	The parliamentary committee hearings took place. However, only the members of the parliamentary committees and the members of the working group on the bill were allowed to attend. Only invited persons could participate. The discussion was not broadcast on television or radio in its entirety, but some of the key parts of the deliberations were recorded and shown on the parliamentary television channel.
Interested parties have 14 days after the publication of parliamentary committee amendments, during which they can submit feedback and recommendations before the legislation goes to a final vote in parliament		The deadlines were observed.
Publication of feedback report, explaining which recommendations from whom were/ were not accepted, and why		No feedback report was published. The text of the bill, revised for the second reading, was published, with a comparative table showing the amendments, and the conclusion of the corresponding parliamentary committee. The table showed which proposed amendments to which clauses of the bill were taken into account – but with no explanation.

4 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=2490&skl=9

8. The process – from the perspective of participants/stakeholders

Andriy Zabolotnyi, Deputy Head of the National Agency of Ukraine on Civil Service

"The bill was needed to:

- *ensure equal access for all citizens to apply for civil service positions;*
- *remove political influence from the promotion process in the civil service;*
- *curb discretionary powers regarding bonuses of civil servants;*
- *prevent staff turnover in connection with changes of leadership of state organs;*
- *attract talented young people to work in state organs.*

"I participated in all stages of the legislative process, in particular the working groups. The process brought the innovation that the public could follow the development of the bill at each stage, and progress was made by virtue of the fact that the Government had the political will to carry out reforms.

"Co-operation between government institutions, the Parliament, and civil society institutions was 100%. The overwhelming majority of my proposals were taken into account. The stages of the legislative process proceeded in accordance with the legislative procedures, but delays in co-ordination between the relevant public authorities affected the timeframe.

"Lessons learned:

- *In the early stages of the process, participants should submit concrete written proposals on specific regulations;*
- *The Regulation of the Cabinet of Ministers must be followed;*
- *It is essential to set out shorter time limits for the second reading;*
- *The public should be involved in the early stages to ensure co-authorship of the law."*

Alyona Shkrum, MP

"The purpose of the bill was to introduce wholesale reform and restructuring of the civil service. There was a clear concept as to how it should be done. My goal in participating in the legislative process was to build a professional, independent and depoliticised civil service that attracts people to join, especially young people. It is necessary to modernise the civil service.

"The public and the government authorities developed the bill. The Government tabled the bill in the Parliament, which made its progress faster, although it could be argued that it should have been registered in the name of civil society, since 80% of the content was prepared by civil society. Moreover, the bill tabled in the Parliament contained some amendments from the side of the Government that weakened the draft legislation.

"Between the first and second readings, the deputies submitted 1,500 amendments. To review them, a working group was created under my leadership. We invited representatives of the executive authorities, ministries, the Presidential Administration, and the public. Five formal meetings of the working group were held, as well as many informal meetings. Individual meetings were also held with certain organs (such as the National Security and Defence Council).

"The parliamentary committee held four meetings, where each amendment was voted upon separately. Subsequently, I presented the law to the Parliament for the second reading. As the President insisted on his own revisions, I voiced compromises from the rostrum. Then the law was passed.

"I was heavily involved in the process, as I head the subcommittee on civil service reform. I chaired all the workshops, presented all the amendments at the Committee, and attended the co-ordination meetings organised by the then Parliament Speaker, Volodymyr Groysman. I also worked closely with RPR (there was a meeting almost every week).

"Innovation: I tried to simplify the way the working group functioned. Formal invitations and correspondence were ineffective, as there were more than 80 participants. We opened it to everyone. On Facebook, I wrote that anyone can join the group, my assistant arranged permits for anyone to visit the meeting of the Committee, including any member of the public who asked for an invitation. Everything happened openly and without bureaucracy. In addition, many important ideas were sent to me through Facebook. It is also worth noting that the parliamentary committee authorised the working group to make editorial changes to the bill.

"The members of the Committee and the public had productive dialogue with the National Agency on Civil Service, but dialogue was more difficult with the Government and the Presidential Administration, which controls the votes of many deputies. Dialogue was difficult with many government authorities that were affected by the proposed reforms and wanted to avoid job cuts.

"The majority of my suggestions were taken into account, but they were drafted so as to coincide with the positions expressed by the public, European experts and often deputy ministers. They were developed in this context and officially signed by me. The legislative process was conducted in accordance with the existing legislation. In the Committee, votes were held on each amendment, which happens very rarely. The extra-parliamentary procedures that took place were not contrary to the legislation.

"Lessons learned: In Ukraine, there continues to be a lot of resistance to reforms – and without the support of civil society and European partners the law would not have been adopted. We need to simplify the bureaucratic procedures of the work of the parliamentary committees (working groups), use online tools more effectively, and involve more stakeholders."

Serhiy Soroka, Expert, New Country civil platform

"The purpose of the bill was to reform the civil service, since it was unreformed, corrupt, post-Soviet, and ineffective. My goal was to launch and implement this reform since the civil service served as the main brake on reforms. I participated in the expert advisory council of the National Agency and the working group in the parliamentary committee, and I was in regular consultation with the Secretariat of the Cabinet of Ministers, the Ministry of Finance, and Ministry of Economic Development.

"All the experts competent in this subject were involved in the process. The intensification of the law-making process was speeded up, and direct dialogue took place. My suggestions were taken into account, but there was a collective effort, so there was a shared authorship.

"Lessons learned: The process ran in accordance with the law, but the deputies did not accept the concept of 'deadlines'. Furthermore, the earlier that relevant stakeholders are involved in the legislative process, the faster and better the process will be."

Volodymyr Kupriy, Executive Director of CCC Creative Center

"The Law on Civil Service stemmed from the need for civil service reform, and in a broader sense the need for public administration reform. Its necessity was declared, in particular, in the President's statements, in the programme of the government, and in Ukraine's commitments within the framework of the Association Agreement with the EU. Reform of the civil service was a key priority on the agenda of civil society, which I represent, and we wanted to realise our mission.

"For all the participants in this process, there were equal and adequate opportunities to influence the development of the bill. Expert organisations had the opportunity to participate directly and make suggestions. We met on a weekly basis within the expert advisory council and made suggestions and amendments. The general public had the opportunity to submit proposals online via the website of the National Agency and the Civil society-Government website. However, this did not arouse much interest on the part of citizens, so the Government needs to promote this mechanism more.

"The innovation in this process included the creation of the expert advisory council of the National Agency, which served as a platform for operational discussion and co-ordination of interests. This was the first time such a platform had been created.

"Most of my proposals were considered and adopted.

"Lessons learned: Some procedures in the law-making process are set out in the legislation, but a lot depends on the political will of leaders and leadership in the respective authorities. For example, the head of the National Agency was not obliged to create an expert advisory council. He just took advantage of his right to create one. Positive results are achieved only through dialogue with the public. The openness and transparency of the process are key to garnering the support of society. However, individual activists should not speak on behalf of civil society as a whole. It is necessary to set 'good governance' standards in Ukraine (for example, using such tools as green papers and white papers)."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The legislative process was broadly in line with Ukrainian legislation, in particular with the rules regarding participation in the law-making process. However, the legislation does not regulate in detail the legislative process before the stage of introducing a bill to the Parliament, thus leaving a lot of discretion to the authorities. Many actions, such as establishing the expert advisory council under the National Agency (as a permanent working group, which, since the adoption of the law, continues to work on drafting regulations on its implementation as well), regular meetings with CSOs, and the holding of regional events, are not required by legislation.

The success of the process derived from the existence of political will on the part of some representatives of the authorities, from public pressure, and from the EU's support. Representatives of civil society were able to make a significant contribution to the drafting of the text of the bill in the working groups created by the Government. However, significant contributions were also made by other key stakeholders – for instance, trade unions and civil servants. They softened the rules regarding the conditions for dismissal from the civil service and transfer to other positions within the service. The whole process was successful to such an extent that it can be said that a truly reformist law was developed transparently and adopted successfully.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

This legislative process was open and wide-ranging. The expert advisory council of the National Agency, the working group of the responsible parliamentary committee, regional and national events, and online tools all enabled the engagement in the process of all interested parties, independent experts, academics, and representatives of various authorities.

The genuine dialogue that took place and made it possible to agree on the reform-driven text of the bill is, however, extremely rare. That is why this process should

become a model for the law-making process henceforth, and legislation should be enacted to ensure that this model approach is fixed in law as mandatory and is not dependent on the goodwill of the authorities. This will enable the emergence of a sustainable framework within which the Government and society can work together successfully in the development of sustainable policy solutions and corresponding legislation.

Amendments to the Tax Code, 2014-2015

1. Objective

The current taxation system in Ukraine, characterised by a rigid fiscal regime, different taxation regimes and frequently manual administration of taxes, has long needed systemic reform. This is evident from the results of discussions within industry platforms, where business representatives from different industries have identified a whole range of problems:⁵

- The high tax burden on wages;
- The uneven tax burden on businesses;
- The shadow economy;
- The prevalence of contraband products on the market;
- The instability of tax legislation;
- The lack of long-term excise policies;
- Additional import levies;
- Non-transparent administration of taxes, and refusals to refund VAT.

An attempt was made to conduct an all-encompassing tax reform in Ukraine. However, the process was approached from conflicting perspectives. In particular, two alternative draft laws were drafted – one by the Ministry of Finance, and another by a group of MPs and representatives of the public, aiming for a more substantive change in the Tax Code. As a result of the subsequent dialogue between the Ministry of Finance and representatives of the public, a compromise was found concerning some aspects of tax reform. This made it possible to adopt a compromise law, but one that tackled only a small part of the reforms that are necessary.

2. Civil society participants involved

Representatives of the following civil society organisations and initiatives, and legal entities from the business sector, participated in this legislative process in the following three activities:

5 <http://www.minfin.gov.ua/uploads/redactor/files/567038854c68e.pdf>

1) The development of the Tax Reform Concept in the working group under the Ministry of Economic Development and Trade:

- Reanimation Package of Reforms (RPR);
- New Country civic initiative;
- Union for the Protection of Entrepreneurs (a CSO);
- All-Ukrainian Association of Small and Medium Business "Fortetsya" (a CSO);
- The Association of Young Leaders and Entrepreneurs;
- European Law Development Network;
- The Council of Entrepreneurs under the Cabinet of Ministers of Ukraine.

2) The drafting of the Law on Amendments to the Tax Code of Ukraine Concerning Tax Liberalisation No. 3357:

- RPR;
- New Country civic initiative;
- CASE Ukraine;
- The Chamber of Tax Consultants (a CSO);
- OMP law firm;
- OMP Accounting and Audit Service Ltd;
- LTD auditing company;
- Capital Plus auditing company;
- Kesarev Consulting;
- KM Partners Law Firm;
- European Law Development Network;
- National Platform for Small and Medium Business.

3) The development of the draft Law on Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine Concerning Ensuring the Balance of Budget Revenues in 2016, No. 3688:

- RPR;
- New Country civic initiative.

3. Public authorities involved

The following state authorities participated in the legislative process:

1) The development of the Tax Reform Concept in the working group under the Ministry of Economic Development and Trade:

- Ministry of Economic Development and Trade;
- Ministry of Finance;
- Ministry of Agrarian Policy and Food.

2) The development of the draft Law on the Creation of Competitive Conditions in Taxation and Stimulation of Economic Activity in Ukraine No. 3630:

- Ministry of Finance (with the participation of international auditors, relevant ministries and departments).

3) The drafting of the Law on Amendments to the Tax Code of Ukraine Concerning Tax Liberalisation No. 3357:

- A group of MPs, in particular, the Head of the Parliamentary Committee on Tax and Customs Policy.

4) The development of the draft Law on Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine Concerning Ensuring the Balance of Budget Revenues in 2016, No. 3688:

- Ministry of Finance.

4. Stages of potential consultation

The process of developing legislative initiatives for tax reform, which took place during 2014-2015, is an example of complex, conflictual interaction and unproductive co-operation between different branches of the state, as well as between public authorities and representatives of the public.

