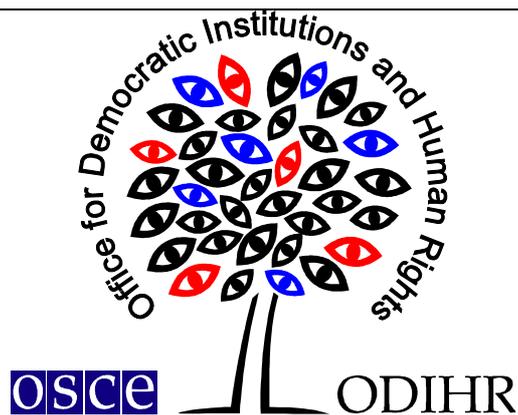


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OPINION ON

DRAFT SECTIONS I-III OF THE RULES OF

PROCEDURE OF THE

NATIONAL ASSEMBLY OF ARMENIA

**based on an unofficial English translation of the Draft Rules of Procedure
provided by the OSCE Office in Yerevan**

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Annex: Draft Rules of Procedure to the Rules of Procedure of the National Assembly of Armenia (uploaded in a separate document)

I. INTRODUCTION

1. *On 18 October 2016, the Head of the OSCE Office in Yerevan forwarded to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a letter received from the Head of the Standing Committee on State and Legal Affairs of the National Assembly of Armenia, in which the latter requested international expertise on the Draft Law on Rules of Procedure of the National Assembly of Armenia (hereinafter “the Draft Rules of Procedure”).*
2. *As indicated in the letter from the Head of the OSCE Office, the request followed informal discussions on potential changes to the Rules of Procedure of the National Assembly held earlier in 2016, and OSCE/ODIHR’s previous support to Armenian authorities in the area of regulatory reform, undertaken in cooperation with the OSCE Office in Yerevan. This support, provided following a Memorandum of Understanding signed between OSCE/ODIHR and the Ministry of Justice of Armenia in 2014,¹ had involved an Assessment on the Legislative Process of the Republic of Armenia in 2014², and had culminated in the preparation of a Regulatory Reform Roadmap in May 2016.³*
3. *On 21 October 2016, the OSCE/ODIHR responded to the request of 18 October, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Rules of Procedure with OSCE commitments and international human rights and democracy standards.*
4. *This Opinion was prepared in response to the above request.*

II. SCOPE OF REVIEW

5. The scope of this Opinion covers only those parts of the Draft Rules of Procedure that, within the given time, could be reviewed in English, namely Sections I-III (Chapters 1-22). Subsequent parts of the Draft Rules of Procedure will be reviewed as the remaining tranches of the English translation are received. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the National Assembly of Armenia.
6. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that may be improved rather than on the positive aspects of the Draft Rules of Procedure. The ensuing recommendations are based on international standards and practices related to constitutional matters and parliamentary practice. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to

¹ This Memorandum of Understanding was signed between the Armenian Minister of Justice and the Director of OSCE/ODIHR on 19 February 2014 and envisaged the preparation of the assessment report on the legislative process in Armenia, and the organization of up to four thematic workshops on different aspects of law making, to facilitate the preparation of a Regulatory Reform Roadmap with concrete action points.

² OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, Legis Paper-Nr.: 247/2014 [YA], issued in October 2014.

³ This Roadmap includes a number of action points relevant to the National Assembly as well, especially in the area of public consultations,

mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Rules of Procedure on women and men.⁴

7. This Opinion is based on an unofficial English translation of the respective Sections of the Draft Rules of Procedure provided by the OSCE Office in Yerevan, which is attached to this document as an Annex. Errors from translation may result.
8. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to this and other related legislation of Armenia that the OSCE/ODIHR may make in the future. This concerns in particular additional review of other Sections and Chapters of the Draft Law on Rules of Procedure of the National Assembly of Armenia that are not covered by this Opinion.

III. EXECUTIVE SUMMARY

9. The Draft Rules of Procedure of the National Assembly are a welcome attempt to bring this legislation in line with the 2015 Constitution of Armenia. While passing such rules as primary legislation provides a certain level of security, this may however pose disadvantages with respect to flexibility in amending the text, and accessibility of the rules to lay persons. In such circumstances, it is particularly important that the Draft Rules of Procedure are formulated in a clear and understandable manner; including definitions of key terminology and more explicit references to other legislative provisions may prove useful in this respect.
10. The Draft Rules of Procedure appear to be quite comprehensive, and cover numerous issues ranging from the roles of deputies, factions and committees to procedural matters, including the legislative process. At the same time, a number of aspects could be formulated with greater precision, to clarify the practical consequences of certain scenarios, e.g. what happens when factions are terminated or lose their members, or what the consequences are for violations of the Draft Rules.
11. In the interests of transparency, it may further be helpful to outline with greater precision the roles of the Speaker of the National Assembly and the key reporters of draft legislation in the legislative process, and of the Government when the National Assembly debates and adopts legislation following an accelerated procedure. As far as procedural matters are concerned, the public nature of hearings and sessions should be elaborated, in particular how the public may have access to such meetings. Consideration may additionally be given to streamlining the process of amending draft laws.
12. More specifically, and taking into account what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Rules of Procedure:
 - A. To subject the discretion of the Speaker of the National Assembly relating to staffing arrangements to some sort of parliamentary institutional review and consider drafting criteria and/or rules on the reimbursement of deputies; [pars 29 and 31]
 - B. To clarify in the Draft Rules of Procedure whether factions may be created after the first sitting of the National Assembly, and what the consequences shall be in cases

