



Guidelines

on Democratic Lawmaking
for Better Laws



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Guidelines on Democratic Lawmaking for Better Laws



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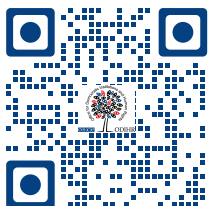
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Foreword

Laws have an immense, although often unforeseen, influence on our daily lives, shaping our societies, our rights, our obligations and personal freedoms. The quality of laws that impact our lives is a direct consequence of the manner in which they were developed and consulted. And yet, the process that led to their adoption often appears distant, inaccessible, complex or monopolized by politicians or technocrats. The democratic backsliding witnessed in many places around the OSCE in recent years, coupled with the ripple effect seen in institutions throughout the OSCE caused by various crises and conflicts, has exposed a number of underlying weaknesses in legislative processes, from the drafting of laws, through the frequent imbalance between the different branches of powers, to the frequent use of expedited procedures and the lack of public consultation leading to public distrust in adopted legislation and democratic institutions.

OSCE participating States have committed to respecting democratic principles and the rule of law as critical elements for lasting peace and stability in the region, and these commitments should also be reflected in their lawmaking processes. Good lawmaking is a cornerstone of the functioning of a democracy and of human rights protection and fulfilment, and ultimately contributes to enhancing public trust in democratic institutions and processes. Lawmaking procedures and practices should follow democratic principles, adhere to the rule of law and comply with the international human rights obligations and standards to which OSCE participating States have committed.

Almost twenty years ago, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) started assessing lawmaking systems and processes to identify entry points for improving elements of legislative processes, eventually to adopt better legislation. These *Guidelines on Democratic Lawmaking for Better Laws* build upon the ODIHR's work and seek to provide concrete, practical recommendations on how to draft good-quality laws by enhancing the quality of lawmaking processes.

The Guidelines offer a comprehensive toolkit for policy- and lawmakers on how to improve their legislative process to tackle contemporary lawmaking challenges head-on and to promote more openness, transparency, accountability, inclusiveness and participation at all stages of the legislative cycle. The Guidelines are an effective instrument to ensure that lawmaking processes and adopted legislation are human rights-compliant, accessible, non-discriminatory, gender-responsive and sensitive to the needs of diverse social groups. The Guidelines also emphasize the fundamental role that non-governmental organizations play throughout the lawmaking process and can serve as an advocacy tool for civil society to ensure that the people affected by legislation are informed about, and have a say in shaping its contents.

It is our hope that these Guidelines will be a useful source of information and will provide users with practical, hands-on advice on how to reform their legislative rules and practices in compliance with international human rights and rule of law standards and OSCE commitments, leading to better-quality laws. Their ultimate goal is to empower decision makers to develop legislation that truly serves the people.

Matteo Mecacci, ODIHR Director

Introduction

1. Laws have an enormous impact on everyday life, on everyone's rights and livelihoods, and the quality of those laws is intrinsically linked to the process that led to their adoption. OSCE participating States have committed to respecting democratic principles and the rule of law as crucial elements for lasting peace and stability in the region, and these commitments should also be reflected in their lawmaking processes. Given the ongoing erosion of democratic and constitutional standards and the rule of law across the world, and declining public trust in democratic institutions, it is essential to strengthen democratic institutions and processes by promoting openness, transparency, inclusiveness and accountability in lawmaking. Contemporary lawmaking displays a number of weaknesses, including a lack of proper policy discussions, impact assessments or public consultations before drafting a law and the practice of sidelining democratic institutions throughout the legislative process.
2. In principle, a democratic lawmaking process not only leads to better laws but usually improves the implementation of the adopted laws, ultimately enhancing public trust in democratic institutions and processes. Laws¹ are of good quality if they are consistent, clear and intelligible, foreseeable, transparent, accessible, human rights-compliant, effective, non-discriminatory, gender-responsive and sensitive to the needs of diverse groups in society, both in terms of wording and in practice once implemented. The quality of laws is a direct consequence of the manner in which they are developed and discussed. Thus, lawmaking procedures and practices should follow democratic principles, adhere to the rule of law and comply with international human rights obligations and standards. At the same time, they should be evidence-based, open and transparent, participatory and inclusive, and subject to effective oversight.
3. *Purpose of the Guidelines* — The present Guidelines aim to provide an overview of the guiding principles of democratic lawmaking followed by concrete and practical recommendations on how these guiding

1 For the purpose of these Guidelines, the term 'laws' is used to refer to a legally binding document adopted by a competent legislative or executive authority that codifies behavioural norms and contains rights, as well as obligations for individuals, the state and/or other bodies or entities. Unless specified otherwise, the scope of the present Guidelines covers in principle both primary legislation (i.e., legal texts that are approved by parliament or congress) and secondary legislation (or 'by-laws' or 'regulations', i.e., normative acts adopted by the executive, in order to implement primary legislation), since most of the principles and recommendations stated therein are relevant to both types of legislation, while also acknowledging the diversity of practices across the OSCE region.

principles can be adhered to at each stage of the legislative cycle to achieve good-quality laws, based on the rule of law and human rights. These principles and standards underly the process of preparing, discussing, adopting, implementing and evaluating laws; at the same time, the Guidelines seek to showcase how to make such processes effective. By reflecting on experience and good practice from across the OSCE region, the purpose of the Guidelines also lies in elucidating some of the parameters for democratic lawmaking using OSCE human dimension commitments and international human rights and rule of law standards and recommendations as a benchmark. The Guidelines also reflect the importance of maintaining lawmaking principles and standards in times of crisis, drawing both on the experience of the COVID-19 pandemic and the impact of other emergency situations. They aim to enable an objective, thorough, transparent and equal assessment of lawmaking processes.

4. The Guidelines build upon the work carried out by ODIHR in assessing legislation and legislative processes of individual OSCE participating States over the past 20 years and the recommendations made in this context. Such recommendations concern not only the contents of laws, but also the process of how these laws were drafted and consulted. Based on the observation that the quality of laws is a direct consequence of the manner in which they were developed and consulted, the main goal of the Guidelines is to provide concrete and practical recommendations on how to draft good-quality laws by enhancing the quality of lawmaking processes, in the belief that this will lead to more meaningful and sustainable reform. The Guidelines, in turn, seek to provide a tool for the aforementioned ODIHR legislative assessments to facilitate analysis of a given country's constitutional and legal structures, legislation and practice on lawmaking.
5. *Target Audience* — The Guidelines are aimed at anyone involved in law-making at the state, regional or local levels. These include government officials and decision makers, parliamentarians and parliamentary staff, policymakers and legislative drafters and experts involved in, or mandated to improve legislation. They are also addressed to wider audiences, such as independent institutions, notably national human rights institutions (NHRIs), as well as civil society organizations (CSOs), academia, human rights defenders and all other people and entities engaged in the legislative process in different capacities.

6. Recognizing that key elements and stages of policy- and lawmaking by and large follow similar patterns in the majority of OSCE participating States, the Guidelines and the recommendations that they contain aim to apply to all democratic states, regardless of whether they are presidential or parliamentary democracies, or whether their parliaments are unicameral or bicameral. At the same time, the Guidelines recognize the diversity of local traditions, historical, political, social, judicial or geographical contexts of specific countries, as well as different legal systems and mechanisms.
7. *Scope of the Guidelines* — Reflecting the above aims, the Guidelines focus on the full cycle of policy- and lawmaking underlying the entire process of developing, drafting, consulting and discussing, scrutinizing, amending, adopting, publishing, implementing, monitoring and evaluating laws. They look at standard lawmaking procedures. Special rules on referenda and similar forms of lawmaking fall outside the scope of these Guidelines, although some principles are also relevant. While some of the recommendations contained in the Guidelines are relevant to martial law/armed conflict situations, these issues may require a separate assessment.
8. *Content of the Guidelines* — The Guidelines start with an introduction to, and definitions of democratic lawmaking and good-quality laws and a description of the concept of the legislative process as a cycle, while Part II provides a set of Guiding Principles for democratic lawmaking and how to achieve good-quality laws, based on key rule of law and human rights standards. These principles form the backbone of the *Guidelines on Democratic Lawmaking for Better Laws*: they guide how laws are made (the process of making laws), which standards the substance of a law should adhere to (the content of the law) and what form a law should take (the form of legislation). Part III presents the key actors in the law-making process and their roles. Finally, Part IV provides detailed, concrete and practical recommendations on how the Guiding Principles can be adhered to at each stage of the legislative cycle to help make qualitatively better legislation. Annexes to the Guidelines include references to selected international and regional instruments, documents and case law, as well as a glossary with key terms.

9. *Methodology for Preparing the Guidelines* — The Guidelines were developed in three stages: first, a survey was made of representative and inclusive samples of legislative practices from OSCE participating States, as well as relevant tools and approaches developed by other organizations; second, a common understanding was reached on the principles and practice of democratic lawmaking, including identifying the most contentious and/or problematic areas of regulation and practice. In the third stage of this process, the Guidelines were developed via an inclusive and comprehensive drafting process, involving a lead drafter and a working group of ODIHR experts over four years. The draft Guidelines were then peer reviewed by the European Commission for Democracy through Law (Venice Commission), the Organisation for Economic Co-operation and Development, the Parliamentary Assembly of the OSCE and representatives from civil society.

The background is a solid red color. Overlaid on this are several concentric, semi-transparent circular bands. Within these bands, there are various geometric shapes: squares, circles, and triangles. Some of these shapes are connected to the bands by thin, curved lines, suggesting a flow or a path. The overall aesthetic is modern and minimalist.

PART I. **KEY CONCEPTS**

PART I. KEY CONCEPTS

10. The need for open and democratic lawmaking procedures is clearly set out in relevant OSCE commitments. The 1990 Copenhagen Document speaks of legislation, adopted at the end of a public procedure, as being “essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings”.² The 1991 Moscow Document echoes these findings, by committing OSCE participating States to formulate and adopt legislation “as a result of an open process reflecting the will of the people”.³ Other OSCE human dimension commitments emphasize the importance of democratic, inclusive and participatory public decision-making procedures.⁴ Moreover, OSCE participating States have committed to build, consolidate and strengthen democracy as the only system of government,⁵ and have recognized it as an inherent element of the rule of law.⁶ Democracy is likewise one of the universal core values and principles of other inter-governmental organizations and inter-state unions such as the United Nations (UN),⁷ the Organization

2 [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE \(Copenhagen Document\)](#), OSCE, 29 June 1990, para. 5.8.

3 [Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE \(Moscow Document\)](#), OSCE, 3 October 1991, para. 18.1.

4 Especially with regard to the effective and full participation of women, people belonging to national minorities and Roma and Sinti; see e.g., [Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area \(Action Plan\)](#), OSCE, 27 November 2003, para. 88; [The Challenges of Change \(Helsinki Document\)](#), OSCE, 10 July 1992; and OSCE, [Moscow Document](#).

5 Preamble, [CSCE Charter of Paris for New Europe](#), 21 November 1990.

6 OSCE, [Copenhagen Document](#), para. 3; see also OSCE, [Copenhagen Document](#), para. 2, which states that “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression”; and OSCE, [Moscow Document](#), whereby OSCE participating States reaffirmed that “democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations”. While acknowledging that the term ‘rule of law’ is a multi-faceted and broad concept, for the purpose of these Guidelines, a substantive and broad conception of the term will be retained, referring to a system of governance in which all people, including individuals, the State and all public entities, are accountable to laws that were adopted in accordance with, and which forms and substance comply with, the principles listed in the present Guidelines. For examples of definitions of what is meant by ‘rule of law’, see e.g., UN Security Council, Secretary General’s report, [The rule of law and transitional justice in conflict and post-conflict societies](#), S/2004/616, 23 August 2004, para. 6, in which the rule of law is described as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”. See also European Commission for Democracy through Law (Venice Commission) of the Council of Europe, [Rule of Law Checklist](#), CDL-AD(2016)007, 18 March 2016, which refers to the following core elements of the rule of law: i.e., “(1) Legality, including a transparent, accountable and democratic process for enacting law; (2) Legal certainty; (3) Prohibition of arbitrariness; (4) Access to justice before independent and impartial courts, including judicial review of administrative acts; (5) Respect for human rights; and (6) Non-discrimination and equality before the law”.

7 As stated on the website of the [UN Office of the High Commissioner for Human Rights](#).

for Economic Co-operation and Development (OECD),⁸ the Council of Europe (CoE),⁹ the European Union (EU)¹⁰ and the Organization of American States (OAS).¹¹ Respect for human rights and fundamental freedoms is an essential part of democracy and the rule of law (for more information on applicable international and regional standards and recommendations, see Annexe I).

1. Definition of Democratic Lawmaking and Good-quality Laws

11. For the purpose of these Guidelines, lawmaking processes are democratic if they are carried out by democratically elected or designated bodies that adhere to the principle of the separation of powers and checks and balances, and are rule of law- and human rights-compliant, open, transparent, accessible, non-discriminatory, gender-responsive, inclusive, representative, participatory and sensitive to the needs of diverse groups of society. A democratic lawmaking process leads to the adoption of better laws and tends to help improve the implementation of adopted laws.

Box 1 – Definition of democratic lawmaking

The process whereby laws are developed, drafted, consulted and discussed, scrutinized, amended, adopted and published, and later monitored and evaluated following key democratic principles. The process is carried out by democratically elected or designated bodies that adhere to the principle of the separation of powers and checks and balances. The process is compliant with the rule of law and human rights obligations. It is open, transparent, accessible, non-discriminatory, gender-responsive, inclusive, representative, participatory and sensitive to the needs of diverse groups of society.

- 8 Recommendation of the Council on Open Government, Organization for Co-operation and Development in Europe (OECD), 2017; Recommendation of the Council on Regulatory Policy and Governance, OECD, 22 March 2012.
- 9 Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist, European Commission for Democracy through Law (Venice Commission) of the Council of Europe, CDL-AD(2019)015-e, 24 June 2019, para. 10. See also European Court of Human Rights (ECtHR), *Hyde Park v. Moldova* (No. 1), Application no. 33482/06, judgment of 31 March 2009, para. 27, where the Court reiterates that democracy “is the only political model contemplated in the Convention and the only one compatible with it”.
- 10 See Article 2 of the Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390, which states: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”, as well as Title II.
- 11 See the homepage of the Organization of American States (OAS).

12. Laws codify behavioural norms and summarize principles, rights, privileges, as well as obligations for individuals, powers and responsibilities of states and other bodies or entities. In terms of their content, laws should¹² adhere to democratic principles and to the rule of law and must be human rights-compliant and non-discriminatory, while being proportionate and effective. In terms of their form and structure, laws must be clear and intelligible for the end user, foreseeable, accessible, consistent, stable and predictable.¹³ Laws must be formulated with sufficient precision so that individuals are able to regulate their conduct accordingly, and may reasonably foresee the consequences of a given action.¹⁴ At the same time, laws need not be overly detailed, or overly dense in all situations.¹⁵ While, sometimes, the issue that a law regulates may demand greater detail, in other cases, a broad and flexible approach is preferable, leaving some margin of discretion to the bodies which are tasked with interpreting legal norms and, in particular, to courts of law. As a matter of principle, primary laws should define key rules and key principles, as well as rights and obligations, powers and responsibilities in line with the outcome of the policymaking process. Secondary legislation, passed in order to implement primary laws, may then fill in some points of detail, such as technical information or administrative procedures, without going beyond the scope of what is governed by primary law. Primary and secondary legislation are further developed in the practice of the courts, which may fill in gaps through judicial interpretation, but which must remain faithful to the letter and the spirit of the legislation.

Box 2 – Definition of good-quality laws

Laws are of good quality when they are clear, intelligible, foreseeable, consistent, stable, predictable, accessible, compliant with rule of law and human rights standards, gender-responsive, diversity-sensitive and non-discriminatory, in both content and practice, while being proportionate and effective.

12 For the purpose of these Guidelines, the term 'must' is used when there are clear international legally binding obligations while the term 'should' is preferred when there are no such legally binding obligations and when referring to political commitments, non-legally binding recommendations and/or good practice examples.

13 Tom Bingham, *The Rule of Law*, (Penguin UK, 2011), p. 40.

14 ECtHR, *Sunday Times v United Kingdom* (No. 1), Application no. 6538/74, judgment of 26 April 1979, para. 49. See also Venice Commission, *Rule of Law Checklist*, paras. 58-59.

15 ECtHR, *Kononov v. Latvia [GC]*, Application no. 36376/04, judgment of 17 May 2010, paras. 187, 235 and 238.

13. Laws are generally enacted in response to a societal need (real or perceived) or problem, or in order to meet a commitment or obligation imposed by other legislation, court decisions or international treaties. At the same time, legislation is only one example of state intervention in its broadest sense, where changes are carried out by means of state-enacted law, establishing mandatory rules or standards, rather than by persuasion or encouragement. This legislative approach should be used once in-depth analyses or previous interventions indicate that other forms of state intervention will not have the same level of success.¹⁶ Where feasible and useful, non-legislative interventions should be preferred, thus avoiding over-regulation and legislative overload, which happens when too many draft laws are pending simultaneously, in particular in parliament. For state authorities, whether and how to intervene will depend on multiple factors such as the issue at hand, the estimated impact of the intervention, financial concerns, and which solution will prove the most successful in dealing with a particular matter. However, any limitation on the exercise of human rights and fundamental freedoms by the state must be provided for by primary law.
14. Where a law is found to be the best solution, it is important that it is developed following a proper legislative procedure, which should be set out in the legal framework. Usually, some general rules on lawmaking are already contained in constitutions, including the different roles played by the government and parliament, which bodies or people have the right to legislative initiative and provisions on the hierarchy of norms¹⁷ and provisions defining the stages of a lawmaking process. A number of countries in the OSCE region additionally have legislation that regulates the hierarchy of norms, primary laws, secondary laws, or rules of procedure for the government and parliament, as well as soft law documents that outline the lawmaking process or certain of its components.

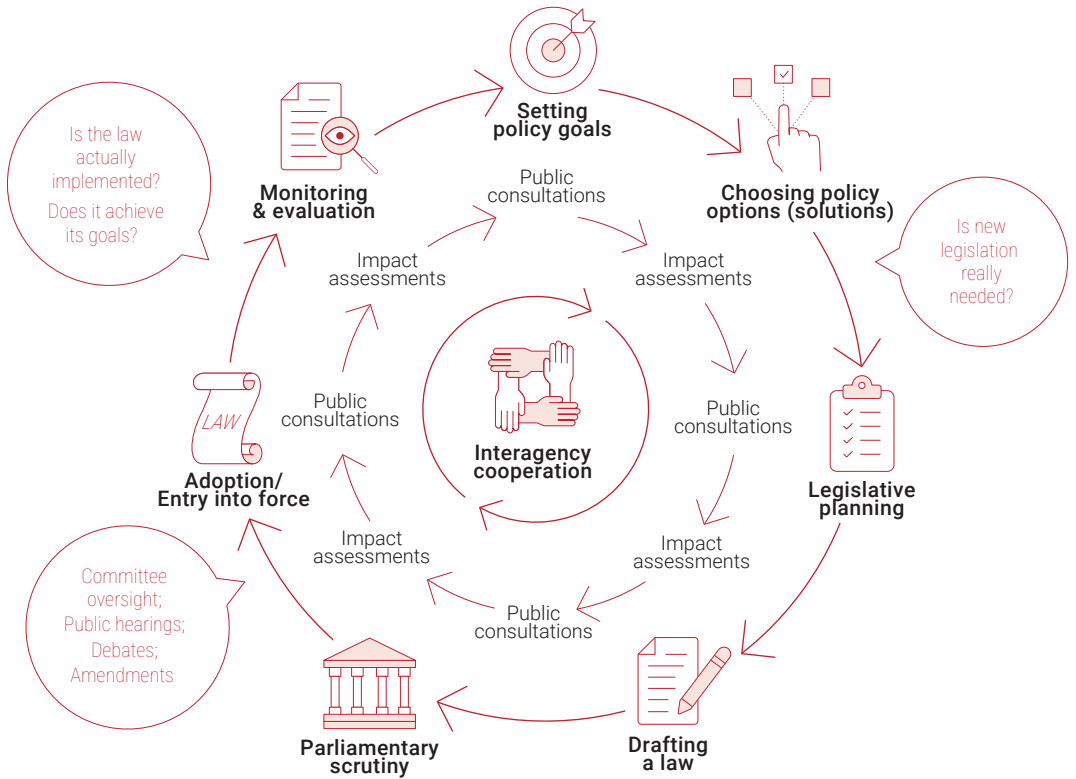
16 OECD, *Recommendation of the Council on Regulatory Policy and Governance*, 22 March 2012, para. 4.

17 Hierarchy of norms determines the relative ranking of different types of laws in the structure of a legal system of a particular state. In general, the fundamental levels of hierarchy consist of: a constitution or founding document; statutes or legislation; regulations; and procedures. The hierarchical structure varies from country to country, and depends on the form of government. However, there are general principles that are common to most countries and are key to determining the purpose of each piece of law within a legal and regulatory framework, and ultimately enforcing their authority and validity. Respect for the hierarchy of norms is fundamental to the rule of law, as it determines how the different levels of law will apply in practice, i.e., how the laws rank in authority and how the authority and scope of each level is derived from the constitution. As to the position of ratified international treaties within this hierarchical structure and their hierarchical relationship with the Constitution, it also varies from countries to countries, with certain legal systems adopting a monist approach, whereby international treaties are considered part of the domestic legal order, without any need for their transposition by means of national legal instruments, or a dualist approach, whereby international treaties do not apply directly within the domestic legal order but need to be transformed into national law by means of a statute or other source of national law.

2. The Legislative Cycle

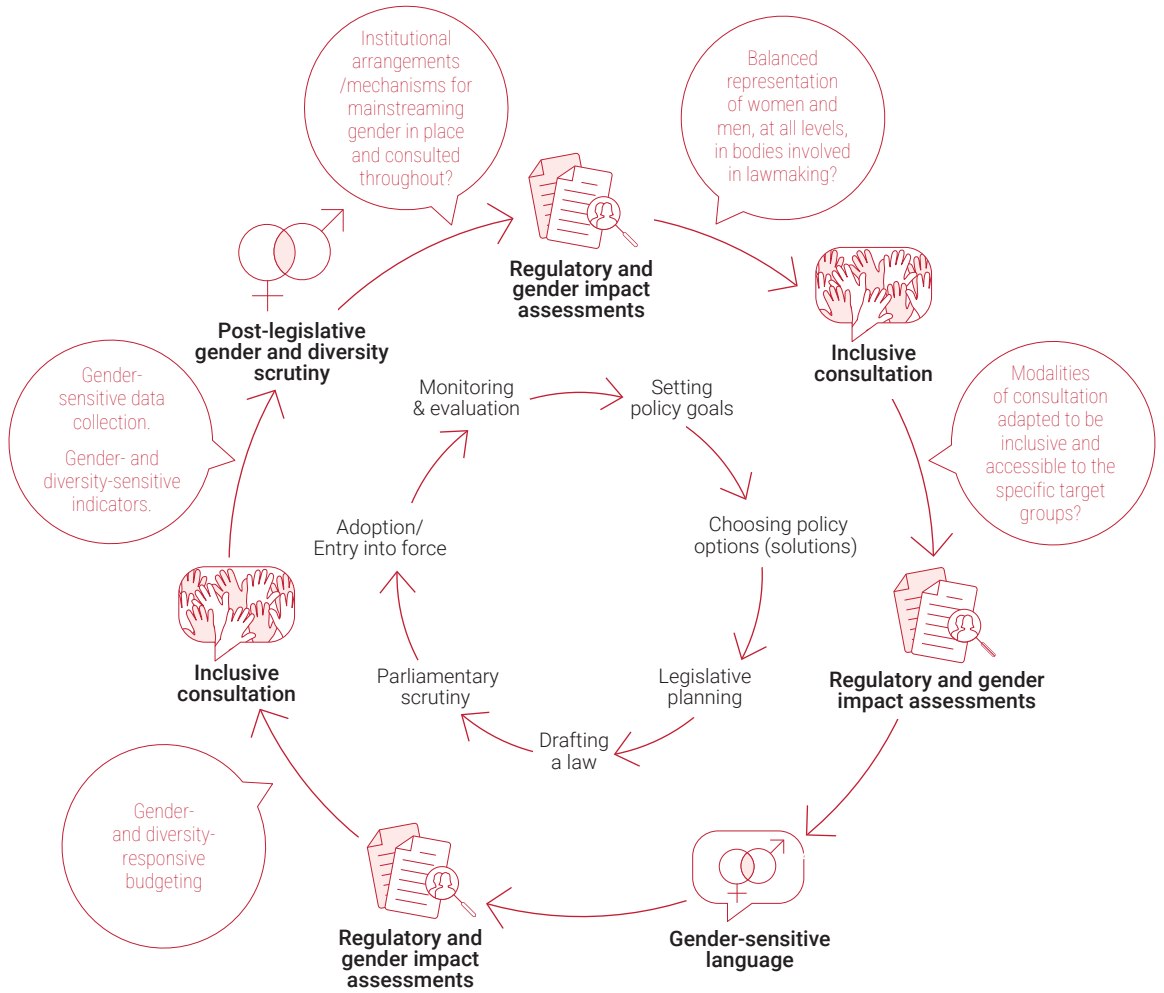
15. The lawmaking process should be approached as a cycle. This cycle consists of the following stages: policy setting; law drafting; parliamentary scrutiny; adoption, publication and consolidation; monitoring and evaluation. The evaluation stage may point to gaps and inadequacies, which may, in turn, lead to new policy debates that set off a new policy and legislative cycle. The management of legislative projects — how this cycle is conducted in practice — depends on the laws and procedures adopted in each country. In certain countries, different stages of the cycle may happen simultaneously, or they may be repeated several times.
16. At the same time, there are a number of methodological steps that are followed while conceptualizing legislation. This usually starts with identifying a problem, a social need or the need to adapt legislation to other laws or to international treaties, including human rights instruments. This is followed by determining the aim of the measure (mostly, which aspect of the problem is being solved), and analysing the different options, including legislative and non-regulatory measures, that can help achieve this aim. Once a decision is made on which measure will be undertaken, and legislation is considered to be the most appropriate route, the procedural elements of the lawmaking process are set into motion. In the end, the solution chosen should be the most proportionate and effective response, in other words a response that is the least burdensome, while deemed capable of achieving the best possible results. This solution then undergoes several cycles of verification and testing throughout the government and parliamentary review and adoption process, with the active involvement of, and consultations with stakeholders. Once legislation is adopted, implementation is monitored by oversight bodies and other actors.

Figure 1. The process of making laws — the legislative cycle



17. The life cycle approach to lawmaking allows legislators to integrate other perspectives, such as gender and diversity or environmental and economic assessments, systematically throughout the legislative process. As an example, the graphic below shows how gender and diversity can be mainstreamed across the legislative process.

Figure 2. Mainstreaming gender and diversity throughout the legislative cycle





**PART II. GUIDING PRINCIPLES OF
DEMOCRATIC LAWMAKING AND
BETTER LAWS**

PART II. GUIDING PRINCIPLES OF DEMOCRATIC LAWMAKING AND BETTER LAWS

18. The lawmaking process and legislation should observe the principles of democracy, the rule of law, and be human rights-compliant; other principles of lawmaking and good-quality laws described in this section are based on these core premises. The key principles set out below guide how laws are made (the process of making laws), which standards the substance of a law should adhere to (the content of the law) and what form a law should take (the form of legislation). Part III of the Guidelines further elaborates on how the main actors of the lawmaking process put the Guiding Principles into practice while Part IV contains interpretative notes that elaborate on the Guiding Principles and provides detailed, concrete and practical recommendations on how these can be adhered to at each stage of the legislative cycle.

1. Prerequisites for Democratic Lawmaking and Better Laws

Principle 1: Compliance with Democratic Principles

19. The procedures and practices of lawmaking, as well as the contents of laws, should adhere to democratic principles. This means that they should emanate from the democratically elected or designated bodies that adhere to the principle of the separation of powers and the ensuing necessary checks and balances between state institutions, as set out clearly in a country's constitution. Legislation should also be prepared, debated, verified, adopted, enforced, monitored and evaluated following participatory and representative procedures that are set out in a stable, clear, foreseeable, open and transparent legal framework. Legislative power should normally be vested in a democratically elected parliament and laws should not delegate or allow for the delegation of unlimited lawmaking powers to the executive. Where this occurs, the delegation of power from parliament to the executive should be minimal and should only be possible in certain circumstances. These circumstances should

be explicitly and precisely defined in constitutions or constitutional legislation, along with the objectives, content and scope of the delegation and details of parliamentary control or scrutiny and judicial review of the delegated legislation. Routine use of such 'exceptional' lawmaking powers by the executive should be avoided, or phased out where such practice exists, or at least circumscribed by the mechanisms of effective parliamentary control.

Principle 2: Adherence to the Rule of Law

20. The process and contents of laws should adhere to the rule of law. This means that public institutions, individuals and legal entities are accountable to laws adopted in compliance with democratic principles (see **Principle 1**); laws that are consistent, clear, and human rights-compliant (see **Principle 3**), as well as equally and transparently applied, and subject to oversight, including control by independent and impartial courts. The rule of law also requires that both the procedure and substance of laws comply with higher-ranking law, including applicable international legal obligations, which should be assessed at different stages of the legislative process. As a rule, legislation should not have retroactive effect; exceptions to this rule need to be clearly outlined in constitutions or constitutional legislation and strictly limited to compelling public-interest reasons. Under no circumstances shall detrimental retroactive effect be possible in the case of criminal legislation. Legislation should set out rules for future behaviour and may not be designed to apply *ad hominem* (i.e., to a particular person or group). Moreover, while legislation needs to be able to adapt to changing economic or social circumstances, it should not interfere with the principle of *res judicata* (i.e., respect for final court decisions rendered under previously existing rules).

Principle 3: Human Rights Compliance

21. Legislation must be human rights-compliant, meaning that it must be compatible with applicable international human rights obligations and standards, and rights and freedoms guaranteed by national constitutions. This also means that legislation must not be directly or indirectly discriminatory and should be gender- and diversity-sensitive. To that end, the legislative process should be inclusive and integrate gender and diversity perspectives throughout the legislative cycle to ensure fair results and a positive impact on gender equality, diversity and human rights (see

especially **Principles 6, 7 and 12**). The human rights implications of laws should be identified at the stage of policy development or pre-drafting of new legislation. Policymakers and legal drafters should scrutinize legislation from a human rights, gender and diversity perspective throughout the legislative cycle, to see whether it addresses the different needs of women, men and different societal groups, especially groups that are historically marginalized or under-represented. To ensure such results, the process of legislative design, drafting, consultation, discussion, implementation and evaluation should be inclusive and participatory throughout. Different state and non-state actors — notably independent NHRIs, parliamentary committees, other bodies with a human rights focus and CSOs — should be able to exercise their important monitoring and oversight functions independently and effectively throughout the lawmaking process, including after the adoption of legislation. Where a piece of legislation may infringe on a right, the state is required to demonstrate that the proposed interference is in accordance with higher-ranking law (including principles set down in the constitution and in international law), pursues a legitimate aim, is necessary to achieve that aim, and is proportionate and non-discriminatory.

2. The Process of Making Laws

Principle 4: Necessity to Legislate

22. State intervention by legislation should only take place where state action is necessary and other, non-legislative interventions are not feasible or unlikely to have a successful outcome. For this reason, and to avoid unnecessary and unimplementable laws and frequent substantive amendments to legislation, the need to legislate should be assessed at the beginning of every lawmaking process. The starting point should be the proper identification of a problem or need at the initial policymaking stage. This should be followed by an extensive and open-ended discussion on how best to resolve the issue in line with the established policy objectives, evaluating all potential alternative solutions, including non-regulatory ones, to determine whether legislation is the appropriate route (see also **Principle 5**).

Principle 5: Evidence-based Lawmaking

23. In general, laws and public decision-making should be prepared, discussed and adopted on the basis of well-founded arguments, scientific evidence and data, including information deriving from impact assessments and consultations with the public and other stakeholders. Evidence-based impact assessments should be made early in the process of preparing a law or an amendment. These should evaluate the likely economic, environmental, social, human rights, equality, gender and other impacts, as well as the budgetary, regulatory and bureaucratic implications of the planned legislation. Once adopted, implementation of the legislation should be monitored and its effects/impacts evaluated to assess whether a law adequately met its intended aim and achieved the desired results. Reviews such as these complete the cycle that began with pre-legislative impact assessments. This type of evaluation should include reviews of both the enactment of law (including secondary legislation) and its impact on society and human rights (see also **Principle 3**). The evaluation should be conducted by different entities, including government, parliament, civil society and other experts, after an agreed period of time from adoption. The evaluation results should then inform the next legislative cycle.

Principle 6: Openness and Transparency of the Lawmaking Process

24. The entire legislative process — whereby policies and laws are designed, drafted, debated, adopted, implemented, monitored and evaluated — should, as a rule, be open and transparent. Openness means that all relevant information and documents relating to the lawmaking process are made available to the public and involve the public in the process, ensuring that the legislative process is as accessible as possible to all. Information on draft laws should include, at a minimum, documents setting out the background and rationale behind a draft law. These should explain why the law is necessary and refer to evidence and impact assessments. They should also include an overview and analysis of the results of consultations and explanations of the draft law's compatibility with the constitution and other laws, as well as with international legal and human rights obligations. Transparency means that public authorities promote the disclosure and accessibility of the data and information to foster a general understanding of the lawmaking process and make individuals aware of how they may get involved in the process. Draft laws,

all information about draft laws (including updated versions) and the law-making procedures should be shared proactively and published, both online and in hard copy and, as far as non-governmental stakeholders and the public are concerned, in a simple and comprehensible manner. This will help ensure that all stakeholders, within public administration and beyond, are informed about the need for the law and the planned and ongoing lawmaking activities as early as possible.

Principle 7: Participation and Inclusiveness

25. All interested parties and stakeholders should have the opportunity to access the lawmaking process, be informed about it and be able meaningfully to participate and contribute. Consultations are one means of interacting with the public, in addition to information-sharing and participation, the latter implying greater involvement. Different groups and individuals, especially those who may be affected by the draft law, as well as stakeholder organizations should be identified early and included from the initial policymaking phase and throughout the lawmaking process. They should be empowered to be able to take part adequately in the process. Wide-ranging, proactive outreach measures by government and parliament should help to identify and include all interested and relevant counterparts, including organizations promoting gender equality and representing historically marginalized or under-represented groups. States should address the needs of different groups and the specific challenges that prevent individuals or groups from participating in the same way as others. At the same time, states should ensure that representatives of groups that are, or may be disproportionately targeted by a law are adequately informed about the legislative initiative and directly involved in the design and drafting of the legislation. In parallel, states should manage and diversify the structures, methods, mechanisms, tools and types of public participation, as well as their outcomes, adapting them to the needs of different stakeholders and reaching out to a broader audience. States should inform about the modalities of participation and how the outcomes will inform the legislative process. Participation tools should be user-friendly and may include new technologies, but should not be limited to online tools. All participants should have sufficient time to prepare and provide their input to draft policies or laws. This input should be evaluated diligently, equally and proportionately, and

the initiating institution should provide meaningful and qualitative feedback in due time on the outcome of every public consultation, including giving clear justifications for including or not including certain proposals. The feedback may also be published online.

Principle 8: Organized and Timely Legislative Planning

26. Government and parliament should ensure proper advance planning of policies and legislation to help keep the workloads of government and parliament at reasonable levels and to allow for realistic and responsive preparation and budgeting. To ensure proper coordination, the legislative plans and strategies of government and parliament should be aligned. The government's annual legislative programme should be planned and published in advance and deviations from the programme should remain exceptions, unless warranted by unexpected circumstances. Sufficient time should be allocated within the programme for each stage of the law-making process to allow for impact assessment, public consultation, discussion and effective scrutiny of draft laws, as well as for parliamentary consideration, without unnecessary gaps between the different stages of the legislative process. Important legislation that significantly impacts large parts of the population, or the human rights and fundamental freedoms of individuals, should be debated at length (see **Principle 7**). The planning measures should avoid situations where the time available for consultation and debate is unreasonably compressed. Legislative programmes should contain spare time to allow for unplanned events, such as urgent laws, that may come up during the legislative year.

Principle 9: Adaptability and Stability of the Legal Framework

27. Laws reflect the societal, political, economic and other priorities of a country and therefore should be able to adapt to new developments, changing circumstances and priorities. Legal systems should be sufficiently flexible to allow for adaptation, while retaining the necessary degree of stability and consistency of the legislative framework. This stability can be safeguarded via open, inclusive, well-planned and evidence-based lawmaking, accompanied by scrutiny and oversight. Overly frequent amendments to laws, often due to lack of planning and prior research into policy topics, undermine the stability of the legislative framework and legal certainty in general, and should be avoided.

Principle 10: Accountability of Institutions and Individuals

28. There should be effective mechanisms and institutional frameworks in place to ensure that public institutions involved in the legislative process are accountable to the public. Oversight, monitoring and public reporting throughout the lawmaking process are essential for ensuring effective and meaningful institutional and political accountability in cases where individuals or groups are adversely impacted during the legislative process or once a law is implemented. Regulatory oversight mechanisms should ensure that the competent bodies in charge of lawmaking do not go beyond their scope and authority, that they adhere to the laws and rules of procedure for the development of legislation, but also provide quality control of regulatory management tools and ultimately evaluate and improve regulatory policy. In particular, parliament and its committees should exercise oversight over government bodies and agencies involved in lawmaking. In parallel, strong independent oversight bodies, including NHRIs and the judiciary (in particular constitutional courts, where they exist), should assess whether key elements of the democratic lawmaking process are in place and of the necessary quality. In addition to the judicial avenues that exist for laws that result in human rights violations, effective mechanisms should be available for reviewing the compliance of lawmaking processes with key procedural requirements, either as a part of the review conducted by constitutional courts, or by specialized parliamentary bodies, or by other means of oversight. These reviews may result in draft laws being suspended or returned to the initiating bodies prior to adoption, or to adopted laws being annulled. Disciplinary or other violations by responsible officials may also result in individual liability, as determined by a competent disciplinary or other body.