The main stages of the legislative process were as follows:

- 1) The development of the Tax Reform Concept in the format of a working group under the Ministry of Economic Development and Trade (the concept was not developed further as a basis for draft legislation);
- 2) Assignment by the National Reform Council (under the President) of the Ministry of Finance as the responsible ministry for the implementation of the tax reform;
- 3) The formation and start of work of a taskforce on tax reform under the National Reform Council;
- 4) Approval by the Ministry of Finance of communications strategy;
- 5) The organisation by the Ministry of Finance of industry platforms (for business) and open platforms (for the expert community) to discuss options for tax reform;
- 6) The presentation by the Ministry of Finance and MPs from the profile parliamentary committee of two alternative concepts of tax reform at a meeting of the National Reform Council;
- 7) The adoption by the National Reform Council of the decision to create a working group to develop a single concept of tax reform (which included both the Ministry of Finance, MPs and individual experts);
- 8) Termination by the Ministry of Finance of participation in this working group;⁶
- 9) The convergence of MPs, individual experts, and business representatives in a working group with the Parliamentary Committee on Tax and Customs Policy to draft the Law on Amendments to the Tax Code of Ukraine Concerning Tax Liberalisation No. 3357;
- 10) Parallel development by the Ministry of Finance of its own bill, No. 3630 (with the participation of international auditors, relevant ministries and departments);
- 11) The registration of bill No. 3357 in the Parliament (26 October 2015), its publication and discussion at roundtables and other formats;

⁶ <http://novakraina.org/opinion/ministerstvo-finansiv-proignoruvalo>

12) The registration of the bill of the Ministry of Finance No. 3630 in the Parliament (11 December 2015) and its publication;

13) Discussion by the Parliament of bill No. 3630, but it was not put to a vote (17 December 2015);

14) The Ministry of Finance conducted meetings with the public and business representatives to find a compromise text for a draft law on a limited number of issues;

15) The Ministry of Finance elaborated a compromise bill No. 3688, which was then registered in the Parliament (22 December 2015) and successfully adopted after a vote in a single-reading adoption process (24 December 2015).⁷

5. Forms of participation at each stage

During the legislative process (including the development of all the bills outlined above), at various stages, the following forms of participation took place:

- Working group under the Ministry of Economic Development and Trade for the development of the Tax Reform Concept.
- Taskforce on tax reform under the National Reform Council. This team included representatives of the executive and legislative branches, representatives of the public and business sector. It served as a platform for discussion and elaboration of an acceptable model of tax reform (eight meetings were held).
- Platforms under the Ministry of Finance. Industry platforms were organised to discuss tax reform options with business representatives from individual industries (14 platform meetings were held), and open platforms were organised for discussion with the expert community (six platform meetings were held).

⁷ The Parliament can take a decision to introduce a shortcut procedure to vote to adopt a bill in its entirety in a single reading.

- Working group under the Parliamentary Committee on Tax and Customs Policy to prepare the text of draft law No. 3357 prior to its registration (the working group included MPs, and representatives of the public and business).
- Online consultation involving the wider public on the website of the National Platform for Small and Medium Business, where Law No. 3357 was published.⁸
- Roundtables devoted to the discussion of the tax reform and bill No. 3357.

6. Level and timeframe of access to information

The public and business representatives had an opportunity to directly influence the text during the development of draft Law No. 3357, which took place in the working group of the Parliamentary Committee on Tax and Customs Policy. The drafting process lasted from the middle of September 2015 to 26 October 2015, the date when the bill was registered in the Parliament. However, this bill was never put to the vote.

The Ministry of Finance drafted the text of draft law No. 3630 in a closed process, with the participation of only international auditors, relevant ministries and departments.

⁸ <http://platforma-msb.org/>

7. Comparison against stated stages of policy cycle and participation⁹

Stages of the legislative process	Forms of consultation	Practice
<p>Publication of first draft of legislation</p>		<ul style="list-style-type: none"> ▪ Bill No. 3357 was published on the website of the Parliament after its registration on 26 October 2015. Prior to registration, the main provisions of this bill were drawn up in the form of a presentation that every citizen could access on the websites of various public organisations and also on Facebook. However, the text itself was available (for making amendments) only to deputies, selected experts and business representatives – in the course of their participation in the working group in the profile parliamentary committee. After the publication of the bill, public discussions began on the text, but the bill was never submitted for a vote in the Parliament. ▪ Bill No. 3630 was also published after its registration in the Parliament on 11 December 2015. On 17 December 2015, it was discussed in the Parliament, but it was not put to a vote. Before the registration in the Parliament, the text of the bill was not available to the public, although on 1 December 2015 the Ministry of Finance published an explanatory note on its official website, outlining the innovative provisions in the bill, and their benefits for business.⁹ The Government provided MPs with some parts of the bill before its registration. ▪ Bill No. 3688 was drafted by the Ministry of Finance in a very short timeframe after the conclusion of negotiations with MPs, the public and business representatives. The final text of the bill appeared in the public domain after its registration in the Parliament on 22 December 2015. On 24 December 2015, the bill was presented to a plenary session in the Parliament. During the discussion in the Parliament, amendments were introduced by MPs orally, put to a vote, and included into its text, and then the bill was voted upon and adopted in its entirety.

⁹ <http://www.minfin.gov.ua/news/view/-perevah-dlia-biznesu?category=novini-ta-media>

Stages of the legislative process	Forms of consultation	Practice
Publication of first draft of legislation <i>(continued)</i>	Expert working groups	<p>Prior to the registration of bills in the Parliament, the following groups participated in discussions on development of the texts:</p> <ul style="list-style-type: none"> ▪ Taskforce on tax reform at the National Reform Council of Reforms under the President (discussion of conceptual issues of tax reform by representatives of the government, individual experts, and business representatives); ▪ Industry platforms and open platforms under the Ministry of Finance (discussion with business representatives and public on tax reform models); ▪ Working group of the Parliamentary Committee on Tax and Customs Policy to draft the bill No. 3357 (which included MPs, representatives of the public and business).
	Roundtables	<ul style="list-style-type: none"> ▪ Roundtables concerning bill No. 3357 were conducted both before the publication of the draft text (concerning the conceptual framework) and afterwards (direct discussion of the text). These events took place in such cities as Kyiv, Lviv, Kharkov and Dnipro; ▪ Public discussion of the government bill No. 3630 was organised in a roundtable format by experts and civic activists.¹⁰ The Finance Ministry chose to discuss only its conceptual basis in the open and industry platforms; ▪ Bill No. 3688 was drafted in a very short timeframe without the possibility to hold roundtables.
	Online consultations	<p>Bill No. 3357 was published for online consultations on the website of the National Platform for Small and Medium Business on 27 October 2015.¹¹</p> <p>However, on governmental websites, as well as on the Parliament's website, no consultations were held on the text of the draft laws under consideration.</p>

10 <https://www.facebook.com/events/421257921414481/>

11 <http://platforma-msb.org/obgovorennya-zakonoproektu-shhodo-podatkovoyi-liberalizatsiyi/>

Stages of the legislative process	Forms of consultation	Practice
Advance announcement of the meeting of the parliamentary committee that will review the bill, including an invitation to the public and interested stakeholders to attend		As a rule, personal invitations are issued for attendance at all meetings of the Parliamentary Committees.
	Expert working groups	Announcements regarding the meetings of the working group of the Parliamentary Committee on Tax and Customs Policy on the development of bill No. 3357 were not published on the Parliament's website. Participants were all notified about the meetings by the Secretariat of the parliamentary committee by telephone.
	Public hearings	<p>The draft bills No. 3630 and No. 3688 were considered in open sessions in the Parliament. The meetings were broadcast on television, radio and the internet. There were no other forms of public hearings.</p> <p>Bill No. 3630 was discussed in the Parliament (in the format of the first reading), but then it was not put to a vote.¹²</p> <p>Bill No. 3688 was successfully adopted after a vote in a single-reading adoption process in the Parliament on 24 December 2015.¹³</p>
	Parliamentary committee meetings	None of the bills under consideration were developed further before a second reading. Bill No. 3688 was put to a vote in a single-reading process in the shortest possible timeframe after registration in the Parliament. Therefore, there was only one meeting of the Committee on the draft law. It took place on 22 December 2015.

12 <http://rada.gov.ua/meeting/stenogr/show/6076.html>

13 <http://rada.gov.ua/meeting/stenogr/show/6087.html>

8. Outline of the process from the perspective of participants/stakeholders

Olena Makeyeva, former Deputy Minister of Finance, subsequently adviser to the Minister of Finance

"Tax reform was necessary to address the following problems voiced by the business sector: the high payroll tax burden (at 38%, the highest obligatory state social insurance contribution rate in Europe¹⁴); the unfair tax burden in various sectors with different tax systems and tax incentives, and preferential treatment of individual sectors; the large shadow economy; opaque administration of taxes and fees, the large number of discrepancies in the tax code, and more. These problems were conveyed to us by representatives of the business community from different industries during the industry platforms that were organised – communication platforms established to engage with the business community.

"The stages of the legislative process were as follows:

- ***Assignment of responsible institution.*** *The National Reform Council under the leadership of the President assigned the Ministry of Finance, headed by the Minister of Finance, as responsible for the development and implementation of tax reform.*
- ***Development of a communications strategy to ensure effective dialogue with business.*** *The communications strategy included the organisation of industry and open platforms. At the industry platforms, business representatives raised the problems of each industry, while the open platforms served as a platform for exploring an optimal tax model with the input of the expert community. A total of 14 industry platform meetings were held, resulting in the identification of common business problems and, consequently, future priorities for tax reform. Six open platform meetings were held, where experts presented and assessed 14 possible tax models.*
- ***The search for an effective tax model.*** *The development of an effective tax model was carried out in stages within the framework of the meetings of the taskforce of the National Reform Council, taking into account the results of research in the framework of the communications strategy (eight meetings were held), as well as the participation of the Parliamentary Committee on Tax and Customs Policy, international experts and advisers to the Minister. During one of*

¹⁴ This was the middle level rate, with a highest rate of 42%. After the reforms, there is now a single rate of 22%. This rate combines pension contributions and social insurance in a single rate paid by employees, individuals, and self-employed people.

the meetings of the National Reform Council, an alternative tax model developed by the Parliamentary Committee was presented, after which a discussion between the Government and parliamentarians continued in the working groups.

- **Adoption of an effective tax model.** *After long discussions in various formats, a tax model was approved by the National Reform Council with the participation of the President.*
- **Development of the Tax Code and registration of draft law in the Parliament.** *A new draft Tax Code was developed by the Ministry of Finance on the basis of the approved model and with the assistance of international auditors, relevant ministries and agencies. The new draft Tax Code was adopted by the Government, after which the draft law was registered in the Parliament. MPs decided to register an alternative bill. As a result, two separate bills (introduced by respectively the Government and MPs) were registered in the Parliament, but neither of them was accepted. Nevertheless, the Government managed to significantly reduce the payroll tax burden – the issue that drew the most complaints from businesses – by nearly halving the rate of the obligatory state social insurance contribution rate from 38% to 22%. We also managed to improve the administration of taxes through the reform of the VAT refund system. The resulting bill was passed in December 2015 together with the national budget.*

"As Deputy Minister of Finance, I was totally involved in every stage, from the development of the communications strategy to the establishment of the industry and open platforms, and the search for an effective tax model and then the drafting of the new Tax Code. It is important to note that our revision of the Tax Code passed a two-tier system of controls on the part of international auditors and experts, and the Ministry of Finance and the State Taxation Service.

"The legislative process of developing the tax reform is fully consistent with the national legislation. A bill cannot be registered in the Parliament unless the process has been followed correctly. The bill must have been discussed in the relevant ministries and departments, then approved by the Government and then submitted to the Parliament for registration. The Ministry of Finance complied fully with the legally prescribed procedure.

"The Ministry of Finance used an innovative approach – for the first time, the problems in the field of taxation and, therefore, the priorities for future tax reform, were identified by the representatives of business themselves, rather than by public officials. The Government took on board business priorities and expectations as the basis for the tax reform. In addition, leading world experts were involved in the development of the reforms.

"Any law-making process is an experience, and I am sure that in 2015 it was an important experience for everyone – for ministries, the Government, parliamentarians and CSOs. We managed to build an effective and open dialogue with business, and a transparent process to revise the code. Of course, there were those who were not satisfied with the result. However, this is a normal process. Ukraine is no exception. Reforms are always painful for society; not everyone is ready to consider the interests of the state, of pensioners, and of the welfare of the whole population. It is very difficult to balance all the different interests.

"Ukraine is a unique country when it comes to the law-making process. In no other European country are legislative initiatives co-ordinated with such a large number of CSOs. Some institutions, in other countries, provide independent assessments, or carry out alternative calculations, but the responsibility for implementing policies and for drafting bills lies with the Government. In Ukraine, the Government and the Parliament are often competing with each other, however, hence we had two draft bills on the tax reform.

"Unfortunately, Ukrainians have not learned how to negotiate for a common purpose, and personal ambitions often take precedence. It is very difficult to build a partnerships based on trust. The various parties each want to prevail with their proposals, and to take the lead role rather than coming to the table ready to compromise. This is one of the reasons that the reforms are proceeding slowly in Ukraine.

"Lessons learned: The current law-making process is obsolete, and remains too 'Soviet'. I am impressed by the approach in other European countries with the release of green papers and white papers. The change in legislation in other European countries takes on average about four years, enough time for the development of initiatives, and for research, assessments, collection and processing of proposals, and expert legal review. In my opinion, this approach is absolutely justified. A law that is prepared in line with quality standards does not need to undergo frequent changes subsequently, since everything is clear, unambiguous and understandable for all stakeholders. In Ukraine, laws are usually prepared in a short space of time, with limited professional resources, and this greatly affects the quality of the resulting laws. As a consequence, poorly drafted bills require constant clarifications and amendments. Clearly, we need to learn from the experience of other European countries, allocate enough time for the preparation of new legislation and learn to put the interests of the country above narrow stakeholder interests."