⁴ See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

where factions are dissolved, or where one or several members of factions leave or are dismissed; [pars 33, and 40-41]

- C. To add details to the Draft Rules of Procedure with respect to the public nature of sittings and hearings of the National Assembly, in particular with respect to public access to such meetings; [pars 46 and 82]
- D. To consider preparing more detailed codes of conduct for deputies of the Assembly; [par 63]
- E. To consider reducing the strong control that the key reporter has over the discussions and changes to a draft law and strengthen the roles of committees in this respect; [par 94]
- F. To streamline discussions and proceedings before committees and during plenary sessions; [pars 108-112 and 114]
- G. To consider amending Article 90 of the Draft Rules of Procedure, so that decisions as to whether to apply the accelerated procedure when debating a draft law are taken by the National Assembly [par 120] and
- H. To specify in greater detail consequences for non-compliance with the Draft Rules of Procedure. [pars 56, 61, 69, and 125-130]

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. General Remarks

- 13. The current Draft Law on Rules of Procedure of the National Assembly of Armenia comprises eight sections and 35 chapters. This opinion covers those parts of the Draft Rules pertaining to, among others, the mandates of deputies of the Assembly, standing and *ad hoc* committees, the Council of the National Assembly, and various procedural matters, including the legislative process.
- 14. In this context, it is noted that the Republic of Armenia provides for the Rules of Procedure of its National Assembly by primary legislation. Commonly, states use primary legislation, and sometimes also provisions of the Constitution, to establish basic elements of parliamentary procedure; at the same time, in some states, parliaments supplement this by adopting detailed rules of procedure that also have the status of primary legislation.⁵ In other states, parliaments have the power to adopt their own rules of procedure by resolution.⁶
- 15. Having a primary legislative basis for parliamentary rules of procedure provides a certain level of security and legal certainty. Changes to the Rules of Procedure will have to obtain broader consensus and cannot be effected at short notice. On the other hand,

⁵ This is the practice in certain OSCE participating States, notably Hungary, Serbia, and Moldova.

⁶ This practice is followed in participating States such as the United Kingdom, Germany, Canada and Malta, to name a few.

such a primary legislative basis also carries some drawbacks. Notably, amending rules of procedure will take more time, and involve more complex procedures, which may reduce the ability of the rules of procedure to reflect the changing circumstances and demands of parliamentary life.⁷

16. Moreover, challenges to the interpretation of rules of procedure contained in legislation may need to be taken to court. While this may provide for more security in court cases, it could also result in an uneasy application of the principle of the separation of powers of the legislature and the judiciary.
17. Finally, where the rules of procedure are contained in primary legislation, the formal rules of legislative drafting may mean that they are less easy for the lay person to understand; this is explored further in the next section.

2. Drafting Modalities

18. The draft Law on the Rules of Procedure of the National Assembly is inevitably a quite lengthy document, since it covers a wide array of topics. Given that Assembly proceedings may often require the Rules to be consulted urgently, it is important that the draft Rules of Procedure are drafted and presented as clearly and logically as possible.
19. In this context, it is noted that the Draft Rules of Procedure do not appear to have a contents page or an index, either or both of which would make the Rules more readily accessible to users. Neither do the draft Rules seem to contain a comprehensive or collated list of definitions of the words and phrases used, which would also assist the users. For example, the term ‘non-working days’ (Article 52 par 6) is not defined. As regards the ‘National Assembly Council’, Article 9 par 1 (6) notes that this body will be subsequently referred to in the text as ‘the Council’, but does not define what this body is and what its competences are. This explanation only comes much later, in Article 25 par 3.
20. Throughout the text, the Draft Rules of Procedure commonly refer to provisions of other legislation without specifying where to find them⁸; **specific references (in the text or in footnotes) would enhance both clarity and precision, and also user accessibility. The same applies to cross-references within the text to other provisions of the Draft Rules of Procedure.**⁹

3. Bodies of the National Assembly

3.1. Deputies of the National Assembly

21. The deputies of the National Assembly, and their roles, rights and responsibilities, are stipulated in Chapter 1. Under this Chapter, Article 1 sets out the powers of individual deputies. While par 1 of this Article indeed speaks of the rights of deputies, par 2

⁷ The Armenian practice of regulating many subject matters by primary legislation, and the ensuing high workload for the National Assembly, was also mentioned in OSCE/ODIHR’s 2014 Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, pars 12 and 18.

⁸ See, for example, Article 1, par 3; Article 2, pars 4 and 5, Article 5, par 1 and Article 7, par 4.

⁹ See, for example, Article 12, par 1 (10), Article 18 par 5 and Article 59, par 8.