Principle 11: Accelerated Legislative Procedure and Lawmaking in Times of Emergency

29. The legal framework may provide for an accelerated or fast-track legislative procedure in cases where legal amendments are minor and not complex or uncontroversial, or where there is an urgent need to pass certain laws quickly. In the latter case, this should be used rarely and only in exceptional cases of genuine urgency to pass a specific law, as the process entails a lack of legislative planning and less or no time for in-depth consultations on draft laws, nor for adequate parliamentary scrutiny. The legal framework should define precisely and narrowly the circumstances

in which fast-track procedures may be applied and should require proper justification. Accelerated lawmaking procedures should not be used to bypass public consultations and impact assessments and only be possible if they are based on a formal request submitted in accordance with the relevant legislation. They should not be applied to introduce important and/or wide-ranging reforms, such as constitutional reform, legislation introducing major changes to the functioning of the democratic institutions or legislation significantly impacting the exercise of human rights and fundamental freedoms. Laws passed by accelerated procedures should be subjected to special oversight and should ideally contain a review clause.

30. In times of emergency, emergency legislation passed through an urgent procedure, or via government decree and related measures, should be limited to what is strictly required by and proportionate to the exigencies of the situation. Emergency laws and other emergency measures should only remain in force for the duration of the emergency situation. Measures taken need to be assessed regularly and adequate safeguards and oversight should be in place, including judicial review, to ensure that the rules are followed. In times of emergency, states should refrain from considering legislation that is not urgent in nature. They should not adopt or amend constitutional provisions or legislation that may impact fundamental freedoms and human rights, nor change the balance of powers, nor the system of checks and balances. Even during states of emergency, public authorities should seek to apply ordinary legislative processes to the extent possible, and to ensure inclusive public hearings and consultations as feasible in the given circumstances, including through the use of online platforms if necessary. Emergency laws should contain a sunset clause and, if other laws have been adopted during times of emergency, they should ideally contain a review clause and be reassessed by parliament once the emergency situation has ended.

3. The Content of Laws

Principle 12: Equality and Non-Discrimination

31. All individuals are born free and equal and must have equal access to and be equally protected by the law. Consequently, legislation must not discriminate, directly or indirectly, intentionally or unintentionally, against any individual or group (see also **Principle 3**). Where a law results in discrimination, there should be a clear mechanism in place to offer redress. Additionally, legislation should proactively promote substantive equality, as well as ensure equality of outcomes or results for different groups of society. Specific anti-discrimination laws and laws promoting gender and other forms of equality should be in place to serve as a guide and touchstone for the development of all legislation. This is essential for ensuring that individuals are not arbitrarily denied their rights on the basis of characteristics such as their national or ethnic origin, colour, religion or belief, language, sex, sexual orientation, gender, gender identity, disability, social origin, property, health, birth, age or other status. Care should be taken to ensure that the legislative process is inclusive (as set out in **Principle 7**). This will involve reaching out to a variety of different groups and individuals, so that legislation is not drafted from the viewpoint, or in the sole interests of the majority or dominant population.

Principle 13: Proportionality

32. Legislation should be proportionate to its aims, which presupposes that it is also necessary (see also **Principles 4 and 14**). More specifically, the law should employ the least intrusive measures to reach the policy objective. Additionally, there should be a reasonable relationship between the public interest pursued by the legislation and the possible impact on private interests or rights of individuals. Laws that are neither necessary nor proportionate should not be pursued.

Principle 14: Effectiveness

33. Legislation should be effective, meaning that it should be implementable and capable of achieving the desired results. To ensure this, laws should have a clearly stated purpose that individuals and implementing bodies know and understand. Legislation should include appropriate and realistic implementation and compliance mechanisms and should

communicate the rules clearly to all those affected by, or who are in charge of implementing them. Laws should also be integrated smoothly into the body of existing laws, by repealing, amending or complementing existing legislation. Legislation further requires prompt and proper implementation; often, this will depend on the swift adoption of secondary legislation with appropriate orders and procedures to ensure the execution of the primary law. Once adopted, the implementation of legislation should be monitored and its impact evaluated to assess both its effectiveness and possible unintended consequences.

4. The Form of Laws

Principle 15: Clarity and Intelligibility

34. Laws must be drafted in a clear, precise and unambiguous manner. They must be easy to understand, even when they involve complex topics. To the extent possible, legislation should avoid excessive or unnecessary detail, and the quality and impact of existing laws should be monitored regularly to ensure they remain necessary, effective and proportionate **(see also Principles 4, 13 and 14)**. To ensure the clarity and intelligibility of legislation, the overall legal framework of a country should be coherent and consistent. This means that laws should complement and not contradict each other. It also means that no inconsistencies or conflicts should exist within a law. One of the requirements for clear and unambiguous legislation is consistent drafting and structure, with terminology always used in the same way, definitions added where necessary and relevant cross-references provided to other provisions or laws. For this purpose, drafters should follow clear and unified drafting instructions, and sufficient funds should be invested in training and capacity-building for legal drafters to ensure high quality, written legislation. Well-drafted and clear legislation clarifies the aims and overall contents of a law, while avoiding legal loopholes, or vague, contradictory or ambiguous wording, which can undermine legal certainty and public ownership of, and trust in legislation.

Principle 16: Foreseeability

35. Laws must be foreseeable, meaning sufficiently clear, such that an average person can predict what kind of consequences a given action may entail, at all times and to a degree that is reasonable in the circumstances, where necessary with the assistance of a lawyer. Laws should include clear definitions and should not permit excessive state discretion, which may result in arbitrariness. Adopted laws that require significant efforts from the institutions responsible for implementing them should not enter into effect immediately, but should give those institutions a certain period of time to prepare for implementation (*vacatio legis*).

Principle 17: Publication and Accessibility

36. Laws, draft laws and secondary legislation should be published — both online and offline — and should be easy to find. Draft laws, as well as adopted legislation and their supporting documents, should be easily and publicly accessible for the entire population. This includes timely publication on publicly accessible official websites and official gazettes, availability in the national languages (including minority languages) and, to the maximum extent possible, in formats accessible or adapted for persons with disabilities (including individuals with visual impairments or intellectual disabilities). As new technologies develop, accessibility may be enhanced by ensuring that laws are made available online. Nevertheless, laws should also continue to be available in print, to mitigate the risk of a digital divide (i.e., the exclusion of certain categories of the population that may not have access to, or know how to navigate the Internet and new technologies). All additional materials (such as court judgments on the law, secondary legislation and amendments) should be accessible in the same place. To enhance accessibility, the websites and official gazettes should contain consolidated legal texts, reflecting the latest amendments to legislation, as well as previous versions of the laws. There must also be proper and secure backup in place for online official gazettes.

**PART III. THE MAIN ACTORS
INVOLVED IN THE LAWMAKING
PROCESS**



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37. The lawmaking process — whereby policies and laws are prepared, discussed, verified, revised, eventually adopted and promulgated, monitored and evaluated — is different in every country, but the various actors involved and their roles are often quite similar. This overview describes these main actors, their tasks, what these should encompass in order to contribute, in accordance with their mandates, to a democratic lawmaking process that corresponds to the key principles set out above. Usually, the main tasks and powers of the three state powers (government, parliament and the judiciary), and of independent institutions, are described in the constitutions of individual states. Based on the constitution, governments and parliaments create laws, secondary norms and rules of proceedings for themselves, which must clearly set out their rights, obligations and processes in greater detail. Generally, laws containing general and abstract rules are passed by parliaments, but constitutions may allow the executive to issue decrees in certain areas, or may include exceptions where legislative power is delegated by parliaments to the executive. In such cases, the objectives, contents and scope of the delegation of power should be explicitly defined in the relevant legislative acts.¹⁸ Secondary legislation (or ‘by-laws’ or ‘regulations’) is then adopted by the executive in order to implement laws passed by parliaments or the executive, including by filling in some points of detail, such as technical information or administrative procedures. Effective lawmaking processes and qualitatively good laws require a collaborative approach from all branches of state power and a consistent effort.
38. The following sub-sections provide a fuller description of the roles the different actors play in the lawmaking process, and the contribution they may make to ensuring that lawmaking is democratic and results in good-quality laws.

¹⁸ See Venice Commission, [Rule of Law Checklist](#), Benchmark A.4. i. and iii.

1. The Role of the Parliament

39. Parliaments and individual parliamentarians play a crucial role in the law-making process, by initiating laws, discussing, amending and approving bills submitted by the executive, and as a means of legislative oversight on behalf of the population that they represent.
40. Parliaments contribute to ensuring a state's compliance with its international human rights obligations and in translating these into national policies and legislations.¹⁹ As part of the legislative branch, parliaments are part of the state powers tasked with guaranteeing that the rights of individuals are respected, protected and fulfilled in the country. In parliament, this is done by ensuring human rights-compliant legislation, supporting the national human rights framework and examining petitions and other situations of potential human rights violations, as well as monitoring and otherwise overseeing government action.²⁰
41. Generally, and depending on the constitution of each country, general oversight tools available to parliaments include public hearings, petitions, interpellations (i.e., formal requests of parliament made to the government), reports, question and answer sessions with members of the executive, or committees of inquiry set up to investigate specific situations or issues.
42. A parliament's rules of procedure outline different types of debate structures, both at the plenary and at the committee and subcommittee level. They also provide for the manner in which commissions of inquiry function, or how petitions, hearings and other tools available to parliaments are reviewed and used. Parliamentary rules of procedure may additionally include certain provisions to strengthen the role of the opposition and cross-party groups in parliament, most importantly in the context of lawmaking and legislative oversight. The status of the opposition will depend, among others, on the type of electoral system, the organization of the legislature and the structure of the state.²¹
43. The composition of governing bodies of parliament and of committees will usually largely respect the principle of proportional representation (with exceptions in some cases where greater parity is needed, e.g., in-

19 [Contribution of parliaments to the work of the Human Rights Council and its universal periodic review](#), Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/38/25, 17 May 2018, Annex 1.

20 See e.g., Kirsten Roberts Lyer, [Effective Human Rights Engagement for Parliamentary Bodies, A Toolkit](#), International IDEA 2022; see also, [Human Rights Handbook No. 26 for Parliamentarians](#), Inter-Parliamentary Union (IPU), 2016, Chapter 2.

21 Venice Commission, [Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist](#), para. 12.

vestigative committees reviewing actions of the government of majority party²²) and reflect the political composition of the parliament or chamber.²³ Moreover, in line with international obligations and commitments regarding gender-balanced representation in public decision-making at all levels,²⁴ it is important to ensure a balanced representation of women and men in parliaments and their bodies, including those involved in the policy- and lawmaking process. Members of opposition parties often have a say in the collective bodies of parliament, so that they are involved in all important procedural decisions concerning the functioning of parliament.²⁵ Opposition parties need the requisite infrastructure and resources to adequately perform their role in parliament,²⁶ including public funding. Such resources include, but are not limited to, access to government documents, control over a reasonable share of parliamentary time and support from parliamentary assistants.²⁷

44. Certain OSCE participating States' rules of procedure prioritize speaking rights for opposition parties or include 'opposition days', during which opposition parties or minority groups may set the parliamentary agenda.²⁸ A determined number of opposition parliamentarians may also have the right to call and be accorded extraordinary parliamentary sessions or to ask for certain issues to be included in the agendas for upcoming

22 See [Guidelines on Political Party Regulation](#), 2nd edition, OSCE/ODIHR and Venice Commission, 6 April 2023, para. 127.

23 [Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament](#), Council of Europe Parliamentary Assembly (PACE), Resolution 1601 (2008), adopted on 23 January 2008, para. 2.1.1. See also Venice Commission, [Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist](#), para. 86.

24 See e.g., [UN Convention on the Elimination of Discrimination against Women \(CEDAW\)](#), UNGA, entry into force 3 September 1981, Article 7, which deals with women's equal and inclusive representation in decision-making systems in political and public life, and Article 8, which calls on all States Parties to take appropriate measures to ensure such access; [Beijing Platform for Action](#), Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), Strategic Objective G.1., "*Take measures to ensure women's equal access to and full participation in power structures and decision-making*"; [Council of Europe Recommendation Rec \(2003\)3](#) of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making adopted on 30 April 2002; [OSCE Ministerial Council Decision MC.DEC/7/09](#) on Women's Participation in Political and Public Life, 2 December 2009.

25 Venice Commission, [Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist](#), para. 88.

26 See ODIHR and Venice Commission, [Guidelines on Political Party Regulation](#), para. 127.

27 In the United Kingdom, so-called 'short money' is funding to support opposition parties for their parliamentary business, travel and associated expenses and the running costs of the office of the Leader of the Opposition, for more information see Richard Kelly, [Short Money](#), House of Commons Library, 8 June 2023.

28 Opposition days exist in states that follow the Westminster model, e.g., the United Kingdom, where Standing Order 14 of the House of Commons allots 20 days of each parliamentary session for proceedings on opposition business, 17 of which shall be at the disposal of the Leader of the Opposition and three of which shall be at the disposal of the leader of the second largest opposition party (see [Standing Orders of the House of Commons, 2018, Standing Order 14 "Arrangement of Public Business"](#)). In Canada, opposition parties also have at their disposal 20 so-called 'allotted days' during which they may debate any element of the government's proposed spending plans (see [Members of the House of Commons: Their Role](#), Government of Canada Political and Social Affairs Division, Revised Jun 1997). See also, the [Constitution of France](#), 4 October 1958, as amended, Article 48, stating that "*[o]ne day of sitting per month shall be given over to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups*".

ing sessions, or rules of procedure may contain other provisions that strengthen the role of the parliamentary opposition parties.²⁹ Members of opposition parties should also have the right to table amendments to draft laws being discussed in parliaments, in particular if these are government draft laws, following the usual procedural requirements.³⁰

45. Depending on the country, parliamentarians or groups of parliamentarians may have the right of legislative initiative, i.e., the right to draft and submit laws to parliament. While in some countries, individual members of parliament may submit draft laws,³¹ others give this right to a certain number of parliamentarians or factions.³² In practice, parliaments may also create working groups to develop laws, involving not only parliamentarians but also experts and civil society representatives, among others. When establishing such working groups, it is important to ensure that the requirements for experts and civil society representatives are transparent, while ensuring that the composition of the working group is inclusive and gender-balanced.³³
46. Sufficient resources and proper support staff, including legal drafters or other forms of support, are essential for the proper functioning of parliaments, to carry out their legislative, representative and oversight functions. Well trained, apolitical and competent parliamentary staff provide the know-how and research necessary for good-quality draft laws and parliamentary amendments to laws for MPs of both governing and opposition parties. If this is missing, the quality of legal drafting, as well as the professional communication between different lawmakers (for example,

29 See PACE, *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, paras. 2.1.-2.3.5. See also Venice Commission, *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, paras. 93-97, 100 and 102.

30 Venice Commission, *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, paras. 104-107.

31 See, e.g., *Constitution of Albania*, Article 81, specifying that the Council of Ministers, every deputy, and 20,000 electors have the right to propose laws and *Constitution of France*, Article 39, stating that the Prime Minister and parliamentarians have the right of legislative initiative.

32 See, e.g., the *Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee*, May 2014, Section 76, specifying that where draft laws are initiated by members of parliament under Article 76 of the German Basic Law, they require the support of 5% of the members of parliament or of a faction. See also *Constitution of Latvia*, Article 65, stating that "*[d]raft laws may be submitted to the Saeima by the President, the Cabinet or committees of the Saeima, by not less than five members of the Saeima, or, in accordance with the procedures and in the cases provided for in this Constitution, by one-tenth of the electorate*".

33 Regarding the participation of associations in policy- and lawmaking, see *Guidelines on Freedom of Association*, OSCE/ODIHR and Venice Commission, 1 January 2015, paras. 183-187. See also *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, Council of Europe, 10 October 2007, paras. 12, 76 and 77; *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UNGA, resolution 53/144, 9 December 1998, Article 8; *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), United Nations Economic Commission for Europe (UNECE), 25 June 1998, Articles 6 and 8; *Framework Convention for the Protection of National Minorities*, Council of Europe, ETS No. 157, 1 February 1998, Article 15.

submission of draft laws by MPs that are similar to those initiated by the government), may be inconsistent, which will negatively affect the legislative process. Adequate and continuous training on the use of drafting manuals, the application of legislative techniques and other guidance should also be provided to staff supporting MPs in developing legislative initiatives and proposing amendments as well as to civil servants preparing and processing draft laws.

COUNTRY EXAMPLE 1

Ireland — Office of Parliamentary Legal Advisers (OPLA)³⁴

The **Office of Parliamentary Legal Advisers (OPLA)** is an in-house legal team of the Houses of the Oireachtas (Parliament of Ireland), completely independent of Government, and which provides specialist, non-partisan legal advice on a broad range of parliamentary, constitutional and corporate legal issues to Parliament, its Members and its staff. This includes legal advice and support on legal issues arising in Oireachtas Committees, examining and challenging Government-supported policy matters and Bills, legal policy advisory services and legislative drafting services to Non-Government Members of the Oireachtas (including initial research, development of the policy proposal, drafting the Bill and amendments to it, and pre-Committee Stage scrutiny).

47. Additionally, care should be taken to enhance gender-responsiveness and diversity-sensitivity in parliaments, in particular with respect to law-making and oversight³⁵ (see **Sub-Section IV.8** on Gender and Diversity Considerations below). Gender and diversity audits and action plans can help further strengthen gender-sensitive practices within parliaments, including when carrying out their lawmaking functions.³⁶

34 See [The Office of Parliamentary Legal Advisers – Houses of the Oireachtas](#).

35 For a comparative overview of gender-sensitivity in parliaments in OSCE participating states, see [Realizing Gender Equality in Parliament. A Guide for Parliaments in the OSCE Region](#), OSCE/ODIHR, 6 December 2021.

36 See *ibid.*; and [Participatory Gender Audits of Parliaments: A Step-by-Step Guidance Document](#), OSCE/ODIHR, 16 August 2022.

48. Once a draft law is submitted to parliament, it is normally first allocated to a committee, which will debate the draft law, both in general and in detail, and may then adopt it with or without changes. It is also essential that there are concrete institutional arrangements or mechanisms in place within the parliament to ensure the proper implementation of gender-based analysis (e.g., by a parliamentary committee), accompanied by appropriate budgetary allocations and resources and adequate support research services.³⁷ After a draft law has passed the committee stage, it usually undergoes at least two readings (first as a whole, and then article by article), during which amendments may be proposed by members of parliament. Plenary sittings should, as a rule, be open to the public. They may be closed by the decision of the majority, ideally by a qualified majority in cases where secret matters are discussed (e.g., matters of defence or foreign policy); the decisions taken by parliament in closed hearings should then be published.³⁸
49. The right to table amendments during parliamentary sittings may be limited in the rules of procedure, in order to prevent belated or irrelevant proposals for amendments. In some countries, the first reading is conducted by the competent committees, with the plenary then reviewing the draft law in its second reading. Some constitutions and/or parliamentary rules of procedure foresee a third reading.³⁹

COUNTRY EXAMPLE 2

Montenegro – Rules of Procedure of the Parliament of Montenegro⁴⁰ (unofficial translation)

Article 137

Review of draft laws by committees (first reading)

The draft law, before the Parliament considers a draft law in a session, shall be reviewed by the competent committees (the Legislative Committee, and the committee in charge of the subject matter). [...]

37 See e.g., *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation*, OSCE/ODIHR, 4 July 2017, pp. 40-46.

38 Venice Commission, *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, 24 June 2019, para. 64.

39 See, e.g., Canadian House of Commons, *Standing Order 71*, *Rules of Procedure of the German Bundestag*, Section 84, and UK House of Commons *Standing Order No. 62*.

40 See *Rules of procedure of parliament of Montenegro*.

Prior to its consideration in the sitting of the Parliament, responsible committees (Legislative Committee and a lead committee) shall consider a proposal for a law.

Article 140

Review of the draft law in general (second reading)

[...] The review of the draft law includes a debate on: the constitutional basis under Article 16 of the Constitution; the reasons for passing the law; its compliance with European legislation and confirmed international agreements; the essence and effects of the proposed solutions and the assessment of the necessary funds from the budget for the law's implementation. [...]

Consideration of the proposal for a law at the sitting of the Parliament shall commence by a general debate on the proposal for a law.

General debate shall include the debate on constitutional grounds referred to in Article 16 of the Constitution; reasons for adoption of the law; its compliance with European legislation and ratified international treaties; substance and effects of proposed solutions and estimated funds required from the budget for enforcement of the law.

[...]

Article 143

Review of the draft law in detail (third reading)

Following additional hearings by the committees and the submission of a report thereon, the Parliament considers the draft law in detail, which includes debates on the solutions in the draft law, the submitted amendments that had not been agreed upon, as well as views and proposals made by the committees.

[...]

After additional debate in committees and submission of the report thereon, the Parliament shall proceed to detailed debate on the proposal for a law, which shall include the debate on the solutions in the proposal for a law, submitted but not reconciled amendments and positions and proposals by the committees.

[...]

50. The subsequent process differs, depending on whether a state has a unicameral or a bicameral parliament. In a unicameral system, after having passed through the different readings, a final version of the draft law

is then adopted by parliament. Laws may be passed by simple majority or by a qualified majority (this will be a certain percentage of all parliamentarians as foreseen by the constitution, e.g., two-thirds). The type of majority required will depend on the nature of the law; many constitutions specify that changes to key legislation can only be passed by a qualified majority.⁴¹ In most bicameral systems, all, or certain types of draft legislation are adopted first by the lower house of parliament, and then pass to the upper house of parliament, which may usually adopt, amend, or reject or veto draft laws.⁴² After laws have been passed by parliament, they are then promulgated by the head of state. In most democracies, the head of state has the option of rejecting an adopted law, but not indefinitely; if the head of state persists in their rejection, many constitutions and rules of procedures allow a qualified or absolute majority of members of parliament to override such objection, in which case the law is considered duly promulgated.⁴³ In some jurisdictions, the head of state can apply a constitutional veto as well, meaning that, where they deem an adopted law to be unconstitutional, they can send it to the constitutional court for review. In case of unconstitutionality, the law cannot then be promulgated and published.

51. In line with an emerging practice globally, it is also important to enhance parliamentary oversight over the implementation of laws, by establishing a set of rules or system enabling the Parliament to assess the impacts of major legislation in force and determine whether such legislation has achieved its goals and whether it should be maintained, amended or repealed (see **Sub-Section IV.4.2**).

41 See, e.g., the [Constitution of Armenia](#), Article 103 (2), specifying that the Rules of Procedure of the National Assembly, the Electoral Code, the Judicial Codes, the Law on the Constitutional Court, the Law on Referendum, the Law on Political Parties and the Law on the Human Rights Defender are constitutional laws that need to be adopted by at least three fifths of votes of the total number of deputies. Similarly, the [Croatian Constitution](#), Article 83, states that laws regulating the rights of national minorities shall be passed by a two-thirds majority vote of all members of parliament.

42 See, e.g., [Constitution of the Czech Republic](#), Articles 45-48.

43 See, e.g., *Ibid.*, Article 50; [Constitution of North Macedonia](#), Article 75, and [Constitution of Portugal](#), Article 136.

Box 3 – Ways in which parliaments can contribute to a democratic lawmaking process and better-quality laws

- Ensure proper, timely and early legislative planning, coordinated with other actors of the lawmaking process, e.g., the government.
- Specify, in relevant rules of procedure, that draft laws prepared by MPs should, as far as possible, follow similar processes of quality checks, regulatory impact assessments (RIAs), preparation of explanatory notes and of consultation procedures as those of the government, to ensure draft laws of a similar quality, while ensuring that adequate support and resources are provided for that purpose.
- In particular, and even if not required by law, ensure that parliamentary draft laws and draft amendments undergo RIAs, especially where they have a significant impact on the fundamental rights of individuals or the environment, or on the state budget. Where certain types of draft laws are required to undergo RIAs by law at the pre-parliamentary stage, this obligation should be extended to the parliamentary phase as well, and should provide information on the necessity of the law, its compatibility with international and national legislation, and the relevant impact assessments to be conducted, including the economic, environmental, social, gender and diversity impact.
- Arrange that, in addition to the work of constitutional and budget and finance parliamentary committees, a specific parliamentary committee(s) or other parliamentary body or structure is in charge of assessing the human rights and gender compliance of the proposed draft laws, with a clear mandate as well as the financial and human resources to do so.
- Allocate proper time between sessions and voting to allow for meaningful parliamentary analysis, debates and general oversight.
- Organize inclusive and meaningful public hearings and/or public consultations, with a proper feedback mechanism, even if not mandated by law, especially when the proposed law may have an impact on the functioning of public institutions, including the judiciary, and on human rights (see **Principle 7** on Participation and Inclusiveness).
- Develop the capacities of parliamentary staff to support the work of parliamentarians and develop legislative and law-drafting skills and guidance, including on human rights compliance, encompassing also non-discriminatory, and gender- and diversity-sensitive legislation.
- Ensure the openness and transparency of parliamentary work and sessions and of public debates/hearings, including by having an accessible, user-friendly, intelligible website (but also offline resources). This should allow the public easily to access draft laws and related documentation (such as relevant impact assessments, the background and rationale of a draft law), as well as giving an overview and analysis of the results of consultations and explanations of a draft law's compatibility with the constitution and other laws and with international legal and human rights obligations.
- Monitor and evaluate the adopted legislation, including, as appropriate, the collection of data disaggregated by sex and other relevant characteristics (see **Principle 5** on Human Rights Compliance).

2. The Role of the Government

52. Across the OSCE region, the ways in which policies and laws are drafted and debated within governments varies, given the different types of governments, their internal work processes, and the various levels of openness and transparency marking their work. Governments may be initiators of draft legislation that is then debated, amended and adopted by parliaments. They may, in some circumstances, also prepare and adopt decrees themselves, if granted this power by the constitution or by parliamentary delegation. Governments and individual ministries or agencies are usually also responsible for passing secondary legislation to help implement laws.
53. Just as other state powers, the executive is responsible for the protection, respect, and fulfilment of human rights while implementing its role in the lawmaking process. This requires positive action in law and policy to ensure that individuals are able to enjoy and exercise their rights freely. This also means bearing in mind gender and diversity obligations imposed on states and actively promoting these and other rights. It also requires the state to ensure that individuals are protected from violations of their rights and have effective remedies available where their rights are violated.
54. The government should ensure proper advance planning of policies and legislation, allocating enough time for each stage of the policy and legislative cycles of the various legislative projects of a given ministry or other government agency.⁴⁴ It should also take into account the length and/or complexity of the legislative initiatives or whether it involves wide-ranging reforms that may significantly impact large parts of the population.⁴⁵ This also includes sufficient time for initial policymaking discussions, verification processes, impact assessments and public consultations.⁴⁶ The government should inform the parliament early on about policy measures and legislative proposals that will be submitted within the coming months and years. It is also essential to ensure proper cooperation between the government and the parliament throughout the policy and lawmaking processes. This should include regular sharing of updates to policy and legislative plans, aligning their respective legislative plans and strategies, and enhanced formalized coordination arrangements between them. The planning process should also be consistent with a state's budgetary cycle and reflect budget allocations and expenditures.

44 *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, OSCE/ODIHR, 27 October 2008, p. 31.

45 *Assessment of the Legislative Process in the Kyrgyz Republic*, OSCE/ODIHR, October 2015, para. 13 and paras. 35-39.

46 *Assessment of the Legislative Process in the Republic of Armenia*, OSCE/ODIHR, 30 October 2014, para. 39.

55. Most governments have some sort of rules of procedure that outline their daily work processes, including in the areas of policy- and lawmaking. Usually, these outline the different steps that need to be taken in the course of developing policies or laws. They will usually include different stages of cooperation and consultations between the initiating body (e.g., a ministry or other government office or agency) and stakeholders in government and beyond (including the ministries of justice and finance, as a matter of course), including via public consultations especially when they are required by law. It is also essential to envisage a mechanism whereby the institutional mechanism for the advancement of women and gender equality is systematically involved in the policy- and lawmaking process, including ex ante and ex post impact assessments, while also allocating adequate resources for this purpose.⁴⁷ There should be an oversight mechanism within the government to conduct checks both on compliance with relevant procedures, including regulatory impact assessment (RIA) and consultation procedures, and on the content and quality of the analysis and conclusions presented and of the draft law, before they are submitted to government for final approval. The final step, before a draft law is submitted to parliament, is usually approval of the draft law by the government. Rules of procedure may be very detailed or in some case, quite general, and will allow plenty of discretion in practice. The manner in which the inner workings of the government are communicated to other stakeholders and the public, and in which different stages of policy- and lawmaking are made public also varies greatly and depends on how governments perceive themselves and their roles vis-à-vis the public.
56. The box below outlines how governments can help ensure that lawmaking processes are democratic and result in good-quality legislation, following some of the principles set out in Part II. Similar considerations and recommendations may apply to presidential administrations when they have the competence to initiate laws, depending on the extent of their mandates and insofar as they are separate organs and not part of the government.

47 See *Institutional Mechanisms as Critical Actors for Gender Equality: A Review from the OSCE Region*, OSCE/ODIHR, 16 November 2023, Part II.

Box 4 — Ways in which governments can contribute to a democratic lawmaking process and better-quality laws

- Ensure proper, timely and early legislative planning, coordinated with other actors of the lawmaking process, e.g., parliament, and also involving proper and realistic budgetary planning.
- Seek to have a working group in charge of developing the bill whose composition is gender balanced and representative of different communities.
- Ensure the openness and transparency of policy discussions and of the different legislative drafting stages (see **Principle 6** on Openness and Transparency).
- Conduct in-depth RIA, including on gender, diversity, economic, environmental and social aspects, when debating draft policies or laws, with the depth and extent of the analysis proportionate to the potential significance of the draft policy or law.
- Organize inclusive and meaningful public consultations, with proper feedback mechanisms, involving stakeholders that are interested in, or may be impacted by, or will be in charge of implementing the planned legislation and/or their representatives at different stages of developing draft laws or policies, including at an early stage in working groups or drafting committees (see **Principle 7** on Participation and Inclusiveness).
- Conduct outreach to obtain input from a wide variety of stakeholders (domestic, foreign and international) and the public, while exploring new and innovative ways to adequately involve the latter in policy discussions.
- Develop the skills and capacities of legal drafters within the government, including on how to prepare human rights-compliant (i.e., also non-discriminatory, gender- and diversity-sensitive) legislation and formulate it in a clear, foreseeable and consistent manner.
- Set up an oversight mechanism within the government to conduct checks both on compliance with relevant procedures, including RIA and consultation procedures, and on the content and quality of the analysis, presented conclusions and the draft law itself.
- Ensure consistency in the documentation of draft laws submitted for consultations and to parliament, so that each submission comes attached with an informative explanatory memorandum, informing the actors participating in the lawmaking process of the necessity of the law, how it fits into the national and international (where applicable) legal system, its possible impacts on different rights and vested interests, and the evidence it is based on, as well as other relevant information.
- Monitor the implementation of adopted legislation, including, as appropriate, collection of data disaggregated by sex, age and other relevant characteristics (see **Principle 5** on Evidence-based Lawmaking).
- Conduct proper ex post evaluation of existing legislation and its implementation with the help of different stakeholders, including particularly interested groups or those most impacted by the laws, as well as identify possible gaps and ensuing identification of legislative or non-legislative solutions.

3. The Role of National Human Rights Institutions and Similar Independent Bodies

57. National human rights institutions (NHRIs), ombudspersons institutions and equality or other human rights bodies specialized in particular fields (hereafter ‘similar independent bodies’) have an important role to play in promoting and protecting human rights at the national level, including in the context of lawmaking.
58. NHRIs, ombudspersons and equality bodies generally have mandates that explicitly include monitoring legislation and providing input to the legislative process. They should be consulted regularly and their advice sought on draft laws touching on their fields of competence and mandate. Both during the drafting period, and while such draft laws are debated before parliament, they should be able to review and contribute to public debates on draft laws and laws more or less at will.⁴⁸ These institutions may also have mandates that allow them to investigate cases where laws have been misapplied or applied arbitrarily and where this has resulted in discrimination or other human rights violations, based on individual complaints and/or on their own initiative. Some NHRIs and similar independent bodies may also have the powers to submit opinions on draft laws, propose or initiate draft laws⁴⁹ or initiate proceedings before courts, including constitutional courts (see box below). Moreover, some institutions may also intervene in the court proceedings as a ‘friend of the court’ (amicus curiae).

48 See, e.g., [Law on the Constitutional Law on the Human Rights Defender of Armenia](#), Article 29, according to which the Defender has the right to submit a written opinion on draft normative legal acts regarding human rights and freedoms prior to their adoption to the relevant body.

49 See, e.g., [Constitution of Serbia](#), Article 107, which grants this right also to the Civic Defender and to the National Bank of Serbia.

COUNTRY EXAMPLE 3

Role of the National Human Rights Institutions and similar independent bodies in Armenia, France and Georgia

ARMENIA – Constitutional Law of the Republic of Armenia “On the Human Rights Defender”⁵⁰

Article 29. Powers of the Defender with regard to improving normative legal acts

1. The Defender shall have the right to submit a written opinion on raft normative legal acts regarding human rights and freedoms prior to their adoption to the relevant body.
2. In all the cases where the Defender reveals during his or her activities that issues relating to the human rights and freedoms are not regulated by law or any other legal act or are not fully regulated, the Defender may submit to the body adopting the legal act a relevant recommendation, indicating the necessity and the extent of making amendments or supplements to the legal act.

FRANCE – Organic Law n° 2011-333 relating to the Defender of Rights⁵¹ (unofficial translation)

Article 32

The Defender of Rights may recommend making any legislative or regulatory changes that is deemed useful.

The Defender of Rights can be consulted by the Prime Minister on any draft law coming within its field of competence.

It can also be consulted by the Prime Minister, the President of the National Assembly or the President of the Senate on any question falling within its field of competence.

It contributes, at the request of the Prime Minister, to the preparation and definition of the French position in international negotiations in the areas falling within its field of competence.

In the cases provided for in the second and third paragraphs, the Defender of Rights delivers the opinion within one month.

50 [Law on the Constitutional Law on the Human Rights Defender of Armenia.](#)

51 [See Organic Law of France no. 2011-333 on the Defender of Rights, 29 March 2011, \(in French\).](#)

GEORGIA — ORGANIC LAW OF GEORGIA ON THE PUBLIC DEFENDER OF GEORGIA⁵²

Article 21

Based on the results of an inspection, the Public Defender of Georgia may:

(...)

e) in certain cases, act as a friend of the court (*amicus curiae*) in common courts and the Constitutional Court of Georgia;

(...).

59. It is important that laws, especially constitutions,⁵³ provide such institutions with as broad a mandate as possible,⁵⁴ and sufficient structural and financial independence⁵⁵ to allow them to fulfil their tasks accordingly,⁵⁶ including in the lawmaking process. The manner in which the heads or members of such bodies are appointed or dismissed, and their status and tenure need to be such as to exclude any potential undue influence from either the executive or the legislature, and guarantee their independence.⁵⁷ The funding of NHRIs and similar independent bodies should not depend on the executive and should be sufficient to ensure good-quality work and fulfilment of their mandates.
60. Other independent or regulatory bodies relevant to the lawmaking process include: auditors-general, courts of accounts or other supreme audit institutions, anti-corruption bodies, freedom of information or data protection commissioners, national broadcasting commissions or central

52 See Organic Law of Georgia on the Public Defender of Georgia, 1996, amended 2010, comprising Organic Law of Georgia No 2146a of 23 June 1999 - LHG I, No 27(34), 6.7.1999, Art. 142 and Organic Law of Georgia No 3565 of 21 July 2010 - LHG I, No 46, 4.8.2010, Art. 278.

53 With respect to ombuds institutions specifically, see Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles), European Commission for Democracy through Law (Venice Commission), 3 May 2019, para. 2.

54 See, e.g., Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles), UN General Assembly, resolution 48/134, 20 December 1993, Competence and responsibilities, paragraph 2.

55 See the Belgrade principles on the relationship between national human rights institutions and parliaments, in Report of the UN Secretary General on National institutions for the promotion and protection of human rights, 1 May 2012, Annex, adopted by experts from NHRIs, parliaments and universities from Africa, Central and South America, Asia, Europe and Oceania, at a 2012 International Seminar on the Relationship between National Human Rights Institutions and Parliaments, organized by the UN Office of the United Nations High Commissioner for Human Rights, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, and the National Assembly and the Protector of Citizens of the Republic of Serbia, with the support of the UN country team in Serbia, para. 6, with regard to the roles that parliaments can play in this context.

56 For national human rights institutions, these principles are set out in the UN Paris Principles and the General Observations, Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA), 21 February 2018.