Tetiana Ostriкова, MP, member of the Parliamentary Committee on Tax and Customs Policy

"Tax reform was needed for a number of reasons. The Tax Code adopted by the Government of [Prime Minister] Mykola Azarov, which has been amended many times, contained many discretionary rules allowing for different interpretations. This provided the tax service with powers that it abused, and also many unnecessary exemptions from VAT payments for entire industries. Moreover, the administration was outdated, and tax liberalisation was necessary (including lower tax rates to curb the shadow economy), and administrative reform was needed (in particular, putting an end to abuse of power by the State Tax Service, and removing, for instance, its rule-making powers and rights to administer registries and databases).

"Bill No. 3357 was initiated by a group of MPs and experts as a response to the inactivity of the Ministry of Finance. The National Reform Council had assigned the responsibility for tax reform to the Ministry of Finance. A tax reform taskforce was set up, led by the Deputy Minister of Finance, but the ministry failed in this task. As a consequence, the Government was unable to submit anything to the Parliament by 1 July 2015. Once it became clear that MPs had written a quality bill of their own, the Ministry had commissioned the writing of a bill to be financed from grant funding. This bill was then submitted to the Parliament in December. Therefore, the work of the taskforce under the National Reform Council was a complete failure for the Government.

"The MPs recruited experts, auditors, practising lawyers, practising accountants, academics and representatives of business to draft Bill No. 3357. The text of the bill was drafted between July and October 2015. Prior to the registration of the bill in the Parliament on 26 October 2015, its main provisions were assembled in the form of a presentation distributed on the websites of various CSOs (for example, "New Country") and on Facebook. After its registration and publication on the Parliament's website, the draft law was widely presented and discussed at various venues. In particular, together with the head of the Parliamentary Committee, I met with the ambassadors of the G7 countries. The main provisions of the bill were explained to the International Monetary Fund (IMF) and the economic departments of embassies. Members of our team went on a tour of Ukraine to discuss the bill in different cities – Kharkiv, Dnipro, Lviv. Numerous roundtables and presentations were held.

"Bill No. 3357 was not put to the vote, but it performed an important function. It prevented the adoption of a fiscally austere bill prepared by the Government that lacked any progressive norms. If there were no Bill No. 3357, the Government would

have reproached MPs over the lack of an alternative, so we forced the Government and all stakeholders in the process, including the President and the IMF, to seek common ground, and the compromise Bill No. 3688 was developed.

"I was heavily involved in the process. I participated in a lot of meetings and consultations, and in the process of revising the draft law. The main innovation of this process was that we involved specialists – people who work with the Tax Code every day, and have first-hand knowledge of its shortfalls and failings, and who advise others about the application of tax norms. Therefore, Bill No. 3357 was really popular.

"My contribution was in the areas of transfer pricing, capital withdrawals, the tax police, and financial investigation services. My proposals on the text of draft law No. 3357 concerning the tax on capital withdrawals, the reduction of the obligatory state social insurance contribution rate, transfer pricing, and on the issues of abolition of the tax police, were taken into account.

"This process took place in line with legislative procedures. The only thing that was violated was Article 4 of the Tax Code, which stipulates that tax reform legislation must be voted upon before 1 July to come into force on 1 January the following year. We, of course, wanted the bill to come into force on 1 January. However, it was not voted upon.

"Lessons learned: I learned a lot from the campaign to promote Bill No. 3357. I understood the key stakeholders: those to whom the necessary explanations had to be provided, those with whom it was necessary to co-ordinate positions, others who needed to be engaged, so that they did not take offence at being excluded, and respond negatively or try to block the adoption of the bill.

"What could be improved? We lacked a high-level expert group not burdened by conflicts of interest (not employees from a Big Four audit firm, not people in the consulting business). I have in mind academics, CSO representatives, tax experts from the OECD, namely people thoroughly versed in tax issues, who know the context both in our country and also in other countries."

Oleksandr Vinnikov, Chair of the Board, European Law Development Network

"The tax system of Ukraine needed and needs to be simplified: it is necessary to reduce taxpayers' expenses incurred in reporting and verification, to streamline tax benefits, and to bring salaries out of the 'shadow' by cutting one of the highest social insurance contribution rates in the world.

"The purpose of my participation was to reform the simplified taxation system for small businesses, non-profit organisations, private donors and charities.

"The development of amendments to the Tax Code in 2015 – unlike in 2014 – was led by the Ministry of Finance and a group of MPs (with the help of 16 permanent experts from business and CSOs). The Ministry of Finance created open platforms for independent experts, but no summary was provided of their proposals and almost none of these proposals were taken into account. The MPs' bill was considered in public discussions. In short, it was developed in a much more open fashion.

"On 24 December 2015, the Parliament adopted a 'compromise' version on the basis of the draft of the Ministry of Finance, but without tackling the main priorities in need of tax reform. True, the top state social insurance contribution rate was reduced from 43% to 22% and a simplified system was preserved for small businesses. Of course, the MPs were given barely any time – three days – to study the new draft of the Ministry of Finance even 'superficially'.

"In 2014, I participated in a working group of the Ministry of Economic Development and Trade, which included many experts from business associations, leading consulting firms and CSOs. In 2015, I participated in working meetings with the Ministry of Finance and with parliamentary committees, in particular, on the taxation of non-profit organisations. Amendments to Articles 57, 133 and 134 were, as a result, fully or partially included in the revised Tax Code.

"The innovations of draft law No. 3357 can be attributed, in particular, to the preparation of financial calculations for the main taxation options (in the past, only the Ministry of Finance had been involved), to questioning during roundtables, broad discussion of the project on television, and also consultations with local authorities. Previously, the participation of the public and experts was limited, and the Ministry of Finance finalised the project on its own.

"There are no laws regulating lobbying or consultations on legislation in Ukraine. The regulations of the Parliament and the Cabinet of Ministers regulate these issues in only a very general way. The executive authorities are required to draw up public

consultation plans, but they are not liable for the way they hold consultations or for refusal to consider proposals on their merits.

"Taking into account the results of preparation of the drafts of the Tax Code, the main lessons are as follows. For each bill, it is necessary to formulate goals and expected results of implementation (including financial ones). It is necessary to put into law regulations governing the procedure for consultations with the public, including the right to challenge in the courts acts adopted "in camera". The participation of representatives of the executive authorities in public events (roundtables, televised debates, parliamentary committee hearings) should be mandatory, since the official position of the Government on important issues often remains unknown until the day of voting in the Parliament."

Ilya Neskhodovskyi, Expert, RPR's "Tax Reform" group

"Tax reform was needed to solve a number of problems. There was a large network of conversion centres with the help of which tax obligations were lowered by between 50 and 100 billion UAH, corruption schemes were in place for VAT refunds, and the tax liabilities of enterprises were being shifted to their contractual partners (to benefit from tax credits). Ukraine had one of the world's highest payroll tax rates (the rate for single social contributions), resulting in more than 60% of citizens receiving shadow wages ("in envelopes"), and the tax on profits was paid not on the basis of a real financial result, but by agreement with the tax authorities.

"Since the beginning in May 2015 of the work of the taskforce set up by the National Reform Council, open platforms were organised by the Ministry of Finance, and the public had the opportunity to submit proposals for a fairly long period, but the draft proposed by the Ministry of Finance did not take into account these proposals, which led to the need to create an alternative bill. Bill No. 3357 was created entirely on the basis of the proposals of experts, MPs, and representatives of business. After its registration, from November to December 2015, there was an opportunity to submit proposals for amendments to the bill.

"I participate quite actively in this law-making process. I was a member of the taskforce, participated in all the open platforms (until June 2015), and also took part in the work of expert groups created under the Parliamentary Committee on Tax and Customs Policy. However, when it became clear that the MPs would register the text of bill No. 3357 without taking into account the conceptual remarks of the experts, I stopped participating. Until that point I was deeply involved in the development of the text.

"My contribution to the development of the legislative process amounted not only to the drafting of conceptual approaches to tax reform, but also serving as a 'bridge' between different groups of participants, namely bringing the public's position to the attention of the Ministry of Finance and MPs, and vice versa. It was very important that the experts met with the then Minister of Finance, Natalia Yaresko, and we managed to reach understanding on some issues. Thus, a compromise bill was formed.

"There was nothing very innovative in this legislative process, but previously there have never been open platforms where issues related to the text of the draft law were discussed with different stakeholder groups. This was a very positive development.

"The legislative process was conducted in line with the law. The explanatory note of each draft law indicates whether it was subject to consultation with the public, but the current legislation does not determine the format of such consultations, which provides wide scope for various forms of discussion of draft laws. The initiators of the bill were MPs, which is also in accordance with the legislative process. However, the deadline for filing a bill on tax changes (six months before the beginning of the fiscal year) was not met.

"Lessons learned: The authorities often create only the illusion of discussions with the public, and in reality ignore the proposals submitted. The authorities do not take a comprehensive approach and the main task, in the case of tax reform, is to complete the budget in the short term without taking into account the negative consequences for business. The Ministry of Finance does not have high-quality lawyers who can write the text of such a bill, which leads to an ambiguous interpretation of rules; it also lacks economists who could objectively calculate the consequences for the economy of adopting new norms. Often the process of drafting a bill is passed on to those who develop the concept, that is, to representatives of the public, which complicates the work."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

Since legislation does not regulate the stages of the legislative process in detail before the stage when a draft law is introduced into the Parliament, in the course of the process of reforming the legislation on taxation, all the norms regarding

consultations and the procedure for drafting bills were observed. However, conflicts and misunderstandings emerged between the participants involved in the process.

The Ministry of Finance played a key role in the process of drafting Bill No. 3630. Before drafting the text of the bill, the ministry consulted with the public on open platforms (and with business representatives on industry platforms), meetings of the tax reform taskforce and one of the meetings of the working group set up by the National Reform Council. However, the bill was drafted by the Ministry in closed mode, which led to the launch by MPs and the public of the parallel draft Bill No. 3357.

The draft law No. 3357 was drafted with the active participation of representatives of the public and business, in the working group under the Parliamentary Committee on Tax and Customs Policy. At the meetings of this working group, representatives of the public directly influenced the text of the bill. However, a number of the participating experts did not agree with the final draft of Bill No. 3357 and left the working group.

The text of Bill No. 3688 was developed by the Ministry of Finance on the basis of agreements reached at a meeting with representatives of the public and business. The Ministry of Finance fully took into account the position of the public and business in drafting this bill, which contributed to its successful adoption in the Parliament, albeit in the shape of a narrower set of reforms than many experts and stakeholders would have liked to see.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

In the course of the legislative process under consideration, there were several noteworthy innovative approaches. First of all, the open and industry platforms organised by the Ministry of Finance, where the public and business had an opportunity to discuss the models of tax reform and share their proposals with the Ministry.

However, the use of these instruments did not prevent the emergence of conflicts. Each of the parties could act at its own discretion, as the law-making

rules, stipulated by the Ukrainian legislation, do not prescribe the details of the legislative process before the stage of introducing the bill into the Parliament. In this regard, Ukraine urgently needs to adopt a Law on Public Consultations so that all interested parties jointly and openly participate in policymaking and law-making. In addition to legislation, however, it is important to develop a culture and traditions of co-operation, openness, tolerance, and participation.

CIVIL SOCIETY ENGAGEMENT IN POLICY-MAKING:

TWO CASE STUDIES

Draft Law on Public Consultations

1. Objective

Ukraine lacks a unified law regulating the procedures for all public authorities and local government bodies to conduct consultations with the public and interested stakeholders in the decision-making processes. At the level of the law, consultations are mandatory only when the authorities develop "regulatory acts" related to the business sphere, or acts concerning the environment, nuclear energy, placement and construction of nuclear facilities and facilities designed to store radioactive waste, preparation of town planning documentation, naming of legal entities and objects after individuals, dates of holidays, and names of historical events.

At the level of bylaw, the executive authorities are obliged to consult with the public when developing all normative acts, but there is no legal liability in the case of non-observance. As a consequence, the majority of political decisions and normative acts are adopted without preliminary discussion of the concepts and texts with interested stakeholders. In the absence of a law on public consultations, the Government often independently develops and adopts normative acts, and the public subsequently criticises them, and even protests against them.

There are no obligations at all for MPs (each of which has the right to legislative initiative), the President, or local government bodies to hold consultations. Furthermore, it is widespread practice for bills to be drafted by ministries, but submitted through MPs without public discussion. Moreover, in December 2014, the Government introduced into the government regulations the rule allowing decision-making on "urgent cases" such that draft acts developed by individual ministries did not even pass through government committees and appraisals, let alone public discussions. This regulation was abolished by the Government in May 2016.

The public has become increasingly insistent about the need for a law on public consultations, and the process of drafting the Law on Public Consultations is underway in Ukraine. The purpose of this bill is to regulate at the legislative level the procedure for holding public consultations with stakeholders, including the public, during the preparation of draft laws, government decisions on policies, and draft regulatory acts.

2. Civil society participants involved

Representatives of the following CSOs were involved:

- Centre of Policy and Legal Reform (CPLR);
- CCC Creative Center;
- Laboratory of Legislative Initiatives;
- Ukrainian Independent Center for Policy Studies;
- European Law Development Network; and
- other public organisations.

3. Public authorities involved

The following state authorities were involved in the preparation of the bill:

- Secretariat of the Cabinet of Ministers;
- Ministry of Justice (the official working group was established under the Ministry of Justice).