- describes their responsibilities; **it may thus be advisable to adapt the title of the provision accordingly.**
22. Article 2 speaks of the work of deputies. Under par 4 of this provision, deputies shall not receive their salaries “for inexcusable absence from sittings”. **It is not clear who shall determine whether absence was inexcusable or not, and following which criteria – this should ideally be outlined in Article 2** (typical ‘excusable absences’ would be, e.g., illness, official travel, or participation in events on behalf of the faction or committee). Presumably, documents explaining the absence would need to be submitted to whoever chairs the respective hearing – if it is a plenary hearing, this would be the Speaker, and in cases of committee hearings, it would be the Chair of the respective committee. The respective chairperson would then determine whether the absence was indeed justified or not.
 23. The procedure for posing written questions, undertaking inquiries and making proposals to the executive is stipulated in Article 3. The wording of par 1 of this provision seems to imply that this is, as a rule, a bilateral communication between the respective deputy and the Government and related executive bodies. To enhance transparency, and strengthen the oversight role of the National Assembly, **it is recommended to include the requirement that the correspondence be published, insofar as it concerns official questions submitted to the Government.**
 24. Article 4 outlines the procedure for statements of deputies; paragraph 6 of this provision specifies that video recordings of the sittings shall be shown on television the following day. It is unclear what this means in terms of other types of recording, i.e. whether this would exclude live-streaming of sittings.
 25. Under Article 5 par 1, deputies of the National Assembly may be present at sittings of state government and local self-government bodies, under the procedure “stipulated by legislation”. **To enhance clarity and comprehensiveness of the provision, it may be helpful to specify which legislation this provision is referring to.**
 26. Article 6 describes the circumstances in which a group of deputies (namely one-fifth of the total number of deputies) can take a case to the Constitutional Court, as stipulated in pars 1 and 4 of Article 168 of the Constitution. This reflects the wording of Article 169 par 2, which requires the same number of deputies for applications to the Constitutional Court under Article 168 par 6 (termination of the powers of a parliamentarian). **To ensure that Article 6 fully reflects the wording of the respective constitutional provision, it is recommended to also include a reference to Article 168 par 6 of the Constitution.**
 27. Finally, Article 8 mentions annual leave, and unpaid leave, but does not mention special leave, including maternity/paternity leave. **It is recommended to add information on these types of leave, or to include direct references to relevant legislation.**

3.2. Role of the National Assembly Speaker

28. The role of the National Assembly Speaker and Deputies is described in Chapter 2 of the Draft Rules of Procedure. According to Article 9 par 1, the Speaker shall “represent the National Assembly and secure its normal functioning”. Paragraph 2 of the same provision then outlines in greater detail the tasks of the Speaker, including those such as convening and chairing sessions of the National Assembly, circulating information, and signing and publishing relevant decisions, among others. It is noted that neither this provision, nor other Articles of the Draft Rules of Procedure contain a duty of the

Speaker, or of the National Assembly Council to certify the accuracy of final legislative texts as enacted by the National Assembly. This should be regulated somewhere in the Draft Rules of Procedure.

29. According to Article 9 par 1 (11), the Speaker shall, among other things, appoint and dismiss the Chief of Staff, his/her deputies and senior staff. This would provide the Speaker with virtually sole discretion in such matters. To ensure the neutrality and independence of parliamentary staff, so that they can undertake their activities in an apolitical manner, it may be advisable to make the discretion of the Speaker subject to some sort of parliamentary institutional review. This role may already lie with the National Assembly Council, which according to Article 43 par 1 (9) approves the structure and charter of staff, but it would be helpful to specify this in the text. The same would apply to the pay scales of National Assembly employees, which currently would appear to also lie within the sole discretion of the Speaker.
30. The Speaker shall likewise approve the security rules for the premises and building of the Assembly (par 1 (19) of the same provision). In this context, it is noted that the Rules of Procedure do not appear to specify which body or individual shall be responsible for drafting such rules. This should be outlined in the Draft Rules of Procedure.
31. Finally, according to Article 7 par 3, the Speaker is responsible for establishing rules for the entitlement of deputies for reimbursement for accommodation in Yerevan. It is unusual for one person, albeit the Speaker of the National Assembly, to have full discretion over the formulation of such rules, and such regulation could also lead to tensions and conflicts in the long run, which could diminish the authority of the Speaker. It may thus be better to have some sort of parliamentary body draft such rules, perhaps the Council.

3.3. *Factions*

32. According to Article 105 of the Constitution, factions shall facilitate the formation of the political will of the National Assembly. They may include only parliamentarians of the same party or of the same party alliance. The role of factions is described in detail in Chapter 3 of the Draft Rules of Procedure.
33. According to Article 11, factions shall be created at the opening day of the first session of the newly-elected Assembly. It would be helpful if Article 11 would specify whether it is possible to also create factions after this date, e.g. in cases where political parties or factions dissolve and/or new alliances are created.
34. Article 12 outlines the powers of factions, which also include, in par 1 (9), imposing disciplinary sanctions on their members, such as removal from a faction. In this context, it is noted that Article 12, primarily par 1 (10), and pars 4 and 5, includes numerous references to other provisions of the Draft Rules of Procedure, without specifying which ones. **To enhance clarity and readability of the Draft Rules of Procedure, it is recommended to be more specific in this respect.**
35. In Article 13 describing activities of factions, par 2 enumerates the contents of the charters of factions, which also include, under point 14, ‘the procedure for imposing a disciplinary sanction upon a member of the faction’. This description speaks only of one possible outcome, and disregards the fact that disciplinary proceedings may also result in a decision to not impose disciplinary sanctions. **It is thus recommended to reword**

this provision, so that disciplinary procedures in general are covered, regardless of the outcome.