57 For ombuds institutions, see Venice Commission, Venice Principles, paras. 6-7 and 11.

election commissions, whose purpose is to ensure the integrity, and improve the quality and resilience of democratic governance, as well as mitigate corruption risks.⁵⁸ Such bodies are often part of the constitutional structure of a country, but do not belong to the executive, legislature or judiciary. These public bodies are generally politically neutral and/or independent (to a greater or lesser degree) from the three branches of government. They may also be consulted during the lawmaking process on certain issues linked to their mandates. Cooperation between NHRIs, other independent bodies and civil society, including through advisory groups or networks, generally tend to strengthen the role of such institutions throughout the lawmaking process. Thus, human rights or anti-corruption concerns have a greater chance of being resolved if they are raised by different bodies, or if special audit institutions include them in their annual reports. Likewise, enhanced cooperation between independent institutions and other regulatory institutions or bodies and civil society can ensure greater awareness-raising and movements for reform on specific issues.

61. Some jurisdictions also have independent or partially independent bodies composed of legal experts whose specific role is legal reform, sometimes known as law commissions, or law reform commissions. Their role is to promote reform of the law in a non-contentious, apolitical manner, by updating or consolidating the law, simplifying or modernizing it, or removing archaic pieces of legislation. Depending on their mandates, these types of commissions may also have the right of legislative initiative or may propose the preparation of draft laws to government.

Box 5 – Ways in which national human rights institutions (NHRIs) and similar independent bodies can contribute to a democratic lawmaking process and better-quality laws

- Monitor government and parliamentary legislative planning and initiatives.
- Provide expert advice/contributions to the lawmaking process by assessing whether draft policies or laws are human rights-compliant and providing recommendations.
- Contribute to public discussions and parliamentary debates on draft policies and laws relevant to their scope of work.
- Where mandated to do so, bring a claim before the constitutional court or other high-level court regarding the non-compliance of the proposed draft or adopted law with the constitution (and potentially with international human rights standards).

58 Independent Regulatory and Oversight (Fourth Branch) Institutions, Constitution-Building Primer 19, International IDEA, 24 September 2019, p. 6.

- Monitor the implementation of adopted legislation, e.g., by assessing whether it is applied in a fair, equal and non-discriminatory manner, including, as appropriate, the collection of data disaggregated by sex and other relevant characteristics, ultimately to contribute to greater accountability of public bodies/institutions.
- To the extent possible, dedicate adequate time, human and financial resources to developing the capacity of staff to assess the compliance of laws with international human rights standards and/or domestic laws.
- Explore and enhance cooperation with other independent bodies and civil society, including through advisory groups or networks, to strengthen the role of such institutions throughout the lawmaking process and to raise awareness about human rights or anti-corruption concerns.
- Contribute to ex ante and ex post RIA processes to enhance analysis of the human rights-compliance of existing or draft legislation.

4. The Role of the Judiciary

62. Access to justice before independent and impartial courts is a core element of the rule of law. Courts review laws for their compliance with higher laws and are the main interpreters of how laws should be applied and implemented.⁵⁹ Due to the separation of powers in democratic states, the judiciary is usually not directly involved in making laws (as opposed to the executive and the legislature), but instead exercises more of an oversight role. At the same time, the Consultative Council of European Judges (CCJE) has recommended that “*the judiciary should be consulted and play an active part in the preparation of any legislation concerning their status and the functioning of the judicial system*”.⁶⁰ Courts also have a critical role in safeguarding human rights in all democratic states. They are “*charged with the ultimate decision over life, freedoms, rights, duties and property of citizens*”.⁶¹ Courts may be called on to restrain actions of different branches of government that threaten or violate human rights, and to prevent the abuse of power. They also interpret national laws on the basis of the legally binding human rights commitments of the state. An independent judiciary is thus essential in a democratic state.⁶²

59 *Opinion no. 18 on the position of the judiciary and its relation with the other powers of state in a modern democracy*, Council of Europe, Consultative Council of European Judges (CCJE), paras. 7 and 9.

60 CCJE, *Opinion no. 18*, para. 31.

61 See e.g., *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, adopted 6 September 1985.

62 See e.g., *Ibid.*

63. To allow courts to fulfil their roles adequately, laws on the judiciary need to contain the necessary safeguards to ensure the independence of courts and individual judges. Constitutions and other legislation need to regulate the appointment, removal, tenure and status of judges in such a way as to ensure the independence and immunity of judges. Courts need to have sufficient funds and other resources, and a certain budgetary autonomy to allow for the proper administration of justice.⁶³ Additionally, laws on the judiciary and on the administration of justice should not be changed too frequently within a short period of time.⁶⁴
64. In common law countries, in addition to rendering decisions that interpret laws, courts have created a vast body of law that is not grounded in statutes (judicial lawmaking⁶⁵), based on their legal interpretation of cases to which there is no clear statutory answer, which then sets precedents for other courts in later cases (the system of *stare decisis*). This kind of ‘judge-made law’ has the same level of authority as a law passed by the legislature, but can be overturned by the legislature.
65. At the same time, a number of civil law countries have institutions such as councils of state, which can have a judicial oversight role but may, at the same time, provide legal advice to governments and parliaments, also on draft laws.⁶⁶ Constitutional courts or high courts may also be asked to review draft legislation before adoption for its compliance with the constitution or higher laws, if their competences allow this, either in the form of advice, or in the form of a ruling.
66. In cases involving the review of adopted legislation, it is important to distinguish between constitutional courts and regular courts. Regular courts habitually review and interpret laws as part of their examination of individual cases and may determine whether secondary legislation complies with and implements the respective higher laws.
67. Constitutional courts, on the other hand, have the competence to determine whether a given law complies with the constitution, usually based on applications submitted by lower courts, constitutional organs, or individuals. Constitutional courts may identify gaps in legislation, declare

63 CCJE, *Opinion no. 18*, paras. 50-51.

64 *Ibid.*, para. 45.

65 See the definition of ‘judicial lawmaking’ in the Encyclopaedia Britannica.

66 See, e.g., the *Conseil d’Etat* in France and the *Consiglio di Stato* in Italy. The ECtHR has specified in its case law that the concurrent exercise of judicial and administrative functions does not per se raise concerns with respect to the independence and impartiality of such bodies, see the case of *Sacilor Lormines v. France*, no. 65411/01, judgment of 6 November 2006, paras. 70-74.

laws null and void, or remand them to parliament for revocation and revision, depending on their mandates.

COUNTRY EXAMPLE 4

Romania – Role of the Constitutional Court in Romania

CONSTITUTION OF ROMANIA⁶⁷

Article 146

Powers

The Constitutional Court shall have the following powers:

- a. to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution;
- b. to adjudicate on the constitutionality of treaties or other international agreements, upon notification by one of the presidents of the two Chambers, a number of at least 50 deputies or at least 25 senators;
- c. to adjudicate on the constitutionality of the Standing Orders of Parliament, upon notification by the president of either Chamber, by a parliamentary group or a number of at least 50 Deputies or at least 25 Senators;
- d. to decide on objections as to the unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration; the objection as to the unconstitutionality may also be brought up directly by the Advocate of the People;

[...]

68. When reviewing laws, constitutional courts or other higher courts may look not only at the content of laws, but also at the process whereby they were adopted. Depending on their mandates, constitutional or supreme courts may annul laws if they are invalid. A law is usually deemed invalid if it was adopted by a body having no such competence, if the law was not adopted by the necessary majority or was not published, and if it does

67 Constitution of Romania, 1991, as amended 2003.

not respect legal hierarchy. Beyond this, some state laws allow constitutional or other high courts to also review whether procedural or competency errors occurred during the legislative process, e.g., unjustified fast-track procedures, lack of public consultations on draft laws,⁶⁸ or a failure to conduct evidence-based lawmaking.⁶⁹ They may therefore have a substantial indirect influence on the lawmaking process, as the government and the legislature may then take greater care to follow the correct procedure to avoid legislation being overturned on such grounds.⁷⁰

69. Court decisions may instigate discussions on amendments or potential new laws. Judges, and in some countries even judicial governance bodies or higher courts, may also be involved in discussions on legislation pertaining to their rights and duties as judges (although in the case of courts, the extent of this is tempered by the principle of the separation of powers).

Box 6 – Ways in which the judiciary can contribute to a democratic lawmaking process and better-quality laws

- Play an active part in the preparation of any legislation concerning the status of the judiciary and the functioning of the judicial system.
- Where competent to do so, constitutional courts or other high courts should make sure to focus not only on the content of draft laws but also on the procedure whereby they are introduced, debated and adopted.
- Ensure that the judicial review of laws or the process of lawmaking are conducted in a fair, impartial and independent manner, and within a reasonable time.

68 See, in this context, Swiss Federal Constitution, Article 147, requiring cantons, political parties and interested groups to be involved in the preparation of laws that are important or of substantial impact, as well as in relation to significant international treaties.

69 See, e.g., the German Federal Constitutional Court, which in its judgments (see e.g., judgments of 19 March 2013 (2 BvR 2628/10) and of 22 December 1999 (1 BvR 1859/97, in German)) have often stressed the need for evidence-based lawmaking and the obligation of states to review regularly whether existing facts and statistics still support certain legal provisions. See also France, where the Council of State checks the quality of RIA while reviewing governmental draft laws and may ask the government to supplement its documents. In its published advice the Council has also criticized RIA deficiencies, see e.g., in a recent review of a draft law on renewable energy acceleration in September 2022, the Council of State of France stated that the RIA conducted was 'insufficient' with respect to certain provisions and even 'non-existing' with respect to important clauses, indicating that in some cases, these deficiencies gave the impression that the draft was based "*upon a pre-supposed statement rather than a developed impact study*"; see *Opinion on a Bill relating to the Acceleration of Renewable Energies*, Council of State of France, 22 September 2022, in French.

70 Ittai Bar-Simon-Tov, *The Role of Courts in Improving the Legislative Process*, *The Theory and Practice of Legislation*, Volume 3, 23 February 2016, pp. 295-313.

5. The Role of Civil Society

70. Civil society is an essential component of all democratic states that can play an active role in a variety of areas, notably by supporting the promotion and protection of human rights, including in the context of debating, preparing and, later, monitoring and evaluating policies and laws. The term covers a wide range of independent stakeholders and associations, including non-governmental organizations and human rights defenders, as well as individuals representing different parts of society working to improve and advance matters which they consider important, some of which are also in the public interest. Some of these individuals and entities also fulfil an important ‘watchdog’ function by scrutinizing state actions and institutions and raising issues that are of public concern.⁷¹
71. Engaging meaningfully with individuals or entities that represent people who are often marginalized or under-represented, such as younger people, the elderly, persons with disabilities, minorities, etc., throughout the policy- and lawmaking process allows their perspectives to be taken into account and the adopted policies and laws to be gender- and diversity-responsive (see also **Sub-Section IV.5** on Consultations). Civil society organizations thus have an important role to play in ensuring that laws are the result of an inclusive process, are implemented properly and fairly and in an equal and non-discriminatory way, and do not impose disproportionate burdens on individuals and groups.
72. The participation of civil society organizations in lawmaking should be facilitated by public authorities, for instance, by the establishment of mechanisms that enable associations to engage regularly in dialogue with, and be consulted by public authorities at various levels of government.⁷² When participation happens through regular discussions or institutionalized frameworks, such as consultative bodies (e.g., public councils), working groups or appointed government bodies, this participation should be organized through a public, transparent, open and competitive selection process, based on clear and predefined criteria. It should allow associations to choose their representatives and should be transparent.⁷³ In parallel, public consultation mechanisms should be open, making it possible for all interested associations, including smaller civil society

71 ECHR, *Magyar Helsinki Bizottság v. Hungary* (GC), Application no. 18030/11, judgment of 8 November 2016, paras. 166-167, with further references.

72 See ODIHR and Venice Commission, *Guidelines on Freedom of Association*, para. 184.

73 *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, OSCE/ODIHR, 22 September 2015, prepared by civil society experts with the support of ODIHR, para. 13.

groups that are not involved via regular discussions or institutionalized frameworks, to take part (see also **Sub-Section IV.5** on Consultations).

73. Civil society can engage in legislative processes in various ways. Organizations and individuals can raise issues publicly and advocate for legal reform, educate and mobilize others, and support marginalized and under-represented groups to become more involved in public affairs. This may include sending petitions to relevant parliamentary committees or appearing before such committees to provide information and evidence.
74. Civil society organizations or individuals may also participate directly in the drafting process by submitting input during public consultations, being invited to take part in working groups or conducting their own research on the impact of legislation after its adoption. In a number of countries, these organizations may engage in litigation activities with regard to specific cases that come to their attention. Different entities and organizations with similar goals may also create and participate in national and international networks, platforms and coalitions.
75. To ensure that civil society organizations can contribute in a meaningful way to enhancing lawmaking processes, domestic laws and practices should ensure that they encourage and support, and do not unduly restrict the participation and work of such organizations. Notably, civil society entities should not face any undue obstacles when seeking to participate in debates on political matters or on other issues of public interest.⁷⁴ These kinds of organizations should also not suffer from other kinds of undue restrictions that could potentially impact their role in law- and policymaking. Thus, laws should provide for transparent, unbureaucratic, fair and gender- and diversity-sensitive registration processes for associations and similar entities that wish to register, providing the latter with prompt decisions, in compliance with human rights standards, while recalling that unregistered associations also benefit from the right to freedom of association. Associations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights. This means providing them with the right to appeal or to have reviewed, in a timely manner and by an independent and impartial court, the decisions or inaction by the authorities concerning their registration, activities, prohibition, dissolution or sanctions.⁷⁵

74 In the past, the ECtHR, has found, however, that this is permissible in cases involving paid advertisement, see *Animal Defenders International v. the United Kingdom*, no. 48876/08, 22 April 2013, paras. 116-125.

75 See ODHR and Venice Commission, *Guidelines on Freedom of Association*, paras. 116-119. See also ECtHR, *Koretsky v. Ukraine*, no. 40269/02, 3 April 2008, paras. 51-52, and *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, paras. 55-56.

Moreover, states should not unduly interfere with the internal structure or work of civil society organizations. In addition, these entities should have access to sufficient resources, and related reporting requirements should not impose excessive burdens on them,⁷⁶ all of which could potentially hinder their work in general, and their participation in law- and policymaking procedures in particular. Any legislation regulating lobbying should strictly define the meaning of lobbying, ensuring that it primarily targets those who receive compensation for carrying out lobbying activities and that it does not cover all advocacy activities by civil society organizations or participation in public consultations (see also **Sub-Section III.8**). Restrictions pertaining to third-party funding and involvement in political activities should only apply in cases where third parties and their actions are intended to benefit specific political parties, either in general or during campaigns, and should not cover NGOs, other associations and interest groups that debate issues of public interest, engage in democracy promotion or general issue advocacy during electoral campaigns,⁷⁷ including in the context of lawmaking.

76. States must also protect civil society organizations from threats, attacks or other measures that intimidate them, such as criminalization of their work by targeted criminal or civil proceedings, or harassment.⁷⁸ In particular, states should seek to maintain the autonomous watchdog function of organizations that habitually draw attention to matters of public interest.⁷⁹ Overall, civil society should be able to conduct its work free from harassment and stigma, and organizations and individuals should be seen as useful collaborators in the field of policy- and lawmaking; not as opponents. Civil society's access to information, including as part of the legislative process, should be actively upheld and protected by the state.

76 ODIHR and Venice Commission, *Guidelines on Freedom of Association*, paras. 20, 27, and 75.

77 See ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 221.

78 See e.g., ODIHR *Guidelines on the Protection of Human Rights Defenders*, OSCE/ODIHR, 10 June 2014.

79 As accepted by the ECtHR in relation to civil society organizations' right to access official documents held by public authorities, see, e.g., ECtHR, *Magyar Helsinki Bizottság v. Hungary (GC)*. See also ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 124 and 139, where the ECtHR specifically emphasized that "civil society makes an important contribution to the discussion of public affairs", noting its vital role as "public watchdog", and that the "democratic process is an ongoing one which needs to be continuously supported by free and pluralistic public debate and carried forward by many actors of civil society, including individual activists and NGOs".

Box 7 – Ways in which civil society can contribute to a democratic lawmaking process and better-quality laws

- Raise public awareness of, and advocate for legislation or better legislation in certain areas, in particular where this is needed to safeguard the human rights of individuals or groups, to protect democratic values and the rule of law.
- Provide inputs reflecting their expertise throughout the legislative process, especially at the policymaking stage and in public consultations or working groups.
- Function as a key trigger for more inclusive and participatory legislative processes, including by organizing consultations and events to ensure the participation of marginalized or under-represented people or groups.
- Monitor the implementation of adopted legislation and raise awareness about the legislation and about potential problems in implementation, including discriminatory impact on certain people or groups.
- Raise concerns about situations where draft laws have not undergone the proper procedure (especially with respect to public consultations), or where they have the potential to threaten or violate human rights and freedoms.
- Where needed, advocate for more transparency and openness in policy- and law-making in general, including the use of new and innovative manners of expanding civic participation.

6. The Role of the General Public

77. Along with civil society, the public should have equal and accessible opportunities to be informed and consulted and to engage actively in all phases of the policy and legislative cycle. In this respect, states should explore, promote and implement innovative ways to engage effectively with the public to source ideas and co-create solutions.
78. A recent trend has seen many countries across the OSCE region address specific issues of political or societal interest via methods of deliberative democracy that involve engaging citizens directly in public decision-making. In a recent publication, the Organisation for Economic Co-operation and Development (OECD) differentiated between four different purposes of deliberative processes: 1) informed citizen recommendations on policy questions, 2) citizen opinions on policy questions, 3) informed citizen evaluation of ballot measures and 4) permanent representative deliberative models.⁸⁰ Citizens' assemblies or similar citizens' gatherings such as citizens' juries or panels are made up of randomly selected citizens and fall within the first category. These types of deliberative processes habitually go through learning, consultation,

80 *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD, 10 June 2020, Chapter 2.

deliberation and decision phases before issuing recommendations to governments and the wider public.⁸¹

79. Such assemblies may form smaller, local or topical groups to debate solutions to a specific problem. Within the last decade, citizens' assemblies and citizens' juries or panels have appeared in different countries across the OSCE region (and beyond) and have focused on, among others, democracy, elections, climate change, legalizing assisted dying and other matters of heightened public interest.⁸² Some countries or regions have even sought to create permanent procedures to engage randomly selected citizens in policymaking alongside parliamentarians.⁸³ The benefits offered by new technologies has facilitated the creation and organization of many such assemblies in recent years and enables additional deliberative online meetings via crowdsourcing.
80. In this respect, it is important that states address the needs and overcome the specific challenges confronting minority, historically marginalized or under-represented people or groups wishing to participate in lawmaking processes. Legal guarantees and organizational mechanisms should be put in place to ensure more inclusive processes, while taking care to:
- Diversify the structures, methods, mechanisms, tools and types of public participation, ensuring that they are accessible, user-friendly and include new technologies, but are not limited to the sole use of online tools;

81 *Ibid.*

82 Recent examples of citizens' assemblies include the 2022 Climate Assembly (*Klimarat*) in Austria, during which 100 randomly chosen citizens came together over half a year to develop proposals on climate policy, a citizens' assembly on human rights (*Skupština građana*) in Bosnia and Herzegovina in 2022 involving 57 randomly selected citizens in Sarajevo and Teslic, who debated how to eliminate discrimination in the country's political and electoral system over two weekends, as well as the 2020-2022 Canadian Citizens' Assemblies on Democratic Expression, involving 120 randomly selected individuals to examine the impact of digital technologies on Canadian society. Recent years have seen similar assemblies in on climate change in Denmark (2021), France (Convention on Climate (2020)), Germany (2021), Luxembourg (2022), Scotland (2020-2021), Spain (2021-2022) and the United Kingdom (2020). Other topics discussed at similar assemblies over the last three years related to artificial intelligence, Germany's role in the world, education and learning and democracy (Germany), gender equality and biodiversity (Ireland), corruption (Montenegro), vaccination confidence and COVID 19 (North Macedonia), the future of Scotland (Scotland), food policy (Switzerland) and democracy (UK). For more information on these and other assemblies, see: [OECD Database of Representative Deliberative Processes and Institutions \(2021\)](#), and 'citizens' jury/panel' are at times used interchangeably, the latter are at times seen as more concise, with less people involved. Thus, the OECD has identified three sub-categories of such juries or panels: panels or juries that take place over consecutive days, those that are spread out over several weeks, and those that are ongoing for longer periods, e.g., two years (see: [OECD, Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave](#), Chapter 2. Recent examples of citizens' juries or panels are the [2021 two-day citizens' jury on democracy in Austria, where ten randomly selected people discussed the future of democracy](#), a [33-person jury in Finland to evaluate climate action in 2021](#), and a [25-person jury in Ireland on access to health information](#), also in 2021.

83 See, e.g., the Parliament of the Brussels region in Belgium, which amended its parliamentary procedures in December 2019, allows the formation of 'deliberative committees' composed of a mixture of members of the Regional Parliament and randomly selected citizens. This followed similar attempts of the City Council of Madrid and the Parliament of the German-speaking community in Belgium to create permanent institutions of citizen participation. For more information, see Min Reuchamps, [Belgium's experiment in permanent forms of deliberative democracy](#), International IDEA constitutionnet website, 17 January 2020.

- Support associations which aim to enhance the capacities of disadvantaged, marginalized or otherwise under-represented people to take part effectively in public decision-making processes; and
 - Adopt and implement relevant international guidance on web content accessibility for persons with disabilities.⁸⁴
81. When putting such mechanisms in place, it is essential to avoid a digital divide (i.e., the exclusion of certain people who may not have access to, or the capacity to use the Internet and new technologies). Regarding the participation of young people in particular, they must be given the proper tools to be effective, such as information and education about their political and civil rights, and the capacity, empowerment and access to exercise them. This presupposes that the public authorities will provide the necessary support and themselves have the capacity to engage meaningfully with youth.⁸⁵
82. States must ensure that they do not unduly interfere with the deliberative democracy process, and that those involved in such processes are aware of the relevant international human rights standards, which should then form part of the deliberations.
83. In some countries, constitutions and other legislation allow for so-called ‘citizens’ initiatives’, meaning the initiation of legislative procedures following a draft law that is supported by a certain number of citizens eligible to vote. Given the number of signatures required in such cases, and the large amount of resources, organizational and advocacy skills that are needed for success, citizens’ initiatives are quite rare in practice. Nevertheless, when they do take place, they are an important means for citizens to exercise their right to participate directly in public affairs. Ideally, state constitutions and relevant legislation should ensure that the thresholds for ‘citizens’ initiatives’ are not unduly high. The organizers of citizens’ initiatives then usually take part in the parliamentary proceedings in the same way as do other authors of draft laws from government, at least at the committee level.

84 See [W3C Web Accessibility Initiative \(WAI\)](#).

85 See [Revised European Charter on the Participation of Young People in Local and Regional Life](#), Congress of Local and Regional Authorities of the Council of Europe, 21 May 2003, Preamble.

COUNTRY EXAMPLE 5

Citizens' legislative initiatives in the Kyrgyz Republic, the Republic of North Macedonia and Estonia

CONSTITUTION OF THE KYRGYZ REPUBLIC⁸⁶

Article 85(1) provides that the right of legislative initiative belongs to 10,000 voters (popular initiative).

CONSTITUTION OF THE REPUBLIC OF NORTH MACEDONIA⁸⁷

Article 71 provides that the right to propose adoption of a law is given to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters.

CITIZENS' INITIATIVES PORTAL IN ESTONIA

The Citizens' Initiatives Portal enables citizens to write proposals for new or amending legislation, hold discussions, compose and send digitally signed collective addresses — at least 1,000 signatures from citizens of Estonia, aged 16 or over — to the Estonian Parliament (Riigikogu) and the local government (at least 1% of its registered population).

84. Other examples of deliberative models are online public debates,⁸⁸ or internet platforms at local or central levels that allow citizens to come together to develop broader visions for certain municipalities or to respond to a particular question.⁸⁹ Additionally, tools such as delibera-

86 Constitution of the Kyrgyz Republic, (2021).

87 Constitution of North Macedonia (1991, as amended).

88 See, e.g., France, where a public debate on agriculture was organized in 2020: see the 2021.Final Report of the public debate on the website of the National Commission on Public Debate, 8 January 2021.

89 See, e.g., the G1000 project that took place in Belgium in 2011-2012 and consisted of three phases: In the first phase, a broad online survey allowed individuals to raise different topics of interest, which were then narrowed down to three main themes: social security, welfare in times of economic crisis, and immigration. These themes were then discussed during a citizens' summit (phase two) involving 1000 citizens, and in the third phase, a citizens' panel of 32 (randomly selected) people elaborated proposals for reform. Following this, a similar G1000 project was organized in the Netherlands in 2014 and 2016s forum developing more concrete proposals, and the citizens' assembly, which deliberated and decided on these proposals. Participants included 49 employers, 51 politicians, 43 civil servants and 51 artists and 94 clerks were found to assist the groups. A similar project to establish a strategy for the city of Madrid was launched in 2019: see: Participedia Case Madrid G1000.

tive polls or surveys⁹⁰ can gauge individuals' opinions on specific issues before legislating on them.

Box 8 – Ways in which the public can contribute to a democratic lawmaking process and better-quality laws

- Follow and remain informed about planned or ongoing legislative projects and participate in consultation processes.
- Promote, support and participate in deliberative models of civic participation.
- Raise awareness of gaps or inconsistencies in legislation or in the implementation of laws, including cases where certain groups are specially targeted or disproportionately affected, and seek out available administrative or legislative avenues.

7. The Role of Experts

85. While legal drafters operating within the executive may have a wealth of drafting experience, gaps may remain in areas where additional, external, technical expertise is required. Given the complexity of contemporary legislation, additional technical information or expertise provided by extra-institutional actors can also help inform policymakers about different policy choices.⁹¹ Likewise, verification processes within government may need to be complemented by legal/human rights expertise, including gender-related, environmental, scientific, economic, academic or other forms of expertise, to ensure that a draft law is on the right path to meet the intended policy objectives.

90 Deliberative polling, developed by the US University of Stanford, is a means to conduct polling with an informed citizenry. The process involves several stages: first, a random, representative sample of individuals is polled on a particular issue. After this, the individuals discuss the issues during an event, and receive (balanced) briefing materials which are also published. The participants engage in dialogue with competing experts and political leaders based on questions they develop in small group discussions with trained moderators. Parts of the deliberative events are often broadcast on television, either live or in taped and edited form and/or through social media and other mediums. After the deliberations, the same people are again asked the original questions. The resulting changes in opinion represent the conclusions the public would reach, if people had opportunity to become more informed and more engaged by the issues. This form of deliberative polling has been undertaken in the US but has also spread to many other countries across the world. For example, Iceland and Mongolia used deliberative polling prior to amending their constitutions in 2019 and 2017 respectively. For further information, see: [What is Deliberative Polling?](#), Stanford Deliberative Democracy Lab website.

91 [Compilation of Venice Commission Opinions and Reports on Lawmaking Procedures and the Quality of Law](#), European Commission for Democracy Through Law (Venice Commission), 29 March 2021, p. 18.

COUNTRY EXAMPLE 6

Serbia – Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents⁹²

Implementation of consultations in public administration bodies

Article 42.1

(1) During the process of formulating a public policy, and/or drafting a regulation, and depending on the nature, scope and potential effects, the proposing party shall include in the consultation process representatives of relevant civil society organizations, professional associations and scientific-research organizations, and representatives of public administration, including relevant public administration bodies.

86. Expertise can be provided by individuals, but also by independent groups, ad hoc commissions financed by public funds, academia or by the regular participation in public life (in the framework of conferences, meetings and auditions) of any private body, be it an enterprise, an association or trade unions.⁹³ Policy- and lawmakers should ensure equal access to decision-making for experts from different fields, especially when representatives of different industries/interest groups are involved and seek to influence the legislative process (see **Sub-Section III.8** on the Role of Special Interest Groups Through Lobbying). The effectiveness of the expertise is determined by the resulting quality of legislation, including its compliance with human rights and the rule of law.⁹⁴
87. Additional expertise is particularly important in the context of research-based lawmaking and will help legal drafters assess the potential impact of draft laws during the drafting process. Likewise, after laws have been adopted, expert opinions can assist with in-depth analysis of the actual impact of adopted legislation and will help lawmakers and decision makers assess whether a law has, in fact, achieved its intended goals.
88. Both before and after laws are adopted, public consultations at government and parliamentary levels should be open to a wide range of experts

92 Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, Government of Serbia, as of 2018.

93 Venice Commission, *Compilation of Venice Commission Opinions and Reports on Lawmaking Procedures and the Quality of Law*, p. 18.

94 Valentyna Lukianets-Shakhova et al., *The Lawmaking Linguistic and Expert Support: European and Ukrainian examples*, *Revista EntreLinguas, Araraquara*, v. 7, n. 00, e021113, 2021, citing further references.

from different fields. Public institutions should establish and maintain lists of experts to consult on a variety of topics and have procedures in place to ensure diversity and objectivity with respect to the experts who are proactively invited to government and parliamentary meetings. This should be based on neutral and objective criteria and will ensure that a range of views is heard on a given topic by a plurality of different experts from diverse backgrounds. The executive and parliaments are likewise encouraged to consult with international experts or expert organizations.

89. At the same time, when seeking expert advice from different people or groups, policymakers and legal drafters need to bear in mind that, at times, the experts may have vastly different opinions on the subject. The drafters and decision makers need to find ways to resolve such conflicts, while remaining true to the objectives of the draft policies and laws, and to the national and international human rights and rule of law standards. It is also important that the principles of legitimacy, representativeness, transparency and accountability are respected throughout the process of involving experts.

Box 9 – Ways in which experts can contribute to a democratic lawmaking process and better-quality laws

- Follow and remain informed about planned or ongoing legislative projects, and take part in consultations relevant to areas of expertise.
- Where possible, conduct in-depth analysis of draft policies or laws and raise any concerns about possibly erroneous data or analysis on which it may be based, inconsistencies or violations of laws or international standards, or of potential problems relating to implementation.
- Ensure that any analysis provided to law drafters, decision makers and/or the public is clear and understandable to lay people, so that issues with a draft policy or law are comprehensible to stakeholders and the wider public.

8. The Role of Special Interest Groups Through Lobbying

90. Special interest groups, informal or formal, may seek to influence the legislative process, including in an organized manner via professional lobbyists. Lobbying is understood as the promotion of specific interests by communicating with a public official as part of a structured and organized action aimed at influencing public decision-making.⁹⁵ It is a legitimate act of political participation, an important means of fostering pluralism and a tool, ultimately, to contribute to better decision-making in the public domain.⁹⁶ The participation of private actors in this way in the policymaking process in their field of interests is important, as it allows individuals or groups who may not otherwise be able to participate in politics to play a role in the process.⁹⁷ Social partners, representing the interests of union and business groups, can likewise be involved in the pre-parliamentary arena of lawmaking.
91. Lobbying activities may be regulated in the interests of transparency and accountability, as an essential component of good public governance applicable to the public sector and to ensure that financially or politically powerful groups do not unduly influence or capture state policies.⁹⁸ However, regulation of lobbying activities should not be unduly burdensome and should seek to balance the need for transparency with safeguards for the rights of individuals and associations,⁹⁹ including the rights to freedom of expression and opinion, freedom of association and the right to participate in public affairs. Individuals and associations have the right to express their opinions and petition public officials, bodies and institutions, whether individually or collectively, and to participate in public affairs by campaigning for political, legislative or constitutional change.¹⁰⁰ While some civil society organizations may be involved in lobbying, not all contacts between civil society and politicians or political institutions, nor

95 [Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making](#), Council of Europe Committee of Ministers, 22 March 2017.

96 [Urgent Opinion on Draft Rules of Italy Governing the Activity of Representation of Interests](#), OSCE/ODIHR, 21 September 2021, para. 7.

97 Venice Commission, [Compilation of Venice Commission Opinions and Reports on Lawmaking Procedures and the Quality of Law](#), para. 43.

98 ODIHR, [Urgent Opinion on Draft Rules of Italy Governing the Activity of Representation of Interests](#), para. 10.

99 The ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) define an 'association' as "an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. An association does not have to have legal personality, but does need some institutional form or structure."

100 See e.g., Council of Europe Committee of Ministers, [Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making](#).

forms of advocacy by civil society organizations should be characterized as lobbying.¹⁰¹ Thus, when drafting or reviewing regulations on lobbying, it is important to define lobbying and who is to be considered a lobbyist clearly and unambiguously, while involving all key actors, including public officials, and also representatives of the lobbying consultancy industry, civil society and independent ‘watchdogs’ in establishing rules and standards, and putting them into effect.¹⁰²

92. Strong transparency and integrity requirements help to achieve accountability and inclusiveness in decision-making, including lawmaking.¹⁰³ Moreover, public officials need to provide all stakeholders, notably the private sector and the public at large, fair and equitable access to participate in the development of public policies.¹⁰⁴ Such an approach helps counterbalance vocal vested interests and is crucial to protecting the integrity of decisions and the processes by which they are made. A number of states have therefore created mandatory or voluntary lobbyist registers or lists to promote transparency in this respect and to achieve fair and equitable access, while others have adopted legislation to regulate lobbying.¹⁰⁵

101 [Report on the Role of Extra-Institutional Actors in the Democratic System \(Lobbying\)](#), Council of Europe Venice Commission, CDL-AD(2013)011, adopted 8-9 March 2013, para. 14.

102 [Recommendation of the Council on Principles for Transparency and Integrity in Lobbying](#), OECD, OECD/LEGAL/0379, 18 February 2010, Principle 4 and para. 17.

103 [OECD, Recommendation of the Council on Principles for Transparency and Integrity in Lobbying](#), para. 19.

104 *Ibid.*, para. 4.

105 See, e.g. the [French Law no. 2016-1691](#) of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life, (in French); [Lithuanian Law on Lobbying Activities](#), 26 June 2020, No. XIII-3170; [Latvian Law on Transparency of Interest Representation](#), adopted on 13 October 2022.

Box 10 – OECD’s Recommendation of the Council on Principles for Transparency and Integrity in Lobbying¹⁰⁶

I. Building an Effective and Fair Framework for Openness and Access

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.
3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.
4. Countries should clearly define the terms ‘lobbying’ and ‘lobbyist’ when they consider or develop rules and guidelines on lobbying.

II. Enhancing Transparency

5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.
6. Countries should enable stakeholders — including civil society organisations, businesses, the media and the general public — to scrutinise lobbying activities.

III. Fostering a Culture of Integrity

7. Countries should foster a culture of integrity in public organisations and decision-making by providing clear rules and guidelines of conduct for public officials.
8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

IV. Mechanisms for Effective Implementation, Compliance and Review

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.
10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

93. When drafting policies or laws, it is important to remember that the information provided by sectoral or interest groups entails the risk of being partial. The arguments cannot be considered as neutral expertise. It is the task of the political process itself to resolve such conflicts of special interests.¹⁰⁷

106 Available at [OECD Legal Instruments](#).

107 Venice Commission, [Compilation of Venice Commission Opinions and Reports on Lawmaking Procedures and the Quality of Law](#), p. 18.

Box 11 – Ways in which special interest groups and lobbyists can contribute to a democratic lawmaking process and better-quality laws

- When getting involved in discussions on planned draft policies or laws, be transparent about being a lobbyist, either for one's own cause or for that of others, so that it is clear which interest or lobbying group is being represented.
- To further enhance transparency, proactively register with (voluntary or mandatory) lobbyist registers and follow any other requests or requirements related to the status of lobbyist.
- As applicable, raise valid concerns regarding potentially unclear or unduly burdensome lobbying legislation, to ensure that key principles regarding the right to participate in public affairs are adhered to.
- At all times, seek to maintain professional integrity, provide correct and reliable information and avoid conflicts of interest to ensure a level playing field in public participation and retain public trust in public decision-making processes.¹⁰⁸

¹⁰⁸ See also OECD, *Recommendation of the Council on Principles for Transparency and Integrity in Lobbying*, paras. 15 and 16.

The background is a solid red color. Overlaid on this are several concentric, semi-circular arcs of varying shades of red. Interspersed among these arcs are various geometric shapes: solid circles, hollow circles, and solid squares. Some of these shapes are positioned as if they are part of a flow or process, with arrows pointing in a clockwise direction. The overall effect is a sense of dynamic movement and interconnectedness.