4. Stages of potential consultation

The process of drafting the bill on public consultations went through the following stages:

1) Analytical studies were conducted both by CSOs and by the Secretariat of the Cabinet of Ministers. Numerous public events were held, where issues of public participation in the process of forming and implementing public policies were discussed. As a result of this work, it was concluded that there was a need to develop a law on public consultations.

2) Independent experts, together with the public authorities (the Ministry of Justice and the Government's Secretariat) and the public, developed – with the support of the Council of Europe – the document "Strategic Priorities for Promoting Civil Participation in Decision-Making in Ukraine".¹⁵

¹⁵ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cc3d5>

- 3) The Government approved an action plan for implementation in the framework of Ukraine's membership of the Open Government Partnership initiative for 2014-2015. The action plan provided for the development of a draft law aimed at improving legislation that regulates public participation in public decision-making and policy-making.
- 4) The Ministry of Justice created a working group to draft a law on public consultations. The working group includes representatives of civil society, business associations, public authorities, and academics.
- 5) With the support of the OSCE Project Co-ordinator in Ukraine, within the framework of the working group, a group of experts was established.
- 6) The expert group, mentioned above, together with the representatives of the Secretariat of the Cabinet of Ministers and the Ministry of Justice, developed proposals for the concept of the draft law, based on international experience and domestic practices.
- 7) The Secretariat of the Cabinet of Ministers, in co-operation with the Ministry of Justice and the Office of the OSCE Project Co-ordinator in Ukraine, organised six regional roundtables with the participation of representatives of the public, executive authorities and local government to discuss proposals for the concept of the draft law.
- 8) The concept of the draft law (although formally this concept was not approved, and was used simultaneously as both a policy document and consultation document) was posted for public discussion on the government website, "Civil Society and Power".¹⁶
- 9) Two roundtables were held in the Parliament to present the concept of the draft law.
- 10) The draft Law on Public Consultations was prepared by the working group under the Ministry of Justice on the basis of the results of the public discussions.
- 11) The draft law was posted for public discussion on the website of the Ministry of Justice and the government website, "Civil Society and Power".
- 12) Proposals and comments were collected from public authorities.

16 http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/img_1st/2778

13) Conclusions on the draft law were gathered from international organizations (OSCE Office for Democratic Institutions and Human Rights (ODIHR/OSCE) and the European Center for Not-for-Profit Law (ECNL)).

14) The Secretariat of the Cabinet of Ministers held a roundtable in co-operation with the Ministry of Justice and the Office of the OSCE Project Co-ordinator in Ukraine, with the participation of representatives of the public, executive authorities and local government, international organisations and academics to discuss the draft law.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

The idea of developing a comprehensive draft law on citizens' participation in decision-making emerged for the first time in 2005, but the regulation that emerged was almost identical to the decision of the Cabinet of Ministers No. 1378 in force since 15 October 2004. Moreover, the law applied only to the executive authorities.

In 2009, the Cabinet of Ministers submitted to the Parliament a bill that would have introduced amendments to the laws On Local State Administrations and On Local Government (concerning the obligation of these bodies to consult with the public, to establish consultative and advisory bodies – public councils – and to facilitate independent expert assessment). This bill was approved by the Parliament at the first reading, but it was never adopted.

The Government returned to the subject of developing a draft law on public consultations in early 2010. In January 2010, the Cabinet of Ministers approved the Concept of the Draft Law On the Fundamentals of Communicating Policies. A part of this draft law was to be focused to the issue of holding public consultations with the public in decision-making processes. But the draft bill was never finalised.

In 2012, the public again began to raise the issue of the need to adopt a law on public consultations. In that year, by decree of the President, the Co-ordination Council on Civil Society Development was established. The council included representatives of various CSOs.

This council developed the Strategy of Public Policy to Promote the Development of Civil Society in Ukraine, where it was stated that it is necessary to introduce systematic consultations between public authorities, local government and the public in decision-making processes, and that draft acts must be published on official websites.

At the time when the action plan for the implementation of this strategy was being prepared, the public were increasingly raising the issue of the need to adopt a law on public consultations.

Ukraine's Open Government Partnership Action Plan, approved by the Government in 2012, included general provisions on the development of public consultations. However, there was no mention of a draft law. In 2014, the new Government (at the level of professional employees in the government apparatus) supported the argument that a law on public consultations was needed and the Ministry of Justice set up a working group. The text of a draft law was subsequently developed, but there is a risk that – during its subsequent passage in the Cabinet of Ministers and the Parliament – politicians will reject those elements of the bill that challenge their interests and existing procedures for preparing decisions.

The idea of the bill is at the same time simple and ambitious. According to the proposed law, all draft normative acts (without exceptions) should be made public in advance for interested stakeholders to appraise the text. The minimum period for this consultation would be 15 days. Electronic consultations would serve as the minimum standard for transparency and stakeholder participation.

At the same time, a consultation document (in the form of an explanatory note, with a description of the problem, the reasons for the legislation, and the options considered) would have to be developed and published. Where appropriate, active forms of discussion should be conducted around the drafting of the law. If the consultation procedures were not observed, this would provide grounds for a court ruling to cancel the law. The latter component causes the greatest concern among the authorities about the proposed law.

6. Forms of participation and engagement adopted, tools deployed, and how these evolved

The forms of participation during this legislative process were to date as follows:

1. A roundtable and expert discussions were held at the stage of identifying the key issues pertaining public consultation that needed to be addressed;
2. The establishment of a working group under the Ministry of Justice;
3. A series of roundtables, including six regional roundtables, two roundtables held in the Parliament with the participation of MPs, a national roundtable with representatives of CSOs, public authorities, local government, international organisations, and academics;
4. The posting of the draft bill for discussion on the website of the Ministry of Justice and the government website "Civil Society and Power".

7. The impact of engagement

Public participation in this legislative process contributed to the development of a sufficiently high-quality and public-oriented text of the draft law. This can bring positive consequences for all subsequent decision-making processes related to draft policies and draft laws – in terms of their openness and the scope to which they take into account the interests of citizens. However, the text of the draft law has not yet been finalised.

8. The process from the perspective of participants/stakeholders

Roman Usenko, Director, Department of Constitutional, Administrative and Social Legislation, Ministry of Justice

"The Ministry of Justice developed this draft law to implement the corresponding commitments in Ukraine's Open Government Partnership Action Plan for 2014-2015, as well as Section II "Preventing Corruption" of Annex 2 to the State Programme for Implementing the Foundations of the State Anti-Corruption Strategy for 2015-2017, and the Action Plan for the implementation of the National Human Rights Strategy for the period until 2020.

"The Cabinet of Ministers proposed to extend to all public authorities the practice of holding public consultations when initiating policy decisions (at the level of law).

The wide involvement of academic experts in jurisprudence in this process was initiated in 2016. The composition of the working group for the preparation of the bill on public consultations was updated, in particular to include a number of experts from academic institutions such as the Institute of State and Law, and the Legislative Institute of the Parliament, as well as a number of authoritative CSOs and experts.

"It is very difficult to prepare a quality bill without the input of serious academic experts. In this regard, while leading a number of working groups on drafting bills, I tried to use the potential of leading legal institutions as much as possible, and to ensure the maximum representation of relevant experts and specialists.

"A number of my proposals to the text of the bill were taken into account. I directly influenced the shape of the final text of the bill and reported this to the Minister of Justice and the First Deputy Minister.

"Lessons learned: In the drafting of any legislation, it is crucial to identify a concrete policy solution during formulation of the concept of the bill. If the adoption of a bill or other normative legal act does not rest on a clear concept and clearly defined goal, it is impossible at the preparatory stage to formulate an effective solution on solely technicalities. In Ukraine, there are many examples where the drafters of bills cannot explain to society the purpose of the bill.

"The draft law on public consultations proposes the creation of registries of stakeholders who, if they wish, can receive electronically information on the preparation of normative acts as quickly as possible. The adoption of the law will positively influence the development of mechanisms for co-operation between the public administration and civil society."

Natalia Oksha, Deputy Director, Department of Information and Public Communications, Secretariat of the Cabinet of Ministers, Head of the Division for Facilitation of Civil Society Development and Public Communications

"The bill is being drafted because it is necessary to extend the obligation to consult with the public to all branches of the state power, in particular to the Parliament and local authorities. There was another ambitious goal – to extend this obligation to the legal acts of the President. It is important to ensure that consequences follow in the event of non-consultation and to bring standards of consultation in line with European standards.

"There has been no innovation, but the process has been systematic. In contrast, in the past, there have been few examples of systematic discussions, whereas in this case discussions began even before drafting the bill – at the problem analysis stage.

"I hope that my personal contribution to the drafting of the bill will have helped in improving the standards of consultations and extending consultations to the decisions of all branches of the state power, while also stimulating the executive branch to embrace consultations. If the draft law provides legal consequences in the event of an absence of consultations, that will play an important role.

"Most of my proposals have been taken into account – in particular, the clauses on the 'consultation document', the implementation of the Register of CSOs to be involved in consultations, and stipulation of departments in authorities responsible for organising the public consultations.

"This legislative process was carried out within the framework of national legislation. However, we need a law on legal acts that will regulate the drafting stage of bills.

"Lessons learned: Careful consideration should be given to the selection of participants for planned events. Not all the participants were acquainted with the text of the concept and the text of the bill even these had been posted on the website. It was a problem in organising the event, that the draft law was not circulated to the participants, but they could read it on the website. If a participant is interested, that participant should have read it.

"It is very important that the laws work in practice. We can write a quality law, but in practice, for some reason, it will not work. It would be good if a pilot project on the instrument could first be carried out with one public authority or region. But, unfortunately, we do not have this practice."

Ihor Kohut, (then) Chair of the Board, Laboratory of Legislative Initiatives

"The development of this bill is part of the plan to implement the Open Government Partnership in Ukraine, and all the work on the bill was conducted in the context of the implementation of the OGP Action Plan. In this regard, the Office of the OSCE Project Co-ordinator in Ukraine supported the development of the draft law and the format of the consultations process.

"By and large, it was not possible to provide full-fledged public consultations, either technically or procedurally. The new development was to hold public consultations in a variety of formats – with regional discussions as well as events in Kyiv.

"I have been engaged over a long period of time in issues related to the legislative process in the Parliament. At the Council of Europe level, I have been involved in the dissemination of the idea of civic participation through the Code of Good Practice for Civil Participation in the Decision-Making Process, so my participation was absolutely natural.¹⁷

"Participation in the process took place with the help of a working group under the Ministry of Justice, through public discussions in the regions, and work with the department responsible for drafting the bill. The OSCE provided us with translations of the EU laws on public consultations.

"I was deeply involved in the process but, since I'm not a lawyer, I did not participate in the direct development of the norms. My participation was at the level of promoting ideas and principles.

"Participation in the working group was not my main activity, but an additional activity. The meetings were organised quite well by the Ministry of Justice, and there were enough regional discussions. We made a conscious decision not to discuss the bill itself with the public, but rather to discuss a policy document and general principles, since the bill is more of a technical issue.

"About 70-80% of the available tools of public consultations were used. More innovative tools could have been used, but that would have required the corresponding organisational and financial resources.

"Part of my main proposals for the draft law were taken into account. The appearance in the text of a term such as "interested party" was partly my initiative, for instance.

"One of the main lessons is that it is not feasible to hold consultations around the text of the draft law, since this is the expert level. Consultations can be held in relation to the conceptual framework, problems and alternatives."

Volodymyr Kupriy, Executive Director of CCC Creative Center

"The purpose of the draft law was first to regulate the positive developments that have already emerged and, second, to ensure normative implementation of citizens' rights to participate in public administration, through participation in the development and implementation of public policy.

17 <http://www.coe.int/en/web/ingo/civil-participation>

"I took the opportunity to apply the experience and knowledge I have gained in the study of the policy development process as a sphere of my academic interest, and I consider the process around the proposed law on public consultations an ideal one in the current context. The public was able to make proposals at roundtables and regional meetings. The concept of the law, and the draft law itself, were published on the government website, 'Civil Society and Power', through which millions of proposals could have been submitted.

"I was a member of the working group under the Ministry of Justice to draft the bill, as well as being one of the actual drafters of the bill. There was nothing new in this process, but it is noteworthy that a classical approach was applied to the process, such that the development of ideas took place with direct stakeholder participation. With roundtables and working groups, each stage worked well.

"From the experience of my participation, it follows that CSOs can influence processes if they take a professional, constructive approach, with a desire to achieve goals in the public interest, and not only to promote their own interests. Most of my proposals were taken into account in the draft of the law.

"Lesson learned: Without professionalism, the knowledge to understand substance, and the ability to establish a constructive conversation, civil society will be the loser. At the same time, it is not always possible to find a consolidated position."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

The process of development of the law has been conducted in line with the laws and procedures, although the law has not yet been finalised and submitted to the Parliament. If the law in its current form is passed, it will provide an important new tool for civil society to engage in policymaking, and serve as an essential step in strengthening the quality of law-making and decision-making.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

The use of roundtables and regional meetings has provided greater inclusivity than with the process in drafting most laws, and the inclusion of CSO representatives in the working groups has strengthened the potential for future and sustainable co-operation between public authorities, civil society and independent experts. At the same time, the political will is needed to finalise the legislation and to give firm legal status to public consultations in the decision-making processes. This is necessary to ensure that the laws enacted are quality ones that have undergone a stakeholder engagement process to assess the impact of the proposed legislation or policies on different stakeholders. It will also be crucial that the law on public consultations, once passed, includes sanctions in the event that the mandatory consultations are not held.