36. Paragraph 6 of the same Article 13 states that a faction shall be terminated if all of its members leave the faction, but that it may be reinstated if at least one deputy “having such power” becomes enrolled in a faction. The meaning of this provision is not quite clear, in particular whether this means that it would in practice be possible to have factions consisting of only one deputy. Given that factions are alliances between parties, it is difficult to imagine how this would work in practice. **It is recommended to clarify this provision accordingly, perhaps by specifying a certain minimum number of deputies required to form a faction.**

3.4. Standing Committees

37. Chapter 4 of the Draft Rules of Procedure describes the roles of standing committees in the National Assembly. In this context, it is noted that Article 106 of the Constitution limits the amount of standing committees to 12, but that the Draft Rules of Procedure also envisage *ad hoc* and inquiry committees. To streamline and simplify the structure of the National Assembly somewhat, consideration may be given to establishing subcommittees of the standing committees to replace some of the *ad hoc* and inquiry committees. At the same time, if this path is chosen, safeguards should be in place to prevent the creation of too many subcommittees, i.e. the number of subcommittees that each standing committee may create should be limited.
38. Article 14, par 2 (1) provides that standing committees shall be created during the first session of a newly-elected National Assembly, and that factions may present draft decisions prescribing the number, names and spheres of activities of standing committees. Article 14, par 4 stipulates that after the creation of the standing committees their number may not be increased (presumably during the life of that National Assembly, but that should be specified).
39. The wording in Article 14 reflects Article 106 of the Constitution, which declares that the number of Assembly standing committees shall not exceed 12. This raises the wider issue of the constitutionality of Article 14 par 4, if a faction were to request, at a later stage but still during the life of the Assembly, that the number of standing committees be increased from the decided number to 12 or less. **It may be advisable to clarify this in Article 14 of the Draft Rules of Procedure.**
40. The formation of standing committees is outlined in Article 15. Paragraph 3 of this provision states that faction members shall become committee members. A deputy who quit a faction or was removed from it may, however, be assigned a position as member of the committee vacated by the faction based on his/her written application and the written consent of the National Assembly Speaker. Given the strong role that factions play in the National Assembly, this raises the question of what happens when a deputy leaves a faction in general, or when a number of deputies decide to leave a faction. It would be helpful to specify this in the text of the Draft Rules, to ensure that also after leaving a faction, deputies are able to continue their work (perhaps as members of another faction). With respect to the latter case, when several deputies decide to leave a faction, this would again raise the question of whether it is possible to create new factions at a later stage (see par 33 *supra*).
41. Moreover, this touches on the wider issue of whether a deputy who leaves his/her party or faction may retain his/her membership within a committee. Such matters should not

be left to the sole discretion of the Speaker of the National Assembly, but should rather be set out clearly in the Rules of Procedure, so that the consequences of leaving a faction are clear to all, and in particular to the deputies. Ideally, a deputy who has left a faction should not be prevented from continuing to work in his/her previous committee if he/she so desires.

42. **Overall, factions and standing committees (and other bodies of the National Assembly) should strive to ensure gender balance among their membership; this should be reflected in Article 15 as well.**¹⁰
43. According to Article 15 par 4, and unlike other deputies of the National Assembly (Article 1 par 2 (1)), the Speaker of the National Assembly, his/her deputies, and faction leaders are not obliged to be members of committees. This raises the question of whether they may join a committee if they wish to do so. **This should be specified clearly in Article 15.** In this context, it should be noted that while presiding officers of parliament should not be prevented from participating in the work of committees, it is generally not common for them to do so (this does not, however, apply to those committees that manage the parliament, other than committees that review and report on the discipline of Members of Parliament).
44. As part of the activities of standing committees, Article 16 par 1 (5) provides such committees with the right to propose candidates to the National Assembly for the election or appointment of positions. **It is unclear which positions are meant here – this should be specified,** at least by indicating the types of positions that this refers to.
45. The sittings of standing committees shall be public (Article 18 par 4), except in cases specified by the Draft Rules of Procedure (par 5 of the same provision). Such specifications could not be found in the provisions of the Draft Rules under consideration. While it may be difficult to provide a comprehensive list of circumstances when a standing committee may sit *in camera*, it would be desirable for the Draft Rules of Procedure to provide an indicative list of such circumstances. Even though presumably, the ban on voting during *in camera* sittings aims to enhance the transparency of committee work, there may be instances where it would be impossible to have a proper public vote on an issue that is confidential. **This provision should thus be reconsidered.**
46. Article 18 par 6 details those individuals who may attend such public sessions. It is unclear, however, why such a list would even be necessary if a sitting is public. Therefore, it is recommended to amend Article 18 accordingly, to specify the nature of public sittings, and how members of the public may attend. Given that the sittings of ad hoc committees (Article 25 par 2) and inquiry committees (Article 29 par 5) shall follow the procedure stipulated for standing committees, the same question would arise with regard to these types of committees.
47. Article 19 focuses on the procedure of conducting standing committee sittings. A standing committee shall have a quorum if more than half of the total number of committee members are present (registered) (par 1 of this provision). It is presumed that deputies need to be physically present and registered, and that the quorum is not met if a

¹⁰ See, in this context, Council of Europe Parliamentary Assembly Resolution 2111 (2016), adopted on 21 April 2016, on Assessing the impact of measures to improve women's political representation, which, in its par 15.3, also encourages parliaments and other elected bodies to adopt measures to reconcile their activities with the private life of members, such as compatible session and voting times, and childcare services.

deputy has registered, and then left the sitting. **Unless the lack of clarity is due to a translation error, it is recommended to state this explicitly in Article 19.**