**PART IV. FUNDAMENTAL
ELEMENTS OF THE LAWMAKING
PROCESS CONTRIBUTING TO
BETTER LAWS**

PART IV. FUNDAMENTAL ELEMENTS OF THE LAWMAKING PROCESS CONTRIBUTING TO BETTER LAWS

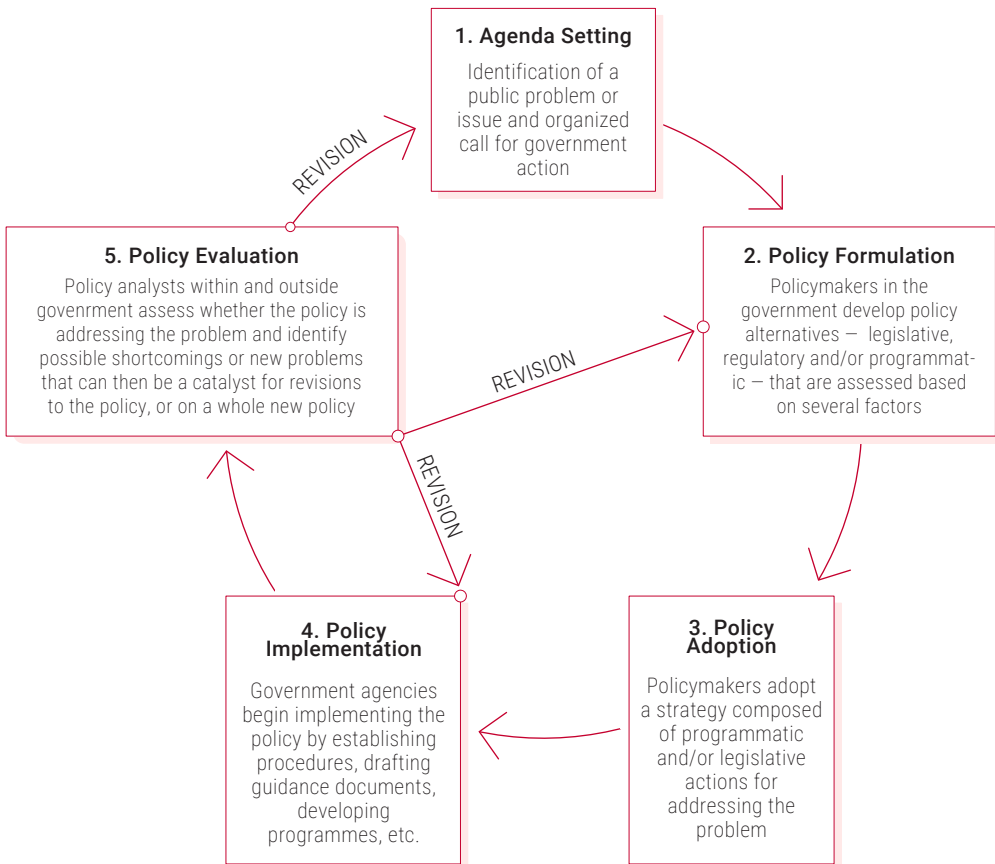
94. The quality of laws depends largely on the process leading to their adoption. Experiences from countries across the OSCE region have demonstrated the importance of an evidence-based, open and transparent, and inclusive, representative and participatory process for the creation of effective and implementable laws that are of good quality.
95. This chapter elaborates on the Guiding Principles and provides detailed, concrete and practical recommendations on how these can be adhered to at key stages of the legislative cycle. It will explain why these elements of the legislative cycle are necessary and how to shape them to contribute to better legislation and ensure that laws will address the issues that they have set out to resolve.
96. Some of these key elements of the legislative cycle should be considered or may be relevant at several different stages of the lawmaking process or even throughout the legislative cycle, such as impact assessments, public consultations and gender- and diversity-mainstreaming.

1. Policymaking

97. For states, policymaking means setting their key strategies and developing proper measures to implement such strategies (policymaking process). The executive, i.e., governments and other parts of the state administration, are habitually responsible for planning, developing and implementing policies. To help enhance the transparency of such policy work in general, it is important that members of the government publish data on a regular basis. This also helps enhance trust in public decision-making, as it indicates that the relevant ministers or other initiators of draft policies or laws are basing their policy decisions on up-to-date and reliable information in a specific policy area.

98. As with the legislative process, policymaking is a cyclical process. It begins with the agenda-setting stage, which includes the recognition and definition of a significant public problem and an organized call for government action. In response, policymakers in the government develop policy alternatives that are assessed based on several factors, which may then lead to the formulation, adoption, and implementation of a strategy composed of programmatic and/or legislative actions for addressing the problem. Once implementation has begun, analysis of the effectiveness of the policy may reveal shortcomings or new problems that can then be a catalyst for revisions to the policy, or for a whole new policy.

Figure 3. The policymaking process



99. Policymaking is broader than lawmaking, and legislation is only one of the tools that policymakers can use to achieve the desired objectives. During the policymaking process, all potential alternative solutions are evaluated, including non-regulatory ones, to determine whether legislation is the appropriate route. Good-quality policymaking means that legislation is only developed and adopted where necessary. In many states, the policymaking stage is often disregarded or conducted in a perfunctory manner, and it can also be hampered by overly short timelines and insufficient planning, which, in turn, impacts the quality of the resulting lawmaking process if legislative solutions are chosen.
100. A number of good practices can help ensure that the policymaking stage achieves its aims. These include:
101. **Proper policy planning.** Government and parliament should ensure proper advance planning of policies and legislation to help keep the workloads of government and parliament at reasonable levels. It is crucial to ensure that the government has its own policy/legislative plans and informs the parliament early on about policy measures and legislative proposals that will be submitted within the coming months and years. It is also essential that the planning process is consistent with a state's budgetary cycle and that it reflects relevant budget allocations and expenditures. This will help ensure that the planned policy/legislative initiatives comply with the annual budget. Enough time should be allocated for each stage of the policy and legislative cycles of the various legislative projects of a given ministry or other government agency,¹⁰⁹ also taking into account the length and/or complexity of the contemplated reform or whether it involves wide-ranging reforms that may significantly impact large parts of the population.¹¹⁰ This also includes sufficient time for initial policymaking discussions, verification processes, impact assessments and public consultations.¹¹¹
102. **Any state action, including the development of laws, should start with an open-ended policymaking phase.** During this phase, different solutions to a specific problem, including non-regulatory ones, are evaluated, debated and compared within government cabinets, ministries and other state agencies. The discussions during this phase should ideally be open-ended, with the focus being on how to solve the problem, not on drafting a particular law. It should look at, among other things, costs and

109 ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 31.

110 ODIHR, *Assessment of the Legislative Process in the Kyrgyz Republic*, para. 13 and paras. 35-39.

111 ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 39.

benefits, political viability, administrative ease and legal feasibility, all of which will determine which option to choose and whether it is necessary to develop legislation to address the problem. Increasingly, this pre-legislative stage is seen as a separate and distinct stage, worthy of particular attention.¹¹² Relevant documentation can be sent to stakeholders and published in a gradual manner, starting with an overview of different alternatives, and continuing with the government's proposals and policy statement.¹¹³ The preparation of policy papers such as concept notes or other policy documents should always precede and be approved by the government before legislation drafting begins.¹¹⁴

103. **A qualitative and evidence-based policymaking process enhances the content and coherence of laws.** Good practices from certain OSCE participating States have shown that an in-depth policymaking process, where the debates are based on evidence and extensive research, and sufficient time is allocated to allow for proper evidence-based policymaking, helps render the remaining process of drafting and debating a law much more coherent. It also helps manage and balance out the points of view of different interest groups and stakeholders. Evidence-based policymaking also saves time, as knowledge and convictions gained as to the actual necessity of a law or amendment will inform consultations and help with the assessment process throughout. It is generally recommended that a RIA be conducted in the early stages of the policymaking process.¹¹⁵
104. **Evidence-based policymaking is most effective if undertaken early on and in a transparent, consultative and inclusive manner.** This means compiling evidence on what has worked well in the past, both within a state and in other states, measuring the impact and thus effectiveness of existing government policies and adopted laws, using the gathered evidence to improve existing projects, while scaling back inefficient

112 See *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan*, OSCE/ODIHR, 11 December 2019, para. 58. See also ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 30.

113 E.g., in the UK, the government may issue white papers (policy documents that set out their proposals for future legislation) that already include a version of a draft law. It may also publish green papers, which are consultation documents that allow people both inside and outside parliament to provide feedback on policy or legislative proposals, see: [UK Parliament glossary](#). The EU has developed a similar practice, see: [European Union glossary](#).

114 See e.g., *Functioning of the Centres of Government in the Western Balkans*, SIGMA, Paper no. 53, 27 February 2017, p. 21, which refers to a system of concept papers that usually precedes the drafting of legal acts and also evaluates the need to have an impact assessment.

115 OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012), Recommendation I. 4. See also ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 47.

ones, and encouraging innovation and testing of new approaches.¹¹⁶ The policies also need to be the subject of intense consultations with a wide range of key stakeholders and decision makers, to test their feasibility at an early stage,¹¹⁷ from, among others, budgetary, economic, environmental, political, human rights, and gender and diversity points of view. In general, involving the public at an early stage of the policy cycle may help assess whether a proposal is likely to be accepted by the public and thus successful, especially if it is new or controversial. This involvement may include citizens' conferences with participants selected by lot, who, together with independent experts, could make recommendations on specific aspects of a policy. In matters pertaining to the environment, for example, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention, requires States Parties to provide for early public participation in various categories of environmental decision-making, including policies and generally applicable legally binding normative instruments.¹¹⁸ Public officials need regular/continuous training on how to conduct such early public consultations. Civil society can be instrumental in conducting evidence-based research, both at the planning and policymaking stages, and later, once laws have been adopted, to provide feedback on how such laws are implemented. To enhance the usefulness of such collaboration, civil society organizations need to be given sufficient information and background on the draft policies and laws,¹¹⁹ and be invited proactively to contribute.

105. **A qualitative and participatory policymaking process should also mainstream horizontal concerns, such as human rights, gender and diversity issues, throughout the policymaking cycle.** Addressing different concerns should be one aspect of the process of collecting data/evidence and of the ensuing assessment of the problem and of relevant policy options. Information on relevant issues, including the needs of men and women and of diverse groups in society, can be obtained by conducting an open, inclusive, transparent and accessible policymaking process. Targeted gender- and diversity-sensitive outreach measures to

116 See e.g., *Evidence-based Policymaking Collaborative: Principles of Evidence-based Policymaking*, US Urban Institute, 2016, p. 3. See also *Building Capacity for Evidence-Informed Policy-Making: Lessons from Country Experiences*, OECD, 2020; and *Supporting and connecting policymaking in the Member States with scientific research*, European Commission, Commission Staff Working Document , last updated 28 October 2022.

117 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 14.

118 See UNECE, (*Aarhus Convention*), Articles 6-8.

119 See, in this context, key Council of Europe instruments and documents setting out the right to access documents held by public authorities, e.g., the *Convention on Access to Official Documents*, which entered into force on 1 December 2020, and the *Committee of Ministers' Recommendation Rec. (2002) 2 on Access to Official Documents*. See also ECtHR, *Magyar Helsinki Bizottság v. Hungary* (GC).

different groups, ensuring their participation in various forms of public consultations or debates, will ensure that a wide range of different voices and opinions can inform and enhance the drafting process at an early stage, which will help avoid one-sided preconceptions or errors (see also **Sub-Sections IV.4** on Impact Assessment, **IV.5** on Consultations and **IV.8** on Gender and Diversity Considerations).

106. **Access to information should be guaranteed to all, throughout the policy- and lawmaking process.** All relevant documentation and evidence should be published, so that the public can relate to the reasons behind certain policy and legislative choices. In particular, in cases where a certain legislative decision will mean further expenditure of public financial and other resources, the public should have the right to know what data the decisions were based on (see also **Sub-Section IV.7**).
107. **New technologies facilitate communication, information-sharing and transparency.** New technologies can help enhance the focus and usefulness of initial policy consultations and assessments, e.g., by crowdsourcing key aspects of a policy. This opens up new means of communication with the public, but also comes with certain challenges, e.g., with respect to transparency and information-sharing, not to mention how to collect, compare and synthesize the gathered information.¹²⁰ At the same time, using such means to conduct consultations should not exclude certain individuals or groups. Notably, when using online tools, policy- and lawmakers should follow guidance on web content accessibility for persons with disabilities.¹²¹ Moreover, it should always be borne in mind that these technologies cannot be the only means of reaching out to particular groups or to the wider public, given that not all individuals have equal know-how or access to the Internet. Hence, policymakers should seek to diversify the structures, methods, mechanisms, tools and types of public participation and of targeted public outreach to certain groups, especially to those who will be impacted by the contemplated policy. The means of civic participation should be user-friendly and should include new technologies, but not be limited to the use of online tools to prevent the risk of digital divide. Here, the print media, radio and television can still play an important role.

120 See [Crowdsourcing alternative policy proposals' impacts on SMEs \(small and medium enterprises\), Example of Slovenia](#), OECD Observatory of Public Sector Innovation, 9 January 2018.

121 See [W3C Web Accessibility Initiative \(WAI\)](#).

COUNTRY EXAMPLE 7

Estonia – Data-driven Decision-making

Estonia is working on ways to integrate data into policymaking more meaningfully. Within the DG Reform Technical Support Instrument-funded project, Government data-driven decision-making (DDDM) is being implemented. The vision of the Government Office of Estonia is to develop a highly ambitious technical solution that supports the Government's data-driven decision-making process by providing fully automated analytical overviews of various subject matters and decision proposals for discussion at their weekly cabinet meetings. The outcome of the vision will replace and modernize the current approach to creating the Government Memorandum. The aim is to reach a fully automated and data-driven, end-to-end decision-making process where the Government Memorandum is generated by an intelligent technical solution.

108. Additionally, in cases where the public is involved in such a direct manner, it is particularly important that an adequate feedback mechanism is in place that provides those participating with some form of response, even if the sheer number of inputs may prevent them from doing so in an individualized manner. Generally, public officials should receive proper and consistent training on how to use digital tools in a time-efficient and effective manner.

2. Legislative Planning

109. One very important element of effective lawmaking is adequate prospective legislative planning. Rather than reacting hurriedly to specific problems, and thereby unnecessarily accelerating the legislative process (leading to uneven results in terms of quality of legislation), more long-term planning of key legislative initiatives results in qualitatively better, more sustainable legislation.
110. It is customary for states to have legislative plans that are usually drafted and published by both the government and the parliament. These plans, when properly prepared and implemented, adequately organize and space out legislative projects or annulments of existing legislation. In principle, they allow governments and parliaments and other bodies and stakeholders participating in the lawmaking process to look ahead and coordinate and organize their workloads accordingly.

COUNTRY EXAMPLE 8

Bosnia and Herzegovina – Overview of the Legislative Planning Process

Parliaments at the state (Parliamentary Assembly of Bosnia and Herzegovina) and entity levels (Parliament of the Federation of Bosnia and Herzegovina and National Assembly of Republika Srpska) organize their work based on a work plan. Its consistency with the governmental legislative plans and programmes depends on the quality of the cooperation and coordination between the different bodies and the quality of the governments' policy planning. Parliaments also develop their agendas, on the basis of which they deliberate on the proposals.

Public institutions propose their legislative drafting plans based on prior RIAs as an integral part of their annual work programmes, for themselves and for the Council of Ministers. Public institutions shall conduct prior consultations when developing the legislative drafting plan.¹²²

122 See Assessment of the Legislative Process in Bosnia and Herzegovina, OSCE/ODIHR, 7 February 2023, pp. 43-44.

111. Challenges arise in cases of unforeseen and urgent laws, which are not included in the annual legislative plans and threaten to overwhelm both government and parliament, resulting in rushed drafting, consultations and debates, and consequently in insufficiently coherent or unsuitable legislation. New technologies allow for more regular updates of legislative plans, which can then be shared once ready. However, while technologies may facilitate certain aspects of these processes, they will not replace the need to plan legislation properly and to share relevant information on a regular basis.¹²³
112. A number of good practices can help ensure that legislative planning achieves its aims. These include:
113. **Governments should publish legislative and work plans on a regular basis.** Generally, governments agree on legislative and work plans on an annual basis, and/or at the beginning of their tenure. These plans are then published and proactively shared with other state institutions, including parliament, the national human rights institution, civil society and other stakeholders.¹²⁴ In line with the principle of transparency, updates of these plans must also be regularly published and shared via clear, visible and easily locatable and accessible channels.
114. **Annual work plans of parliaments and of parliamentary committees should likewise be published and updated on a regular basis.**
115. **Legislative plans need to contain achievable goals and realistic and flexible deadlines.** This is important to ensure that legislative plans will be implemented correctly, and that the draft policies and laws that are planned will be completed in time. It should be ensured that enough time is allocated for each stage of the legislative cycle of the various legislative projects of a given ministry or other government agency.¹²⁵ This also includes sufficient time for initial policymaking discussions, verification processes, impact assessments and public consultations.¹²⁶ The legislative and work plans should also include instructions on drafting secondary legislation to implement primary laws, along with the necessary timelines; ideally, secondary legislation should be prepared in tandem with primary legislation, to ensure consistency and avoid delays in implementation. Lengthy or complex pieces of legislation, or those

123 *Assessment of the Legislative Process in Georgia*, OSCE/ODIHR, 30 January 2015, para. 10.

124 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, as revised in 2008, p. 32 and ODIHR, *Assessment of the Legislative Process in the Kyrgyz Republic*, para. 39.

125 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 31.

126 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 39.

introducing important and wide-ranging reforms that may significantly impact large parts of the population, such as constitutional reforms, should be addressed with greater flexibility, as they may require more time to develop.¹²⁷

116. **Legislative plans should reflect the key directions of state policy set out in government action plans or other programmatic documents.**

There needs to be a clear and uniform procedure in place for the preparation and adoption of legislative plans and individual law proposals, as well as for the manner of implementing, amending and monitoring both. The legislative plan needs to set out the roles and responsibilities of different stakeholders as well. It is important that the planning process is consistent with the state's budgetary cycle and that it reflects budget allocations and expenditures. This will help ensure that the planned legislative initiatives comply with the annual budget and will allow parliament and its committees also to monitor the allocation and spending of budget allocations when reviewing the planning and implementation of laws. Throughout the planning process, and wherever possible, sufficient financial and staff resources need to be allocated to the management of legislative projects.

117. **Legislative plans should take into account legislative recommendations arising from the human rights commitments of the state,** such

as recommendations made to the state by the UN Universal Periodic Review and UN Treaty Bodies, or recommendations made by regional human rights bodies or other monitoring mechanisms. The cycle of reviewing states' progress by international treaty monitoring (or similar) bodies should also be taken into account in legislative planning. Governments are encouraged to establish and maintain inter-agency working groups which coordinate the implementation of the international obligations of the country and of the recommendations of the international monitoring bodies and their integration in the legislative process.

118. **The practice of introducing draft laws that are not part of the initial legislative plan of a state should be kept to a minimum,** and only

applied where necessary. One means to do this is to assess adequately, on a regular basis, how existing legislation is working in practice (ex post evaluation), so as to catch potential gaps and inconsistencies at an early stage. Once gaps have been identified, policy discussions within government or parliament can be scheduled, based on which the timelines of potential legislative processes can be assessed and, if needed, the

127 See ODIHR, *Assessment of the Legislative Process in the Kyrgyz Republic*, para. 13 and paras. 35-39.

timelines of already planned legislation can be re-assessed. Parliaments should avoid tabling important legislative texts shortly before the holiday period, or at other times where planned events would require unduly short and rushed deliberations at the parliamentary level. Within the government at least, these policy processes should already include assessments of the merits of certain planned initiatives; in the end, only those draft laws that the government is truly committed to should be included in the legislative plan.¹²⁸

119. **Communication helps ensure effective and efficient legislative planning.** Regular communication within the government and between the government and the parliament is essential to enhance organization and planning. Also, as the main policymaking body, the government should inform the parliament early on about legislative proposals that will be submitted in the coming months and years (and updates to these) and on a continuous basis while implementing the legislative plan. This will also allow the parliament time to prepare for proposals by conducting research on the topics and consulting experts and stakeholders. Parliament should also reflect the main elements of the government's legislative plan in its own sessions' agenda, and the same should apply to the agendas of individual parliamentary committees.
120. **Framework legislation on the legislative process needs to be assessed and reviewed on a regular basis.** This helps ensure that laws and procedures regulating different stages of the legislative process continue to provide useful and relevant guidance. This includes defining appropriate time limits for different stages, responsibilities and criteria for research and evidence collection, particularly during the policymaking stages, RIA and consultations, and internal and external means of informing and communicating about legislative work.
121. **Regular monitoring of the implementation of legislative plans is useful to ensure the effectiveness of the next cycle of legislative planning and to provide timely and reasonable changes to the current plan.** In this regard, the development of an electronic and user-friendly tool may help facilitate the tracking of draft laws at different stages of the legislative process by both lawmakers and civil society representatives, or the general public.

128 *Ibid.*, para. 39.

3. Legislative Drafting

122. Legislative drafting means turning policy into law, ensuring the drafting of good-quality laws. When laws are drafted, certain requirements need to be fulfilled: the drafters need to be aware of the proper drafting technique and style in use in their state, but also need to know about the subject the law seeks to regulate. Moreover, they need to be aware of their legislative audiences, so that they can draft legislation in a way that is clear and unambiguous, intelligible and accessible. It is not always easy to combine these requirements, as those proficient in legal drafting will not always be experts in all matters that need to be regulated. Ideally, lawmaking should be a coordinated process involving subject matter experts and legislative drafters.
123. Across the OSCE region, countries have adopted different systems for legal drafting. In some, the line ministries or other government agencies are responsible for drafting legislation that falls within their fields of work, while in others, central government drafting services (for instance, within the government cabinet) take on this task.¹²⁹ There are advantages and disadvantages to both solutions:¹³⁰ while the line ministries will not always have specialist drafters at their disposal, they will be experts on the subject that is being regulated. At the same time, the drafting services will be specialists in drafting legislation and can thus act as a strong check against low-quality drafting but they will usually lack in-depth knowledge of the subject of the law. It is important to acknowledge that drafting legislation is a specialised area of expertise that not everyone with a legal background is proficient in. When laws are prepared within the government, special working groups may be created for this purpose, involving not only ministry staff, but also stakeholders, such as external experts and civil society representatives (including those representing vulnerable, marginalized or otherwise under-represented groups), among others, who can then be directly involved from a very early conceptual stage.

129 In the UK, for example, a centralized body (the Office of the Parliamentary Counsel) made up of lawyers specialized in drafting legislation is responsible for drafting laws, but is supported by so-called 'bill teams' from ministry departments, as set out in the Government's *Cabinet Office Guide to Making Legislation*, 2022. A similar drafting body exists in Australia: *Office of Parliamentary Counsel*.

130 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 14.

124. The use of new technologies and artificial intelligence (AI) for legislative drafting offers opportunities to improve the quality, efficiency and transparency of lawmaking. In particular, it may help to improve the quality of legal content and of the lawmaking process and efficiency, including by: enhancing textual clarity and consistency; maximizing reuse of similar legal concepts; supporting legal drafters and end-user presentation, including accessibility and visualization (legal design); facilitating the use of linguistic variants and temporal version management of each type of legislative document; facilitating consolidation; ensuring metadata consistency; automating consolidation and semantic annotation; assisting the implementation of policy priorities in legislation (e.g., digital readiness, gender sensitivity); and enhancing transparency, searchability, accessibility up to publication.¹³¹
125. At the same time, new technologies also present a number of risks and challenges, including: the inability of static formula and codes to reflect principles and values or to adapt to the evolution of society; the risk of bias and discrimination entrenched in the data used and/or the algorithms; the lack of transparency and accessibility of AI tools; the lack of resources and capacity constraints, (e.g., a lack of specific skills of lawmakers, low digital literacy in society, an inadequate level of investments and funding for research and development); early experimental, technical and practical challenges, (e.g., the availability of quality data, lack of common standards, the degree of interoperability between different IT systems).¹³² Human rights should guide the development and use of digital technologies and AI systems in the context of lawmaking, with human rights impact assessments carried out before, during and after the use of such technologies and systems.¹³³ Lawmakers should be transparent when AI systems are used in lawmaking, with clear explanations of the decision-making logic used by algorithms.

131 See e.g., *Drafting legislation in the era of AI and digitisation - study*, European Commission, Directorate-General for Informatics Solutions for Legislation, Policy & HR, 16 June 2022, pp. 11 and 20-24.

132 *Ibid.*, pp. 17 and 6-77.

133 See *New and emerging technologies need urgent oversight and robust transparency: UN experts*, UN OHCHR press release, 2 June 2023; and *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UNGA, A/73/348, 29 August 2018.

COUNTRY EXAMPLE 9

Portugal — Portuguese Charter of Human Rights in the Digital Age¹³⁴ (unofficial translation)

Article 9 — Use of AI and robots

1. The use of AI must be guided by respect for fundamental rights, ensuring a fair balance between the principles of explainability, security, transparency and responsibility, which takes into account the circumstances of each specific case and establishes processes aimed at avoiding any prejudice and forms of discrimination.
2. Decisions with a significant impact on the recipients that are taken through the use of algorithms must be communicated to the interested parties, being susceptible to appeal and auditable, in accordance with the law.
3. The principles of beneficence, non-maleficence, respect for human autonomy and justice, as well as the principles and values enshrined in Article 2 of the Treaty on European Union, namely non-discrimination and tolerance.

126. A number of factors need to be taken into account when drafting laws. These include:
127. **The actual drafting process should be distinct from the policymaking process, but both processes should be collaborative.** Legislative drafting will work best when a collaborative approach is adopted.¹³⁵ This means that legal drafting should be seen as a dialogue and an iterative process, marked by extensive cooperation between policy developers and the drafters or, if policymakers and drafters are the same people, by extensive policy discussions that are only later formally written down. In systems where specialized legal drafters prepare laws, early engagement between policy development and legislative drafting is usually beneficial for the legislative end product, as the drafter tends to have a better understanding of the policy rationale behind a new law, and sub-optimal policies can be discarded at an early stage. Regardless of which approach is adopted, the process and principles that are followed will determine the quality of legislation.

¹³⁴ Portuguese Charter of Human Rights in the Digital Age, Law no. 27/2021, 17 May 2021 in Portuguese.

¹³⁵ See also Helen Xanthaki, *Legislative Drafting: A New Subdiscipline is Born*, IALS Student Law Review, Volume 1, 2013, p. 65.

128. **Effectiveness is an essential decision-making criterion during the legislative drafting process.** Effective laws are those whose purpose, content, context and results all lead to the achievement of the desired objectives. Drafters thus need to prioritize the legislative solutions, structure and language choices that have the best potential to bring about the desired regulatory results. If laws are drafted in a simple and effective manner, this helps avoid loopholes in legislation; poorly drafted laws usually fail to achieve their objectives or achieve them only in an expensive, or otherwise unduly burdensome or disproportionate manner.¹³⁶ Also, laws are often more effective when they are inclusive and intervene in a balanced way in the lives of those they affect, without creating adverse effects on grounds of sex, gender, age, disability, ethnic origin, etc. Human rights considerations, based on the commitments of the state, should form a central part of the preparation of all laws, including during the drafting process, even those which may not appear to be human rights-related at first glance.
129. **Laws must be clear and foreseeable.** As laws are the main means of translating public policy into action, they need to be drafted in a clear, precise and unambiguous manner, which, in turn, helps ensure that laws are predictable and foreseeable.¹³⁷ The wording used when drafting should be simple and concise.¹³⁸ Laws should also include clear definitions and not use vague terms that have no established definition and/or are open to potentially diverging or arbitrary interpretation by public authorities. At the same time, some norms cannot be formulated with absolute precision, to avoid excessive rigidity and allow laws to keep pace with changing circumstances.¹³⁹ In certain contexts, it is permissible for laws to contain certain general and all-encompassing notions, provided that their interpretation by public authorities and courts is predictable and reasonable and is developed further in secondary legislation or in courts' case-law. However, where possible, legal drafters should avoid the use of such terms. Generally, legal provisions should not permit excessive state discretion, which may result in arbitrariness. Based on the legal text, it should be clear to an average person, with the help of

136 [Good Governance in Egypt, Legislative Drafting Manual for Better Policy](#), OECD, 2 August 2019.

137 See e.g., ECtHR, [The Sunday Times v. the United Kingdom \(No. 1\)](#), no. 6538/74, 26 April 1979, para. 49; [Kurić and Others v. Slovenia \[GC\]](#), no. 26828/06, 26 June 2012, para. 341. See also CJEU, [Europäisch-Iranische Handelsbank AG v. Council of the European Union](#), C-585/13, 5 March 2015, para. 93. See also Venice Commission, [Rule of Law Checklist](#), para. 58.

138 Carleton Kemp Allen, *Law in the Making*, 1964, as cited in Mukund Sarda, [Principles of Legislative Drafting: a Study](#), *Orient Journal of Law & Sciences*, Volume V, Issue 2, January 2011, pp. 23-25, para. 5. See also Helen Xanthaki, [Legislative Drafting: A New Subdiscipline is Born](#), *IALS Student Law Review*, Volume 1, Issue 1, Autumn 2013, 26 September 2013, p. 62, and the European Commission's campaign, [Clear Writing in Europe](#), which aims to help Commission staff write "shorter, simpler, jargon-free texts".

139 ECtHR, [Kokkinakis v. Greece](#), no. 14307/88, 25 May 1993, para. 40.

legal counsel if necessary and to a degree that is reasonable in the circumstances, what is allowed and what is not, how individuals or entities may or may not act and what kind of consequences a given action may entail (legal certainty). Likewise, laws should contain conditions informing of their entry into force and should include transitory provisions and periods that provide those implementing the law with sufficient time to adapt to the new provisions (*vacatio legis*). They should also indicate the secondary legislation required to implement legal provisions.

130. **The rules or instructions governing the preparation, drafting and verification of draft policies and laws need to be clear and unambiguous.** The rules of procedure, or instructions governing the processes of how policies and laws are prepared within government and parliament, need to be sufficiently clear and understandable. This principle applies also to the procedures and responsibilities of individual parliamentarians, parliamentary and governmental bodies and staff,¹⁴⁰ and means that relevant provisions should be drafted in a manner that avoids potential abuse due to unclear or ambiguous language. Within the executive, draft policies and laws habitually go through various verification procedures and channels for approval within the initiating body and are then circulated among the different ministries, and also the prime minister's office. In most cases, the initiators of a draft law need to consult, at a minimum, the ministry of finance on budgetary matters, and the ministry of justice on legal matters, to ensure a realistic allocation of funds for implementation and consistency with the constitution and other legislation respectively. In some countries, a first government draft of a law is even sent to the competent parliamentary committee for early feedback.¹⁴¹ The consequences of verification procedures should be clear,¹⁴² e.g., negative opinions from the ministries of finance and justice respectively on the financial impact or compliance of a draft law with other legislation should normally lead to the requested revisions. Rules of procedure or instructions also need to specify the minimum contents of explanatory memoranda (including references to implementation) and other supporting documents and need to instruct drafters of laws to publish

140 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 33.

141 For example, in the United Kingdom. For more information on this, see UK Parliament, *Erskine May, Prelegislative scrutiny of draft bills*.

142 ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 45.

explanatory memoranda along with draft laws to facilitate transparency and consultations.¹⁴³

131. **Deadlines for the review of draft laws within parliament, especially at the committee level, should not be too short nor too rigid, to allow flexibility in cases of lengthy or complex draft laws,¹⁴⁴ or prioritization of draft laws with greater political, legal or human rights importance.¹⁴⁵** In cases where more than one draft law is submitted to parliament on the same topic and at the same time, for example, by two different parliamentarians, the rules of procedure should allow, or even encourage parliaments to merge these drafts, to avoid confusion, or to choose one text as the focus of consideration and allow the authors of the other texts to present relevant parts of their draft laws as amendments to that text.¹⁴⁶ Rules of procedure may also foresee debates on lengthy or complex draft concepts or policies of laws so that parliamentarians may get a better understanding of the key elements.¹⁴⁷
132. **Key legislation needs to ensure that verification and vetting processes cannot be abused.** Under no circumstances should it be possible for draft laws initiated within government to be submitted to parliament by one or more parliamentarians, in a bid to circumvent government procedures on lawmaking. Rather, draft laws submitted by parliamentarians should ideally follow similar verification and vetting procedures as government-initiated drafts, although some differences between the two procedures may be justified. For this to be possible, individual parliamentarians should be provided with the necessary assistance by parliamentary commissions or committees, or by government experts. Similarly, draft laws prepared by certain lobbying or interest groups should also not find their way into parliament via individual parliamentarians without being properly vetted and discussed. Safeguards preventing such abuse are particularly important with respect to key and far-reaching legislation, such as constitutional or tax law amendments or those impacting human rights and fundamental freedoms. There must always be transparency throughout the legislative cycle, as provided in **Principle 6**, including with regard to the actual origins of legislative proposals.

143 *Opinion on the Draft Law on the Government of Kosovo*, European Commission for Democracy through Law (Venice Commission), CDL-AD(2020)034, para. 62. [*There is no consensus among OSCE participating States on the status of Kosovo and, as such, the Organization does not have a position on this issue. All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.*]

144 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 50.

145 *Assessment on Law Drafting and Legislative Process in the Republic of Serbia*, OSCE/ODIHR, 8 February 2012, p. 73.

146 See *Assessment of the Legislative Process in the Republic of Moldova*, OSCE/ODIHR, 15 September 2010, p. 58.

147 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, paras. 14 and 38.

133. **The language of legislation should be appropriate to the audiences of the law and should avoid discriminatory, biased or stereotypical language.** Depending on the intricacies of the language used, drafters are encouraged also to apply gender-sensitive drafting and terms. This requirement should be included in drafting manuals, along with examples of the kind of language to be used. Gender-blind language jeopardizes inclusivity and sends out wrong messages.¹⁴⁸ The language used in legislation should also not be demeaning or dismissive of forms of self-identification, such as with respect to a disability or to a national, ethnic or indigenous identity or other characteristics. Gender- and diversity-sensitive language¹⁴⁹ is the only acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity. More generally, legislation should be formulated in a way that ensures that legislative requirements can be met by all, irrespective of their gender or other personal characteristics. It should not discriminate against or exclude certain individuals or groups, especially those considered marginalized or historically subject to discrimination, directly or indirectly, and intentionally or unintentionally. In countries with more than one official language, the competent authorities need to ensure that all language versions of legislation are identical and are drafted to the same high quality, so that there are no conflicts between the different language versions.¹⁵⁰

148 Donald L. Revell, Jessica Vapnek, *Gender-Silent Legislative Drafting in a Non-Binary World*, *Capital University Law Review*, Vol. 48, Issue 2, 19 May 2020, pp. 1-46; *Guide to Gender-Neutral Drafting*, Office of the Parliamentary Counsel and the Government Legal Department (UK), 2019; *Gender-neutral Language*, Government of Canada, Department of Justice, last modified 24 August 2023; Ruby King and Jasper Fawcett, *The End of "He or She"? A look at gender-neutral legislative drafting in New Zealand and abroad*, *New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ng W hine*, Volume 2, 2018; *Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling*, Australian Parliamentary Counsel, 1 March 2016; *Drafting Guidance*, Office of the Parliamentary Counsel (UK), June 2020.

149 See e.g., *UN Guidelines for Gender-Inclusive Language in Arabic, Chinese, English, French, Russian or Spanish English*, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context; and *UN Disability-Inclusive Communications Guidelines*, March 2022; *Toolkit on Gender-sensitive Communication ... A resource for policy-makers, legislators, media and anyone else with an interest in making their communication more inclusive*, European Institute for Gender Equality (EIGE), (Luxembourg: Publications Office of the European Union, 2019); *Inclusive communication in the General Secretariat of the Council*, Council of the European Union Publications Office, 2018.

150 ODIHR, *Assessment of the Legislative Process in the Kyrgyz Republic*, para. 49.

134. **Laws need to be consistent with one another and need to adhere to the principle of legality.** In addition to stylistic and language-related matters, it is important for legal drafters always to bear in mind the principle of legality. Drafters need to ensure that the draft law and its obligations and rights remain within the scope of authority and competences of the government and the relevant ministry or ministries or other bodies, e.g., competent local governments or independent, administrative authorities. Legal drafters also need to respect the hierarchy of laws and, therefore, need to ensure that the legal text they are preparing is in line with the constitution, with other legislation and with relevant international instruments that their country has signed and ratified. Legal drafting manuals may help drafters by including relevant checklists for reference. Electronic drafting tools have contributed to accelerating the process of drafting and revising legislation and can also help enhance the consistency of the legal framework. These tools also allow drafters, and others involved in the legislative process and the public, to see both current and previous versions of a legislative text, and the changes that were made from one version to the next. At the same time, laws should not merely repeat provisions set out in higher laws or in constitutions, as this may create legal uncertainty if there are slight textual differences from the wording of the constitution.¹⁵¹ Repetition is also unnecessary, as legislation is meant to elaborate, not repeat what is stated in constitutions.
135. **Unified drafting manuals should apply to all legal drafters, who should be obliged to follow the basic rules and principles set out therein** to ensure that policies and laws are drafted in a consistent manner, following a similar terminology. The majority of states in the OSCE area have developed some sort of drafting manual. A drafting manual is a set of instructions or guidance on how legislation ought to be drafted,¹⁵² that may usefully explain the role of the drafter in the drafting, legislative and policy processes. These manuals typically introduce the main theoretical principles of drafting, provide technical guidance on the wording to be used when drafting, as well as on structure, definitions and other matters concerning drafting technique and style.¹⁵³ Manuals can be formal or informal, publicly available or private, and in the form of internal documents, or external rules set by the parliament. While drafting manuals are there to ensure consistency in the format, structure and style

151 Venice Commission, *Opinion on the Draft Law on the Government of Kosovo*, para. 53.

152 See, as an example of a guide to legislative drafting, Helen Xanthaki, *Thornton's Legislative Drafting*, 6th edition, 21 July 2022.

153 Helen Xanthaki, *Drafting Manuals and Quality in Legislation: Positive Contribution Towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?*, *Legisprudence*, Vol. 4(2), October 2010, pp. 111-128.

of laws, and other technical elements, they do not give guidance on the contents of a law.

COUNTRY EXAMPLE 10

Serbia – Law on National Assembly¹⁵⁴

Article 8.2

The competent committee of the National Assembly shall pass an act regulating unique methodological rules for drafting regulations to be applied by the authorised bodies when drafting Bills or other acts to be passed by the National Assembly.

COUNTRY EXAMPLE 11

France – “Guide de Légistique” (Legislative Drafting Guide)¹⁵⁵

A regularly updated “Guide de légistique” (Legislative Drafting Guide) prepared jointly by the General Secretariat of the Government under the Prime Minister and the Council of State aims to explain, to any person involved in the preparation of legislative drafts, the process to be followed to develop and draft bills, including public consultations and RIAs, the structure and the style of draft laws and decrees with recommended and concrete examples.