Civil Initiative Reanimation Package of Reforms

1. Objective

The civic initiative, Reanimation Package of Reforms (RPR), is the largest coalition of leading civil society organisations in Ukraine, a coalition which has come together to promote and implement reforms in Ukraine. RPR functions as a co-ordinating hub for 65 CSOs and 24 expert groups working to develop and promote reforms, and monitor their implementation.

The strategic mission of RPR is to consolidate the efforts of the public to serve as an actor in the policymaking process, to guarantee the quality of the proposed changes to public policy, to promote and monitor the implementation of reforms, and inform Ukrainian society and the international community about these transformations.

2. Civil society participants involved

RPR unites the representatives of 65 CSOs:

Association "Energy-efficient Cities of Ukraine"; Association for Energy Efficiency and Energy Conservation; Association of Tax Consultants; Development and Security Association; Association of Ukrainian Human Rights Monitors; BF East-SOS; Bureau of Environmental Investigations; VBF "Right to Defence"; Wikimedia Ukraine; Youth Nationalist Congress; Union of Ukrainian Youth in Ukraine; All-Ukrainian Investment and Sustainable Development Agency; All-Ukrainian Association of Small and Medium Business "Fortetsya"; Civic network OPORA; Detector Media; Dixie Group; Ecology-Law-Man; Europe Without Barriers; Life; Initiative E+; Internews-Ukraine; Institute of Electoral Law; Institute of Civil Society; Institute for Economic Research and Policy Consulting; Institute for Euro-Atlantic Cooperation; Institute of World Politics; Institute of Social and Economic Transformation; Institute of Socio-Economic Research; Coalition of Civil Society Organisations "For Sober Ukraine"; Committee of Voters of Ukraine; Cultural Assembly; MAMA-86; Grinkubator Energy Innovation Network; National Ecological Center of Ukraine; Congress of Cultural Activists; KrimSOS; Easy Business; League of Interns; PLAST - National Scout Organisation of Ukraine; Podolsk Regional Development Agency; Reformy.UA; "Motherland"; "No to Bribery" Movement;

Union of Archaeologists of Ukraine; CCC Creative Center; Ukrainian Defence Promotion Society; Ukrainian Scientific Club; Ukrainian Independent Centre for Policy Studies; Ukrainian Insurance Federation; Ukrainian Philanthropists' Forum; Ukrainian Centre for European Policy; Ilko Kucheriv Democratic Initiatives Foundation; Health Forum; Regional Initiatives Fund; Eidos Centre; Economic Strategy Centre; Centre for Democracy and the Rule of Law; Centre for the Study of the Liberation Movement; Anti-Corruption Centre; Centre for Policy and Legal Reform; Center for Innovation Development NaUKMA; Centre for Assistance to Reforms; UA Centre; CASE-Ukraine; Transparency International Ukraine.

3. Public authorities involved

RPR co-operates with various government representatives in the process of initiating reforms, and in the development and promotion of legislative initiatives, as well as exercising control over the implementation of reforms, including the following:

- The Parliament;
- Members of the Government;
- Leaders and representatives of central executive bodies.

4. Stages of potential consultation

The process of creating RPR began during the Revolution of Dignity of 2014. In January 2014, public activists, experts, journalists and academic experts joined together to draft laws and promote real reforms in Ukraine. At the same time, it was proposed to conduct an audit of initiatives already prepared (bills, programmes, etc.) to enable their quick inclusion in the order of the day of the new Government.

On 7 March 2014, the founders of RPR officially presented their initiative to society. Since then, RPR has become a powerful platform for the development and promotion of reforms in Ukraine. RPR unites representatives of expert circles, academics, and public authorities to jointly develop reform concepts and concepts for draft normative acts. RPR experts take an active part in various

working groups and advisory councils associated with different branches and levels of power, in meetings of parliamentary committees, and have organised training sessions, seminars and other events. RPR experts, as a rule, take part in all stages of the legislative processes of those bills that they initiate or support. The main objectives of the RPR are advocacy, co-ordination and communication.

5. Reasons why civil society chose, or had no choice, to work outside the existing/non-existing participatory processes, or in the case of a more sustained participatory dialogue process how and why this came about instead of focus on single laws

In January 2014, at the height of the Revolution of Dignity, public activists, experts, journalists and academics decided to join forces and take responsibility for the introduction of reforms in Ukraine. The reason for this was that President Viktor Yanukovich's authoritarian regime did not want to carry out real reforms and rarely listened to the opinions of the expert community and other representatives of civil society. Reforms often had only a "cosmetic", superficial character. Often under the guise of reforms Yanukovich pushed through anti-constitutional normative acts. The citizens did not experience any significant changes in the country.

Working together, representatives of civil society began to collect bills for reforms: both bills that had been developed, but not enacted under the rule of Yanukovich, and also new ones developed during the Revolution of Dignity. After the emergence of the new Government in 2014, RPR became a powerful engine of reforms that had long been in demand in Ukrainian society, and which were required for Ukraine's future development.

6. Forms of participation and engagement adopted, tools deployed, and how these evolved

RPR uses the following tools and formats to promote reform initiatives:

1. Campaigns in electronic and print media (statements, publications, articles);
2. Organisation of press conferences, conferences, and roundtables;
3. Organisation of training events and seminars;

4. Participation in various working groups and advisory councils associated with different branches and levels of government;
5. Participation in the meetings of parliamentary committees;
6. Street actions and flash mobs.

RPR consists of the following subgroups: constitutional reform; public administration reform; judicial reform; decentralisation; anti-corruption reform; reform of law enforcement agencies; reform of electoral legislation; e-democracy; electronic management; deregulation; tax reform; public finance; financial sector reform; media reform; medical reform; reform of the energy sector; science, technology, and innovation; environment; national security and defence; policy of national remembrance; human rights group; pension reform; culture; education; RPR-Kyiv; economic integration with the EU.

7. The impact of engagement

RPR has become a powerful motor for the promotion by civil society of progressive reforms in Ukraine. As RPR became very popular in the country, it became more and more difficult for the Ukrainian authorities to ignore its initiatives or criticism.

On the eve of the parliamentary elections on 17 October 2014, RPR presented the Roadmap for Reform to the Parliament. The roadmap comprised a step-by-step plan for implementing reforms in 18 then priority areas (later, there were 24 areas set out in the roadmap), where each step was supported by a separate bill. On the same day, leaders of the leading pro-European political forces signed a memorandum in support of the roadmap.

With the support of the RPR, more than 60 laws as a whole were passed and another 53 bills were passed at the first reading.

8. The process from the perspective of participants/stakeholders

Mykhailo Titarchuk, (then) Deputy Minister, Cabinet of Ministers of Ukraine

"RPR is the largest coalition bringing together Ukraine's leading CSOs and experts to promote and implement reforms. RPR's experts independently draft bills and work together to promote progressive bills that correspond to RPR's strategic vision of

reform. The main goal of RPR is to consolidate the efforts of the public to formulate policies, introduce positive changes and implement reforms.

"With a view to introducing reforms, RPR co-operates with progressive politicians, the Government and the international community. This consists in developing policies, reform concepts, draft laws and normative acts, as well as engaging in public discussions, advocacy for bills in parliamentary committees and consultations. I have been co-ordinating the co-operation between representatives of ministries and RPR experts in determining five assignments for each ministry to implement the Government-approved Anti-Corruption Strategy (until 21 September 2016).

"A stable partnership between the public and the Government is just beginning. The traditional closed nature of power, and the desire to independently influence all processes and make decisions behind closed doors, must be replaced with mechanisms for participation, collective policy analysis and discussion, and most importantly, participatory decision-making and the promotion of positive reforms. Undoubtedly, RPR has a large expert potential, which should be used on a systematic basis. At the moment, this co-operation exists in the context of the current circumstances. However, we must build a real partnership, a systematic dialogue and mutual trust.

"The RPR regularly prepares an 'agenda' for the Parliament, where it recommends the support of certain bills (priorities). RPR prepares explanatory studies, or carries out actions whose purpose is to persuade MPs to make decisions that are positive for society, even though this prompts opposition from MPs whose private or commercial interests are affected. It is noteworthy that the Parliament has supported 98 bills developed or promoted by RPR.

"To date, a significant barrier to positive change is mutual distrust. It can be overcome only through dialogue and co-operation, whereby the Government or the Parliament does not use civil society only as a tick-box for "consultation", but rather uses its enormous potential and takes into account the recommendations and advice provided, jointly shaping a collective vision and moving together to achieve the goal. Such forms of dialogue need to be established, since if there is no co-operation, then everyone continues to live under their own illusions – experts work on their grant projects, and the Government or the Parliament implements their vision of change without external inputs."

Alyona Shkrum, MP

"RPR was created so that the public could exert its influence on politics. We lacked actors, except big business, oligarchs and large associations, who could influence political decision-making. It was necessary to facilitate influence from the side of civil society, as a player who is not interested, for example, in selling cigarettes or lowering rates for agricultural enterprises.

"RPR works within the framework of existing legislation, but it has made politicians 'take a serious step forward' within the limits of decision-making. While initially RPR representatives met once a week – when the Parliament was in session – with representatives of different parliamentary party groups, now the MPs themselves want to come to a meeting with the RPR. Moreover, the Speaker of the Parliament began to give an opportunity to RPR representatives to attend the Parliament's Co-ordination Council meetings (where the agenda for the week is determined).

"As an MP, I very often met with representatives of RPR at working group meetings, every week, and I continue to meet with them. RPR contributed to the development of law-making processes in Ukraine, as its representatives persuaded representatives of the authorities to listen to their opinions, and give them the floor. For example, on our committee [the Committee on State Building, Regional Policy and Local Government] they were given the floor, listened to, and they often influenced the voting (they could both interrupt and contribute during the proceedings). Our working group (on the draft Law on Civil Service) held intensive debates, precisely because of the contributions of representatives of the public (RPR).

"Many legislative initiatives (bills) introduced by RPR were adopted. Many MPs not only follow what RPR thinks about this or that, but also take into consideration its opinion. If the RPR is categorically opposed to a bill, and especially if its position is a united one, the view that it is a bad bill is likely to reverberate in society, since representatives of RPR are invited to the airwaves from where people mostly draw their information. The MPs are afraid of this, and try to co-ordinate their positions with RPR.

"The main result of working with RPR for me has been the Law on Civil Service. For me, RPR has been a breath of fresh air through an open window, since a continuation of the old way of doing politics without RPR would have been very depressing. Without the help of the RPR, young, progressive MPs would feel lonely. Instead, we have a movement that supports us from the outside.

"RPR needs to think about how to best carry out advocacy activities in creative ways, and about how it can better convey its positions to Ukrainians. It cannot only be

roundtable events and conferences. For example, they need to continue to organise flash mobs, and presentations that will attract the media and will inspire people to action."

Yuliya Kyrychenko, Expert, Centre of Policy and Legal Reform, Manager and Expert, RPR's "Constitutional Reform" group

"Most CSOs that work in the field of policy and legal reforms, and economic reforms, suffer from a lack of opportunities and resources to publicly present the results of their work and to influence policymakers. This prompted them to unite and create a single centre that would consolidate their efforts in certain areas and combine together in joint advocacy.

"The activities of RPR do not conform entirely with the existing legislative process. They extend beyond the boundaries of the process, and involve advocacy for certain reforms that are necessary for society's development. However, in its initiatives, RPR does take into account the current legislation, and does use the prescribed mechanisms for exerting public influence on law-making.

"RPR also initiated new procedures for the law-making process. In particular, they launched initiatives related to changes in the Regulation (Rules of Procedure) of the Parliament and were aimed at ensuring greater engagement by the Parliament with the public.

"My objectives for working with RPR were: co-ordination of different experts from different CSOs and academic experts to develop a common vision of constitutional reform, and to promote the constitutional changes developed as a result.

"RPR experts initiated new forms of decision-making, in particular changes in the procedures for passing laws and to the classification of laws. They proposed the classification of laws as ordinary and constitutional (pertaining respectively to the exercise of state power or the exercise of constitutional rights).

"RPR also proposed that ordinary laws should require a majority vote of the parliamentarians present, while constitutional ones should require a majority vote of the total membership of the Parliament. RPR also proposed a move away from individual legislative initiatives by individual MPs, as it generates many bills that are substandard and diverts the entire Parliament from government initiatives. Therefore, it was proposed to introduce instead a collective legislative initiative, in which MPs numbering the equivalent of the smallest parliamentary fraction (12-15 MPs) would be able to submit bills.

"My work for RPR is intense. Every week there is a working meeting of the core group on constitutional reform, and three or four times a month we hold meetings with international organisations seeking consultations with us. RPR conducted an information campaign on strengthening the primacy of the Constitution and this required two working meetings every month.