48. Similarly, Article 19 par 6 states that committee decisions shall be taken by majority vote of all committee members – also here, it is assumed that this refers to the majority of all committee members present. If not, then it would be difficult to adopt decisions directly after discussions, as outlined in the same provision. **Article 19 par 6 should be supplemented accordingly.**
49. Parliamentary hearings conducted by standing committees are described in Article 21. Paragraph 4 specifies that hearings shall be chaired by the committee chairperson; in cases of joint committee hearings, they shall be chaired by both committee chairpersons. **This raises the question of which committee chairperson may give an authoritative procedural ruling during the hearing – this matter should be clarified in the present provision**, e.g. by stating that such decisions shall be taken by consensus of both committee chairpersons.
50. Under Article 21 par 5, committees may prepare a variety of documents pertaining to the respective committee hearing, which may be published upon the proposal of the committee with the consent of the Speaker of the National Assembly. In the interests of transparency, it may be better to require committees to prepare such documentation, ideally after the hearings.¹¹ **Furthermore, it is not clear why the consent of the Speaker should be required in such cases, nor on which grounds he/she may refuse his/her consent. Finally, the Draft Rules of Procedure should specify whether committees would have the right to challenge such refusal, and if so, how. It would be useful to clarify these matters in the Draft Rules of Procedure.** Overall, it would be preferable if committees would be able to take such decisions by themselves, without requiring the prior consent of the Speaker of the National Assembly.

3.5 Inquiry Committees

51. The rules governing inquiry committees are set out in Chapter 6 of the Draft Rules of Procedure. Article 27 specifies the procedure for creating such committees, while par 2 of this provision states that in the field of defence and security, only the competent standing committee can exercise the powers of an inquiry committee, if this is requested by one-third of the total number of deputies.
52. While it may be justified to have a higher threshold in place for these types of inquiry committees, it may, given the importance of matters pertaining to defence and security, be preferable to also allow for independent *ad hoc* inquiry committees in this area. The respective provision should thus be reconsidered.
53. With respect to the activities of inquiry committees, Article 29 allows such committees to demand and receive written and oral evidence from public sector entities and officials. It is noted, however, that this provision does not empower inquiry committees to take such evidence from private sector entities or individuals. **This may prove necessary in the course of such inquiries**, in particular with respect to, *inter alia*,

¹¹ In this context, see also the recent GRECO Evaluation Report on Armenia, Fourth Evaluation Round, “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted by GRECO at its 69th Plenary Meeting (12-16 October 2015), par 32, which recommends that appropriate measures be taken to ensure disclosure of information on the content of and participants in committee hearings, among others.

- private entities and individuals who receive state subsidies, or participate in public procurement, **and it is thus recommended to amend Article 29 accordingly.**
54. Article 31 specifies the rights and obligations of persons participating in inquiry committees. Paragraph 3 states that the failure to provide the required information or to appear before an inquiry committee “without an excusable reason” shall give rise to liability stipulated by law. **In this regard, it is not clear what an ‘excusable reason’ shall be, or who may determine whether reasons adduced to explain a failure to appear when summoned are indeed excusable or not. This should be specified.**
55. Moreover, Article 31 par 4 mentions similar liability in cases where an individual provides incorrect information or explanations to an inquiry committee. In this context, it is noted that this provision does not differentiate between voluntary actions, and involuntary actions. **Indeed, in some cases a person may believe that he or she is telling the truth to an inquiry committee, even though the presented facts are objectively not correct. Any liability provision should take this into account.**
56. Finally, pars 3 and 4 both do not specify which type of liability they are referring to, namely whether this shall be of an administrative, disciplinary or even criminal nature. Especially in these types of cases, it is essential for individuals to know in advance what types of consequences certain behaviour will have; in this, as in other similar cases in the Draft Rules of Procedure (see pars XX *infra*), **it is recommended to outline the type of liability that specific actions will entail in greater detail.**
57. Under Article 32, an inquiry committee shall submit a report on its findings to the National Assembly Speaker. Within a month, this report shall then be discussed during a regular sitting of the National Assembly, and a decision on the report will be taken. In this context, it is noted that Article 32 does not specify a deadline within which the report shall be circulated to all deputies, which would be necessary in order for them to be able to participate properly in discussions during the sitting mentioned above.

3.6 The Ad Hoc Committee on Ethics

58. Chapter 7 describes a special *Ad Hoc* Committee on Ethics, which shall be created based on Article 34, to review matters pertaining to the ethics of deputies, and present an opinion to the National Assembly on each such matter. This involves, primarily, actions or behaviour that may be incompatible with the mandate of a deputy, conflicts of interest, and individual deputies’ compliance with ethics rules.
59. At the outset, it is noted that Articles 35 – 37 mainly deal with duties and obligations of National Assembly deputies, which may more appropriately fit into Chapter 1. Consideration may be given to moving them to this Chapter.
60. Article 35 par 2 states that deputies shall “be dismissed” from positions that are incompatible with their work as deputies within a month of being appointed. Unless due to a translation error, the more appropriate word here would presumably be ‘resign’, as this is an action that can be taken by the deputy, whereas dismissal would be an action taken by others.
61. It is noted that neither Article 35, nor any other provision in the Draft Rules of Procedure, specifies what shall happen in cases where deputies do not resign from work that may be incompatible with their functions. Similar considerations apply with regard to par 10 of the same provision, which prescribes that deputies shall inform the Speaker about any “scientific, educational, and creative work, or other work not prohibited by