136. Generally, manuals have proved useful for the technical elements of legislative drafting,¹⁵⁶ especially for junior or less-experienced drafters. They store and codify best drafting practice in a country, and promote consistency in drafting, particularly where drafting is spread across different ministries. Drafting manuals also need to be available in all official languages. Whilst manuals provide guidance, they should not limit the ability of legislative drafters to make the decisions that best serve the effectiveness of their drafts. Moreover, while helping drafters develop a homogeneous drafting style, manuals likewise need to be flexible documents that also allow for innovation and change.¹⁵⁷ They need to be adapted

154 Serbia, *Law on National Assembly*, no date.

155 See the online French *Guide de légistique*.

156 See e.g., OECD, *Good Governance in Egypt. Legislative Drafting Manual for Better Policy*.

157 Xanthaki, *Drafting Manuals and Quality in Legislation*.

and updated on a regular basis.¹⁵⁸ Drafting manuals are different in every state, as they reflect the specific legal traditions and practices of a given country; manuals of another state may thus provide guidance, but will never be as useful as a drafting manual prepared for the country itself.¹⁵⁹

137. It is important, however, that there is only one unified drafting manual that is applied by everybody engaging in legal drafting.¹⁶⁰ Legal drafters in the government and parliamentary sectors (and beyond), and government staff responsible for verifying draft policies and laws should adhere to the same drafting manual and instructions or checklists outlining legislative techniques.¹⁶¹ This applies regardless of whether law drafting is centralized or conducted by each ministry or government agency itself. These manuals should be updated regularly and be easily accessible and available to all relevant government staff. Moreover, where such manuals exist, the various line ministries or the government should issue internal directives to oblige their staff to apply the technical instructions contained in the manuals when drafting laws, along with information as to where online or offline versions of the manuals may be found. Additionally, there should be some sort of quality check within the government¹⁶² to ensure that all draft laws adopted by the government are of the same quality, style and structure.
138. Where parliamentarians also have the right of legislative initiative, internal parliamentary directives should oblige them to adhere to the existing drafting manuals. Relevant parliamentary support staff should be familiar with the instructions and guidelines set out in the manuals and have the necessary skills and capacities.¹⁶³ Parliamentary support staff could also be in regular contact with government ministries or other government agencies involved in legislative drafting to share knowledge on drafting techniques and processes.

158 See, e.g., the French online [Guide de légistique](#).

159 ODIHR, [Assessment of the Legislative Process in the Republic of Moldova](#), p. 50.

160 ODIHR, [Assessment of the Legislative Process in the Kyrgyz Republic](#), paras. 46-47. As an example, see the French online [Guide de légistique](#), which is also regularly updated.

161 ODIHR, [An Assessment of Law Drafting and Regulatory Management in North Macedonia](#), pp. 30 and 32.

162 See e.g., [Quality assurance on legal drafting](#), OECD SIGMA website.

163 See ODIHR, [Assessment of the Legislative Process in the Republic of Armenia](#), para. 53.

139. **Both governments and parliaments should provide initial and continuous training on legislative drafting,**¹⁶⁴ to create a corpus of well-trained legislative drafters who can work with ministries and other initiating bodies and subject experts when designing legislation. This should also include regular training in the use of drafting manuals and the application of legislative techniques. All those involved in legislative drafting must have a clear understanding of the human rights commitments of the state. Training sessions should be led by those most proficient, either from within the government or via outside experts.¹⁶⁵ Sufficient government resources should be allocated to ensure such training and to provide sufficient legal drafting capacities,¹⁶⁶ either within the parliament, ministries and government agencies, or in a centralized legal drafting unit. This also means that both the government and, as needed, parliament, should invest in high-quality staff who will be compensated adequately to ensure appropriate quality legislation and training for others.¹⁶⁷ Training should benefit staff in the ministries and other government agencies, as well as parliamentary staff advising and supporting parliamentarians.¹⁶⁸ It is only in this manner that awareness of how to draft legislation and review draft legislation will be enhanced in the relevant public institutions.
140. **Legislative initiatives prepared by citizens should be facilitated and, here also, drafting standards should be followed.** To address the potential lack of resources and knowledge about legal drafting of the initiators of such legislation, support mechanisms should be in place to ensure that draft laws submitted by a statutory number of citizens are drafted according to the applicable legal and drafting standards.¹⁶⁹ Support may come from certain government bodies, independent agencies, or from a special unit within parliament.¹⁷⁰

164 *Ibid.*, para. 55.

165 See ODIHR, *Assessment of the Legislative Process in Georgia*, para. 10 and paras. 59-61.

166 ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 31.

167 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, paras. 55-56.

168 See ODIHR, *Assessment of the Legislative Process in Georgia*, para. 62.

169 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 53; and ODIHR, *Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro (2023)*, para. 77.

170 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 29. See also e.g., the case of Canada: *Private Members' Business... Introduction* (ourcommons.ca).

4. Impact Assessment

141. Laws end up being more effective and implementable where policymakers conduct a proper assessment process of planned policies and laws before the drafting process starts in earnest (see **Sub-Section IV.1** on Policymaking). At this stage, different policy options should be debated and weighed up, along with their respective impacts, advantages and disadvantages, and how easy or difficult it may be to implement them. The results of such discussions should be published.
142. In order to have policies and laws that adequately address the problem and also work in practice, it is important to begin by assessing the impact of the policies and laws. Once a problem or challenge has been identified, assessment usually moves on to a needs analysis and an outline of the assumed outcomes of a legal act and of other, non-legislative solutions (including the option of doing nothing). This should be followed by a discussion on, and determination of the most viable solution (ex ante evaluation, meaning before a law is adopted), and ends with the evaluation and monitoring of enacted legislation (ex post evaluation, meaning after a law is adopted). Establishing clear SMART objectives at the outset for any piece of legislation — i.e., aims that are specific, measurable, achievable, relevant, and time-bound — may also be helpful to evaluate whether regulations have met policy objectives. Evaluation of adopted legislation may take place in relation to specific laws (often with a view to amending or replacing them), or in the form of a periodic review of a whole stock of existing legislation, e.g., laws relating to a certain sector.¹⁷¹ Some countries have been applying the concept of ‘experimental legislation’, which is legislation that is implemented only in a certain region, and which then undergoes an assessment process to see whether the scope of the law should be expanded to the entire state.¹⁷² In any event, there should be sufficient funding and capacities in place to allow for in-depth ex ante and ex post evaluations, as well as initial and ongoing training for public officials to carry out such assessments.¹⁷³

171 See e.g., [Best Practice Principles for Regulatory Policy, Reviewing the Stock of Regulation](#), OECD, 4 December 2020.

172 See e.g., [Constitution of France](#), Article 37-1, which allows laws or regulations to contain provisions of an experimental nature, for limited purposes and duration; see also [Study on How to Innovate in the Conduct of Public Policies](#), Counsel of State of France, 2019, on the implementation of Article 37-1 of the Constitution (in French).

173 [Conduire et partager l'évaluation des politiques publiques](#) (Conducting and Sharing Public Policies), Counsel of State of France, 2020.

4.1. Ex Ante Regulatory Impact Assessment (RIA)

143. The ex ante RIA is both a tool and a process designed to help inform public decision makers on whether and how to regulate to achieve public policy goals.¹⁷⁴ RIA helps ensure good-quality and evidence-based legislation throughout the entire cycle of policy- and lawmaking. As with other forms of impact assessment, the main purpose of RIA is to find the best solution for a problem or challenge, by identifying approaches likely to deliver the greatest net benefit to society. RIA also helps assess whether it is worthwhile for the state to become active in a certain field or not. If a proposed law or policy has no identifiable impact or added value, or if it is unclear what problem a law is trying to address or whether the problem could rectify itself without direct government intervention over time, then there is no need to regulate the matter. Impact assessment also allows for evidence to be considered on potential impacts on horizontal concerns, such as gender, diversity, economic and environmental matters.

COUNTRY EXAMPLE 12

Estonia – Basic Principles for Legislative Policy until 2030¹⁷⁵

12.3. Laws must have an impact.

12.3.1. The impact that a law initiated by the Government of the Republic is likely to produce is assessed before the preparation of the corresponding bill according to the principle of proportionality – the impact assessment of a proposed amendment that aims to achieve a far-reaching impact must be more detailed and include, among other things, an analysis of other possible regulatory solutions.

12.3.2. When participating in legislative efforts in the European Union and internationally, the impact of the legislative instruments to be drafted is assessed already at the stage where Estonia's position is formulated. Top specialists of the field must be enlisted and ways must be found to carry out a comprehensive analysis of such an instrument's compatibility with Estonia's legal order.

174 Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment, OECD, 25 February 2020, Chapter 1. See also Better Regulation Practices Across the European Union, OECD, 28 June 2022, Chapter 3: Regulatory Impact Assessment Across the European Union; and OECD, Recommendation of the Council on Regulatory Policy and Governance, Annex, 4.1.

175 Resolution of the Riigikogu (Parliament of Estonia), 12 November 2020.

12.3.3. Impact assessments must increase their use of input data. To ensure quality results, the analysis must be systemic, purpose-driven and, in addition to known methods, also make use of novel ones such as heuristic models and nudging where appropriate.

12.3.4. The Government of the Republic will take steps to ensure central coordination of the system of regulatory impact assessment and to make available the required methodology support and tools. The Government of the Republic will establish effective arrangements to provide for reasonable use of existing data, including Big Data. Efforts must be made to bring Artificial Intelligence to bear on the analysis. The aim is to reach a stage where all legislative instruments in force are machine-readable.

COUNTRY EXAMPLE 13

Montenegro – Rules of Procedure of the Government¹⁷⁶

Article 33

When drafting laws and other legislation, the initiator is obliged to conduct regulatory impact assessment (hereinafter: RIA) in accordance with the act of the Ministry of Finance.

If the initiator assesses that RIA should not be carried out in the process of drafting a law or other legislation, it is obliged to provide a reasoned explanation to that effect.

144. When conducting ex ante RIA, a number of considerations and steps need to be taken into account to ensure that this tool is truly effective. These include:

¹⁷⁶ Rules of Procedure, Government of Montenegro, as amended 21 September 2018.

145. **Ex ante RIA needs to be neutral, evidence-based and open-ended.** Identifying a specific policy need and the objective of the law clearly and accurately,¹⁷⁷ and adopting a neutral, evidence-based and result-oriented stance are important starting points for conducting RIA in a proper manner (see also **Sub-Section IV.1** on Policymaking). As observed in numerous states across the OSCE region, RIA will not lead to useful results if it is conducted with a particular outcome already in mind, or where impact assessments focus only on some issues, but not others. Similarly, RIA that is done only perfunctorily will also not bring good results, (e.g., where the drafters declare that there will be no impact or costs of a certain law without having done a full cost assessment, or where there has been no consideration of other options aside from the draft law). Notably, RIA is useful only and precisely because of its research and evidence-based approach.
146. **Ex ante RIA should be undertaken early on.** Applying this tool at the beginning of the lawmaking process, or even during the policymaking stage, to assess the effectiveness of a policy or law, its scope and how it relates to other existing legislation, helps reduce ineffective, incomplete or incoherent legislation.¹⁷⁸ For this reason, the OECD Recommendation on Regulatory Policy and Government has also proposed integrating RIA into the early stages of the policy process for the formulation of new regulatory proposals.¹⁷⁹ However, additional RIA may also be conducted at other stages of the lawmaking process, e.g., after a draft law has been prepared or after substantial amendments to a draft law, or several times during the process if the contents of a draft law have changed in the course of discussions.
147. **RIA should be conducted by the authors of draft laws and experts.** Given that most laws are prepared by governments, they have primary responsibility for creating proper internal RIA mechanisms. These will usually need to involve the relevant line ministries, given their role in developing policies for their areas of expertise, but also experts in the RIA process itself, serving as a quality check for the entire government, and assisting ministries and other relevant agencies when conducting RIAs. Once RIA procedures have been adopted, it is important that relevant public officials receive regular training on how to conduct proper RIA, including on how to incorporate human rights, gender and diversity

177 OECD, *Better Regulation Practices Across the European Union*, Chapter 2. Best Practice Principles for Regulatory Impact Assessment.

178 ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, 2014, para. 47.

179 OECD, *Recommendation of the Council on Regulatory Policy and Governance*, Recommendation I. 4.

considerations, and on how to further improve the existing process of conducting such assessments.

148. When parliamentarians draft legislation, this raises the question of how a proper RIA can be ensured, given that members of parliament and their staff often do not have the same capacities at their disposal as the government. Therefore, developing RIA capacities within parliaments may be necessary. Another option would be to designate a competent and independent RIA agency that is structurally outside the government and parliament apparatus, and that serves the government and parliament alike. This type of independent agency could also be mandated to support the preparation or evaluate an impact assessment of citizens' legislative initiatives when and if they occur.
149. **Public consultations, that are inclusive and accessible, should be systematically incorporated into the RIA process and provide meaningful** opportunities for all stakeholders to provide input at this stage of the policy- and lawmaking process (see **Sub-Section IV.5** on Consultations).
150. **Proper guidance and transparency help to ensure effective RIA.** It is important to have a general RIA methodology in place, with guidance on how and when to conduct RIA, and on which criteria.¹⁸⁰ It is also important for governments to be transparent throughout the RIA process, in order to increase accountability and public trust in different policies and laws and to demonstrate that there is a real need for new or amended legislation. This is particularly important where new laws or amendments significantly impact people and entities in their daily lives. Thus, the outcome of RIAs, including which legal options were considered and what their respective impact was on different individuals or groups and different sectors, should be published and attached to the draft laws submitted to parliament.
151. **RIA should be applied only to selected legislation.** To avoid imposing extensive burdens on the state, RIA should ideally not be undertaken with respect to all laws, but mainly in those cases where this is

180 See ODHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 49, which proposes to include the following elements in guidelines for conducting RIA: problem analysis with a brief description of the issue; an outline of the purpose of intervention by a draft law; addressees and stakeholders of the intervention; the justification of an intervention along with a risk assessment; a brief description of the available intervention (or non-intervention) options, while weighing their justification, effect and feasibility; the impacts for citizens (including the impact on both men and women), businesses, the Government and the environment; cost and benefit analysis.

deemed necessary.¹⁸¹ Thus, numerous countries have elaborated criteria to help them decide whether RIA is necessary for a given piece of legislation or not. Some countries have formal threshold tests for determining whether RIA should be applied or not (depending, for example, on the expected costs/resources or on the overall economic, social or environmental impact), or whether to conduct a full RIA, or a so-called 'simplified' RIA, meaning, only an ex-ante assessment, or a RIA on specific limited impacts. Generally, while it is recognized that RIA cannot always focus on all aspects of a draft law or policy, those conducting RIA should try to adopt a holistic approach, covering those fields that are likely be most affected. Draft laws covering new topics, or those that are expected to impose considerable administrative or regulatory burdens or otherwise have wide-ranging effects on significant parts of the population, the economy, the state budget, or the environment, should always undergo some form of RIA, although the particular threshold is up to each individual country.

152. The RIA threshold in different countries should not automatically exclude secondary laws from the scope of RIA, given that they help bring primary legislation to life and are therefore often equally responsible for administrative or regulatory burdens.¹⁸² Secondary laws should be subject to the same RIA thresholds as primary laws.
153. **States should determine which types of impact will be assessed and when.** A well-designed RIA can help promote coherence in state policies and overall accountability by making transparent the inherent trade-offs in regulatory proposals, identifying who will benefit from certain regulations, as well as those who will bear the costs, and how risk reduction in one area may create risks for other areas of government policy.¹⁸³ Those countries that apply some sort of RIA usually foresee an assessment of the estimated economic, social and environmental impact (which helps ensure that decision makers think about the likely effects on the environment at the earliest possible time and aim to avoid, reduce

181 See Venice Commission, Rule of Law Checklist, Benchmark A.5.v. for a general requirement stating that where appropriate, impact assessments shall be made before laws are adopted. See also OECD, Recommendation of the Council on Regulatory Policy and Governance, Annex, stating that states shall "*adopt ex ante impact assessment practices that are proportional to the significance of the regulation*", and OECD, Better Regulation Practices Across the European Union, Annex: A closer look at proportionality and threshold tests for RIA. See further ODIHR, Assessment of the Legislative Process in the Republic of Armenia, para. 48.

182 OECD, Better Regulation Practices Across the European Union, Chapter 3: Regulatory Impact Assessment Across the European Union.

183 *Ibid.*

or offset those effects).¹⁸⁴ Officials in charge of RIA should identify all possible direct and indirect impacts of alternative options that can, in principle, address and solve the policy problem. Various methodologies can be used to compare the positive and negative impacts of regulatory and non-regulatory options, including qualitative and quantitative methods, cost-benefit analysis, multi-criteria methods, and partial and general equilibrium analyses.¹⁸⁵ RIA undertaken only to assess the costs or economic impact of a law will not always be effective. Depending on the topic, the political impact of a draft law or policy may need to be considered, as well as the impact on employment sectors, different businesses, human rights, (including gender and diversity aspects) and/or the anti-corruption impact.

154. **The costs or burdens of a new law should not outweigh the benefits.** Where relevant, the costs of regulation should not exceed its benefits,¹⁸⁶ and alternative options should also be examined; RIAs should help authorities ensure that administrative burdens stemming from newly adopted regulations will not outweigh the existing burden.¹⁸⁷ In cases where it is difficult to quantify the costs or benefits or both, the benefits should at least justify the costs.
155. **Specific ‘screens’ can be added to the RIA methodology to ensure that governments will consider specific impacts in all policies.** For example, human rights impact assessments should always be a part of ex ante RIA, to ensure that legislation does not unduly interfere with the human rights of individuals or groups. Human rights RIAs help assess the short-, medium- and long-term human rights impacts of proposed policies and draft laws. These types of assessments are concerned with how the proposed policy complies with the state’s international legal obligations to respect, protect and fulfil the human rights of its population. The process of conducting these types of RIAs should ensure that a wide array of stakeholders is able to participate and access all relevant information in a timely and comprehensive manner; in this context, the broadest possible national dialogue should be sought, including also with disadvantaged, marginalized or otherwise under-represented groups (see

184 See e.g., although in the context of assessment of certain public and private large infrastructure projects or programmes, see [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment – Policies - IEA; and [Directive 2001/42/EC](#) of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

185 See OECD, [Better Regulation Practices Across the European Union](#), Chapter 3: Regulatory Impact Assessment Across the European Union.

186 ODIHR, [Assessment of the Legislative Process in the Republic of Armenia](#), 2014, para. 47.

187 ODIHR, [Assessment of the Legislative Process in the Kyrgyz Republic](#), para. 50.

Sub-Section IV.5 on Consultations). Human rights RIAs can be both stand-alone assessments or they can be incorporated into broader environmental and social impact assessments.¹⁸⁸

156. **Gender and diversity assessments, in particular, as a horizontal concern relevant to legislation in general, should always be considered for ex ante RIAs.** Gender and diversity impact assessment analyses, based also on disaggregated data collection, help define how distinct legislative solutions are likely to impact women and men, and specific groups, based on their personal characteristics. They also include an analysis of gender roles, but also of possible structural and historical discrimination and of the potential discriminatory impact of the existing legal framework in this field on certain groups. Relevant groups may include persons with disabilities, national, ethnic, religious or other minorities, young people, etc. Overall, gender and diversity assessments estimate the (positive, negative or neutral) effects of a policy or activity in terms of gender and specific characteristics of certain groups.
157. Depending on the institutional settings and actors involved in different countries, gender impact assessments may be conducted by the government unit proposing a law, by governmental institutional mechanisms for gender equality, or as part of a comprehensive RIA. Each approach has its advantages and disadvantages: while a centralized government-led approach may enhance capacities in this field in the government, and introducing gender impact assessments into comprehensive RIA may raise it higher up the political agenda, this may not lead to in-depth assessments. This will be different where assessments are conducted by gender mechanisms, which may, however, struggle to convey key concepts to the rest of the government. Similar issues may arise for other forms of assessments focusing on the concerns of specific groups, such as national, ethnic or religious communities, or persons with disabilities.

188 [Guiding Principles on Human Rights Impact Assessment of Economic Reforms](#), UN Human Rights Special Procedures, 2020.

COUNTRY EXAMPLE 14

Czech Republic – General Policy for Regulatory Impact Assessment¹⁸⁹ (unofficial translation)

[...]

9. Available Data

The submitter shall state the studies, analyzes and data sources based on which the proposal was developed.

10. Characteristics of specific impacts

The submitter will evaluate whether the below-mentioned impacts are relevant for the draft legal regulation. If the option YES is chosen, the impacts will be briefly evaluated together with an estimate of their extent. Part of the specific impacts is the assessment of compliance with the principles of creating digitally friendly legislation.

[...]

10.5 Social Impacts

The impacts on specific social groups of the population and their rights will be stated, e.g., on the socially vulnerable, persons with disabilities, national minorities, the socially excluded, as well as, for example, on employees or on the protection of children's rights. The evaluation may include circumstances that have an impact on the deterioration of social equality, labour relations, social inclusion, association, minority rights, social dialogue, privacy and personal data protection, etc. The societal impact, including partial aspects and the resulting socio-economic consequences, shall be adequately evaluated and described.

[...]

10.9 Impacts in relation to non-discrimination and in relation to gender equality

The expected effects of the proposed solution in relation to the prohibition of discrimination and in relation to the equality of women and men will be stated. The evaluation must include an explanation of the causes of any differences, expected impacts or expected developments, using statistical and other data, if such data are available.

189 See [General Policy for Regulatory Impact Assessment](#), Czech Republic, 2011, as last amended by Resolution of the Government No. 435 of 14 June 2023 (in Czech).

158. **Situations where law drafters are exempted from conducting full RIA in cases of urgency need to be kept to a minimum.** Many state laws contain exceptions to RIA in cases of public emergency, or where accelerated lawmaking procedures are applied. In this context, it is important that these options are not abused, and that decisions to use urgent procedures are properly justified. Where parliaments adopt emergency procedures without proper cause or fast-track highly complex and important legislation, this runs counter to good governance and democratic principles. Moreover, the absence of RIA will again lead to insufficiently planned, assessed and vetted legislation, with potentially grave consequences for the quality of such laws and their implementation, or lack thereof. Regulatory oversight bodies should monitor the use of exceptions to RIA requirements to prevent abuse, and ex post RIA can also help assess this. For further discussion on oversight, accelerated procedures and states of emergency, see **Sub-Sections IV.6, IV.9 and IV.10.**
159. **The failure to conduct proper RIA should have consequences.** In states where RIA is obligatory, the failure to conduct proper in-depth, evidence-based impact assessments should have consequences. This may include the rejection of the draft policies and laws at the governmental and parliamentary levels respectively (for examples, see **Sub-Section III.4** on the Role of the Judiciary). A number of countries have established regulatory oversight bodies with varying degrees of independence. Ideally, these bodies should be tasked with a variety of functions to promote high-quality, evidence-based decision-making, including quality control of impact assessments that allow them to return proposed laws where impact assessments are inadequate. (For more examples see **Sub-Section IV.6** on Oversight Mechanisms).

4.2. Ex Post Regulatory Impact Assessment (RIA)

160. Once legislation is adopted, this in no way constitutes the end of the legislative process. Rather, as this process is a continuous cycle, adopted legislation needs to be assessed and evaluated to see whether it adequately achieves its intended aim. Indeed, it is only after laws have entered into force that governments and parliaments can assess their full effects and their impacts on society. Many of the features of an economy or society underpinning particular regulations will change over time, meaning that laws that may have been necessary, adequate and useful when they were

adopted may become outdated.¹⁹⁰ International standards — including in the fields of human rights and the environment — also develop over time, and national laws may need to be assessed against these new, legally binding obligations. Therefore, essential questions to be answered when conducting ex post reviews are: whether a valid rationale still exists for regulating (appropriateness); whether the regulations achieved their objectives (effectiveness); whether they have given rise to unnecessary costs (efficiency) or other unintended impacts, including discriminatory impact on certain people or groups, and whether modifications, removal or replacement are called for.¹⁹¹ In general, ex post evaluation also needs to be proportionate to the significance of a regulation and its impacts, and the degree of public interest or concern. Ex ante RIA and ex post evaluation are strongly linked and mutually reinforcing, representing different, yet interconnected steps of the policy- and lawmaking cycle, where each stage feeds off the other.¹⁹²

161. There are a number of factors that should be borne in mind when undertaking ex post evaluations for them to reach their goals. These include:
162. **States need to review regularly the effectiveness of laws after adoption.** Countries should review their stock of existing regulations regularly to ensure that they remain appropriate.¹⁹³ It is important that evaluation is based on proper evidence, established via statistics, surveys and other relevant means, and disaggregated as relevant.
163. **Ex post assessment should focus on whether the objectives of the legislation were achieved, particularly in terms of implementation and impact.** Alongside looking at the actual economic, social and environmental impact of laws, it should always integrate human rights, including gender and diversity perspectives, meaning that the assessment should analyse how the adopted legislation has actually impacted women and men, gender roles, gender relations, social responsibilities and gender equality, as well as other groups.

190 OECD, *Better Regulation Practices Across the European Union*, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union. See also OECD, *Best Practice Principles for Regulatory Policy. Reviewing the Stock of Regulation*, Chapter 1: Overarching Principles.

191 *Ibid.*, Chapter 4: Key Questions for Reviews.

192 Ex post evaluation may benefit from the RIA report in determining whether a given law was effective or not and the reasons for potential regulatory failure; RIA may also benefit from taking into account the results of any ex post evaluation of the implementation of existing legislation, when discussing and formulating new regulations.

193 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 33.

164. **Ex post evaluation needs to be done in a systematic manner.** This type of evaluation should follow some basic rules, be it that according to law, certain specified laws, or laws in certain sectors are evaluated after three, five or ten years, or that individual laws contain provisions requiring them to be monitored and evaluated after a certain period has passed, following specific benchmarks for assessing their effectiveness. Some laws are adopted for a certain period, requiring them to be assessed once this period has ended (sunset clause);¹⁹⁴ they are then only renewed once it has been determined that they are still needed. Similar considerations apply to experimental legislation, where evaluation should precede any decisions taken on extending it to other regions or topics. The OECD has categorized ex post evaluation into three broad types of review: programmed reviews, ad hoc reviews and ongoing stock management (see box below).

Figure 4. OECD – types of ex post reviews

Programmed reviews	Ad hoc reviews	Ongoing 'management'
<ul style="list-style-type: none"> • Sunsetting • Embedded in statute • Post implementation reviews <ul style="list-style-type: none"> - process failure - catch-all 	<ul style="list-style-type: none"> • Public stocktakes <ul style="list-style-type: none"> - economy-wide - sectoral • 'Principal-based' reviews • Benchmarking • 'In-depth' reviews 	<ul style="list-style-type: none"> • Regulatory strategies • Stock flow linkages <ul style="list-style-type: none"> - Budgets - 'In-Out' / 'Offsets' - RIA based consideration • Red tape reduction targets

Source: Banks, Gary (2013). Reviewing the Regulatory 'Stock': reflections from Australia. *5th Expert Workshop on Measuring Regulatory Performance, OECD*. <https://web.archive.org/2013-10-31/254529-Proceedings-Sweden-Workshop.pdf>

194 See e.g., *Better regulation and simplification, Background Document*, OECD Public Governance Directorate Regulatory Policy Committee, GOV/RPC/(2022)9/ANN3, Brussels, 2 August 2022, pp. 8-9.

165. **Ex post evaluation of certain type of laws needs to be mandatory.** Similarly to ex ante RIA, legislation must indicate which types of laws (e.g., those impacting fundamental rights, including gender and diversity, those impacting the efficiency, effectiveness and independence of democratic institutions, civil society and private entities, critical environmental policy) must undergo evaluation.¹⁹⁵ The laws and rules of procedure should also contain a proper evaluation methodology, specifying how evaluations must be conducted, and their scope, and what happens after ex post evaluations have been completed. The general methodology for conducting evaluations should be within a cost-benefit framework, in which the various impacts of a regulation are identified and documented, and their relative magnitudes assessed.¹⁹⁶ Moreover, the observed outcomes of regulatory actions should ideally be compared to what could otherwise have occurred in the absence of regulation. Consultations need to be undertaken with affected parties, using processes that are as inclusive and accessible as possible (see **Sub-Section IV.5** on Consultations below). The coverage and duration of consultations should be proportionate to the significance of the regulation and its impacts, and the degree of public interest or concern. Regular RIA training should also include training on how to conduct ex post evaluation in a proper and effective manner, based on the established methodology. As much as possible, ex post evaluations should also be made public to enhance transparency and help explain certain policy choices for new legislation, especially in contentious areas of regulation.¹⁹⁷ Overall, it is also useful to evaluate regularly the manner in which ex post evaluations are conducted, to help enhance the process.¹⁹⁸
166. **Ex post evaluation should form the basis of new ex ante assessments of reforms.** Ex post evaluation of adopted laws is an important element of the legislative process, both as a means of reviewing the quality of such legislation, but also as a starting point for potential new reforms.¹⁹⁹ Ideally (although this may not always work in practice), ex post assessments of regulatory performance should have symmetry with ex ante assessments, the starting points of RIA before legislation is passed. Thus, ex post evaluations should verify that the stated objectives

195 See e.g., OECD, *Best Practice Principles for Regulatory Policy, Reviewing the Stock of Regulation*, Chapter 7: Reviewing the Stock of Regulation.

196 *Ibid.*, Chapter 5: Methodologies.

197 See e.g., *Ibid.*, Chapter 6: Public Consultation.

198 OECD, *Better Regulation Practices Across the European Union*, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union.

199 See e.g., OECD, *Best Practice Principles for Regulatory Policy, Reviewing the Stock of Regulation*, Chapter 1: Overarching Principles.

of a law have actually been met, determine whether there have been any unforeseen or unintended consequences, including potential discriminatory impact, and consider whether alternative approaches could have achieved the policy goals better.²⁰⁰ This also means that ex post assessments should generally follow the same methodology used in ex ante reviews.²⁰¹

167. **Special bodies could be set up to conduct ex post evaluation.** Not all countries have a proper ex post evaluation system. In those that do, it is usually the government, in particular the competent line ministry, that is responsible for conducting ex post evaluations of laws that fall within its purview. Some countries have separate agencies dealing with ex post evaluation of laws; sometimes the same agencies that oversee the quality of RIAs, or even special parliamentary evaluation committees. Having separate agencies conduct ex post evaluation may render it more neutral, and thus more useful, in particular with respect to politically or otherwise sensitive legislation.²⁰² This process may be enhanced by involving the public and relevant stakeholders in ex post evaluations and conducting inclusive debates on how certain legislation works in practice.

COUNTRY EXAMPLE 15

Austria — Overview of RIA and Ex Post Evaluation Framework²⁰³

A comprehensive threshold test was introduced in 2015 to determine whether a simplified or full RIA has to be conducted for draft regulations and the same threshold will apply, ensuring that regulations passing the threshold are subject to an ex post evaluation. The ex post evaluation consists of assessing whether underlying policy goals have been achieved, the comparison of actual and predicted impacts, and the identification of costs, benefits and unintended consequences of regulations are part of the standard methodology for ex post evaluations. In 2019, a principle-based ex post review of 200 federal laws has been carried out with a view to reducing administrative burdens stemming from gold-plating.

200 OECD, *Better Regulation Practices Across the European Union*, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union.

201 See e.g., OECD, *Best Practice Principles for Regulatory Policy, Reviewing the Stock of Regulation*, Chapter 1: Overarching Principles.

202 OECD, *Better Regulation Practices Across the European Union*, Chapter 4: Ex Post Review of Laws and Regulations Across the European Union.

203 See, *Regulatory Policy Outlook 2021: Austria*, OECD, 6 October 2021.

The Federal Performance Management Office (FPMO) at the Federal Ministry for Arts, Culture, Civil Service and Sport (BMK/OES) reviews the quality of all full RIAs and ex post evaluations and controls and supports the application of threshold tests for simplified RIAs. It publishes its opinions on RIAs for primary laws and can advise civil servants to revise RIAs if not up to standard. The FPMO also issues guidelines, provides training on RIA and ex post evaluation and coordinates these tools' use across government. In addition, it reports annually to Parliament on RIA and ex post evaluation results. The Ministry of Finance supports the FPMO by reviewing assessments of financial impacts and costs in RIAs and ex post evaluations, and is also involved in issuing guidelines on the application of these tools.

168. **Ex post evaluation is part of proper parliamentary oversight.** As part of their general oversight role, it is important also for parliaments to engage in ex post evaluation of legislation, often called post-legislative scrutiny, in addition to other bodies that perform this task. It is important for parliaments to have adequate structures and procedures in place and the capacity to provide outputs and conduct follow-up related to post-legislative scrutiny. Ex post evaluation is often carried out by parliamentary committees,²⁰⁴ who evaluate the implementation and impacts of laws falling within their competences, or, due to their often-limited capacities, ask the government to do so. The results of such ex post evaluations could then be debated in parliament.

COUNTRY EXAMPLE 16

United Kingdom – Ex Post Evaluation

Ex post evaluation is defined by the Law Commission of England and Wales as:

*“A broad form of review, the purpose of which is to address the effects of legislation in terms of whether intended policy objectives have been met by the legislation and, if so, how effectively. However, this does not preclude consideration of narrow questions of a purely legal or technical nature”.*²⁰⁵

204 Post-legislative scrutiny, Westminster Foundation for Democracy website.

205 Cited in Linda J. Knap et al, *The impact of ex-post legislative evaluations: a scoping review*, *The Journal of Legislative Studies*, February 2022, Note 1.

In the UK House of Commons, this form of review is undertaken by departmental select committees (sessional committees) that shadow government departments. In the UK House of Lords, it is undertaken by ad hoc committees, created to undertake a specific function.

5. Consultations

169. The requirement to consult draft policies and laws derives from the overall need for transparency and good governance in public institutions,²⁰⁶ and also to allow individuals and the wider public to participate in public affairs within the sense of Article 25 of the ICCPR on the right to participation, and to exercise other rights, such as freedom of expression (including the right to freedom of information). Consultations are one means of interacting with the public (in addition to information-sharing and participation, which means greater involvement), and presupposes interacting with interested or affected groups, to collect information that will facilitate the preparation of higher quality legislation.²⁰⁷ Consultations, especially if they start at an early stage of the policy and legislative process, may contribute other points of view, and help legal drafters prepare a law that will ideally take into account the (possibly conflicting) interests of different stakeholders, individuals or experts.²⁰⁸ They also help to improve the quality of laws, as unintended mistakes may be discovered and highlighted when individuals reflect on how a draft law will affect them.
170. States must develop a policy to actively and systematically engage with a wide array of stakeholders at an early stage and throughout the process. The more open and transparent the government and the parliament are about the law drafting procedure and input requested and received from both within and outside their structures, the fewer problems a piece of legislation may encounter further down the line. Thus, laws that are drafted by a small group of people within government or parliament, with little input from others before the draft law is completed and adopted, often encounter difficulties due to incomplete, one-sided and, at times, even rushed policy- and lawmaking stages at the beginning of the process.²⁰⁹ It is these types of laws that may later risk being amended multiple times,

206 See Venice Commission, *Rule of Law Checklist*, Benchmark A.5. Lawmaking procedures, stating that the lawmaking process shall be "transparent, accountable, inclusive and democratic", which requires the public to have access to draft legislation and have a meaningful opportunity to provide input (Benchmark A5.iv).

207 *Background Document on Public Consultations*, OECD Regulatory Policy Division, 2006, p. 1.

208 *Ibid.*, p. 2. See also ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 27.

209 ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 24.

and within a relatively short period of time. Therefore, it is important that the law-drafting process is organized and coordinated closely between different government agencies and between the government and the parliament, and that outside stakeholders are also involved in a meaningful and inclusive manner.

COUNTRY EXAMPLE 17

Kyrgyz Republic – Rules of Procedure of the Jogorku Kenesh (Parliament)²¹⁰

Article 46 establishes that the information about the results of the public hearings, public discussions are required for submitting a draft law (Article 46).

According to Article 115.3, parliamentary hearings shall invariably be held on draft laws on ensuring the constitutional rights, freedoms and duties of citizens, the legal status of political parties, non-profit organizations and the media, on the budget, taxes and other mandatory fees, on the introduction of new types of state regulation of entrepreneurial activity, on ensuring environmental safety and on crime prevention.

171. Effective public consultations depend on a number of factors. These include:
172. **The process for public consultations should be outlined in relevant public documents.** Governments should publish a clear policy on how open, inclusive and balanced consultations will take place,²¹¹ and how information obtained in this way will be used in the process. Government rules of procedure or similar documents may outline the different stages of how policies and laws are prepared, formulated and consulted, and how decisions are then taken. Drafting manuals and similar documents, or relevant administrative instructions may provide guidance on how to conduct consultations with stakeholders. To ensure the consistency and quality of consultations, some governments have opted for establishing a central office responsible for coordinating or supporting public

210 [Law of the Kyrgyz Republic No. 106 on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic](#), Venice Commission, 16 November 2022.

211 OECD, [Recommendation of the Council on Regulatory Policy and Governance](#), Annex, 2.1. See also ODIHR, [Assessment of the Legislative Process in the Republic of Armenia](#), para. 32.

consultations in government bodies. Once all initial feedback on the draft law has been received, it may be revised, and is then presented to the government cabinet, which will then decide whether to adopt and submit it to parliament or not. Parliamentary rules of procedure also need to include procedural details on public hearings on draft laws, both within committees and in plenary. Training on how to conduct proper consultations and outreach needs to be provided on a regular basis, for both government and parliamentary staff.