"The common RPR brand provides citizens with the means to communicate a position jointly developed by experts for a common platform. RPR has made a significant contribution to fostering stable participation and dialogue between society and government.

"The dialogue takes different reforms. In the Parliament, a club meets every Thursday or Thursday onwards, when a topical issue is selected and MPs meet with RPR experts. RPR representatives visit the Parliament's Co-ordination Council before the plenary week begins. Representatives of the RPR Secretariat distribute infographics to MPs each plenary week, which indicate which bills are supported by RPR bills, and why, and which are not. Dialogue among CSOs is also a constant feature, as working groups focused on reforms meet regularly, bringing together experts from a variety of organisations. Many RPR working groups meet on a regular basis once or twice a week.

"The results of the work of RPR have included securing over a period of nine months a change of 12% in the attitudes of citizens towards the Constitution – thanks to RPR's information campaign aimed at raising the awareness of citizens about the Constitution and at increasing understanding of the importance and primacy of the Constitution.

"Working as part of RPR, I participated in drafting amendments to the Constitution in the areas of justice and decentralisation. These proposed amendments were transferred to the Constitutional Commission and were accepted for further consideration.

"Lessons learned: The consolidation of the efforts of different organisations increases their effectiveness in conveying the positions of each individual organisation. However, the development of a common position requires organisational procedures, and 50% of the time needs to be devoted to the organisational part of the consolidation of the common positions.

"There should be a separate communications specialist in the RPR Secretariat for each area or initiative. One person cannot manage it all."

Mykola Vyhovskyi, Manager and Expert of RPR's "Public Administration Reform" group

"RPR was established in late February/early March 2014 by an initiative group established in the civil sector of EuroMaidan. Even before the shooting of the "Heavenly Hundred", the public understood that we did not have a plan in place as to what to do if Yanukovych resigns, and what to propose to a new government."¹⁸

"First, the RPR conducted an audit of what had already been accomplished, and what was necessary to push forward as a priority. RPR launched its engagement in the policymaking process with the formation of working groups with a clear composition. Then, after conducting an audit of initiatives developed to date, RPR began to work on improving draft bills, for example, the draft Law on Civil Service. After initial successes, further engagement in policymaking followed.

"In terms of the procedures provided by law, RPR representatives were able participate in meetings of working groups and various advisory bodies. But RPR representatives often work in an activist manner as well, namely they hold different actions, write analytical articles, and work with international partners.

"My goal in participating in RPR is to maximise the implementation of reforms in Ukraine. I was one of the initiators of the change in RPR's management structure, so that the main governing body is now the Conference of CSOs participating in RPR, which elects the management body each year - the 12-member RPR Council – and the operational management between the meetings of the Conference of CSOs is carried out by this Council. I also worked to raise public interest in such forms of participation as rallies, flash mobs, and petitions.

"My participation in RPR is quite active and effective, and it takes up 100% of my working time. I participate both in internal meetings of the RPR (regarding the structure and activities of the organisation itself), and in the meetings necessary to promote the bills on which my group [on "Public Administration Reform"] is working, including meetings with influential stakeholders (for example, with the Prime Minister).

¹⁸ On 12 February 2015, President Poroshenko issued a decree declaring 20 February "the Day of the Heavenly Hundred Heroes" to commemorate those who died during the Revolution of Dignity (November 2013 - February 2014).

"Regarding innovations in the political decision-making process, RPR representatives are regularly invited to the meetings of the Parliament's Co-ordination Council before each plenary week, and RPR has supported a bill against non-personal voting by MPs.¹⁹

"At the beginning, it was not so easy for RPR members to have access to the working groups of different Ukrainian bodies. It depended on the goodwill of the head of this or that body. Now, however, it is much easier for RPR representatives to participate in any working group and to be included in the decision-making process.

"Among the results of my work in the RPR, I should mention the Law on Civil Service, which I defended from harmful amendments. I have also advocated for other bills, for example, on changes in laws on the Cabinet of Ministers and central executive bodies. I actively contributed to the writing of the government strategy on public administration reform, and a number of bylaws on the public administration reform.

"The main lesson learned: mutual trust and co-operation significantly reduces the time spent to achieve useful results. For RPR, more organisations need to be actively involved in the process. They must more effectively contribute to the coalition and support their colleagues more actively when support is needed to promote particular laws. Moreover, RPR should more actively involve think-tanks to its work, as the development of high-quality analytical studies are sorely needed to support the drafting of new public policies."

9. Overall assessment as to what extent the process matched the stated laws and procedures concerning the law-making process in terms of participation, and who did influence/amend the law in question, through which mechanisms, and with what results

RPR worked both within and outside the current legislative framework, but the continuation of the engagement of RPR (or other coalitions in the future) with, for instance, parliamentary committee working groups is dependent on the goodwill of MPs and parliamentary parties. The energies and efforts of members of the RPR coalition have contributed to the amended texts of more than 60 laws that have since been adopted. What remains to be achieved is to secure the legal standing of participatory policymaking at all stages of law-making, including the first drafting phases of concept notes and draft bills.

¹⁹ кнопокодавство, a practice when an MP votes with the voting card of another MP.

10. Conclusions concerning innovation in participatory policymaking, lessons learned (including transfer potential to other countries), and potential for long-term partnerships between public authorities and the civil sector

RPR has been a very successful civil society-led initiative, bringing added value and expertise to the table to the benefit of legislators as well as civil society and the wider public. It is one that could be replicated to other Eastern Partnership countries, and has the additional strength in the large number of CSOs that joined together in RPR, giving them depth of expertise and strength in numbers to advocate for policy reforms in a wide range of areas, and drawing on different advocacy strategies and tools, including public events, social media, flash mobs and other innovative ways of including different citizens' groups and the wider public.

Recommendations

- The law-making processes considered in the case studies show many examples of productive civil society participation at different stages, as well as progressive forms of participation in Ukraine. Examples include the formation of an expert advisory council under the National Agency of Ukraine on Civil Service, the organisation of regional and national events open to all stakeholders, an open working group established by a parliamentary committee, and open and industry platforms established by the Ministry of Finance.
- Public awareness needs to be raised about the online tools used by government agencies, so as to maximise the potential current and future use of these tools in legislative processes.
- An example of a problematic legislative process, when stakeholders were turned away at the drafting stage of the draft law, should also serve as an important lesson for the authorities to prevent future mistakes.
- For partners from other countries, an example of the coalition of CSOs, the Reanimation Package of Reforms, could be especially significant. This civil initiative allows representatives of a variety of CSOs to consolidate their efforts and develop common positions on issues related to the development and implementation of public policy in various fields. The co-ordination of expert analysis, communications and advocacy in the framework of a coalition of CSOs and experts makes it possible for civic actors to achieve significantly greater results and to influence policymaking.
- Ukrainian legislation does not regulate in detail the many stages of the development of decisions and the law-drafting procedures before the stage of introducing a bill into the Parliament, leaving a lot of discretion to the authorities.
- Positive examples of involving civil society in the drafting process prior to a bill's registration in the Parliament emerged mainly as a consequence of goodwill on the part of the authorities and pressure from the side of civil society. To make public consultations a required part of the process, Ukraine needs to adopt a law to regulate in detail the procedures for public consultations. This will allow all interested parties to develop solutions both jointly and in an open manner. It is also important to move from a legal (normative) approach to working with the texts of legal acts towards

a situation when solutions are developed based on policy analysis and the use of consultation documents that draw in the views of the different stakeholders concerned. But, more important than any legislation, Ukraine must develop a culture and traditions of co-operation between public authorities and citizens.

III. LESSONS LEARNED

III. LESSONS LEARNED

High-level engagement can reap results even when participatory policymaking is not the norm

When the National Assembly of **Armenia** approved the draft Law on Public Organisations in September 2016, the final text included more than 80% of the CSOs' recommendations, providing CSOs with opportunities to engage in entrepreneurial activities, involve volunteers in their work, ensure the transparency of public funding of CSOs, and provide access to justice in environmental affairs. The result followed the invitation to CSOs to join a Ministry of Justice working group on the draft law. This was consolidated by the close engagement of CSOs during the legislative processes in the National Assembly and advocacy efforts to ensure that the final text maintained their recommendations. This model of co-operation can serve as a positive template for a sustained partnership between the public authorities and civil society, and should be codified into the law and guidelines on public participation in policymaking to ensure all laws undergo stakeholder analysis, impact assessment, and wide public consultation.

Likewise, although only selected CSOs and experts were invited to participate, public-civil society co-operation on the Law on Public Participation was one of the first participatory initiatives with a positive outcome in **Azerbaijan**. The role of civil society was taken into consideration both by government and international organisations. In contrast, the lack of progress in **Azerbaijan** on the Draft Law on the Right to Legislative Initiative of 40,000 Voting Citizens points to the need for a clear plan of engagement with Parliament on the part of CSOs to ensure that draft laws are adopted.

In **Ukraine**, the RPR civic initiative became a principal driver of reforms, combining public events, media campaigns, street actions and flash mobs with expert engagement in working groups and advisory councils to ministries and public agencies, as well as regular participation in parliamentary committee hearings. The public recognition of RPR, combined with its proactive provision of expert advice, made it a voice that the Government has to heed. Moreover, the large number of experts involved in the RPR, and their engagement in so many legislative processes, has deepened and broadened its knowledge base and experience in the law-making process. RPR's exemplary blend of expertise and public campaigning, so that it draws support from the wider public and the expert public, while also adding value to the agenda and knowledge base of law-drafters and parliamentarians, is a model that can be adapted to, and replicated in, other Eastern Partnership countries.

Civil society needs to act quickly to avert laws that curtail freedoms, and to enlist international support

When in June 2009, the Law on NGOs was submitted to Parliament without any prior public debate, its likely consequences – restrictions on the freedom of assembly and expression, and harsh restrictions on, and complications for, the work of CSOs – prompted reactions from civil society in **Azerbaijan**, as well as from the Council of Europe and other international organisations. CSOs immediately organised a public debate and, on 30 June 2009, the proposed amendments were withdrawn by the Parliamentary Committee on Legal Affairs and State-Building. This timely response averted a threat to the legal environment facing CSOs for a period of time.

After the hasty adoption of Amendments to the Law Concerning Constitutional Court in **Georgia** in 2016, a coalition of CSOs submitted a lawsuit to the Constitutional Court, which on 29 December 2016 ruled unconstitutional some articles of the law. The effectiveness of the CSOs' approach, in promptly making a substantiated legal challenge, provides an important marker for responding to future situations where standard law-making procedures and constitutional provisions are bypassed by the Parliament.

Sustained coalitions and campaigns to change policies and legislation build up expertise and strengthen arguments for reform

Efforts to bring about the removal of the ban on hiring workers by self-employed entrepreneurs in **Belarus** lasted six years, and provide an example of sustained and diverse engagement between the state and CSOs. Legislation regulating entrepreneurship marked a first step in the introduction of public consultation during the preparation of draft regulatory legal acts, and the fostering of dialogue between business organisations and government authorities.

In **Georgia**, the CSO working group on citizens' participation in local government was set up in order to present the recommendations of CSOs to the Government, but it also enabled the CSOs to consult with local government representatives and citizens in the regions and to reflect their feedback in the resulting recommendations. In this case, the CSOs were given the opportunity to comment on the draft law before the Government submitted it to the Parliament, and later to attend, and express their opinions at, parliamentary committee hearings –

approaching the model of public participation in the law-making cycle, where consultation and feedback mechanisms are in place at each stage of the process.

The amendment of the “2% Law” in **Moldova** was necessary as a result of flaws in the law adopted in 2014. Both the amendments to the “2% Law” and the draft 2% Regulation subsequently adopted by the Government were made possible due to pressure from a civil society coalition that brought to the table legal expertise throughout the entire law-making process. The efforts of the CSOs used tools of awareness-raising – roundtables, meetings, debates, and online consultation – but their efforts were differentiated by the fact that civil society acted in a coordinated manner, applied law-drafting expertise, and set the agenda. This approach – combining legal expertise and advocacy campaigning – enabled the CSOs to add value to the policy- and law-making process for all stakeholders involved around the table.

CSOs in **Moldova** produced analytical studies into the shortfalls of existing legislation and on comparative international practice on the issue of social entrepreneurship. CSOs took the lead, establishing a CSO platform, and organising roundtables with state authorities, resulting in the establishment of an inclusive working group to draft a new law. The process of elaboration of the draft law was open, with a working group including CSOs, and included the publication of the draft law and the organisation of online public consultations, but it required the initiative of the CSOs to give the process momentum.

Adequate timeframes for review should be available for all stakeholders

Time for debate and review of draft laws is essential but, without political will, it will require a huge effort from the side of civil society to ensure that a meaningful period of consultations takes place and genuinely has an impact on policy outcomes. For instance, the constitutional amendments passed by a referendum in **Armenia** in December 2015 were preceded by two years of drafting of the amendments, yet almost no time was devoted to public consultations and debate around key amendments that will lead to a transformational shift from presidential to parliamentary government. The amendments were rushed through the National Assembly without amendments, and followed by a referendum marred by irregularities and a lack of time for debate.