- law”, which the deputy combines with his/her position. It would again be helpful to include more specific references to the legislation that Article 35 par 10 is referring to.
62. Article 37 lists the ethics rules of deputies, which require deputies to, among others, abide by the law and the Rules of Procedure, not engage in areas involving conflicts of interest, and behave appropriately and respectfully towards others. Some of these requirements, e.g. the one to “respect the moral norms of society” are quite vague.
 63. In this context, it is important to recall that parliaments in numerous other OSCE participating States have created more detailed codes of conduct, which provide Members of Parliament with clear guidance on potential conflicts of interest. These may include, among others, the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources and contacts with third parties such as lobbyists. Such codes shall be drafted with a strong involvement of deputies, shall be accessible to the public, and need to be complemented by practical measures such as awareness-raising, advice, and training. Drafting such a code of conduct would correspond to recent GRECO recommendations in this context.¹²
 64. Relevant provisions in Article 38 outline the creation and composition of the Ethics Committee. Paragraph 4 specifies that the Chairperson of the Committee shall be appointed by the members of the Committee following nominations from the factions. If the Chairperson is a representative of the governing faction, then his/her deputy shall be from the largest opposition faction, and vice versa. This attempt to enhance the neutrality of the Committee is welcome.
 65. At the same time, par 5 states that the right to hold the position of Chairperson shall survive until the termination of powers of the Ethics Committee. This may, however, not always be possible, for example in cases where there is a change of government, factions are disbanded, or other factions become the largest factions in the National Assembly. **Such cases should also be borne in mind, and ideally be reflected in this provision.**
 66. Moreover, according to Article 38 par 6, the powers of the Committee Chairperson, his/her deputies, or other members of the Ethics Committee shall end if, *inter alia*, his/her faction has replaced him/her (par 6 (4)). While the factions are also involved in appointing members to the Committee, **it may be useful to introduce additional safeguards to avoid a situation where factions can inhibit the work of the Ethics Committee by simply replacing their appointed members.** One way to avoid this could be to allow factions to simply propose the replacement of appointed members in the Ethics Committee, with the final decision left to the Chairperson of the Committee.
 67. The powers of the Ethics Committee are described in Article 39. It is noted that under par 1 of this provision, the Ethics Committee shall provide opinions, but shall also take decisions, e.g. on non-compliance with the requirement to announce conflicts of interest, or on violations of rules of ethics. Unless due to unclear translation, this would appear to contradict Article 34 on the field of activity of the Ethics Committee, which speaks only of opinions. Moreover, Article 39 would need to specify the consequences of decisions taken by the Ethics Committee; in this context, it is important to stress that while serious ethics violations may also constitute disciplinary or even administration or

¹² See, in this context, Council of Europe, GRECO Evaluation Report on Armenia, Fourth Evaluation Round, “Corruption prevention in respect of members of parliament, judges and prosecutors”, adopted by GRECO at its 69th Plenary Meeting (12-16 October 2015), para 41-43.

criminal violations of law, ethics codes are *per se* mere guidelines. Their provisions are not specific enough to be used as bases for imposing sanctions. Similarly, the purpose of ethics committees is to provide advice and guidance based on ethics codes, but not to impose any type of sanctions. **For this reason, it would be preferable if the references to decisions of the Ethics Committee could be revised, to clarify the advisory nature of this body.**

68. Furthermore, Article 39 pars 2-4 involves the taking of evidence on the matter at hand. In this context, it is noted that these provisions provide for the taking of evidence from public sector institutions and individuals, but not from the private sector. Moreover, the above-mentioned provisions refer only to written evidence, but do not explicitly mention the taking of oral evidence. **It would be advisable to supplement Article 39 accordingly.**
69. Finally, this Article also does not foresee any consequences or reactions in cases where the requested evidence is not provided, refused, or not submitted on time. The same applies in cases where information or documents are submitted, but where they are not as requested, selective, or deliberately misleading. These matters should be regulated in the Draft Rules of Procedure (see also par 61 *supra*).
70. The procedure for reviewing cases before the Ethics Committee is explained in greater detail in Article 40. Paragraphs 9-12 outline quite specific deadlines for different stages of this process. Namely, under Article 40 par 9, the Committee shall complete the review of a matter within one month; if it is necessary to request additional information or documents, then this deadline may be extended for up to one additional month. This begs the question of what would happen in case the matter is more complex than envisaged, and a period of two months in total is not sufficient for the Committee to issue an opinion on the matter. Assuming that such cases should not be discontinued merely because the deadline has elapsed, **it would be preferable if Article 40 would allow for greater flexibility here in terms of deadlines, while at the same time ensuring that such provisions are not abused to delay proceedings.** One way to avoid this may be for the Ethics Committee to inform the Speaker or the Council initially in cases where proceedings take longer and to be required by the Draft Rules to present reasons for the delay.
71. Where it is impossible for the Committee to adopt a decision without waiting for a court decision first, or where the respective behaviour that it is reviewing contains *prima facie* elements of a crime, the Committee shall suspend proceedings (Article 40 par 10). **In the first-mentioned case, it is not clear whether the suspension would last until all appeals are heard, or the time limits for appeals have expired. This should be clarified.**
72. According to par 12, proceedings shall be resumed within one week after the reason for suspension has disappeared. **It is not clear whether this week would also count into the overall time limit of one month set out in Article 40 (with an additional month's extension if needed), or not. This should be stated explicitly in Article 40.**