173. **Public consultations should take place early on, as well as at later stages, as needed.** Consultations should already be part of the initial policy discussions on how to resolve a problem or challenge, or on potential legislative intent, as at this stage it will still be possible to make significant changes to a concept. At the same time, consultations should also take place at various stages during the legislative process; as a draft policy evolves into a draft law and then undergoes amendments and additions.²¹² Once laws have been adopted, consultations should also be organized to inform about their impact and implementation. This will then be used to evaluate such impact ex post.
174. **Public consultations need to be organized in a transparent manner.** In order to be effective, the drafting policies or laws of public institutions need to ensure that consultations are transparent²¹³ and those invited to take part in consultations will need to be informed early on and via the proper outreach what they are to be consulted about, at which stage of proceedings they will be consulted and, at a later stage, whether their feedback led to any changes of the draft legislation.²¹⁴ As draft laws can change quite substantially during the legislative process, it is essential that all versions are shared with relevant stakeholders and interest groups to ensure that new additions that aim to resolve one matter do not end up creating new difficulties. Additionally, explanatory memoranda attached to draft laws should be published to enhance transparency and provide more background to the draft laws.²¹⁵ It also helps if governments and parliaments publish legislative plans well in advance, as stakeholders can thereby learn what issues may arise and can dedicate time and resources to prepare to participate (see **Sub-Section IV.2** on Legislative Planning). Information about pending draft laws should include information and contact details of responsible public institutions and officials and

212 ODIHR, *Assessment on Law Drafting and Legislative Process in the Republic of Serbia*, p. 72.

213 ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan*, para. 81.

214 ODIHR, *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, para. 10.

215 Venice Commission, *Opinion on the Draft Law on the Government of Kosovo*, para. 62.

should also provide material on past debates and revisions of a draft law, as well as on relevant next steps. Revised versions of draft laws need to be uploaded to a dedicated webpage without undue delay, indicating what has changed compared to previous drafts.²¹⁶

COUNTRY EXAMPLE 18

Estonia – Basic Principles for Legislative Policy until 2030²¹⁷

12.2. The principal regulatory solutions proposed by the bill are discussed with the stakeholders at the earliest possible stage of proceedings.

12.2.1. Involvement of the stakeholders is effective only if it is supported by the work arrangements of State agencies. Stakeholder involvement must encompass the entire course of legislative proceedings.

12.2.2. To provide for the accessibility of legal acts and transparency of legislative proceedings, any information technology solutions used to support these must be citizen-friendly, accessible to the public and comprehensive in their scope. Important legal information will continue to be provided through the Riigi Teataja portal and will be made easier to use.

12.2.3. To assess and develop stakeholder involvement, the Government of the Republic monitors the practice of such involvement by government agencies on a regular basis.

175. **Electronic tools used must be tailored to enhance inclusiveness, transparency and accessibility and to make participation easier.²¹⁸** Merely publishing information on draft laws online is unlikely, per se, to lead to any relevant results, also because not all relevant people or groups will see them in time, nor be aware of how they may contribute. It is therefore important that the authorities take measures to raise awareness about the legislative initiative, for instance, by informing the public through the media or other means depending on the target audience, and calling for feed-back. Government and parliamentary websites need

216 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 14.

217 *Approval of Basic Principles for Legislative Policy until 2030*, Riigi Teataja (State Gazette of the Republic of Estonia) website, 12 November 2020.

218 *Code of Good Practice for Civil Participation in the Decision-Making Process*, Council of Europe Conference of INGOs: adopted on 1 October 2019, p. 17.

to be clear, user-friendly, accessible and easy to find; ideally, all information relating to a particular draft policy or law should be in one place.²¹⁹

176. **Relevant stakeholders need to be identified and approached.** It is important for lawmakers to identify properly which individuals or groups of people will be most affected by a planned law and how, and to run these assessments on a regular basis to ensure that a wide array of stakeholders is identified and approached. Apart from specialized subject expertise, it is important to include stakeholders from certain disadvantaged, marginalized or otherwise under-represented groups to provide their own perspective on drafts likely to impact them. This should already be part of the RIA process and will help determine which means of outreach will be most promising and also which means of consultation will prove most successful. These principles apply equally to drafters in government and parliament, including parliamentary committees organizing public hearings on draft laws. Ministries and parliamentary committees should maintain an up-to-date list of key stakeholders and interest groups to help with proper outreach; however, when compiling and maintaining them, relevant data protection regulations need to be adhered to.
177. **Timely outreach and information for stakeholders.** If legal drafters send out invitations to specific consultation events, these should be sent well in advance, so that those invited will be able to make time in their schedules. Sufficient advance notice is even more important where information on public consultations is simply posted on government websites; in these cases, it may take time for interested stakeholders to become aware of the information. The same applies when parliamentary committees organize public hearings on draft laws.
178. **Women (and, where relevant, men) and representatives of minority groups, persons with disabilities and other marginalized or under-represented groups need to be involved via targeted outreach measures.** Consultation strategies need to adapt their timing and methods of consultation, enhancing measures to reach out to particularly marginalized groups, conducting smaller or larger, local or regional events, or a combination of online and/or offline events, depending on the groups and their needs. Translation, interpretation and/or reasonable accommodation should also be planned for as necessary.²²⁰ When selecting the means of consultation, the special situation of marginalized

219 ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 32.

220 See ODIHR, *Realizing Gender Equality in Parliament. A Guide for Parliaments in the OSCE Region*, p. 53.

or under-represented groups should be taken into consideration.²²¹ In particular, reasonable accommodation needs to be provided as appropriate to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures, for example, communicating information in adjusted formats, easy-to-read language, adapted physical access to events and venues for consultations.²²² International recommendations on the rights of the child require that children are also consulted on draft policies and laws that impact them.²²³ States thus have a duty to create systematically the appropriate conditions for helping children express their views, by establishing institutionalized structures, anchored in law and policy, and targeted measures and discussion platforms involving a wide range of youth-led advocacy and interest groups throughout the policy- and lawmaking process²²⁴ (see also **Sub-Section IV.8** on Gender and Diversity Considerations).

179. **Consultations on (broadly understood) human rights-related issues must always include the competent NHRI and/or similar national, state-based institutions and be open to a wide array of different human rights NGOs, human rights defenders and other parts of civil society.** NHRIs, and other human rights stakeholders, can be particularly helpful in identifying international human rights standards and recommendations made to the state by international human rights bodies, as well as in providing recommendations on how to ensure the human rights-compliance of draft policies and laws.
180. **Organizers of consultations need to determine the most effective consultation methods, based on the rules set out for consultations.** Consultations will likely need to be managed in terms of size and desired outcomes. Thus, at the outset, when a policy discussion is just beginning, it may be useful to conduct wider consultations with a large variety of groups and entities, to ensure that all aspects have been taken into account. As drafting progresses, however, the group of people or entities selected for consultations may gradually be reduced as certain issues are resolved, and may even focus only on certain aspects of a draft law. In contrast, parliamentary hearings conducted as part of the

221 See *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, para. 19, with reference to the World-wide Web Consortium's guidelines on web content accessibility (1999), now updated here: [W3C Web Accessibility Initiative \(WAI\)](#).

222 *Guidelines on Promoting the Political Participation of Persons with Disabilities*, OSCE/ODIHR, 15 March 2019, pp. 87-88.

223 *Opinion on the Law on Youth of Serbia*, OSCE/ODIHR, 8 November 2021, para. 15.

224 *General Comment No.12: The right of the child to be heard*, United Nations Committee on the Rights of the Child, CRC/GC/12, para. 127, notes that that local youth parliaments, municipal children's councils, ad hoc consultations, extending consulting hours of politicians and officials and school visits can help children engage in their communities at the local and national level to the greatest extent possible.

legislative process before parliament should be open to a broad spectrum of people and organizations to ensure a lively and open debate before parliaments decide to adopt laws. The chosen channels and types of consultations need to consider the possibilities for the public and interest groups to access the consultation documents. Public consultation mechanisms should be open, i.e., provide the opportunity for all interested individuals or organizations, including smaller civil society groups, to take part. When public consultations happen through more institutionalized settings, such as consultative bodies or specific working groups, the selection of individuals or entities taking part in consultation mechanisms should be carried out through a public, transparent and open process, on the basis of clearly defined criteria and it should allow associations to choose their representatives.²²⁵

181. **Public consultations need a clear purpose and instructions.** The consultation documents should clearly determine the scope and impact of the public consultations, including whether the entire draft law is subject to consultations, or only part of it, and what is the expected outcome of the consultation process and scope of influencing the content of the draft law.²²⁶ It is also important that the consultation documents include information about the draft law, including about the conduct and outcomes of past, present and planned consultations, the text of the draft law and clear instructions and questions (possibly in the explanatory notes). They should outline in detail what the draft law aims to change and why, and what the various benefits, costs, and obligations will be for different groups. Consultation questions should always integrate a gender and diversity lens. These instructions need to be simple and understandable to a wide range of people. Stakeholders and the wider public should be asked whether they agree with these changes and, if not, whether they can propose any other solutions to the problem.
182. In addition to the instructions and questions, it should also be clear how (to where and to whom) and in what format (ideally with a template form) submissions should be sent. It should also be clear whether submissions may be made anonymously, and participants in consultation procedures should be informed at the outset whether their input and names will be published online.

225 ODIHR, *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, para. 13.

226 See e.g., *Opinion on the Draft Law of Ukraine "On Public Consultations"*, OSCE/ODIHR, 1 September 2016, para. 45.

Box 12 – ODIHR Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes²²⁷

16. States should develop binding and unified standards on effective public participation/consultation in public decision-making processes in accordance with international standards, providing for:

- Scope: participation/consultation of any public initiative which has a potential impact on third parties, whether it is initiated by government bodies, parliament, individual MPs, or other public entities
- Access to information: free and timely access of the public to any document/draft law/legislation under development and related background information; and responsiveness on the side of relevant authorities to any request for additional information
- Allocation of appropriate funding and resources by the States to ensure the inclusiveness of public decision-making processes and that participation does not impose an undue financial burden on the participants
- Timeliness: setting out a clear and reasonable minimum timeline for public participation/consultation that will involve associations 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
- Feedback mechanism: a legal obligation and a mechanism whereby decision makers shall report back to those involved in consultations, including the public, by providing, in due time, meaningful and qualitative feedback on the outcome of every public consultation, including clear justifications for including or not including certain comments/proposals
- Consequences for the failure to comply with laws requiring the organization of public consultations on drafts of policies, legislation, or other decisions
- The obligation of public authorities to conduct a self-assessment on compliance with such binding standards on effective public participation/consultation and to report on the results to the public on a regular basis

183. **Participants in public consultations need to have sufficient time to provide proper input.** In addition to informing potential stakeholders early on about the consultation timeline of a draft policy or law, the people or groups taking part need to know the deadline for providing their input. The time period needs to allow for proper and in-depth review of the draft policy or law and should be appropriate to its length and complexity. Holidays and weekends also need to be taken into account when setting periods of time for consultations.

184. **After public consultations, the organizers need to provide timely, meaningful and qualitative feedback to participants.** In due time,

227 ODIHR, *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*.

the body organizing the consultations should provide participants with meaningful and qualitative feedback on the outcome of each public consultation, including clear justifications for including or not including certain comments/proposals. To this end, the legislation or methodology followed should include a proper and timely feedback mechanism,²²⁸ which should indicate how the received feedback is processed, summarized and displayed, and which body is responsible for this process.²²⁹ In this way, those consulted will know whether and to what extent their input has been incorporated in the draft law or policy and if not, why not. Reporting back to the public, key stakeholders and interest groups is important for maintaining public trust in the process and in public institutions per se. The absence of feedback mechanisms may lead to reluctance to take part in future consultations (consultation fatigue). Such procedural gaps will likewise prevent the organizers from adequately evaluating the success (or lack thereof) of the consultation event, to see whether and how to improve the concept and organization of future consultations. On a practical note, any proper feedback mechanism will also require, as a basis for further analysis, some form of documentation on the type of consultation held, the questions raised and the responses received. The feedback mechanism should also outline how feedback reports are communicated to the people and groups participating in the consultations.²³⁰

COUNTRY EXAMPLE 19

Croatia – Code of Consultation with the Interested Public in the Procedures of Passing Laws, Other Regulations and Acts²³¹ (unofficial translation)

(...)

V. STANDARDS AND MEASURES IN THE CONSULTATION PROCESS

When drafting a draft law, other regulation or act (resolutions, declarations, strategies, programmes, etc.) expressing the policy of the Croatian Parliament or the Government of the Republic of Croatia, whose holders are the central state administration bodies and offices of the Government of the Republic of Croatia, the minimum standards and measures for consultation with the interested public are:

228 ODIHR, *Assessment of the Legislative Process in the Kyrgyz Republic*, para. 71. See also ODIHR, *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, para. 28.

229 ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, p. 41.

230 *Ibid.*

231 See *Code of consultation with the interested public in the procedures of passing laws, other regulations and acts*, (in Croatian).

1. Timely information on the plan for enactment of laws, other regulations and acts

The interested public should be informed in a timely manner about the plan of enacting laws, other regulations and acts by publicly publishing a single list of laws and other regulations that are drafted and proposed for adoption in a calendar year, indicating the holder of drafting and the framework deadline within which the law and /or other regulation should be drafted and adopted.

2. Availability and clarity of the content of the consultation process

The authorities responsible for drafting laws, other regulations and acts shall publish the drafts publicly on the website or in another appropriate manner. Notices and invitations for consultation on published drafts should be clear and concise, providing all the information necessary to facilitate the collection of comments from the public concerned.

3. Deadline for the implementation of online and other forms of consultation

The publication of a call for consultation on draft laws, other regulations and acts should contain a clearly indicated time limit for the comments of the interested public, which is desirable not to be shorter than 15 days from the date of publication of the draft on the website of the drafting authority, so that the interested public has sufficient time to study the draft in question and form its opinion.

4. Feedback on the effects of the consultation carried out

The observations of the public concerned as well as a concise summary justification of the unaccepted comments on certain provisions of the draft shall be made publicly available on the website of the authority responsible for drafting it or in another appropriate manner, in order to see the impact of consultations in the procedures for passing laws, regulations and acts.

5. Coherence of the application of standards and consultation measures in state bodies

In order to ensure the harmonized application of the above standards and measures in state bodies, consultation coordinators will be appointed as contact people in all central state administration bodies, i.e., government offices in charge of drafting laws, other regulations and acts, with the aim of consistent monitoring and coordination of consultation procedures with the interested public.

185. **Access to information should be guaranteed, and public disclosure of all relevant documents and data should be carried out throughout the public consultation process.** Information held by public authorities, including draft legislation, studies/data, results of RIA, etc., should be disclosed proactively to the public in a timely manner via online and other tools. States should ensure accessible and user-friendly access to information to all those potentially impacted, for example, by making parliamentary voting records and session transcripts public; ensuring that public participation/meetings of public councils include open and online consultation processes and online access to related information and documents; using social media (though considering the risk of a digital divide); issuing open invitations for dialogue using civil society and other networks (to ensure timely information of interested parties, including marginalized and under-represented groups and the public); and a range of other dissemination methods depending on the national and regional context. Information about public consultations should be disseminated as widely as possible, using a variety of means and media, including local newspapers and other printed media, social media, TV/radio broadcasts, post, emails, telephones/SMS, online applications, etc.
186. **Exceptions to rules on public consultations should be kept to a minimum.** Most significant laws should undergo public consultations, for example, constitutional amendments or laws on finance or budgetary matters, or at least laws that affect the lives and human rights and fundamental freedoms of individuals. Many state laws contain exceptions to this rule in cases of public emergency, or where accelerated lawmaking procedures are applied. In these instances, it is important that public consultations are only curtailed or dispensed with where this is absolutely necessary, and the cases need to be justified properly. Moreover, consultations should be a significant component of the ex post evaluations of laws fast-tracked in these circumstances (for a more in-depth discussion on accelerated procedures and states of emergency, see **Sub-Sections IV.9** and **IV.10**).

6. Oversight Mechanisms

187. Oversight aims to ensure that the competent bodies do not go beyond their scope and authority while developing policies and draft laws. This also implies a degree of quality control of regulatory management tools, such as RIA, public consultations and ex post evaluations, to ensure that they function in practice. Oversight mechanisms are needed to ensure adherence to the law and rules of procedure for the development of legislation, and to support the actual implementation of these rules in practice, as well as to evaluate and improve regulatory policy. Systems for continuous scrutiny and discussion, from policymaking to ex post evaluation of laws, involve many different actors. Most regulatory oversight bodies are located within government, either at the centre of government or at a line ministry. However, other bodies are increasingly involved in regulatory oversight and legal scrutiny functions, including parliamentary bodies, supreme audit institutions, bodies that are part of the judiciary, or other bodies which may verify the compliance of draft policies and laws with rules on lawmaking and constitutionality, while ensuring coherence with international human rights obligations (e.g., courts, independent institutions, such as NHRIs, other similar independent institutions, regulatory bodies).
188. Government draft policies and laws are scrutinized by other parts of government and by the government body that signs off on official government drafts. Similarly, draft laws originating in parliament are scrutinized by a legislator, initially by parliamentary committees and, later, during plenary sessions (with additional scrutiny where draft laws are substantially changed within parliament).
189. These and other quality control mechanisms help to ensure that the states' regulatory tools actually function in practice and that reforms are implemented. Oversight of the regulatory system also aims to reduce the costs and side effects of regulation and enhance its benefits, while promoting transparency and accountability. It also aims to ensure greater effectiveness of policy- and lawmaking processes and policy coherence, as well as better-quality, consistent drafting.²³² The mechanisms in different countries range from providing advice and feedback during the application of the tools, to issuing a formal opinion on their quality that is

232 Jonathan B. Wiener, *The Diffusion of Regulatory Oversight*, in *Globalization of Cost-Benefit Analysis in Environmental Policy*, Michael A. Livermore & Richard L. Revesz eds., 2013, p. 124; Andrea Renda, Rosa Castro, Guillermo Hernandez, *Defining and contextualising regulatory oversight and co-ordination*, OECD Regulatory Policy Working Papers, No. 17, 20 May 2022, p. 21.

either kept confidential or made publicly available.²³³ In some countries, certain safeguards may also stop a regulation from proceeding to the next step in the legislative process if the quality of the tool is deemed inadequate, e.g., if a RIA is not of the required quality (although this quasi-sanctioning function may be overturned by decision of the competent authority).²³⁴ In other countries, a positive opinion is required for a draft regulation or evaluation to proceed and the sanctioning function cannot be overturned.

190. In government, there may be oversight within individual ministries, which often may only be competent for work processes in that ministry. Ministries of justice, on the other hand, will often have an important quality control function for all policies or laws developed by government bodies and agencies, to ensure their compliance with higher legislation, their consistency and harmonization across national legislation and the rule of law in general (although this role is sometimes fulfilled by cabinet offices). In some OSCE participating states, such reviews go beyond the mere technical analysis of texts, and focus also on compliance with international legislation and a country's international obligations.²³⁵ Ministries of finance have a similar role to play with respect to the budgetary aspects of policies and laws. Usually, government cabinets will have general oversight of all draft laws before they are submitted to parliament. Within the executive, therefore, there are usually multiple regulatory bodies in play, at times to separate certain functions to avoid conflicts of interest or to allow further specialization in each function.²³⁶ However, having several oversight bodies may also lead to fragmentation, lack of consistency in the coordination of regulatory policy and may also reduce accountability; it is important that they coordinate their functions closely, to achieve government-wide scrutiny of draft laws and relevant processes.²³⁷
191. The *OECD Recommendation on Regulatory Policy and Governance* stipulates that states should establish institutions and mechanisms that actively oversee regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.²³⁸ It recommends that states should establish a standing body for regulatory

233 See OECD, *Better Regulation Practices Across the European Union*, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

234 *Ibid.*

235 Renda et al., *Defining and contextualising regulatory oversight and co-ordination*, p. 16.

236 *Ibid.*, p. 17.

237 *Ibid.*, pp. 17 and 23.

238 See OECD, *Better Regulation Practices Across the European Union*, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

oversight to ensure: quality control of regulatory management tools; guidance on the use of regulatory management tools; coordination on regulatory policy; and systematic evaluation of regulatory policy. The functions of such a body should include, among others, reviewing RIAs (and returning draft laws where they were inadequate in that respect), and its own performance should be evaluated periodically (either by the body itself or third parties) with evaluation focusing on the regulatory body, the overall regulatory policy or individual performances. It is important that regulatory oversight bodies have a consistent mandate, with a full range of powers to control, supervise and influence the activities of administrations in charge of policy- and lawmaking, including also consultation processes and ex post evaluations.²³⁹

192. Adopting a government-wide approach to regulatory oversight helps governments retain a good overview of its stock of legislation, of key trends and changes, and of the costs and benefits generated by legislation over time.²⁴⁰ Regulatory oversight bodies can help support political decision-making due to their roles, which, aside from quality control, may also include the identification of policy areas where regulation can be made more effective, the systematic improvement of regulatory policy, the coordination of regulatory tools and relevant guidance and training²⁴¹ (although not all of these are core functions²⁴²). They may provide independent assessments to the regulator or to government, or they may even have special powers to enforce general or specific programmes, acting as a kind of gatekeeper with veto powers based on the quality of the draft laws or policies that are being assessed.
193. Parliaments may also engage in oversight over legislative processes, mainly through the general oversight that they exercise over the executive, but also because they are the ultimate authority to approve legislation,²⁴³ In some countries, parliaments oversee the implementation of laws and evaluate whether they have achieved their intended outcomes. In this respect, ex post evaluation of legislation is increasingly recognized as an important dimension within parliament (see **Sub-Section IV.4.ii** on Ex Post Regulatory Impact Assessment).²⁴⁴ Given the complexity of the implementation process and the frequent lack of information on what happens after a law is adopted, parliaments and elected representatives need mechanisms such as ex post RIA to monitor effectively the

239 Renda et al., *Defining and contextualising regulatory oversight and co-ordination*, pp. 23-24.

240 *Ibid.*, p. 11.

241 *Regulatory Policy Outlook 2015*, OECD, 28 October 2015, p. 39.

242 Renda et al., *Defining and contextualising regulatory oversight and co-ordination*, p. 15.

243 See OECD, *Better Regulation Practices Across the European Union*, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

244 *Post-legislative scrutiny I* Westminster Foundation for Democracy (wfd.org).

implementation of legislation and exercise their oversight functions. Asking questions of the executive, as well as interpellations, or establishing investigative or other ad hoc committees will help reveal how laws were implemented and the overall impact that they have had. This could lead to further discussions, political changes or additional laws or legislative amendments.

194. Judicial oversight of the legislative process varies from country to country. While some constitutions include review of draft legislation in the competences of high courts, such as constitutional or supreme courts,²⁴⁵ others limit them to review only adopted legislation. The right to contest the constitutionality of a law or draft law also differs. Individual access to constitutional jurisdiction has been developed in the vast majority of OSCE countries, either in a direct or indirect manner, by way of an objection concerning the unconstitutionality of legislative provisions raised before an ordinary court, which may refer the issue to the constitutional court,²⁴⁶ or by way of constitutional complaints.²⁴⁷ In other OSCE participating States, this right may be given only to courts, members of parliament (including members of opposition political parties)²⁴⁸ or other state bodies. In some countries,²⁴⁹ NHRIs may also institute proceedings before constitutional courts if they believe that a law is not in compliance with the constitution and other laws (for further information, see **Sub-Section III.4** on the Role of the Judiciary).

245 See, e.g., Constitution of France, Article 61, provides that "Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators".

246 See Venice Commission, Rule of Law Checklist, paras. 109 and 112. For an overview of different mechanisms of constitutional review, see e.g., Constitutions in OECD Countries: A Comparative Study, OECD, 28 February 2022, Chapter 6. See also, e.g., Constitution of the French Republic, Article 61-1, states that: "If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'État or by the Cour de Cassation to the Constitutional Council, within a determined period."

247 See e.g., Law on the Constitutional Court of the Czech Republic, Articles 73-75, which provide that after exhaustion of all procedures afforded by law for the protection of human rights (Article 75), "§ 74 A complainant may submit, together with his constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint; if the complainant alleges it to be in conflict with a constitutional act, or with a statute, where the complaint concerns some other enactment."

248 PACE, Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament, para. 2.5.1. See also Venice Commission, Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist, para. 117, which notes that where it is possible to have the constitutionality of draft laws and laws reviewed, there are good reasons to give the power to trigger such a review also to a minority group in Parliament.

249 NHRIs can submit constitutional complaints in: Albania, Armenia, Austria, Azerbaijan, Croatia, the Czech Republic, Estonia, Hungary, Latvia, the Republic of Moldova, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, South Africa, Spain and Ukraine. See Venice Commission Revised Report on Individual Access to Constitutional Justice, adopted by the VC on 11 December 2020 at its 125th online Plenary Session (11-12 December 2020), para. 62.

COUNTRY EXAMPLE 20

Slovenia — Law on the Constitutional Court of the Republic of Slovenia²⁵⁰ (unofficial translation)

IV. Assessment of the Constitutionality and Legality of Regulation and General Acts Issued for the Exercise of Public Powers

1. Request and initiative to initiate the procedure

Article 23a

(1) By request, the following may initiate proceedings to assess the constitutionality or legality of a regulation or a general act issued for the exercise of public powers:

(...)

the Ombudsman if considering that a regulation or a general act issued for the exercise of public powers is inadmissible interference with human rights or fundamental freedoms,

(...).

195. In several countries, administrative courts may review the compliance of secondary legislation or other normative acts, e.g., presidential decrees or ministry regulations, with relevant primary laws and other normative acts of a higher order. If such sub-legislative acts are found to violate laws or the constitution, or if they did not undergo appropriate consultations during the drafting stage, the courts may also declare them null and void.²⁵¹
196. NHRIs also play an important role in verifying the compliance of draft laws or existing laws (and their implementation) with international human rights obligations (see also **Sub-Section III.3** on the Role of NHRIs). Many states may, further, have specialized independent and regulatory bodies that oversee certain elements of laws, such as auditors-general, courts of accounts or other supreme audit institutions, anti-corruption commissions, freedom of information or data protection commissioners, national broadcasting commissions or election commissions. These bodies conduct oversight over laws and practices in their fields in a more or less autonomous or independent fashion. Additionally, civil society

²⁵⁰ See [Law on the Constitutional Court of the Republic of Slovenia](#), (in Slovenian).

²⁵¹ See, e.g., the [decision of the Council of State of France](#) of 23 December 2011, in French, which nullified the decree establishing the *Ecole normale supérieure de Lyon*, where the deliberation process was considered to have influenced the meaning of deliberations and thus the meaning of the decree.

serves an important watchdog function in overseeing the implementation and quality of legislation and its effects (see also **Sub-Section III.5** on the Role of Civil Society).

197. In order for oversight to be effective and achieve its objective, there are numerous obligations and good practices to bear in mind. These include:
198. **Oversight mechanisms within governments should involve one main standing body, ideally located close to the centre of government**, which should have a broad mandate to oversee the entire legislative process as conducted within the executive, including the quality of ex-ante and ex-post RIA, as well as the conduct of public consultations. They should have a full range of powers to control, supervise and influence the activities of administrations in charge of policy- and lawmaking. Oversight bodies should be able to conduct checks both on compliance with RIA procedures, including consultation procedures,²⁵² and on the content and quality of the analysis and conclusions presented in the draft RIA reports, as well as of the legislative proposal, before they are submitted to government for final approval.
199. **The main regulatory body in government, where it exists, should have a stable mandate to ensure its influence.** It also needs to have powers to access all relevant information in order to exercise its functions adequately.

COUNTRY EXAMPLE 21

Greece – Law 4622/2019 on the Organization, Operation and Transparency of Government, Governmental Institutions and Central Public Administration²⁵³ (unofficial translation)

Article 64 Committee on Quality Assessment of Legislative Procedure

1. A Committee on Quality Assessment of Legislative Procedure is established as an independent, interdisciplinary, advisory body.
2. The Committee evaluates and provides an opinion to the General Secretary of Legal and Parliamentary Affairs [under the Presidency of the Hellenic Government], regarding the implementation

252 Regulatory Impact Assessment and EU Law Transposition in the Western Balkans, OECD SIGMA Paper No. 62, 2021, p. 85.

253 Law of the Hellenic Republic No. 4622/2019 on the Organisation, Operation and Transparency of Government, Governmental Institutions and Central Public Administration, as amended in 2023 (in Greek).

and observance of the Principles on Good Legislation in the draft laws, ministerial amendments, legislative acts, regulatory decrees, before their dispatch to the Council of State, regulatory ministerial decisions as well as Regulatory Impact Assessments, referred to it by the General Secretary of Legal and Parliamentary Affairs.

3. In particular, in the context of the above evaluation, the Committee:

- (a) investigates the constitutionality of proposed drafts and their compatibility with European Union and international law, especially with the European Convention on Human Rights, where this is required,
- (b) checks the completeness of the regulatory texts being processed, in particular with reference to repealed or amended provisions, while examining their accompanying documents,
- (c) addresses issues of overlap and conflict of the provisions of the regulatory texts being processed with provisions of the applicable law,
- (d) evaluates the quality of Regulatory Impact Analyses with respect to their quantitative and qualitative dimensions and the realistic capture of quantities, quantitative or quality, included in them.

4. The Committee consists of a President, Vice-President, as well as nine (9) regular members, who are renowned scientists and enjoy special recognition from the scientific and professional community.

5. An honorary judicial officer or advisor of the State Legal Council or a member of the Faculty of Law Schools of A.E.I. is designated as the President of the Committee. An economist of recognized authority is appointed as Vice-President or a member of the Faculty of Economics Schools of A.E.I. of the Country. The President and Vice-President of the Commission are appointed after a decision of the Conference of the Presidents of the Parliament with a three-fifths majority (3/5) of the whole number of deputies taken, in accordance with the provisions of the Rules of Procedure of the Parliament.

6. The regular members of the Committee are designed as follows:

- (a) two (2) legal scholars and two (2) economists are chosen by the President and Vice-President respectively,
- (b) one (1) legal scholar and one (1) economist, are appointed respectively by the General Secretary of Legal and

Parliamentary Affairs and the General Secretaries of Coordination jointly, and

(c) the Secretary General for Legal and Parliamentary Affairs or an official of the same General Secretariat designated by the Secretary General.

(...)

200. **Where there are multiple regulatory bodies exercising oversight over different aspects of the lawmaking process, proper coordination between these bodies is essential to ensure a concerted government approach to oversight.**
201. **Oversight bodies in government and parliament should be able to reject sub-standard draft laws and/or RIA.** Where quality control over RIA processes is in place, it is important to strengthen the position of the oversight bodies by also allowing them to reject deficient RIAs and ask for them to be revised.²⁵⁴ This also applies to the recent trend of ‘arm’s length’ regulatory oversight, conducted by bodies that are somewhat independent of executive government in that their institutional set-up and resources provide safeguards from outside interference in their regulatory oversight activities.²⁵⁵ At the same time, these bodies may remain linked to certain public institutions of the executive, with their members appointed by the government, or their secretariat located in a government body. Other countries have gone a different way by establishing mixed bodies involving representatives from the government, the legislative branch and/or civil society (academia, business, or other).²⁵⁶
202. **Parliamentary committees need to play an active role in the oversight of the lawmaking process.** Draft laws that have been submitted to parliament will be examined, at different stages, by relevant lead committees. Any exceptions to this rule must be transparent, narrowly defined and extraordinary in nature.²⁵⁷ Committees are essential to ensuring that adopted legislation undergoes proper scrutiny after a certain implementation period has passed. Ideally, this special oversight role could be mentioned in the rules of procedure of parliaments.

254 See OECD, *Better Regulation Practices Across the European Union*, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

255 See, for a comparative overview, *Case Studies of RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board*, OECD, 2018.

256 See OECD, *Better Regulation Practices Across the European Union*, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

257 See, e.g., *Recommended Benchmarks for Democratic Legislatures*, Commonwealth Parliamentary Association, revised and updated in 2018, para. 3.2.2.

203. **The rights of the opposition need to be protected inside and outside parliament to ensure that parliament can exercise its oversight role effectively.** Thus, rules of procedure should contain certain mechanisms to balance the political influence that majority parties have over proceedings and outcomes; because these parties usually also form the government, it is important to create checks and balances also within parliament. One way to strengthen the role of the opposition in parliaments is to ensure, via the parliamentary rules of procedure, that certain key positions within parliament are filled with parliamentarians from opposition parties, e.g., vice presidents of parliament, or chairpersons of certain selected committees.²⁵⁸
204. **Parliaments need to support the work of independent and regulatory institutions.** These institutions are generally required to submit and present their annual reports to parliaments and, thereby, have a form of accountability towards parliaments, which also exercise oversight over the executive. Given this shared goal, there should be close cooperation between independent and regulatory bodies and parliaments, including with specific parliamentary committees.²⁵⁹ Issues raised by independent and regulatory bodies should be discussed during special parliamentary sessions and may be translated into concrete proposals for amendments to laws if the appropriate parliamentary committees, including petitions committees, are involved.
205. **Laws regulating the lawmaking process and the judiciary could be expanded to give constitutional courts greater oversight over the process of how laws are made.** In countries where the role of constitutional courts remains largely limited to reviewing the content of a law, a greater focus on the manner in which laws are made could enhance the quality of the lawmaking process and rectify possible defects,²⁶⁰ by allowing constitutional and other higher courts to repeal legislation that has not undergone proper elements of the lawmaking process, including

258 PACE, *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, para. 2.1.1., which states that opposition members “shall have access to posts of vice-president and other positions of responsibility in parliament”. See also Venice Commission, *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, para. 86, which also recommends to reserve opposition party seats in important committees responsible for, e.g., budgetary matters or national security, even if this goes beyond their actual representation in parliament. In Germany, the chairperson of the parliamentary Budget Committee is traditionally a member of an opposition party, see the [website of the Parliament \(Bundestag\)](#). The same applies in France, where the National Assembly’s Committee on finances, general economy and budgetary control is chaired by a member of the main opposition party according to Article 39 of the *Rules of Procedure*.

259 See the [Belgrade principles](#), Annex, paras. 21 and 22, on the relationship between national human rights institutions and parliaments, which include the requirement that parliaments should identify or establish specific parliamentary committees that would then be the main point of contact for NHRIs within parliament.

260 Ittai Bar-Simon-Tov, *The Role of Courts in Improving the Legislative Process*, pp. 295-313.

consultation processes.²⁶¹ An additional layer of oversight may ensure that greater attention is paid to the legislative process and its underlying democratic values.²⁶²

206. **Regulatory oversight bodies should have adequate powers and resources to exercise their oversight functions.** In practice, the powers and functions of regulatory oversight bodies range from providing advice and support and issuing formal opinions, to some forms of sanctions, such as preventing a regulation from proceeding to the next stage or rejecting draft policies and laws, e.g., in the case of a sub-standard RIA or failure to conduct public consultations²⁶³ (see also **Sub-Sections IV.4** and **IV.5**). Individual liability and sanctions should be avoided. Imposing sanctions such as fines on individuals or ministries would be a disproportionate response to non-compliance with the rules on law-making or substandard compliance. Moreover, it would appear difficult if not impossible to establish individual liability, given the number of people involved, the hierarchies in government institutions and the various forces that affect the progress of a legislative process.

261 In the UK, the courts have ruled that Government acted unlawfully in enacting legislation for which there was not a full and proper public consultation, see e.g., *The Queen (on application of Article 39) v Secretary of State for Education* [2020], EWCA Civ 1577.

262 Ittai Bar-Simon-Tov, *The Role of Courts in Improving the Legislative Process*, pp. 295-313.

263 See e.g., OECD, *Regulatory Policy Outlook 2018*, OECD, 10 October 2018, Chapter 2 on the institutional landscape of regulatory policy and oversight.

7. Publication and Accessibility of Adopted Legislation

207. Once legislation is passed, it is usually published in the country's official gazette. In the 1990 OSCE Copenhagen Document, participating States noted that the publication of legislation is the condition for its applicability and committed to making legal texts available to everyone.²⁶⁴ This reflects the recognition that legislation only becomes relevant once the public knows about it and individuals know how to adapt their behaviour accordingly.
208. The publication and accessibility of legislation need to follow some good practices. These include:
209. **Legislation should be publicly available to all.** It is important that legislation is published and available, and that people know where to find it. Laws also need to be easily accessible and available, free of charge, via the Internet or in an official bulletin.²⁶⁵ Online publication should follow guidance on web content accessibility for persons with disabilities.²⁶⁶ As the laws of most countries are now published online, it is essential that there is one, or ideally several electronic backups in place, held in different, secure locations. Information on where to find compilations of laws should also be published. It is good practice to publish updated versions of draft laws before adoption²⁶⁷ to enhance the transparency and accountability of public authorities.

COUNTRY EXAMPLE 22

France — legifrance.gouv.fr — French Public Service on Law Dissemination

[Legifrance.gouv.fr](http://legifrance.gouv.fr) is a governmental website, which is regarded as the public service for the dissemination of legal information. It gives access to the content of 78 'codes' that include laws and decrees related to specific domains, including versions of laws (adopted and consolidated versions), decrees, constitutional, administrative, criminal, civil, commercial case-law and other judicial decisions, information on lawmaking procedures from the Government's approval of a draft law to adoption of the law by the Parliament including explanatory statement, RIA, opinions of the Council of State, parliamentary commissions reports, amendments and minutes of parliamentary and public debates.

264 OSCE, *Copenhagen Document*, para. 5.8.

265 Venice Commission, *Rule of Law Checklist*, B.1. Accessibility of Legislation.

266 See *W3C Web Accessibility Initiative (WAI)*.

267 Venice Commission, *Rule of Law Checklist*, B.1. Accessibility of Legislation.

COUNTRY EXAMPLE 23

Georgia's Online Official Gazette

The Legislative Herald of Georgia, established in 1998, is a legal entity under public law within the Ministry of Justice of Georgia representing the official gazette of Georgia. Since 2011, the Legislative Herald of Georgia has been offering matsne.gov.ge to its users, which is a user-friendly, regularly updated website exhibiting all normative acts adopted by state agencies, as well as international agreements, decisions by the Constitutional Court, local self-government acts, and public statements. A normative act acquires legal effect once posted on matsne.gov.ge. Users have access to consolidated normative acts, including the history of changes made to acts since their adoption.