The draft Law amending the Electoral Code in **Moldova** was adopted at the first reading in an urgent procedure on 14 April 2016. The Parliament did not announce

that the draft was to be adopted in an urgent procedure and did not publish a deadline for submitting comments. When authorities seek to bypass the rules on public participation in law-making, it is important that civil society acts and insists on observance of the rules. In this particular case, the CSOs co-ordinated together and publicly called for public debates, which were then organised by the responsible parliamentary committee as a result of the pressure from the side of the CSOs. Not all the CSOs' comments were taken into account, but it is essential that civil society takes a public stance to call the authorities to account when rules on public participation have not been respected.

Clear regulation providing for public participation in decision-making empowers civil society to become valued partners in inclusive policy-making

At the stage of draft elaboration of the Draft Law on Treatment of Animals in **Belarus**, CSOs could influence the text in the frame of interagency working group discussions, but the application of participatory mechanisms was on an ad hoc basis, contributing to the current situation, whereby the law has still not been adopted and the main stakeholders have not reached agreement on the content of concrete norms. The absence of clear regulation hindered the process despite intensive, pro-active campaigning by CSOs, including wide-ranging co-operation between the CSOs and state authorities. Resolution No. 458, which came into effect in **Belarus** in July 2016, expands the list of areas where public consultations are mandatory to include all environmentally significant decisions. Furthermore, the procedure is spelt out in detail and has contributed to a situation where the Ministry of Natural Resources regularly invites environmental CSOs to consultations.

In **Moldova**, CSOs were actively involved over more than three years in the drafting of amendments to the Law on Tobacco and Tobacco Products. The working group that elaborated the draft law included representatives of several ministries and civil society. The Ministry of Health held consultations on the draft law and the regulatory impact assessment. The draft law was published, and civil society was invited to public meetings and roundtables. The Parliament published a summary of accepted and rejected comments and the final draft law before adoption. During the whole period, CSOs used press conferences, public events and other tools to press the authorities to adopt the draft law, showing that the procedures for public participation need to be embraced, and combined with a proactive determination to promote debate with the wider public and with lawmakers.

In **Ukraine**, the legislation on public participation in law-making lacks detailed guidelines and procedures concerning the stages prior to the introduction of a bill to the Parliament, thus leaving a lot of discretion to the authorities. The Law on Civil Service benefited from political will on the part of some representatives of the public authorities and the Parliament to enable the establishment of the expert advisory council under the National Agency and the holding of regional events, which are not required by legislation. CSO representatives were able to make a significant contribution to the drafting of the text of the bill in the working groups created by the Government. Since such open dialogue is still not customary in Ukraine, legislation should be enacted to enshrine in law this model approach as mandatory, so that it does not take place only on an ad hoc basis at the whim of a particular public agency or political actor. The same conclusion can be drawn from the experience of adopting the Amendments to the Tax Code in **Ukraine**. Different authorities and civil society representatives acted in parallel, often conflicting ways, in the absence of a clear legal framework for the law-making process prior to the parliamentary stage.

The current momentum, generated after the Revolution of Dignity in **Ukraine**, has been evident in the level of public participation that has contributed to the development of a high-quality Draft Law on Public Participation. If passed in the form it had taken by early 2017, it will serve as an essential tool in ensuring quality standards and inclusivity in law-making and decision-making. The final form of the law should include sanctions that come into force in the event that mandatory consultations are not held.

APPENDIX: MEASURES FOR STRATEGIC DEVELOPMENT OF CIVIL PARTICIPATION IN DECISION MAKING IN THE EASTERN PARTNERSHIP COUNTRIES

by Goran Forbici and Tina Divjak

Recommendations are based on the findings of the study *Civil Participation in Decision Making in the Eastern Partnership Countries: Laws and Policies* and on several group discussions with stakeholders from both governmental and civil society organisations from the six countries.

Background

Public consultations and cooperation with stakeholders lead the path to good regulations and efficient political decisions, which are all high quality in content, but also people-friendly and understandable. As a result, they make citizens' everyday lives easier, and don't require frequent amendments. Regulations should reflect the needs of the society and the dynamics of life. That is the only way for people to be willing to accept them and base their lives on them.

Various decisions can impact individuals and communities in various ways, interfering with their rights and influencing the quality of life. Understandably, this also leads to contradiction, resistance and rejection. Cooperation with the public in the early phase of drafting regulations can prevent possible conflicts at a later stage in practice. However, it is particularly sensible to do so in order to gain additional arguments, standpoints, opinions, information, as well as critical reflection, which undoubtedly contributes to better quality of the regulation.

Involvement of the public is therefore not a process to be run parallel to or independent of other steps in drafting regulations, such as assessment of situation in the regulatory field, identification of reasons for adopting the regulation, setting targets and seeking solutions, as well as pondering their alternatives based on in-depth judgement of their environmental, economic and social consequences, etc. Consultation with the public is tightly interwoven with all other steps. The share not only the target, i.e. to acquire a well-considered regulation that enjoys broad public support and can be implemented effectively, but more: consultation with the public is also seen as one of the basic tools to achieve the targets. Current efforts towards open and inclusive drafting of regulations are thus only a portion of the general efforts towards evidence-based policy making, which are run under the motto that governments have to produce policies dealing with problems, are forward-looking and shaped by evidence rather than a response to short-term pressures, and tackle causes - not symptoms.

Experience shows that successful development of civil participation demands action along these tree lines:

- Standardise consultation processes by developing a simple, yet comprehensive regulatory framework;

- Work consistently on strengthening the participatory culture among regulation devisers and decision-makers (public administration and elected officials);
- Empower civil society and key stakeholders.

Only a combination of all these three leads to efficient results. Standardisation is an essential part, assisting the devisers of laws and policies in planning and implementing processes most appropriately and efficiently. While leading the way, it also makes their work considerably easier, and shorter. On the other hand, it is also essential as it informs the stakeholders and general public about what can and should be expected. This helps them better prepare for the processes, which in turn contribute to the quality of final results.

However, standards and rules only make sense when followed and observed. Strengthening the participatory culture is therefore at least as important as standardisation. After all, strong commitment to open and inclusive policy making can help make up for the possible shortcomings of standards and rules, and, most importantly, paves the path to innovation. It is therefore of major importance for governments to promote civil participation systematically, as well as supporting the administration by strengthening its related capacities and providing it with sufficient resources. And to make public acknowledgement of good practices and those responsible, which means major encouragement to proactive approaches and explorations of new ways to reach out.

However, dialogue will be the most successful when also the other party is suitably qualified and prepared as well. Only then can it lead to the best solutions. Not only should participation of the civil society and other stakeholders therefore not be hindered, it should also be systematically encouraged and supported. This includes planned and sustained investments into strengthening their policy and advocacy capacities.

Current Developments in the Eastern Partnership Countries

Systematic open policy making has only been a trend for the past fifteen to twenty years. Countries of the region have taken several important steps in this field as well.¹ In recent years, all of them have ensured (passive) access to information

1 Cf. Lovitt, Jeff (ed.): *Civil Participation in Decision Making in the Eastern Partnership Countries. Part one: Laws and Policies*, Council of Europe, Strasbourg, 2016

related to adopting regulations and decisions, and also worked increasingly towards having it published proactively. Some of them have already established single governmental websites enabling consultations with stakeholders, which makes searching for and access to information considerably easier. The majority of them have also regulated the so-called traditional participation mechanisms, such as citizens' and civic petitions, and legislative initiatives. They are also developing various tools to make their use easier and bring them closer to people. However, their development has not been uniform, some countries having reached further than others.

Things look similar with regard to the development of consultation processes in drawing up and adopting legislation and other decisions. In all countries of the region, at least the first steps have been made towards framing and standardising consultations. In some of them, regulation is highly progressive and principles are unified, whereas in others the rules are only being made and are currently covering neither all policy areas nor all levels of decision-making and power. The majority of countries have also begun strengthening public administration capacities, and launched the related training programmes. In some countries, such programmes are highly systematised, and in others they have only just begun to appear.

In recent years, participatory activities of the civil society and other stakeholders have intensified in all countries, yet they are not always obstacle free. Certain restrictions still exist in the region regarding the funding of policy and advocacy civil society programmes, particularly from foreign resources. They should be withdrawn in all countries to ensure free (advocacy) operation and funding for the civil society. It would also be sensible for all countries to support actively the strengthening and empowerment of civil society in the future. Although this is a very progressive concept, it still remains subject to their own initiative and support of donors coming from abroad rather than own country.

These recommendations support measures along all tree described lines, originating in existing good practices in countries of the region and other, particularly transition countries. The recommendations are addressed to countries, international institutions, the civil society and donors. We all wish to have good regulations and decisions, and should therefore all make every effort to strengthen civil participation.

Recommendations

1. Recommendations for Civil Participation Regulation

Timely and sufficient information is essential for stakeholders to make informed choices and to provide professional, evidence-based recommendations for new laws and policies. Besides passive access to information - where information is provided on demand, authorities need to encourage and ensure proactive disclosure and publication of information related to the on-going decision-making processes. Information should be timely published on public authorities' websites and/or a special website designated for publishing information on draft regulations. It is also advisable to *form lists or databases of interested stakeholders*. Such a database should include the list of interested stakeholders by policy areas and their contact information. Stakeholders should be able to sign in the database by themselves while also marking their preferred areas of interest. Such databases are useful for more than one reason: being included in the database, stakeholders receive information from their preferred areas automatically, thus not having to waste their time searching for information. Due to automated information delivery, there is also less administrative work. Furthermore, databases support the authorities in identifying the stakeholders: when a certain regulation is being drafted, the authority will no longer have to waste time on identifying the potentially interested stakeholders but merely have to contact those included in the database.

The right to petition should be guaranteed at all levels of government: local, regional and national. For citizens, the actual application has to be as simple as possible. Particular focus should be on encouraging the development of official electronic petition tools, and the established system has to ensure for competent authorities to be required to process such petitions. The most transparent method is an uniform webpage for publishing petitions and other proposals addressing authorities, as well as relevant responses. Any interested party would thus be given the opportunity to follow the petition development, and petitions and proposals would not be repeated.

The state should enable citizens' legislative initiative at all levels of government: local, regional and national. It has to be based on reasonable and proportionate quorums and quotas. People should be actively informed on the possibilities and procedure of citizens' legislative initiative. It is particularly

important that citizens are aware of the demands related to the contents of the initiative. The initiatives submitted will thus be better prepared, which will make them easier and quicker to process.

Consultation processes must be mandatory, framed and standardised. The rules have to apply both to the executive as well as legislative power at all levels of decision-making (local, regional and national), to all kinds of documents and decisions, and to all areas of decision-making. Any exceptions have to be defined narrowly and explicitly in advance. There are several possibilities to frame the rules: one of them is to use a regulation, but there are also softer methods, such as official guidelines, recommendations, handbooks, collections of good practices, or combinations of both methods. The approach depends on the local tradition and past practices. Where previously processes have not been regulated, it is sensible to introduce soft approaches and only adopt legally binding rules if the first method fails to bring success. For cases where there has been partial regulation, which, however, was dispersed across various rules, and was regulated differently across various areas, or not at all in some areas, it is recommended to supplement the valid rules with additional rules, particularly for the areas that might have been left out, and to sum up all the rules in a single informative/reference document. Both the administration and the public will thus be given an opportunity to learn about the rules from a single source. The latter is also important from the point of view that knowing the rules well is a prerequisite for high-quality collaboration.

Consultations should also be ensured in case of laws that were initiated by the parliament and/or its members and had not previously been subject to consultations within the governmental procedure. It is advisable that implementation of such consultations is determined as a prerequisite for further consideration of the draft law by the parliament.

Regulation and standardisation of public participation in decision-making should be developed and introduced in a participatory manner, in cooperation with all the interested stakeholders. Although the basic principles and main mechanisms of public participation are similar across various countries, it is of high importance to emphasise that their formation also reflects the specific local nature (i.e. the size of the country – the bigger the country, the longer it takes for information to reach the local level and for comments to be prepared; internet coverage – if low, mandatory discussions have to be prescribed alongside electronic consultations in case of major regulations).

The following recommendations should be followed sensibly when standardising the consultation practices:

Decision-making processes must be inclusive from the earliest phase.

Consultations on policies and development plans have to be initiated in the developing phase rather than later, when a final view on the issue has been formed, i.e. have to be initiated while analysing the problem to be solved rather than later, when draft decisions and regulations have already been prepared. Development of propositions for the planned regulation, as well as their publication and related consultations, have to be encouraged to this end. The outline of issues and aims of the regulation, possible solutions and alternatives, as well as causes, serve as the basis for further discussions and as a topic of consideration of all stakeholders. Governments should also publish their annual regulatory programmes: not only to make early inclusion possible but also to enable stakeholders to make advance preparations for consultations. This would ensure a better dialogue and lead to improved eventual solutions. Normative programmes also have a beneficial effect on the self-regulation of authorities that are politically committed to conceiving the regulations they publically promised.

Public consultations should include online consultations, expert working groups, and public hearings as a standard practice.