4. Procedural Matters

4.1. *The First Session and Regular Sessions*

73. The first session of a new National Assembly is described in Chapter 9. Under Article 48 par 1, until a new Speaker is elected, the first session shall be chaired by the eldest deputy. It is not clear whether this refers to actual age, or to the longest serving deputy. This should ideally be clarified (unless the original language version is clear on this point).
74. Paragraph 9 of this same provision stipulates that during the first session, the Speaker of the National Assembly shall make a statement on the formation of the factions, the standing committees, the Ethics Committee, and the Council. Moreover, Article 41 par 4 of the Draft Rules states that the provisions concerning *ad hoc* committees of the National Assembly shall not apply to the activities of the Ethics Committee. Based on the wording of these provisions, **it is at least questionable whether the Ethics Committee is then really an *ad hoc* committee within the normal meaning of the word, and should even be classified as such (see par 58 *supra*). This should be clarified.**
75. Article 49 speaks of the creation and powers of the Counting Committee, which shall be set up by decision of the National Assembly based on a proposal by the Speaker. The proposal is then put to a vote without discussion; it is assumed that this implies a simple majority vote, but it may be helpful to specify this in the text.
76. Regular Sessions are outlined in Chapter 10. Article 52 notes, in its par 6, that **such sessions shall not take place on non-working days; it would be advisable to specify what is meant (namely whether this refers to public holidays as well).**
77. The procedure for conducting sittings of the National Assembly is described in Chapter 13. Article 67 sets out the residence and working language of the Assembly. While Armenian is the working language, individuals who do not speak Armenian may speak a foreign language during sittings and committee hearings if there is simultaneous interpretation into Armenian.
78. In this context, it is unclear whether the provision of interpretation is obligatory or discretionary. **If obligatory, the Draft Rules of Procedure should specify whether this applies in all cases or only in certain situations, and should also state who shall be responsible for providing such interpretation.**
79. Article 69 describes the chairing of a sitting of the Assembly. While pars 1 and 2 describe the regular course of proceedings, pars 3-10 outline the disciplinary powers of the Chairperson of the sessions, which will usually be the Speaker. To give proper weight and attention to these provisions, it may be preferable to place them in a separate article.
80. According to Article 70, National Assembly sittings shall be public (thereby reflecting Article 101 of the Constitution), and the persons who may attend sittings of the National Assembly are set out in Article 71. While par 1 specifies which persons shall attend public sittings, par 2 lists additional persons who may attend *in camera* sittings. Paragraph 3 of the provision contains a list of persons who may attend upon permission of the Chief of Staff of the National Assembly. **Here, it is not clear whether this refers to public or in camera sittings; this point should be clarified.** In this context, it may be useful to have separate provisions on public and in camera sittings.

81. Also, while it is conceivable that the Chief of Staff may want to keep track of structural units of the National Assembly, and of whether or not they attend the sittings (at least for in camera sittings), it is not clear why assistant staff of the Speaker and his/her deputies need to ask for permission to attend such sittings. It may be easier for the Speaker/deputies to grant such permission, as they will be more informed as to the particular subject areas that their staff works on. The same applies to experts of the standing committees – here, it should be up to the chairperson of each committee to decide whether or not they should attend hearings (again, this applies to *in camera* hearings – there would appear to be no reason to restrict their attendance at public hearings).
82. As stated earlier in the context of committee hearings, in par 46 *supra*, the Draft Rules of Procedure do not clarify the attendance of the public at public hearings. Ideally, there should be a special public area in the sitting hall, similar to that provided for the media under Article 71 par 4. Due to limited space, a procedure should be in place that would allow members of the public to apply for attendance. They would then, based on open and objective pre-determined criteria, be allowed to attend sittings (e.g. first come, first serve).
83. Under Article 72, stenographic minutes shall be kept of National Assembly sittings. Paragraph 2 of this provision states that minutes of public sessions “may” be published. To enhance transparency, and in line with the general tenor of Article 72, it would be advisable to amend this provision to read that minutes of public sittings shall be published.
84. The provisions under Chapter 14 describe the general procedure for discussing issues during National Assembly sittings. Article 74 par 1 states that sessions may be limited to 90 minutes or 3 hours. This would appear to suggest that it is not possible to have longer sessions, which raises the question of what would happen in cases where even three hour sessions are not enough to fully debate an issue. **Article 74 should specify whether in that case the matter is adjourned to the next sitting, or whether it is then possible, on an exceptional basis and if all agree, to extend this time period even further.** The time limits set for different interventions under Article 73 would appear to prevent unnecessarily lengthy sittings.

5. The Legislative Process

5.1. Legislative Initiative

85. In the Draft Rules of Procedure, the legislative process in the National Assembly is described in Section III. Within this Section, Chapter 15 deals specifically with legislative initiative. While Article 81 speaks of the right to legislative initiative, Article 82 addresses the requirements of a draft law. In this context, it is noted that Article 82 par 1 (1) states that a draft law shall conform to “the Constitution and laws, and may not contradict decisions of the Constitutional Court”.
86. It is of course correct that legislation must be consistent with the Constitution and should not attempt to override decisions of the Constitutional Court on the interpretation of the Constitution (although not necessarily other decisions of the Constitutional Court). Also, in a well-ordered jurisdiction, it is important for the totality of the stock of legislation to be accurate and consistent.