210. **Legislation should be universally accessible and should be available in all official state languages.** Legislation needs to be available in all official languages of a country, and good practice dictates that it should, as far as feasible and reasonable, also be available in prevalent unofficial languages and minority and Indigenous language. To ensure accessibility, legislation should also be available in other formats, such as Braille, audio formats, large print or easy-to-read versions upon request; where this is not possible, at least key pieces of the legislation should be converted accordingly. This kind of universal accessibility is particularly important when laws or decrees are issued in emergency situations. Children also need access to information on their rights, any proceedings affecting them, national legislation, regulations and policies in formats appropriate to their age and capacities on all issues of concern to them, in order to enable their participation in decision-making.
211. **Revised and consolidated versions of laws need to be published in a timely manner.** The relevant authorities need to make sure that revised versions of laws are published without undue delay following their adoption. Amended provisions should be inserted into the existing legislation to create consolidated versions of the law, so that the published law reflects applicable law at all times.²⁶⁸ Bodies responsible for maintaining a country's official gazette should be given the requisite competences to consolidate laws,²⁶⁹ and the procedure should be outlined in key admin-

268 See ODIHR, *An Assessment of Law Drafting and Regulatory Management in North Macedonia*, p. 33. See also ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, p. 43.

269 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, paras. 14 and 71.

istrative instructions or similar rules. Amended versions of a law, should be marked as such, and the previous versions should remain available to access. It is good practice for laws to also contain (hyper) links to other relevant laws or information.

212. **Annulled and obsolete laws should be identified and removed.** Processes should be in place to ensure that, where laws are replaced by newer legislation, annulled, or no longer in force for other reasons (e.g., due to a sunset clause), this should be indicated in a country's official gazette, both online and offline. Usually, a draft law will (or should) indicate which laws will become obsolete upon its adoption. Occasionally, states may decide to conduct stock-taking exercises to make an inventory of existing legislation, for example, a so-called 'guillotine' project, whereby certain sectors of legislation are reviewed and obsolete laws, or laws that impose excessive administrative burdens on the state are annulled.
213. **Secondary legislation required to implement primary laws needs to be adopted and published in a timely manner.** Often, primary laws outline the key aspects of a law, but require secondary legislation detailing which bodies will be responsible for which aspects of implementing a law and following which procedures. It is essential that secondary legislation is adopted and published without undue delay, to avoid a legal vacuum where a primary law has been adopted but cannot be implemented, either because there is no secondary legislation, or because such legislation has not been published. To enhance the transparency and accessibility of legislation, hyperlinks or similar online links or references should be established between primary laws and the secondary laws implementing them, as well as to related court decisions.
214. **There should be procedures in place for correcting erroneous legislation.** Special simplified procedures are required to ensure that obvious errors, including grammatical, numerical, spelling or translation errors can be corrected quickly and efficiently. In particular, it would be disproportionate to require each correction to be formulated as a draft law, which would then need to go through the usual drafting and verification procedures and parliamentary debates. Many countries have developed special procedures to correct errors that obviously diverge from the intent of the drafters and parliament. However, it is essential that the law or rules of procedure outline what is considered an 'obvious error' to avoid situations where changes to an adopted law change its meaning. Proposed amendments may follow simplified procedures but should still be verified and reviewed by both government lawyers and specialists,

and by parliament (without necessarily going through the usual parliamentary procedure).

215. **Legislation should be available online on official platforms that are easy to use.** Online versions of legislation should be available on reliable, ideally official online sources. These platforms should use recent technological advancements to enable all users to access related legal information,²⁷⁰ while also complying with web accessibility standards and recommendations.²⁷¹

8. Gender and Diversity Considerations

216. Across the OSCE region, international standards and national constitutions confirm the principle of equality before the law and gender equality. One aspect of this is ensuring that laws apply to all people equally, and do not disadvantage certain people due to their 'race',²⁷² national or ethnic origin, religion or belief, colour, language, sex, gender, gender identity, sexual orientation, disability, health status, age or other characteristics. To ensure equality in legislation, the policymaking process and the process of preparing, drafting, debating, adopting, implementing, monitoring and evaluating legislation also need to bear in mind the diverse and potentially diverging interests, needs, perspectives and experiences of women and men, and of different minority groups.
217. Taking into account gender and diversity considerations in the process of lawmaking essentially means that draft policies and laws need to undergo different assessments as to their impact on different genders and other groups, and need to be consulted with a wide array of civil society organizations representing different interests and groups (see also **Sub-Sections IV.4** and **IV.5**). Gender- and diversity-responsive legislative design can put important concerns on the agenda, prevent

270 See e.g., [Accessibility, Consolidation and Online Publication of Legislation](#), Irish Law Reform Commission, 2016, para. 3.02.

271 See [W3C Web Accessibility Initiative \(WAI\)](#).

272 The use of the term 'race' or 'racial' in these Guidelines shall not imply endorsement by ODIHR of any theory based on the existence of different 'races'. While recognizing that the term 'race' is a purely social construct that has no basis as a scientific concept, for the purpose of the Guidelines, the term 'race' or 'racial' may be used in reference to international instruments applying such a term to ensure that all discriminatory actions based on a person's (perceived or actual) alleged 'race', ancestry, ethnicity, colour or nationality are covered - while generally preferring the use of alternative terms such as 'ancestry' or 'national or ethnic origin'; the Guidelines use the term to ensure that people who are misperceived as belonging to another 'race' are effectively protected against direct or indirect 'racial' discrimination (see e.g., [Hate Crime Laws: A Practical Guide](#), Revised Edition, OSCE/ODIHR, 23 September 2022, footnote 14 and pages 50-51). Except when part of a citation from a legal instrument or case law, the words 'race' or 'racial' are thus placed in quotation marks in these Guidelines to indicate that underlying theories based on the alleged existence of different 'races' are not accepted. See also [General Policy Recommendation No. 7 \(revised\) on National Legislation To Combat Racism And Racial Discrimination](#), European Commission against Racism and Intolerance (ECRI), adopted on 13 December 2002 and revised on 7 December 2017, CRI(2003)8, footnote 1.

negative or unwanted effects, maximise positive achievements and anticipate failures. Many countries have created specific bodies at the governmental and parliamentary level to ensure greater focus on the rights and freedoms of different genders and groups and more gender balance and diversity in terms of representation. Academics, gender and diversity or social inclusion experts, civil society organizations, youth groups and individuals can share gender- and diversity-related insights, which are valuable to the process of drafting legislation. Bias and discrimination or unfairness may be caused by the data source used (e.g., historical data skewed towards specific groups or from specific data collection mechanics) and also by the algorithms and models evaluating the data, or a change in the use of the AI tool.²⁷³ If algorithms are used for the purpose of lawmaking, they must be transparent and explainable, in that the developers or providers of algorithms should be transparent about what data they use with clear explanations of the decision-making logic used by algorithms. They should also be monitored closely to ensure they do not entrench biases.²⁷⁴

218. **Gender and diversity aspects should be considered in legislation in three main ways, namely in the form (language), the substance (content) and the results of the law.**²⁷⁵

- **The form of legislation** is basically how laws are drafted and how gender and diversity considerations are reflected in the language used in laws. While language and formulations are very specific to different states, the drafting manuals of many countries now include suggestions on formulations and terminology that seek to ensure that laws do not just reflect the position of the majority and do not exclude people of a particular gender, or from a particular group.
- The **substance of laws** refers to the content of laws and their impact, which is a second layer through which the gender- and diversity-sensitivity of legislation can reveal itself. Qualitatively good legislation is free from stereotypes and biases and promotes gender and other forms of equality.
- The **results of legislation** can often reveal a differential impact on men, women or other groups. These results need to be anticipated during the drafting process and verified by identifying positive and

273 See e.g., Peter Homoki, *Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU*, Council of Bars and Law Societies of Europe and European Lawyers Foundation, 2022, pp. 46-47.

274 See e.g., *Bias in Algorithms – Artificial Intelligence and Discrimination*, European Union Agency for Fundamental Rights (EU FRA), December 2022.

275 Maria Mousmouti (2022) *Gender-sensitive law-making: concept and process*, *The Theory and Practice of Legislation*, 10:3, 223-233.

negative change at a larger scale during ex post impact assessment (see also **Sub-Section IV.4**).

219. Bearing in mind the above, both in this and other sections, there are a number of good practices that should be taken into account in relation to gender and diversity in lawmaking. These include:

8.1. Gender Mainstreaming

220. Gender mainstreaming²⁷⁶ implies ensuring that a gender equality perspective is incorporated into policy- and lawmaking so that the experiences, needs and concerns of women as well as men (recognizing the diversity of different groups of women and men) are built into the design, discussion, implementation, monitoring and evaluation of policy, legislation and programmes, and that both individual rights and structural inequalities are addressed. Gender mainstreaming implies actively supporting the inclusion of a gender perspective, gender-balanced representation in public decision-making at all levels, and the promotion of equal opportunities in the activities and procedures of the government, parliament, judiciary and other public institutions, and the underlying legal frameworks. In line with international obligations and commitments regarding gender-balanced representation in public decision-making at all levels,²⁷⁷ it is important to ensure that women are sufficiently represented in parliaments and governments and their respective bodies, including those involved in the policy- and lawmaking process. Balanced representation is also fundamental to enhancing the perception of the legitimacy of the policy- and lawmaking processes and outcomes, i.e., adopted legislation.
221. **Concrete institutional arrangements or mechanisms for mainstreaming gender throughout the policy- and lawmaking process.** It is essential that there are concrete institutional arrangements or mechanisms in place for all actors engaged in the policy- and lawmaking process to ensure the proper implementation of gender-based analysis (e.g., an inter-ministerial committee, a parliamentary committee), accompanied by appropriate budgetary allocations and resources, and adequate

276 Gender mainstreaming is an approach to policymaking and lawmaking that takes into account both women's and men's interests and concerns. At present, the concept of gender mainstreaming is firmly embedded in the EU Treaties and the EU Charter of Fundamental Rights.

277 See e.g., [UN Convention on the Elimination of Discrimination against Women](#), Article 7, which deals with women's equal and inclusive representation in decision-making systems in political and public life, and Article 8, which calls on all States Parties to take appropriate measures to ensure such access; [Beijing Platform for Action](#), Chapter I of the Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), Strategic Objective G.1., "*Take measures to ensure women's equal access to and full participation in power structures and decision-making*"; [Council of Europe Recommendation Rec. \(2003\)3](#) of the Committee of Ministers to CoE Member States on the balanced participation of women and men in political and public decision-making, adopted on 30 April 2002; [OSCE Ministerial Council Decision MC.DEC/7/09](#) on Women's Participation in Political and Public Life, 2 December 2009.

research support services.²⁷⁸ It is important to envisage a mechanism whereby the national machinery for the advancement of women is systematically involved in the policy- and lawmaking processes, including in ex ante and ex post impact assessments, while also allocating adequate human, technical and financial resources for this purpose. In addition, it is fundamental that public officials and staff involved in the policy- and lawmaking process are adequately trained or sensitized to gender-sensitive lawmaking.

COUNTRY EXAMPLE 24

France — French Delegation for Women’s Rights and Equal Opportunities for Women and Men

The *Délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes*, (Delegation for women’s rights and equal opportunities between men and women), a permanent delegation in the National Assembly and the Senate, has the mission to inform both houses on governmental policies and their impacts on men and women and to ensure monitoring of the application of legislation. Through this horizontal mandate, the delegation brings critical topics onto the agenda, conducts analysis through public ‘*rappports d’information*’, and proposes improvements and change.

222. **States need to ensure balanced representation of women and men in governments, at all levels, as well as in parliaments and their bodies, and other appointments to public positions.** By way of different equality strategies and laws, states need to ensure that women and men have equal opportunities in appointments to public positions when seeking to run for public office, including in parliaments. The leadership of parliaments and the composition and leadership of committees should be also gender-balanced and respect diversity. When legislatures establish parliamentary committees, care should be taken to ensure these bodies are not only composed of representatives from different political parties, but also of a balanced number of women and men.

278 See e.g., ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation*, pp. 40-46.

COUNTRY EXAMPLE 25

Montenegro — Amendments to the Rules of Procedure to Achieve Gender Balance²⁷⁹

In December 2020, the Parliament of Montenegro adopted the following amendments to its rules of procedure, which aim to improve gender balance in parliamentary leadership positions. Article 18(4) stipulates that at least one Vice-President of the Parliament must be elected from the under-represented sex; Article 34(5) requires that, in the process of determining the composition of each committee, including the positions of chair and deputy chair, care must be taken to ensure the participation of the under-represented sex; and Article 210(3) requires the same course of action in relation to the composition of parliamentary delegations.²⁸⁰

223. **Language is the main medium for communicating the law, and gender- and diversity-sensitive language should be used.** Gender-discriminatory language, meaning language that includes words, phrases and/or other linguistic features that foster stereotypes, or ignore or demean women or men or other individuals on the basis of sex, sexual orientation, gender and/or gender identity, jeopardizes inclusivity and sends out wrong messages.²⁸¹ Gender-sensitive language²⁸² is the only acceptable standard of legislative expression that promotes legislative effectiveness, equality and inclusivity. This means that the language of the law should explicitly consider its audiences and make specific linguistic choices. Regardless of the language in which laws are drafted, legislation should avoid the use of language that refers explicitly or implicitly to only one gender (gender specific language) or group, or that they do so only when it serves the effectiveness of the law or a specific reason (for example, the law addresses a specific gender). Laws should ensure, through inclusive alternatives, the use of gender-sensitive language. It

279 See ODIHR, *Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region* (2021), p. 27.

280 *Ibid.*

281 Revell and Vapnik, *Gender-Silent Legislative Drafting in a Non-Binary World*, pp. 1-46; Office of the Parliamentary Counsel and the Government Legal Department (UK), *Guide to Gender-Neutral Drafting*; Government of Canada, Department of Justice, *Legis.: Gender-neutral Language*; King and Fawcett, *The End of "He or She"? A look at gender-neutral legislative drafting in New Zealand and abroad*; Parliamentary Counsel (Australia), *Drafting Direction No. 2.1 English usage, gender-specific and gender-neutral language, grammar, punctuation and spelling*; Office of the Parliamentary Counsel (UK), *Drafting Guidance*.

282 UN *Guidelines for Gender-Inclusive Language*; EIGE, *Toolkit on Gender-sensitive Communication*; Council of the European Union, *Inclusive communication in the General Secretariat of the Council*.

is not good practice to use a general clause that all its provisions apply equally to both men and women, as this would lead, in practice, to a situation when inclusive alternatives will not even be considered by the drafters nor used throughout the text of the draft law.²⁸³

COUNTRY EXAMPLE 26

Greece — Law 4604/2019 on Substantive Gender Equality, Preventing and Combating Gender-based Violence²⁸⁴

Article 12 of the Law, prohibits the use of gender-discriminatory language in administrative documents as follows:

“The use of language which implicitly or explicitly embodies gender discrimination in the drafting of administrative documents is forbidden.”

224. **In order to ensure that laws address all individuals equally, regardless of their gender and other characteristics, legal drafters should adopt a gender- and diversity-sensitive approach when formulating legal provisions; in particular, draft laws need to be assessed from a gender and diversity perspective.** To ensure that laws also address the specific needs, perspectives and experiences of women and men equally, as well as those of minority groups or historically marginalized or under-represented groups, it is essential for gender and diversity aspects to be mainstreamed throughout the legislative process. Legislative drafters may need to test their assumptions to ensure that they avoid default scenarios, majority representations or conscious or unconscious biases or stereotypes, and they should ensure that laws are also drafted to cover everyone equally. RIAs should assess how planned or adopted policies will, or have affected women and minorities or marginalized groups. This should also include examining their potential impact on people with overlapping marginalized identities.²⁸⁵
225. **Gender- and diversity-responsive budgeting is also an important part of gender- and diversity-responsive lawmaking.** The budget is

283 See e.g., [Preliminary Opinion on the Legal Framework Governing the Legislative Process in Montenegro](#), OSCE/ODIHR, 2 October 2023, para. 154.

284 [Law of the Hellenic Republic No. 4604/2019](#), 26 March 2019, on Substantive Gender Equality, Preventing and Combating Gender-Based Violence.

285 For instance, in Canada, the [Impact Assessment Act](#), which came into force in 2019, requires that the “*intersection of sex and gender with other identity factors be considered in the impact assessment of a designated project*” (Section 22(1)(s)); see ODIHR, [Realizing Gender Equality in Parliament. A Guide for Parliaments in the OSCE Region](#), p. 45.

the single most important policy tool for the government as it affects the successful implementation of all other policies. Gender- and diversity-responsive budgets are not separate budgets for men and women and other groups, but rather budgets that ensure that the needs and interests of individuals from different social groups (gender, age, ethnic origin, disability, rural v. urban, etc.) are addressed in expenditure and revenue policies. This approach helps, among others, to ensure that budgets contribute to the mitigation of inequalities and do not deepen them and that they actively address specific gender- and diversity-related considerations.

226. **Women and men and representatives of minority groups, persons with disabilities and marginalized groups need to be involved in drafting laws and/or be part of targeted public consultations.** As part of the assessment process, and throughout the legislative procedure, these groups should be involved in consultation on legislation that may affect them. The modalities of consultation should be adapted to be inclusive and accessible to the specific target groups (see also **Sub-Section IV.5**).

227. **Legislation should reflect the rights and specific needs of different groups and needs to be monitored and evaluated accordingly.** During the implementation phase, budgets and implementation decisions can be monitored from a gender and diversity perspective and allow for disaggregated data collection on the basis of various characteristics, such as sex, national or ethnic origin, religion or belief, disability, age or other characteristics. This will involve examining the crosscutting gender and diversity impact of legislation and will help identify what did or did not work and what needs to be changed (see **Sub-Section IV.4.ii** on Ex Post Regulatory Impact Assessment). Where state policies or laws are perceived to be discriminatory, individuals may also take their cases to courts or national human rights institutions. Negative content and impacts of legislation will then also lead to further policy discussions on how to amend legislation in a manner that is compliant with the principles of equality and non-discrimination.

COUNTRY EXAMPLE 27

Austria – Gender Equality Dimension within RIA²⁸⁶

Since 1 January 2013, a regulatory impact assessment should accompany all drafted legislation starting from its inception within the responsible ministries up to parliament. As part of this procedure, the dimension of gender equality has to be addressed with respect to benefits, employment, income, education, unpaid work, decision-making and health.

8.2. Diversity Considerations

228. To ensure that laws also address the specific needs, perspectives and experiences of minority groups, or historically marginalized or under-represented groups, it is essential for diversity considerations to be mainstreamed throughout the legislative process. Legislative drafters may need to test their assumptions to ensure that they avoid default scenarios, majority representations or conscious or unconscious biases or stereotypes, and should ensure that laws are also drafted to cover everyone equally. The existing lawmaking rules and practices should reflect diversity perspectives, specifically those related to the ex ante impact assessment of draft legislation as well as ex post evaluation, the inclusiveness of public consultation processes, and the accessibility of the policy- and lawmaking process and related information and documents, as well as the adopted legislation.
229. **Enhancing the representation and participation of non-majority communities in public affairs, including in policy- and lawmaking.** Minority representation in decision-making bodies, and consequently in lawmaking, may be assured through various arrangements, such as reserved seats (by way of quotas, or other measures), assured membership in relevant administrative/executive bodies, advisory/consultative bodies or parliamentary committees, with or without voting rights, or through other mechanisms, to ensure that minority interests are considered.²⁸⁷ The inclusion of persons with disabilities in political life should also be promoted by including them in key parliamentary and governmental bodies and, more generally, in public decision-making processes, including policy- and lawmaking, as well as ensuring the

286 See [Toolkit, Gender Impact Assessment, Austria](#), European Institute for Gender Equality website.

287 See e.g., [The Lund Recommendations on the Effective Participation of National Minorities in Public Life](#), OSCE High Commissioner on National Minorities, 1 September 1999.

accessibility of the parliamentary and government websites, documents and premises.²⁸⁸

COUNTRY EXAMPLE 28

Canada — Guidelines on Public Engagement²⁸⁹

[..]

Principles of public engagement

The guidelines are based on the principles that guide our engagement activities, ensuring that they are meaningful, effective and consistent. These principles are fundamental to establishing successful public engagement.

Open and inclusive: Engagement activities are designed and promoted to provide the opportunity for all interested participants to express their views and have their input considered. Engagement activities are available to participants through a variety of channels and formats to ensure there are no barriers to participation. Feedback is sought from a wide variety of groups, including specific populations (for example, racialized communities, 2SLGBTQI+, persons with disabilities), across gender and age groups, official language minority communities, and from a variety of geographic locations.

Timely and transparent: The purpose, scope and objective(s) of engagement activities should be clearly communicated and planned with adequate timelines to provide participants with sufficient time to participate. The results of engagement activities, and how input was considered in decision-making, should be made available to participants through different channels, in easy to access formats, and in a timely manner.

Relevant and responsive: Engagement activities are participant-focused. The materials developed to facilitate engagement activities are appropriate to meet the objectives. This may involve:

- adapting the approach based on feedback from participants in the early stages of engagement activities
- regularly applying best practices and lessons learned to public engagement planning and implementation

288 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, Section V on Parliaments.

289 Canada, *Guidelines on public engagement 2023*.

230. **Diversity-sensitive ex ante and ex post RIAs.** Human rights impact assessments should generally be part of ex ante RIA, and should include an analysis of the potential impact that the draft legislation may have on the human rights of individuals or groups, particularly minority groups, or historically marginalized or under-represented groups, which should also include looking at their potential impact on people with overlapping marginalized identities. Ex post RIAs should, if appropriate, also analyze how the adopted legislation has actually impacted different groups, relations, responsibilities and equality in general.
231. **Inclusive participation, including public consultations.** Apart from specialized subject matter expertise, it is important to include stakeholders from disadvantaged, marginalized or otherwise under-represented groups who can comment on drafts that are likely to impact them, so that they may provide their own perspective. Wide-ranging, proactive outreach measures by government and parliament will help to identify and include all interested and relevant counterparts, including organizations representing historically marginalized or under-represented groups. When selecting the means of consultation, the special situation of marginalized or under-represented groups should be taken into consideration²⁹⁰ and consultation strategies need to adapt their timing and methods of consultation accordingly. In particular, and as appropriate, reasonable accommodation needs to be provided to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures, such as communicating information in adjusted formats and easy-to-read language, and ensuring physical access to events and venues for consultations, etc.²⁹¹
232. **Diversity-sensitive language should be used in legislation.** The language used in legislation should not be demeaning or dismissive of forms of self-identification, such as with respect to a disability or to a national, ethnic, or indigenous identity or other characteristics. Legal drafters should use gender- and diversity-sensitive language,²⁹² meaning that the language of the law should explicitly consider its audiences and make specific linguistic choices, with a view to promoting equality and inclusivity.
233. **Laws should be published in all official languages and, as much as is feasible and reasonable, in other minority languages, in Braille and in simplified language.** This will enhance the accessibility to laws

290 See ODIHR, *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes*, para. 19, with reference to the World-wide Web Consortium's guidelines on web content accessibility (1999), now updated here: [W3C Web Accessibility Initiative \(WAI\)](#).

291 ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, pp. 87-88.

292 See e.g., [UN Disability-Inclusive Communications Guidelines](#); and Council of the European Union, [Inclusive communication in the General Secretariat of the Council](#).

and ensure that all parts of society will be aware of the laws that affect them. In particular, it is essential that amendments to laws are translated and consolidated without delay. Bearing this in mind, many states have issued laws and regulations to ensure this (see **Sub-Section IV.7** on Publication and Accessibility of Adopted Legislation).²⁹³

9. Accelerated Lawmaking Procedures

234. Most constitutions allow for accelerated or fast-track proceedings where legal amendments are minor and uncontroversial or not complex, or where there is an urgent need to pass certain laws quickly. Simple and straightforward amendments to legislation — e.g., if a law is simply being adapted to the adoption of another law — will not always require extensive policy discussions, assessments or consultations. Countries may have special procedures in place, or parliaments may simply, by consensus, agree to pass such legislation following an accelerated procedure. Whatever the arrangements, when shorter timeframes and simpler procedures are used to pass minor and uncontroversial or not complex legislation or amendments, these cases shall be clearly defined and tightly circumscribed in the regulations.
235. Where laws need to be passed urgently due to a pressing social need, the framework usually foresees reduced time limits for discussion in, or with the government and in parliament, both at the committee stage and in plenary. Where laws are prepared by government bodies or agencies, this will mean little to no consultation with stakeholders or the wider public, starting with the policymaking and drafting stages. At the parliamentary level, there will similarly be no time for in-depth discussions on individual provisions in committees or plenary, nor will proper consultation proceedings be possible.²⁹⁴ Laws passed in this manner may raise doubts as to their quality,²⁹⁵ as the lack of consultation and proper parliamentary review may lead to gaps and inconsistencies in the legislation that can only be addressed during review proceedings after adoption, once the moment of urgency has passed.
236. For this reason, it is important that these processes are not overused and remain exceptions, given that they may have negative impacts on human

293 See *UN Convention on the Rights of Persons with Disabilities*, adopted by General Assembly resolution A/RES/61/106 on 24 January 2007.

294 ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, p. 40.

295 *Romania – Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice*, Council of Europe Venice Commission, CDL-AD(2019)014-e, 24 June 2019, paras. 11-12.

rights and the rule of law, as well as on the quality of the legislation. To prevent overuse, formal or informal criteria may be drawn up to act as guidance when assessing the urgency of a matter. This type of guidance may include assessments, among others, of whether existing legislation might not be sufficient to deal with the urgent issue, and whether the problem has just emerged or whether it is long-standing and should have been dealt with earlier.

237. Overall, to ensure that fast-track proceedings are not abused, the following considerations and factors need to be taken into account:
238. **Accelerated proceedings should remain an exception.** While accelerated lawmaking may at times be necessary, such urgent procedures should only be applied in exceptional circumstances and never on a routine basis or automatically. They must be limited to true cases of urgency, where circumstances do not allow for the usual conduct of proceedings, both within government and particularly before parliament. Under no condition should fast-track procedures be applied simply to achieve policy objectives quickly, or to circumvent rules on public consultation or impact assessments, avoiding relevant verification, consultation and oversight mechanisms.²⁹⁶ Such misuse affects the quality of legislation, weakens external checks on the government and disregards the principle of the separation of powers.²⁹⁷ Moreover, the frequent use of accelerated procedures for adopting legislation affects legal certainty; even for legal experts, it will be difficult to grasp the current state of affairs.²⁹⁸
239. **Laws or relevant rules of procedure need to outline clear criteria.** Instances where accelerated proceedings are permissible or not need to be set out clearly and explicitly in legislation or procedures,²⁹⁹ and the government, other bodies or people with legislative initiative shall be obliged to justify in detail the need for expedition.³⁰⁰ Proposals shall also indicate a timeline for the adoption of secondary legislation to implement these laws. Parliamentary rules of procedure shall also provide parliaments with the option of rejecting the request to apply the expedited procedure where the necessary criteria are not met.³⁰¹

296 *Ibid.*, para. 14.

297 *Ibid.*, para. 21.

298 *Ibid.*, para. 14.

299 See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, para. 51. See also ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, p. 40.

300 ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, p. 40.

301 See e.g., *Opinion on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic*, OSCE/ODIHR, 24 May 2023, para. 60.

240. **Accelerated procedures shall only be possible if they are based on a formal request, submitted in accordance with relevant laws or procedures.** The possibility of requesting the parliament to pass legislation following a fast-track procedure for reasons of urgency needs to be set out in law, and should outline the procedures to be followed in such instances.³⁰² In particular, it should be clear who may request the adoption of a draft law by accelerated procedures, and how the use of such procedures is confirmed (ideally by simple parliamentary vote). Any request to use the accelerated procedure will need to be adequately justified in each case; where there is no, or scant justification, the request should be rejected. Under no conditions should it be possible to shorten or circumvent key elements of the legislative process simply based on an informal discussion.³⁰³
241. **Accelerated procedures should not be applied to legislation that introduces important and wide-ranging reforms, such as constitutional reform,³⁰⁴ legislation introducing major changes to the functioning of the democratic institutions, or legislation significantly impacting the exercise of human rights and fundamental freedoms.** Use of accelerated procedures during states of emergency, war and similar legal regimes is permissible to the extent that they do not introduce permanent changes to the system of checks and balances but aim for a ‘return to normality’ (see **Sub-Section IV.10** on States of Emergency). Despite the urgency of certain decisions, to the extent possible, lawmakers should still seek to involve experts and civil society representatives, including those representing minority, gender and other diverse groups.³⁰⁵
242. **Laws passed by accelerated procedures should be subject to special discussions and oversight.** Where laws are adopted via accelerated procedures, oversight mechanisms need to be in place that take into account the fact that these laws could not be consulted or debated in-depth before adoption. These laws need to undergo robust ex post evaluation, which could be outlined in the laws themselves or in the relevant legislative framework outlining criteria for fast-tracked lawmaking.

302 ODIHR, *Assessment on Law Drafting and Legislative Process in the Republic of Serbia*, p. 73.

303 ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, pp. 40-41.

304 See, in this context, *Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary*, European Commission for Democracy through Law (Venice Commission) of the Council of Europe, 28 March 2011, paras. 16-19.

305 See e.g., ODIHR, *Opinion on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic*, para. 60. As an example, during the pandemic, Canada established the *Covid-19 Disability Advisory Group* (CDAG) composed of representatives from civil society and organizations of persons with disabilities, to advise the government on the real-time lived experiences of persons with disabilities during the crisis, including disability-specific issues, challenges, systemic gaps and recommendations.

They could contain sunset clauses, specifying that they will expire after a certain time or once a certain condition has been met, or a review clause, with a fixed deadline for evaluation. This should be complemented by consultations on the implementation of the law, focusing on possible gaps, inconsistencies, practical implementation issues and any discriminatory impact on certain people or groups of society.

10. States of Emergency

243. States of emergency³⁰⁶ are special, urgent and temporary, legal regimes of a general nature triggered by the need for quick reactions to an extraordinary and temporary situation that poses a fundamental, real and current or imminent threat to a country, such as a war or armed conflict, large-scale terrorist attacks, a natural disaster, a public health emergency or a severe economic crisis. States of emergency should be declared or proclaimed, officially and publicly, in accordance with provisions laid down by the law, and only by a constitutionally lawful body duly mandated to do so. If declared or proclaimed by executive authorities, that decision should be subject to approval or control by the legislature in the shortest possible time.³⁰⁷ Legislation governing states of emergency should be clear and unambiguous, and meet the requirements of international law and clearly describe the powers of the judiciary, executive and legislature (including in the field of lawmaking), as well as the scope of potential restrictions on human rights and fundamental freedoms during such time.³⁰⁸ The state of emergency should be lifted as soon as possible and should not remain in force longer than strictly required by the exigencies of the situation.³⁰⁹ States should ensure a regular review mechanism to assess the necessity of continuing a state of emergency.³¹⁰
244. From the moment a state of emergency is declared or proclaimed, the state should, without delay, make information available to the public about

306 Because the precise terminology used in national legal systems differs significantly and there is no single standard criteria of what qualifies as a 'state of emergency' or procedures that lead to its proclamation, the term is used in these Guidelines to cover special urgent and temporary legal regimes of a general nature that usually allow for a rapid shift of powers towards the executive for quick reactions, subject to procedural and substantive safeguards, and general suspension of or restrictions to certain human rights and fundamental freedoms.

307 *Moscow Document*, paras. 28.2 and 28.3. The UN Human Rights Committee also requires that states "*act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers*" while noting that the official proclamation "*is essential for the maintenance of the principles of legality and rule of law at times when they are most needed*"; see *General Comment no. 29 on Article 4 of the ICCPR*, UN Human Rights Committee, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 2.

308 See *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, OSCE/ODIHR, 17 July 2020, p. 49.

309 OSCE, *Moscow Document*, para. 28.3.

310 See ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, p. 49.

the measures that have been taken³¹¹ and announcements should be made about how the situation will impact the usual lawmaking process. In many emergency situations, it will not be possible for parliaments to meet as usual, and thus ways need to be found to ensure proper, legislative oversight while still allowing urgent decisions to be taken in an effective manner. Despite the urgency of certain decisions however, care should be taken to involve experts and civil society, including minority, gender and other diverse groups, as much as possible in decision-making.

Box 13 – ODIHR Recommendations on Democratic Lawmaking and the Functioning of Parliaments during the Covid-19 Pandemic³¹²

RECOMMENDATIONS ON DEMOCRATIC LAWMAKING

- States should refrain from considering legislation that is not of urgent nature, while parliamentary functions are not fully operational and when certain civic and political rights are restricted, especially legislation that may impact fundamental freedoms and human rights.
- To the extent possible and using innovative approaches, states and parliaments should follow ordinary legislative processes, including public consultations (organized online if necessary) and review the impact on under-represented people or groups of emergency and non-emergency legislation adopted in this period.
- Ensure inclusive public hearings and consultations to the extent possible, including through the use of online platforms.
- Ensure a parliamentary approval process for emergency response legislation and other regulatory actions.
- Ensure that safeguards are in place in relevant legislation on the functioning of democratic institutions.
- Conduct an evidence-based gender and diversity analysis of the measures adopted in response to the pandemic and review documentation of the gender- and diversity-specific human rights impacts of the emergency measures to inform preparedness and response plans for future emergencies.

RECOMMENDATIONS REGARDING THE FUNCTIONING OF PARLIAMENTS

- States should ensure the regular functioning of parliaments by providing for emergency situations in the rules of procedure, considering among other things physical arrangements, quorums, remote sessions, and the use of ICT solutions.
- As states come out of emergency situations, they should conduct an assessment of the application of ICT solutions to support the work of parliament in periods of emergency and beyond, evaluating the risks and benefits, impact on the participation of women and men and what needs to be introduced in the legal framework to facilitate the use of new technologies.

311 OSCE, *Moscow Document*, para. 28.3.

312 ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, pp. 65-74.

- Parliaments should ensure full transparency of their work and decisions regarding how they will function in emergency periods to offer clarity to citizens and may consider allowing citizens to submit on-line petitions to parliaments and their members addressing emergency related legislation/problems.
- Parliaments should conduct special hearings/debates on emergency related issues and states should ensure that parliaments are in the lead in designing policy responses in a transparent and accountable way (rather than allowing the executive to issue decrees without scrutiny).

245. Where emergency situations require the urgent adoption of certain laws, a number of elements help reduce the possibility of abuse. These include:

246. **Measures taken during emergencies need to be strictly necessary, proportionate and temporary.** The measures need to be limited to what is strictly necessary to resolve the emergency and proportionate in terms of their nature and extent³¹³ and shall always be in conformity with a state's constitution and international human rights and rule of law obligations.³¹⁴ Moreover, they need to be temporary, meaning that they shall apply solely for the duration of the crisis and its immediate aftermath. Further, they should be directly connected to the particular emergency, and be subject to regular scrutiny by parliaments and the courts.³¹⁵ While, in times of a public emergency that is "*threatening the life of a nation*", states may determine that the nature of the emergency creates a need to derogate from certain human rights obligations, such derogations are subject to strict conditions³¹⁶ and should be avoided

313 [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#), American Association for the International Commission of Jurists, 1 July 1984, para. 51. See also [Resolution on EU coordinated action to combat the COVID-19 pandemic](#), European Parliament, 2020/2616(RSP), 17 April 2020, para. 46, and [Principles for the Covid-19 Crisis](#), European Law Institute, May 2020, Principle 1.

314 See European Law Institute, [Principles for the Covid-19 Crisis](#), Principle 4.

315 See European Parliament, [Resolution on EU coordinated action to combat the COVID-19 pandemic](#), para. 46, and European Law Institute, [Principles for the Covid-19 Crisis](#), Principle 1.