Various consultation methods are required due to their different features and the targeted stakeholders. Electronic consultations are wide, open to everybody, allowing people to join at any time of day. These enable integration of a wide range of people, and provide a high possibility for new, yet general arguments. Public hearings, on the other hand, give an opportunity to those who prefer to express themselves live and those without Internet access. In public hearings, the circle of stakeholders is normally more restricted, the discussion is more specific, only the most interested stakeholders take part. The most targeted method - the expert working group - only integrates experts, and results in highly specific comments and arguments. However, as this circle of people is extremely limited, an expert working group should never be used as the only consultation method.

All draft legislation and policy documents should be accompanied by explanatory notes justifying the need for the law or amendments, and the objectives and outcomes of the proposed legislation.

Sufficient information is required to ensure that those consulted understand the issues and are able to give informed responses. The information provided should also include validated

assessments of the costs and benefits of the options being considered. It is also helpful to provide for each regulation a contact person, responsible for providing additional information to interested stakeholders.

Consultations should be clear and concise, thus demanding the use of simple language, avoiding abbreviations. It is recommended to voice the questions with the most sought-after answers to maximise the efficiency of the consultations and provide true answers to the decision-maker's dilemmas. Questions have to be easy to understand and easy to answer, yet not proving to be too limiting to the discussion; sufficient space has to be left for actual changes of the draft regulation. The question method is the most helpful when consulting initial regulatory propositions, as solutions are quite open at this stage.

All public consultations should allow sufficient time for responses. The timelines have to be adapted to the needs of stakeholders to be consulted, some of them requiring more time than others (due to lack of appropriate or professionalised staff). Time limits, therefore, depend on who is consulted, as well as the importance and complexity of the consultation substance. More complex topics and documents demand more time than simpler and shorter ones. Holiday seasons and breaks also have to be taken into account, and consultation periods prolonged if required.

Consultations should be targeted. When being devised, the authorities should consider the full range of people, businesses and voluntary bodies affected by the policy, and whether representative groups exist. Stakeholders should be consulted in a way that suits them best. Consultations should also be tailored to the needs and preferences of particular groups, such as older people, younger people or people with disabilities, who may not respond to traditional consultation methods.

Feedback should be provided after each consultation, stating which recommendations were made and by whom, which recommendations were accepted, and which were not, and why. A report should be devised and published together with the document being submitted to the next stage in the decision-making procedure. It should be published at the same place as the consultation documents.

Appeal mechanisms and bodies must be envisaged for cases of infringement, and mechanisms of judicial and legal control should also be established. In the event that mechanisms of judicial and legal control have not been defined, an

institution has to be indicated for following the regulations prepared in the light of the public discussions held (the so-called gate-keeper). If the public discussion regarding a certain regulation failed to be implemented in accordance with the rules, the indicated institution should be able and obliged to return the proposed regulation back to the submitting party.

Places where the draft regulations, policy documents and other consultation documents are published, have to be predetermined and publicly known.

For consultations at the Government level, it is recommended to have a single website/online platform for all public authorities. While allowing the publication of documents, it should also enable submitting comments and remarks. To maximise the transparency, such a website should show the timeline and entire evolution of the regulation: the original version and the comments received, the second version and the comments received, all the way to the final version.

Periodical and systematic evaluation of consultation practices as well as compliance with the rules established has to be envisaged. As well as ensuring periodical and systematic evaluation, findings also have to be introduced into practice and distributed among various authorities. This is the way to improve processes and unify the practice among authorities.

2. Recommendations for Strengthening the Participatory Culture Within the Public Administration and Elected Officials

a. Promoting inclusive and open decision-making

Authorities should be determined to promote continually the civil participation rules and standards at all levels of decision-making. It is important for lawmakers to know that the authorities firmly support the established rules and expect them to be taken into account. To this end, it is recommended to make use of circulars upon the formation of a new government, parliamentary recommendations to the government upon beginning a new parliamentary term, etc. It is also very helpful to emphasise the importance and role of the gate-keeper. Authorities should also organise various events to promote and spread good practices, joint evaluations and training.

The standards for public consultation should be promoted by intergovernmental organisations active in the region, such as the European Union and the Council of Europe. If these standards are not complied with, such organisations should respond quickly and clearly by issuing warnings as well as recommendations.

Competent authorities should examine and evaluate compliance with the rules on a regular basis. In case of infringements, corrective measures have to be imposed. The approaches and processes have to be improved continuously. It is sensible for the entire administration to use a unified evaluation system, thus enabling mutual comparison and learning.

Governments should acknowledge and promote good consultation practices, as well as the persons responsible for the work well done within their administration. This practice will serve as example to others, while also encouraging those responsible to continue drafting the regulations in an inclusive manner. It is also helpful to use innovative approaches for such acknowledgement (i.e. presenting the award for “the most inclusively devised regulation of the year”), as such approaches, quite un-typical for the administration, make a special contribution to an active response among the officials.

Public authorities are encouraged to appoint coordinators for promoting public participation. Their tasks should include monitoring of consultation processes and provision of expert support to their colleagues who plan and implement such processes. Such coordinators should be trained in facilitation and use of various involvement methods and techniques, in order to be able to advise their colleagues about what specific approaches to use in each case.

At the executive level, it is recommended to set up a coordination body for trans-ministerial implementation of consultation processes, having as task to promote inclusive decision-making across ministries, monitor consultation processes, further develop the existing frameworks, consultative tools and mechanisms. There are various options to do so: a dedicated task force would perform a multi-dimensional role, monitoring the process (it can also act as a gate-keeper), and possibly evaluate trans-ministerial processes and other analyses (e.g. development of consultation processes abroad, use of new methods and techniques), preparing various reports, and subsequently framing further governmental plans for strengthening the processes, for training development, etc.

Public administration should envisage sufficient human resources and adequate time for consultation in all phases of policy development.

Disproportionally short time limits for drafting the regulations (imposed by the parliament to the government or by the government to the public institutions) should be avoided, as public consultations could thus be prevented.

b. Capacity building

Knowledge e-hubs, comprising collections of good practices, information and advice on how to plan, implement and evaluate participation processes, are to be developed and established. An e-hub can also include various interactive tools to assist the authorities in implementing individual consultation methods. Such knowledge base have to be supplemented and upgraded on a regular basis.

Public administration can be supported with access to handbooks on planning, implementation and evaluation of consultation processes. Such handbooks have to be promoted and used frequently by public servants.

When organising consultations, public employees responsible for drawing up regulations should be encouraged to use specialised assistance and have access to existing public participation tools to facilitate their work.

All levels of public administration should be trained regularly on planning methods and consultation processes. Training programmes have to be systematic and continuous, part of regular training programmes for public administration implemented by state institutions responsible for public administration capacity building (public service academies, HR administrations, etc.). Such programmes are to be organised by levels – a beginner training programme offering basic knowledge to all public employees, an advanced training programme offering public involvement methods and techniques to public employees directly responsible for devising regulations, and *the most comprehensive programmes* for public consultation promoters and coordinators. The training programmes should be based on practice as much as possible, and should rely on inclusive methods such as role play, simulations, and alike. Participation in trainings should not be limited to public servants but include other stakeholders, thus strengthening the knowledge of law-making processes among participants. This would lead to improved involvement, improved quality of the consultation process, thus facilitating the work of the administration and

improving the quality of the drafted regulation. Mixed participation also promotes dialogue, improves mutual trust among stakeholders, fundamental prerequisites for a high-quality civil dialogue.

c. Development of easy-to-use consultative e-tools

E-tools for consultations and petitions should be set up and upgraded continuously. Such tools must be user-friendly both to stakeholders as well as to consultation implementers, have to be designed in order to assist regulation devisers and shorten their work, rather than prolong it and make it more difficult. As many processes as possible should be automated (e.g. generic design to form feedback reports based on the comments published).

3. RECOMMENDATIONS ON FURTHER EMPOWERMENT OF CIVIL SOCIETY AND STAKEHOLDERS AT LARGE

a. Enabling environment for CSOs and other stakeholders participation in decision-making

There should be no unreasonable barriers and conditions for CSOs registration and operation. All individuals and legal entities should be able to freely establish and participate in informal and registered organisations. Registration should not be mandatory, and in cases when organisations decide to register, the registration rules should be clear, allowing for easy, timely and inexpensive registration and appeal process. CSOs should be able to operate freely without unwarranted state interference in their internal governance and activities. Financial reporting (including money laundering regulations) and accounting rules should take into account the specific nature of CSOs and be proportionate to the size of the organisation and its type and scope of activities.

There should be no restrictions on CSOs policy and advocacy activities and they should be allowed to freely seek and secure financial resources from various domestic and foreign sources.

International donors supporting civil society advocacy programmes and participation of CSOs have to be ensured the appropriate supportive environment. There should be no unreasonable barriers interrupting their operations and financial programmes. Even more, their presence and activity in

countries of the region should be actively encouraged. State support is helpful for coordination and collaboration with donors, this could encourage target financing and reduce duplication.

Transparency has to be encouraged in CSOs and other stakeholders, representing a fundamental tool of strengthening the mutual trust. This is why the civil society and other stakeholders should do as much as possible to increase their own transparency. States and international donors should assist them actively by supporting the development of various sectoral codes, recommendations, good training exchange projects, promotional events, etc.

Participation in consultation processes should be constantly promoted among stakeholders and encouraged through the use of established e-tools/platforms. Advocacy activities and participation in consultation processes need to be publically promoted, and public acknowledgement to be given to those getting engaged.

International donors should continue their support to CSO policy work and active engagement in decision making. While doing so, donors keep realistic expectations, taking into account the given circumstances and potential barriers that the civil society and other stakeholders in countries of the region are faced with.

International donors should proactively collaborate and coordinate their support and funding programmes to address existing needs, avoid duplication (of activities and projects), and avoid leaving certain areas and initiatives without support. It would also be sensible to structure donor collaboration and coordination, potentially by developing periodical donor forums for the region or specific countries, establishing joint trusts, publishing joint tenders, etc. Mutual donor coordination should also be encouraged by the countries and by the international organisations active in the region.

Governments and donors should focus on those civil society programmes promoting participative democracy and citizens active engagement. It is such programmes that bring long-term effects on increased public participation and thereby on improved regulations.

Special attention should be paid to multi-stakeholder cooperation projects and activities (cooperation among CSOs, business sector, trade unions, religious communities, etc.). Not only does multi-stakeholder cooperation highlight the

issue from several angles, each of the stakeholders being based on different premises, it also brings a potential harmonisation of standpoints and partners, which facilitates the dialogue for the state. Furthermore, through the exchange of opinions and increased awareness of different perspectives, such projects also strengthen the capacities of individual stakeholders.

The governments at all levels should reconsider financial and other types of support to CSOs policy work. When financial support is granted, it should be based on open, transparent and inclusive procedures. The most productive way is a dialogue with stakeholders possessing knowledge and expertise. However, CSOs being non-profit-making entities by nature, often lack sufficient resources to analyse policies and seek best professional solutions. In order for the civil society to collaborate to the best of its ability with governments in finding the best political solutions, it would, therefore, be sensible to introduce and strengthen state support to its policy activities, including financial, knowledge and information sharing. It would be helpful to encourage CSOs involvement as consultants to develop certain policy proposals, outsource the preparation of various analyses, ex-ante evaluations and draft documents.

Regional cooperation projects for civil participation have to be encouraged by the international community, governments and civil-society. Multi-stakeholder regional projects with representatives of the government, public administration, civil society and the other stakeholders are particularly welcomed. Such projects bring an exceptional opportunity for exchanging experience and good practices, and for seeking solutions for common or similar problems.

Existing institutionalised regional cooperation mechanisms and structures should also be encouraged and further developed.

Public authorities and the civil society should actively encourage mass media to place civil participation on its agenda, and ensure wide promotion within the society at large.

b. Capacity building

Existing training programmes, other forms of strengthening civil society capacities for policy and advocacy (consultancy, mentorship programmes, exchange of good practices) should be developed and supported (including financial support). Development of new programmes should be encouraged.

This will improve the quality of civil society initiatives and the quality of the dialogue, making key contributions to the quality of the adopted political solutions.

The development and further reinforcement of non-governmental resource centres focusing on policy development and advocacy should be encouraged. These represent “institutionalised”, essential and sustainable know-how hubs, providing civil society systematically with information, counselling and tutoring support in its advocacy initiatives. These hubs have to be geographically dispersed in order to offer accessible support to everyone, regardless of their operation - at local or national level, and regardless of their current location.

Regional Project “Civil Participation in Decision Making in the Eastern Partnership Countries”

AIMS

- ▶ Promote the effective interaction between civil society and public authorities;
- ▶ Stimulate the participation of civil society actors in the democratic decision making process;
- ▶ Strengthen civil society in the region.

ACTIVITIES

- ▶ Working group meetings, awareness-raising actions, workshops;
- ▶ Preparing two regional studies on strategic and immediate priority issues;
- ▶ Multilateral regional conferences on relevant issues, notably those covered by the studies;
- ▶ Drafting a regional strategy for promoting civil participation in decision-making.

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<http://partnership-governance-eu.coe.int>

ENG

The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy, and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments), and the European Commission (representing the common EU interest).

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