316 Despite some differences in interpretation and application by the UN Human Rights Committee and the European Court of Human Rights, the derogation clauses generally require the following overall conditions to be fulfilled for states to validly seek to derogate, as also elaborated in the OSCE Copenhagen (1990) and Moscow (1991) Documents: (i) the existence of an extraordinary situation posing a fundamental, real and current or imminent threat to a country; (ii) the temporary nature of the emergency and of the derogation; (iii) certain procedural requirements that need to be followed by the state in terms of declaration and public proclamation in accordance with provisions in law, and informing ODIHR and formally notifying the UN and the Council of Europe; (iv) the clarity and accessibility of the derogating measures; (v) the strict necessity and proportionality of derogating measures in terms of their temporal, geographical and material scope, to deal with the exigencies of the situation, while excluding certain non-derogable rights from their scope of application; (vi) the measures must not be inconsistent with other obligations arising under international law, including international humanitarian law and international refugee law; (vii) the non-discriminatory character of the derogating measures in law and in practice; and (viii) the existence of safeguards and oversight mechanisms, including to ensure the constant review of the necessity of maintaining a state of emergency and any measures taken under it; see [Article 4 of the ICCPR](#), UNGA resolution 2200A (XXI), 16 December 1966, and [Article 15 of the ECHR](#); OSCE, [Copenhagen Document](#), para. 25 and OSCE, [Moscow Document](#), para. 28; UN Human Rights Committee, [General Comment no. 29](#); [Guide on Article 15 of the ECHR – Derogation in time of emergency](#), ECtHR, 31 August 2022; [Resolution 2209 State of emergency: proportionality issues concerning derogations under Art. 15 of the European Convention on Human Rights](#), Parliamentary Assembly of the Council of Europe (PACE), 24 April 2018, para. 19.4.

if the situation can be adequately dealt with by establishing necessary and proportionate restrictions or limitations that are normally permitted by international treaties for the maintenance of public security, safety, health and order.³¹⁷ States specifically committed to “endeavour to refrain from making derogations” even where international conventions provide for derogation.³¹⁸ Moreover, derogations may never result in a complete departure from human rights obligations but shall be limited to what is strictly necessary given the circumstances.³¹⁹

247. **There are certain rights that states cannot derogate from or otherwise suspend or restrict, even during states of emergency.** This means that policies and laws passed in such circumstances can never restrict or suspend these rights. Notably, the following are all non-derogable rights: the prohibition of discrimination solely on the ground of “race, colour, sex, language, religion or social origin”, the right to life, the prohibition of torture or other ill-treatment, the prohibition of slavery, recognition as a person before the law, and the principle of legality in the field of criminal law. Some other rights have also been recognized as not being subject to derogation, including the right to an effective remedy (inherent to the exercise of other, non-derogable human rights), the fundamental principles of a fair trial, the fundamental guarantees against arbitrary detention and the principle of non-refoulement.³²⁰
248. There are certain other rights that are absolute, i.e., rights that can never be suspended or restricted by laws or policies under any circumstances, even in the context of a war or an emergency. These include the prohibition of genocide, war crimes and crimes against humanity, the prohibition of arbitrary deprivation of liberty and the related right of anyone deprived of their liberty to bring proceedings before a court in order to

317 See e.g., *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, UN Human Rights Committee, UN Doc. CCPR/C/128/2, 24 April 2020, para. 2.

318 OSCE, *Moscow Document*, para. 28.7.

319 See *Article 4 of the ICCPR and Article 15 of the ECHR*, which allow derogations from certain human rights in time of war or other public emergency threatening the life of the nation “to the extent strictly required by the exigencies of the situation”.

320 See UN Human Rights Committee, *General Comment no. 29*, paras. 14–16; *General Comment no. 32*, UN CCPR, CCPR/C/GC/32, 23 August 2007, para. 6; *General Comment no. 35, Article 9, (Liberty and security of person)*, UN HRC, 16 December 2014, paras. 66–67; *Resolution A/RES/51/75*, UN General Assembly, 12 February 1997, para. 3. See also, *Advisory Opinion on the Extra-territorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, UN High Commissioner for Refugees (UNHCR), 26 January 2007, paras. 12 and 20; *Chahal v. United Kingdom* [GC], ECtHR, Application no. 22414/93, 15 November 1996, para. 80; and *Saadi v. Italy* [GC], ECtHR, Application no. 37201/06, 28 February 2008, para. 137.

challenge the legality of the detention.³²¹ States should strive to satisfy their minimum core obligations to ensure that the rights to food, health, housing, social protection, water and sanitation, education, an adequate standard of living and to be free from discrimination also remain in effect even during situations of emergency.³²² Finally, international humanitarian law shall be respected in all circumstances.³²³ Moreover, even in times of emergency, overall respect for rule of law principles should be ensured.³²⁴

249. Given the potentially negative impact of hurried laws and decrees on women and men, or on certain groups, **the legal framework governing states of emergency and implementation of legal and other emergency measures should be designed taking into consideration the specific risks and vulnerabilities of certain people or groups and should respect the rights of all**, including women, persons with disabilities, older people, homeless people, individuals in detention and institutions, migrants, victims of trafficking, asylum-seekers, displaced persons and refugees, children and youth, minorities, and LGBTI people.³²⁵

321 See, *Deliberation No. 11* on prevention of arbitrary deprivation of liberty in the context of public health emergencies, UN OHCHR, Working Group on Arbitrary Detention, A/HRC/45/16 (Annex II), 24 July 2020, para. 5; *Report of the Working Group on Arbitrary Detention*, UNGA A/HRC/22/44, 24 December 2012, paras. 42–51; UN HRC, *General Comment no. 35, Article 9*, para. 67. See also *Convention against Torture and Cruel, Inhumane or Degrading Treatment and Punishment (CAT)*, UNGA resolution 39/46, 10 December 1984, Art. 4, which contains an absolute prohibition of refoulement for individuals in danger of being subjected to torture. See also, *General Comment no. 20 on Art. 7 of the ICCPR*, CCPR, 10 March 1992, para. 9; and ECtHR case-law which incorporates this absolute principle of non-refoulement into Art. 3 of the ECHR, see e.g., *Soering v. United Kingdom*, ECtHR, Application no. 14038/88, judgment of 7 July 1989, para. 88; and *Chahal v. United Kingdom* [GC], ECtHR, Application no. 22414/93, judgment of 15 November 1996, paras. 80–81.

322 See *Emergency Measures and Covid-19: Guidance*, UN OHCHR, 27 April 2020. See also *General Comment no. 3 on the Nature of States Parties' Obligations*, CESCR, 14 December 1990, para. 10; and *General Comment no. 14*, CESCR, 11 August 2000, para. 43. These minimum core obligations include minimum essential food which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger (CESCR, *General Comment no. 12 on the Right to Adequate Food* (1999), paras. 6 and 8); essential primary health care, including essential drugs (CESCR, *General Comment no. 14*, para. 43); essential basic shelter and housing, including sanitation (CESCR, *General Comment no. 3*, para. 10; and *General Comment no. 15*, CESCR, 20 January 2003, para. 37, and the right not to be arbitrarily evicted from one's house (*General comment no. 7*, CESCR, 20 May 1997, para. 8); access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease (CESCR, *General Comment no. 15*, para. 37).

323 See the four 1949 Geneva Conventions, *Common Art. 1*, which states, "[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances".

324 See UN Human Rights Committee, *General Comment no. 29*, para. 2. See also OSCE, *Moscow Document*, para. 28.1, whereby states of emergency "may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms".

325 See e.g., regarding public health emergencies, *Guidance Notes on Covid-19 Response*, UN OHCHR, 29 April 2020, which offers useful practical recommendations and examples of good practices, especially on persons with disabilities, older people, people in detention and institutions, migrants, displaced persons and refugees, children and youth, minorities, gender, women's rights and rights of LGBTI people.

250. **During a state of emergency, states should refrain from considering legislation that is not urgent**, while parliamentary functions are not fully operational and when certain civic and political rights are restricted. In particular, constitutional provisions, or legislation that may impact fundamental freedoms and human rights or change the balance of powers or the system of checks and balances, should not be adopted or amended in such periods.³²⁶
251. **The parliament should retain at least residual oversight powers during emergencies.** Throughout emergency situations, the balance of power tends to shift more towards the executive. At the same time, it is essential that parliaments remain involved and continue to exercise their oversight mandates as far as possible,³²⁷ to the extent of being able to overrule legislation passed by the executive, should this be necessary.³²⁸ This minimizes the risk of abuse of these increased powers and contributes to better decision-making. Parliaments should be notified immediately of declarations of state of emergency or equivalent made by the executive, and parliaments should be able to revoke or approve the declaration, or their authorization should be required for an extension of the emergency status (ideally by qualified majority).³²⁹ While oversight may not always be possible at the initial stage of an emergency, over time, emergency laws, their necessity and proportionality, as well as the evidence that they are based on, need to be evaluated, so that some form of normality is restored.³³⁰ New technologies have proved to be very helpful in ensuring the continuity of work and oversight of parliament, even during a time of emergency, especially during the COVID-19 pandemic, and it is recommended that emergency situations are addressed in the parliamentary rules of procedure.

326 ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, p. 74.

327 See, in this context, European Law Institute, *Principles for the Covid-19 Crisis*, Principle 3. See also Principle 4, stating that governments shall not curtail regular parliamentary debate and processes shall not be abused to promote measures and policies unrelated to the Covid-19 crisis.

328 See also Venice Commission, *Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist*, para. 118.

329 *Ibid.*, para. 121.

330 See, in this context, European Law Institute, *Principles for the Covid-19 Crisis*, Principle 15 on the return to normality, which states that national governments shall, as soon as practicable, publish plans for an exit from the emergency and, in accordance with the rule of law, a return to normality and the ending of the emergency measures.

COUNTRY EXAMPLE 29

Rules of Procedure of the European Parliament³³¹

Rule 237 a: Extraordinary measures

1. This Rule applies to situations in which Parliament, due to exceptional and unforeseeable circumstances beyond its control, is hindered from carrying out its duties and exercising its prerogatives under the Treaties, and a temporary derogation from Parliament's usual procedures, set out elsewhere in these Rules, is necessary in order to adopt extraordinary measures to enable Parliament to continue to carry out those duties and to exercise those prerogatives.

Such extraordinary circumstances shall be considered to exist where the President comes to the conclusion, on the basis of reliable evidence confirmed, where appropriate, by Parliament's services, that for reasons of security, or safety or as a result of the non-availability of technical means it is, or will be, impossible or dangerous for Parliament to convene in accordance with its usual procedures as set out elsewhere in these Rules and its adopted calendar.

2. Where the conditions set out in paragraph 1 are fulfilled, the President may decide, with the approval of the Conference of Presidents, to apply one or more of the measures referred to in paragraph 3.

If it is impossible, due to reasons of imperative urgency, for the Conference of Presidents to convene in person or virtually, the President may decide to apply one or more of the measures referred to in paragraph 3. Such a decision shall lapse five days after its adoption unless approved by the Conference of Presidents within that period.

Following a decision by the President, approved by the Conference of Presidents, Members or a political group or groups reaching at least the medium threshold may, at any time, request that some or all of the measures provided for in that decision be submitted individually to Parliament for approval without debate. The vote in plenary shall be placed on the agenda of the first sitting following the day on which the request was tabled. No amendments may be tabled. If a measure fails to obtain a majority of the votes cast, it shall lapse after the end of the part-session. A measure approved by the plenary may not be the subject of a further vote during the same part-session.

331 Rules of Procedure of the European Parliament, September 2021.

3. The decision referred to in paragraph 2 may provide for all appropriate measures in order to address the extraordinary circumstances referred to under paragraph 1, and in particular for the following measures:
 - (a) postponement of a scheduled part-session, sitting or meeting of a committee to a later date and/or cancellation or limitation of meetings of inter-parliamentary delegations and other bodies;
 - (b) displacement of a part-session, sitting or meeting of a committee from Parliament's seat to one of its working places or to an external place, or from one of its working places to Parliament's seat, to one of Parliament's other working places or to an external place;
 - (c) holding a part-session or a sitting on the premises of Parliament in whole or in part in separate meeting rooms allowing for appropriate physical distancing;
 - (d) holding a part session, sitting or meeting of bodies of Parliament under the remote participation regime laid down in Rule 237c;
 - (e) in the event that the ad hoc replacement mechanism laid down in Rule 209(7) fails to provide sufficient remedies to address the extraordinary circumstances under consideration, temporary replacement of Members in a committee by political groups, unless the Members concerned oppose such temporary replacement.
4. A decision referred to in paragraph 2 shall be limited in time and shall state the reasons on which it is based. It shall enter into force upon its publication on Parliament's website or, if circumstances prevent such publication, upon its being made public by the best available alternative means.

All Members shall also be informed individually of the decision without delay.

The decision may be renewed by the President in accordance with the procedure under paragraph 2 once, or more than once, for a limited time. A decision to renew shall state the reasons on which it is based.

The President shall revoke a decision adopted under this Rule as soon as the extraordinary circumstances referred to in paragraph 1 that gave rise to its adoption have disappeared.
5. This Rule shall be applied only as a last resort, and only measures that are strictly necessary to address the extraordinary circumstances under consideration shall be selected and applied.

When applying this Rule, due account shall be taken, in particular, of the principle of representative democracy, of the principle of equal treatment of Members, of the right of Members to exercise their parliamentary mandate without impairment, including their rights stemming from Rule 167 and their right to vote freely, individually and in person, and of Protocol No 6 on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union, annexed to the Treaties.

252. **Ordinary legislative processes should continue to be applied to the extent possible.** Governments and parliaments should seek to follow ordinary legislative processes even during states of emergency, by ensuring inclusive public hearings and consultations to the extent possible, including through the use of online platforms if necessary.³³² The impact of emergency and non-emergency-related legislation adopted in this period should be reviewed, in particular to assess whether it had a disproportionate impact on certain groups in society, including on historically marginalized or under-represented groups.³³³
253. **Measures taken need to be assessed on a regular basis.** State decision makers need to assess, at the outset and throughout the emergency, whether existing legislation is sufficient to deal with the crisis, or whether amendments or new legislation are required. Where new emergency laws are passed, they should be kept separate and distinct from ordinary laws, to ensure that they do not cross over into mainstream laws; this will also make it easier to assess and then revoke emergency laws once they are no longer needed.³³⁴
254. **States need to act in a transparent manner.** As executive decisions taken during states of emergency usually involve some sort of interference with the key human rights of individuals, states need to keep the population informed, at all times and in a clear and accessible manner, about new ordinances and why these are necessary. Explanatory notes need to be published and should include post-crisis evaluation plans and criteria by which to judge the successes and failures of the legislation.

332 See e.g., ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, pp. 65-74.

333 *Ibid.*, pp. 65-74.

334 Ronan Cormacain, *Keeping Covid-19 emergency legislation socially distant from ordinary legislation: principles for the structure of emergency legislation*, *The Theory and Practice of Legislation*, Volume 8, 2020 - Issue 3: Global Legislative Responses to Coronavirus, 3 July 2020, pp. 245-265.

255. **Sustained efforts should be made to use lessons learned in an emergency or crisis to enable more effective responses in future scenarios.** States should consider carrying out an ex post evaluation of how national legal regimes were prepared for the measures required by the emergency, with a view to maximizing their preparedness and legal framework for future emergencies. They should also conduct evidence-based analysis of the measures adopted in response to emergencies. This should look not only at the social, economic and environmental impact of the measures but also particularly at their impact on democracy and the rule of law, and on human rights, including the impact on men and women and various different groups of society. Reviewing the impacts of emergency measures will help inform preparedness and response plans for future emergencies.³³⁵ While future crises may be different, there will still be some commonalities in how to coordinate certain relief efforts and in how to communicate the need for emergency measures to the public. In particular, past emergencies may allow the creation of plans to ensure the uninterrupted and unencumbered pursuit (as far as possible) of legislative processes in such situations. This form of institutional memory should contribute to improving state emergency responses, thereby avoiding potential pitfalls and negative impacts of certain measures.

335 ODIHR, *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, p. 74.

**ANNEXE I. SELECTED INTERNATIONAL
AND REGIONAL INSTRUMENTS AND
REFERENCE DOCUMENTS**

ANNEXE I. SELECTED INTERNATIONAL AND REGIONAL INSTRUMENTS AND REFERENCE DOCUMENTS

This section includes a selection of excerpts from relevant international and regional instruments and reference documents relevant to democratic lawmaking in the OSCE region. Treaties such as the International Covenant on Civil and Political Rights and the European Convention on Human Rights represent legal obligations for the states that have ratified them. Other instruments, such as the Universal Declaration of Human Rights and the OSCE Copenhagen and Moscow Documents, while not legally binding, are particularly compelling commitments undertaken by the states that have endorsed them.

a. United Nations

- ***International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966***

Article 2(2)

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

(...)

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

(...)

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

(...)

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(...)

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(...)

- ***UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) (12 July 1996)***

(...)

(5) The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

(...)

(7) Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b).

(8) Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

(...)

(25) In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

(...)

- ***Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly on 18 December 1979***

(...)

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

(...)

- ***Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989***

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

- ***Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution A/RES/61/106 on 24 January 2007***

Article 29

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

- ***UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), adopted on 25 June 1998***

Article 7

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the nec-

essary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

• ***UN Convention Against Corruption, adopted by General Assembly resolution 58/4 of 31 October 2003***

Article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

- ***UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), adopted by General Assembly resolution 53/144 of 8 March 1999***

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

b. Council of Europe

- ***Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) as amended by Protocols Nos. 11, 14 and 15***

(...)

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

(...)

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- ***Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms***

Article 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

- ***Council of Europe Framework Convention for the Protection of National Minorities (FCNM) opened for signature on 1 February 1995***

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

- ***Council of Europe Convention on Access to Official Documents (CETS No. 205) of 18 June 2009***

Article 10 – Documents made public at the initiative of the public authorities

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

- ***European Commission for Democracy through Law (Venice Commission) of the Council of Europe: Rule of Law Checklist, 18 March 2016, CDL-AD(2016)007***

(...)

II BENCHMARKS

A. Legality

(...)

5. Lawmaking procedures

Is the process for enacting law transparent, accountable, inclusive and democratic?

- i. Are there clear constitutional rules on the legislative procedure?
- ii. Is Parliament supreme in deciding on the content of the law?
- iii. Is proposed legislation debated publicly by parliament and adequately justified (e.g. by explanatory reports)?
- iv. Does the public have access to draft legislation, at least when it is submitted to Parliament? Does the public have a meaningful opportunity to provide input?
- v. Where appropriate, are impact assessments made before adopting legislation (e.g. on the human rights and budgetary impact of laws)?
- vi. Does the Parliament participate in the process of drafting, approving, incorporating and implementing international treaties?

(...)

- ***Venice Commission, Compilation of Venice Commission opinions and reports on lawmaking procedures and the quality of law, 29 March 2021, CDL-PI(2021)003***
- ***Council of Europe: Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers' Deputies***
- ***Council of Europe Conference of INGOs: Code of Good Practice for Civil Participation in the Decision-Making Process, adopted on 30 October 2019***

- **Case-law of the European Court of Human Rights**

- ECtHR, *Handyside v. the United Kingdom*, Application no. [5493/72](#), judgment of 7 December 1976, para. 49
- ECtHR, *Lingens v. Austria*, Application no. [9815/82](#), judgment of 8 July 1986, para. 42
- ECtHR, *Sørensen and Rasmussen v. Denmark* [GC], Application nos. [52562/99](#) and [52620/99](#), judgment of 11 January 2006, para. 58
- ECtHR, *Animal Defenders International v. the United Kingdom* [GC], Application no. [48876/08](#), judgment of 22 April 2013, para. 108
- ECtHR, *Hirst (No. 2) v. the United Kingdom* [GC], Application no. [74025/01](#), judgment of 6 October 2005, para. 79
- ECtHR, *S.A.S. v. France* [GC], Application no. [43835/11](#), judgment of 1 July 2014, para. 137
- ECtHR, *Lambert and Others v. France* [GC], Application no. [46043/14](#), judgment of 5 June 2015, para. 160
- ECtHR, *Parillo v. Italy* [GC], Application no. [46470/11](#), judgment of 27 August 2015, paras. 184 and following

C. OSCE

- **Madrid 1983 (Questions Relating to security in Europe: Principles)**

Participating States stressed the importance of ensuring equal rights for men and women and agreed to take all actions necessary to promote equally effective participation of men and women in, among others, political life.

- **Copenhagen 1990**

The Participating States solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(...)

(5.8) — legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(...)

(35) The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(...)

- **Moscow 1991**

Participating States committed to:

(...)

(18.1) Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives.

(...)

(40.8) encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes and in international cooperation in general;

(...)

(41.1) to ensure protection of the human rights of persons with disabilities;

(41.2) to take steps to ensure the equal opportunity of such persons to participate fully in the life of their society.

(...)

- **OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, MC.DOC/1/03, 2 December 2003, para. 36**

36. Discrimination and intolerance are among the factors that can provoke conflicts, which undermine security and stability. Based on its human dimension commitments, the OSCE strives to promote conditions throughout its region in which all can fully enjoy their human rights and fundamental freedoms under the protection of effective democratic institutions, due judicial process and the rule of law. This includes secure environments and institutions for peaceful debate and

expression of interests by all individuals and groups of society. Civil society has an important role to play in this regard, and the OSCE will continue to support and help strengthen civil society organizations.

- ***OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (2003), Annex to Ministerial Council's Decision No. 3/03, para. 88***

88. Participating States are encouraged to take into account the following basic conditions for ensuring effective participation by Roma and Sinti people in public and political life:

- *Early involvement*: Any initiative relating to Roma and Sinti people should involve them at the earliest stages in the development, implementation and evaluation phases;
- *Inclusiveness*: Roma and Sinti people should be included in formal consultative processes, and the effectiveness of mechanisms established for their participation in shaping major policy initiatives should be ensured by involving them in a broadly representative process;
- *Transparency*: Programmes and proposals should be circulated sufficiently in advance of decision-making deadlines to allow for meaningful analysis and input from representatives of Roma and Sinti communities;
- *Meaningful participation by Roma and Sinti people at all levels of government*: Participation by Roma and Sinti people in local government is essential for the effective implementation of policies affecting them;
- *Ownership*: Roma and Sinti people play an essential and irreplaceable role in ensuring that the right to participate in the political process is observed in practice.

- ***OSCE, Action Plan for the Promotion of Gender Equality, adopted by Ministerial Council Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d)***

(44) Priorities

(..)

(d) Ensuring equal opportunity for participation of women in political and public life

- The ODIHR will assist participating States in developing effective measures to bring about the equal participation of women in democratic processes and will assist in developing best practices for their implementation;
- The ODIHR and the OSCE field operations will assist, as appropriate, in building up local capacities and expertise on gender issues as well as networks linking community leaders and politicians;
- The ODIHR will continue to assist participating States in promoting women's political participation. It will continue, as a part of its Election Observation Mission, to monitor and report on women's participation in electoral processes. When possible, additionally, the ODIHR will commission and publish reports specifically analysing the situation of women in electoral processes;

(...)

- ***OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life, Athens, 2 December 2009, para. 5***

Calls on the participating States to:

(...)

5. Develop and introduce where necessary open and participatory processes that enhance participation of women and men in all phases of developing legislation, programmes and policies.

(...)

- ***OSCE Ministerial Council, Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children (2013), para. 4.2***

4. Take active measures to support the empowerment of Roma and Sinti women, including by:

(...) 4.2 Promoting the effective and equal participation of Roma and Sinti women in public and political life, including through the promotion of women's access to public office, public administration and decision-making positions;

(...)

- ***Geneva Report of the CSCE Meeting of Experts on National Minorities, Geneva, 19 July 1991***

Section III specifying that when issues relating to the situation of national minorities are discussed within their countries, they themselves shall have the effective

opportunity to be involved, in accordance with the decision-making procedures of each State.

- ***OSCE High Commissioner on National Minorities: Ljubljana Guidelines on the Integration of Diverse Societies, November 2012***

(...)

I. Structural Principles

(...)

Good and democratic governance

2. Good and democratic governance serves the needs and interests of a State's entire population. While democracy implies majority rule in political decision-making, it also includes safeguards against the abuse of majority power. This is achieved by ensuring the protection and participation of minorities, and by facilitating inclusive processes of governance that involve all members of the population.

(...) [...] democratic decision-making processes enable everyone to effectively participate and voice their opinion, including those who are in a structurally unequal position.⁷ Good and democratic governance might require participatory forms of decision-making that proactively reach out to groups that would otherwise be marginalized.

(...)

II. Principles for integration

Recognition of diversity and multiple identities

5. Diversity is a feature of all contemporary societies and of the groups that comprise them. The legislative and policy framework should allow for the recognition that individual identities may be multiple, multilayered, contextual and dynamic.

(...)

Inclusion and effective participation

9. Integration policies should be based on inclusion and should thus strive for a situation in which everyone enjoys full membership in their society, equal access to public goods and services, and equal opportunities. Effective participation on an equal footing by all members of society in social, economic and cultural life and in public affairs should be mainstreamed.

(...)

Legislation and institutions

18. Legislative frameworks, including constitutional law, should be inclusive and should explicitly recognize the diversity within plural societies and guarantee its protection and promotion.

Legislation should reflect the principles of recognition of diversity in society and effective participation. This is achieved by explicitly acknowledging diversity within plural societies. The protection of diversity should be guaranteed and its value promoted. Only if legislation at all levels, including sub-national where appropriate, is informed by such an approach can the legal environment be favourable to integration. This can be further facilitated by constitutional entrenchment of the principles of recognition and inclusion, as well as of effective participation. Inclusive legislation implies that all interested minorities are given appropriate channels to have their voices heard in the process of drafting legislation and implementing measures. This means they can substantially contribute to determining the content of legislation. Inclusiveness is therefore closely linked to the concept and practical manifestations of effective participation. This may include, where appropriate, entrenched decision-making procedures, expert hearings, enhanced participation in all phases of drafting, judicial review prompted by minorities, veto rights, conciliation mechanisms or other forms of participation.

(...)

a. Participation in public affairs

39. States should adopt specific, targeted policies to ensure that everyone has adequate opportunities to effectively participate in democratic decision-making. As part of this, States should strive for adequate representation of the diverse groups in their society, including minorities, in all relevant structures of public administration and decision-making bodies.

(...)

- ***OSCE/ODIHR and Venice Commission, Guidelines on Freedom of Association (2014)***

106. Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should

also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.

(...)

d. Participation in decision-making processes and property, income and assets

183. In a participatory democracy with an open and transparent lawmaking process, associations should be able to participate in the development of law and policy at all levels, whether local, national, regional or international.

184. This participation should be facilitated by the establishment of mechanisms that enable associations to engage in dialogue with, and to be consulted by, public authorities at various levels of government.

185. The participation of associations should involve a genuine two-way process and, in particular, proposals by associations for changes in policy and law should not be seen as inadmissible or unlawful.

186. In addition, associations should be able to comment publicly on reports submitted by states to international supervisory bodies regarding the implementation of obligations under international law, and should be able to do so prior to the submission of such reports. Furthermore, associations should always be consulted about proposals to amend laws and other rules that concern their status, financing and operation.

187. In order to be meaningful, consultations with associations should be inclusive, should reflect the variety of associations that exist and should also involve those associations that may be critical of the government proposals being made.

188. All consultations with associations should allow access to all relevant official information and sufficient time for a response, taking account of the need for the associations to first seek the views of their members and partners.

189. Feedback from associations (and the public in general) should be sought in the form most appropriate to the field in which they operate, and circumstances in a given country, for example, the fact that certain persons, groups and associations may have limited or burdensome access to online resources. Moreover, authorities should acknowledge and respond to such feedback. In order to facilitate this, national human rights institutions may play an important role.

(...)

• ***OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014)***

(...)

74. States should set up appropriate mechanisms and procedures for the participation of human rights defenders and their organizations both domestically and internationally. These should not be limited to one-off or ad-hoc consultations, but should provide for regular, ongoing, institutionalized and open dialogue to facilitate effective participation in public decision-making, including in policy and lawmaking and prior to drafting legislation.

75. Participation mechanisms and procedures should be inclusive, reflective of the diversity of human rights defenders and should take account of the situation of those with specific needs or from marginalized groups, to ensure their participation on an equal basis.

(...)

222. While ensuring that the participation and consultation process is open to all interested parties, participating States should proactively reach out, in particular, to seek the participation of human rights defenders with specific expertise on the subject matter and of individuals and groups that are representative of those that will be affected by the policy, legislative or other measures under consideration. They should take practical steps to ensure the openness of participation and consultation mechanisms for those with special needs, for example, human rights defenders with disabilities. Furthermore, in collaboration with NGOs, human rights defenders and independent NHRIs operating in accordance with the Paris Principles, participating States should take measures to strengthen the capacity of traditionally marginalized or excluded groups and human rights defenders advocating for their rights, so that they may actively and meaningfully participate in the conduct of public affairs.

223. Participating States should encourage and proactively facilitate the equal and meaningful participation of human rights defenders and NGOs, including those working at the grass-roots levels, by ensuring access to relevant information, supporting the conduct of independent studies and surveys, welcoming public policy debates and human rights-monitoring activities, including the observation of trials and other proceedings. As part of their participation in actions aimed at strengthening the rule of law, including through established mechanisms for consultation and dialogue in the development and review of laws and legislative amendments, human rights defenders should also be allowed unhindered access to courts so that they may monitor the functioning of the justice system. Furthermore, human rights defenders should be allowed to carry out monitoring activities in detention facilities and in other public institutions, and should be appropriately involved in the establishment and operation of independent oversight bodies.

(...)

- ***OSCE/ODIHR, Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation (2017)***
- ***OSCE Parliamentary Assembly, Berlin Declaration (2018)***

Urging all OSCE participating States to ensure “*participatory processes for persons with disabilities in all phases of developing legislation or policies in the spheres of political and public life.*”

- ***OSCE/ODIHR, Guidelines on Promoting the Political Participation of Persons with Disabilities (2019)***

Eight recommendations were developed, as follows:

1. OSCE participating States should create an accessible environment for the participation of persons with disabilities in political and public life;
2. OSCE participating States should remove legal and administrative barriers preventing the participation of persons with disabilities;
3. OSCE participating States should create legal, policy and institutional frameworks enabling the participation of persons with disabilities;
4. OSCE participating States should provide inclusive education, civic education and take measures to raise public awareness of participation of persons with disabilities;
5. OSCE participating States should make efforts to increase the visibility of persons with disabilities;
6. OSCE participating States and inter-governmental organizations should ensure broad coalitions and cooperation to guarantee progress;
7. OSCE participating States should collect data about the participation of persons with disabilities and monitor the progress achieved; and
8. OSCE executive structures should implement measures to become more accessible to persons with disabilities.

e. Other Selected International and Regional Reference Documents

- ***Organisation for Economic Co-operation and Development (OECD), Recommendation of the Council on Regulatory Policy and Governance (2012)***
- ***OECD, Recommendation of the Council on Open Government, OECD/LEGAL/0438, adopted on 14 December 2017, and OECD Good Practice Principles for Deliberative Processes for Public Decision Making***
- ***OECD, Best Practice Principles for Regulatory Policy, Regulatory Impact Assessment (2020)***
- ***Inter-Parliamentary Union (IPU), Gender-responsive Lawmaking, Handbook for Parliamentarians (2021)***
- ***Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights***

**ANNEXE II. GLOSSARY OF KEY
TERMS FOR THE PURPOSE OF
THESE GUIDELINES**

ANNEXE II. GLOSSARY OF KEY TERMS FOR THE PURPOSE OF THESE GUIDELINES

Democratic lawmaking — the process whereby laws are developed, drafted, consulted and discussed, scrutinized, amended, adopted and published, and later monitored and evaluated following key democratic principles, meaning that it is carried out by democratically elected or designated bodies that adhere to the principle of the separation of powers and checks and balances and is rule of law- and human rights-compliant, open, transparent, accessible, non-discriminatory, gender-responsive and sensitive to the needs of diverse groups of society, inclusive, representative and participatory.

Discriminatory (laws, policies) — laws or policies that provide for a differential treatment (direct discrimination), or that are apparently neutral but result in unequal treatment when put into practice (indirect discrimination), based on a personal characteristic or the status of a person or group, without objective and reasonable justification, meaning that it does not pursue a legitimate aim recognized by international standards or there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.

Enactment — the process or act of passing legislation.

Environmental impact assessment — assessing the direct and indirect likely impact of a policy or legislative proposal based on a wide range of environmental factors, including population, human health, biodiversity, fauna, flora, land, soil, water, air, climate, landscape, material assets, cultural heritage.

Ex ante regulatory impact assessment — a regulatory impact assessment that is conducted during the early stages of the policy cycle for the formulation of new regulatory proposals and that primarily focuses on clearly identifying policy goals and evaluating if regulation is necessary and how it can be most effective and efficient in achieving those goals.

Ex post regulatory impact assessment (or ex post evaluation of laws or post-legislative scrutiny) — a regulatory impact assessment that is conducted once legislation is adopted and has been implemented for a certain time, with the aim of assessing and evaluating whether it adequately responds to its initially identified purpose and what are its full effects and impacts on society and different groups.

Gender equality — a term that refers to the equal rights, responsibilities and

opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.³³⁶

Gender impact assessment — a process of examining policy and legislative proposals to detect and assess whether and how they will affect women and men, girls and boys differently, with a view to adapting these proposals to make sure that direct or indirect discriminatory effects are neutralized and that gender equality is promoted.

Gender and diversity mainstreaming — the process of integrating a gender and diversity perspective by assessing the implications for women and men and other groups of any planned action, including legislation, policies or programmes, in any area and at all levels, with a view to promoting gender equality and non-discrimination both in terms of the content of the planned action and of representation.

Gender-sensitive language — the use of words and terms whereby all individuals, irrespective of their sex, sexual orientation, gender and/or gender identity, are made visible and addressed in language as people of equal value, dignity, integrity and respect, including by avoiding, to the greatest possible extent, the use of language that refers explicitly or implicitly to only one gender, and preferring the use of inclusionary alternatives depending on each language's characteristics.

Gender-responsive lawmaking — the process whereby laws are developed, drafted, consulted and discussed, scrutinized, amended, adopted and published, and later evaluated with careful consideration of the specific needs, perspectives and experiences of women and men, girls and boys and their different groups. It should encompass the enactment of new laws that affirm the gender-equality principle and guarantee gender equality in practice, as well as amending or repealing laws, which directly or indirectly discriminate on the basis of sex.

336 UN Women, *Concepts and Definitions, OSAGI Gender Mainstreaming - Concepts and definitions (un.org)*; and European Institute for Gender Equality (EIGE), *Gender Mainstreaming Glossary*.

Human rights impact assessment — examining policies and legislation to identify and measure their effects on human rights to help prevent negative effects and to maximize positive effects based on the normative framework of binding international human rights law to which governments have voluntarily committed themselves through ratification of international treaties.

Regulatory institutions or bodies — public bodies or institutions that are usually mandated by law to conduct regulatory and oversight functions in a specific field in a more or less autonomous and/or independent fashion.

Lawmaking — the process whereby laws are developed, drafted, consulted and discussed, scrutinized, amended, adopted and published, and later monitored and evaluated.

Law (legislation) — a legally binding document adopted by a competent legislative or executive authority that codifies behavioural norms and contains rights as well as obligations for individuals, the state and/or other bodies or entities. Unless specified otherwise, the scope of the present Guidelines covers in principle both primary legislation (i.e., legal texts that are approved by parliament or congress) and secondary legislation (or ‘by-laws’ or ‘regulations’ i.e., normative acts adopted by the executive, in order to implement primary legislation) since most of the principles and recommendations stated therein are relevant to both types of legislation, while also acknowledging the diversity of practices across the OSCE region.

Non-governmental organizations — voluntary self-governing bodies or organizations, either membership- or non-membership-based, established to pursue the essentially not-for-profit objectives of their founders or members, and do not include political parties.³³⁷

Oversight (over lawmaking or regulatory oversight) — a system of continuous scrutiny that aims to ensure that, from policymaking to ex-post evaluation of laws, the competent bodies do not go beyond their scope and authority, and to verify that they comply with applicable laws and rules of procedure for the development and adoption of legislation, as well as constitutionality and coherence with international obligations, while also ensuring a degree of quality control of regulatory management tools and aiming to evaluate and improve regulatory policy.

337 See ODIHR and Venice Commission, *Guidelines on Freedom of Association*, para. 63.

Political party — a free association of individuals, one of the aims of which is to express the political will of the people, by seeking to participate in and influence the governing of a country, inter alia, through the presentation of candidates in elections.³³⁸ This definition includes associations at all levels of governance whose purpose is the presentation of candidates for elections and exercising political authority through elections to governmental institutions.

Policymaking — for a state, a cyclical process starting with the recognition and definition of a significant public problem and an organized call for government action, in response to which the government may formulate, adopt and implement key strategies and develop proper measures to implement such strategies composed of programmatic and/or legislative actions for addressing the public problem.

Primary laws or legislation — normative acts that are approved or adopted by the competent legislative authority.

Public consultations — a formal process which public authorities use to seek information and views from individuals and organizations on an existing or proposed policy, law or decision to ensure that it is effective in achieving its goals, well written and fully understood by all interested parties and, crucially, fully compliant with human rights obligations. It involves a two-way flow of communication between public authorities and the public and implies an active effort on the part of the public authorities to reach out to, and engage with, all potentially affected parties.

Regulatory impact assessment (RIA) — a tool and a process designed to ensure good-quality and knowledge-based legislation throughout the entire cycle of policy- and lawmaking by finding the best solution for a problem or challenge and comparing the different potentially positive or negative impacts of different solutions; the best solution will be the one that brings the most advantages, while suffering the least disadvantages.

Rules of procedure (of the government or of the parliament) — the rules that govern how the government or parliament operates and what processes apply to the conduct of their functions.

338 See ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 64.

Secondary legislation (or ‘by-laws’ or ‘regulations’) — normative acts adopted by the executive, in order to implement primary legislation (laws), including by filling in some points of detail, such as technical information or administrative procedures.

Verification — as part of oversight, the process of getting the draft law cleared/ approved through various channels within the drafting body and by the different ministries and the prime minister’s office afterwards. In most cases, the initiators of a draft law need to consult, at a minimum, the ministry of finance on budgetary matters, and the ministry of justice on legal matters, to ensure a realistic allocation of funds to later implement the law, once adopted, and consistency with the constitution and other legislation.

The *Guidelines on Democratic Lawmaking for Better Laws* aim to offer a comprehensive toolkit for policy- and lawmakers, but also for anyone involved in lawmaking, on how to improve legislative processes to tackle contemporary lawmaking challenges and adopt good quality laws. They provide practical advice and recommendations on how to reform legislative rules and practices in compliance with international human rights and rule of law standards, OSCE commitments and good practices. The Guidelines promote more openness, transparency, accountability, inclusiveness and participation at all stages of the legislative cycle and aim to ensure that lawmaking processes and adopted legislation are human rights-compliant, accessible, non-discriminatory, gender-responsive and sensitive to the needs of diverse social groups.