87. At the same time, every provision of enacted legislation changes the law. Sometimes it may simply create new law, but more commonly it also amends existing law by substituting, amending or repealing extant provisions, or by overriding judicial decisions. Thus, when provisions are repealed, substituted or amended by subsequent legislation it is important that these changes are simultaneously reflected at the same time in the earlier legislation. This can be achieved by providing for the changes in the later amending legislation (by for example, in schedules [appendices] in that legislation listing systematically the consequential legislative effects on existing legislation); or by amending the earlier legislation simultaneously.
88. It is thus unavoidable that certain draft laws will run counter to existing laws; if the draft laws are approved, then certain other laws will need to be changed as well. This case is foreseen in Article 82 par 2, which states that draft laws do not need to conform to a law if it “will eliminate inconsistencies”.
89. However, it is also conceivable that some draft laws that amend legislation are adopted merely due to a change in policy, and not to eliminate inconsistencies between legislation. Article 82 should ideally be amended to reflect this, by stating that authors of draft laws should ensure that the draft laws comply with existing legislation, and specifying that in cases where the draft laws would lead to changes in other legislation, these changes should be made at the same time, or shortly after the draft law is adopted. This would complement Article 82 par 3, which states that a package of draft laws may include, next to the draft of the main law, a related draft law or related decisions of the National Assembly, to ensure compliance with the requirements of the Law on Legal Acts. In this regard, it may also be good to specify which requirements of the Law on Legal Acts this provision is referring to.
90. It is noted that Article 82 par 5 prohibits draft laws that contain provisions on amending and supplementing different laws. Unless a result of unclear translation, the purpose of this provision is not apparent, since, as stated above, it is usually not possible to amend one law without also looking into amendments to other legislation; in cases where the amendments are minimal, it may be useful to prepare a draft law that amends several different laws, rather than creating a separate draft law for each law that is to be changed. **The meaning of Article 82 par 5 should thus be clarified, while bearing in mind the considerations raised above.**
91. Article 83 outlines the role of the “key reporter” of a draft law. In this context, it is noted that throughout the Draft Rules of Procedure, this person has substantial procedural control over the pace at which draft legislation progresses.¹³
92. This is in itself not uncommon. However, what is rather more unusual is the control which the key reporter has over amendments to the draft legislation. In most parliaments, once draft legislation has been introduced into the parliament, proposed amendments are largely under the control of the committees and plenary sessions.
93. For example, under the Draft Rules of Procedure, in Article 83 par 2 (3), the key reporter may “revise the draft law”. During discussions in the lead committee, he/she may also “revise the draft law” and propose postponing discussions “for the purpose of revising the draft law” (Article 94 pars 3 and 4). Likewise, in the first reading debate, he/she may “revise the draft” and a vote may be taken on the revised draft law if it is

¹³ See, for example, Articles 83, par 2 (2) - (4) and par 5, Article 95 par 2 and 3, Article 97 par 2, Article 98 par 1 (2) and par 3, Article 103 par 2.

distributed in the sitting hall at least one hour prior to voting on it (Article 95 par 2) and at the second reading, he/she may present the draft law adopted at first reading “by revising it upon his initiative or based on written proposals” (Article 98 par 1 (2)).

94. In the light of the foregoing, it is suggested to further evaluate the revision competence of the key reporter in the course of the progress of a draft law. While the strong role of the key reporter may be based on practical considerations, it may also blur the line between the preparatory stage of a draft law, and its discussion in parliament. Particularly in cases where the draft law is prepared by the Government, this may raise questions with regard to the separation of powers. It may thus be preferable to give the committees a greater role in revising draft legislation, following the principle that once a draft law has reached parliament, it essentially becomes ‘the parliament’s draft law’. In relation to this, it is understood that since receiving the draft Rules of Procedure in translation, they have been altered to provide that, after first reading, amendments will be separately debated and voted on in standing committees.¹⁴

5.2. The Role of Parliamentary Staff

95. Within Chapter 15 on legislative initiative, Article 86 provides details on a “staff conclusion on a draft law”, which shall be presented to the National Assembly Speaker and lead committee within a three-week period after the draft law has been circulated. This staff conclusion on the draft law shall cover the proposed regulations and expected results, the results of the expert review on conformity of the draft with the requirements of Article 82 (on requirements of a draft law), and a note on the need to adopt another law or National Assembly decision related to the draft law (as applicable).
96. In this context, it is noted that in most parliaments, the parliamentary staff provide formal advice to the presiding officers, and informal advice to Members of Parliament, on compliance with the rules of procedure in relation to the parliamentary passage of draft legislation. They also often provide commonly published, apolitical analytical papers on the background to certain draft legislation before the parliament.
97. At the same time, it is not common for staff to provide formal opinions on the draft legislation itself or to formally propose amendments to it. Where this is done, it is usually done in support of committees tasked with reviewing and reporting on the draft legislation to the parliament. If staff were to offer such opinions formally, and if these would then conflict with the opinions of the promoter of the draft legislation or of the committees considering it, then the apolitical status of the staff could be prejudiced.
98. However, if this is the same staff that circulates draft laws once they have been submitted to the Speaker of the National Assembly, then it is assumed that these staff members are not affiliated with committees, but rather work directly for the Office of the Speaker (perhaps as a legal expertise department). **Unless this is an issue of unclear translation, it would nevertheless be helpful to specify which department/office of the National Assembly shall conduct the above-mentioned preliminary reviews, to enhance transparency.** Moreover, consideration could be given to also strengthening cooperation with the committees in this regard or by linking such review to committee work by stating that such analyses can only gain ‘official

¹⁴ In this context, see also OSCE/ODIHR’s Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, par 14, recommendation I.

status' if they are supported by the majority of a committee, or by the plenary of the National Assembly.

5.3. Procedural Issues

99. The procedure of presenting a draft law to the National Assembly for discussion is set out in Article 84. Paragraphs 1 and 2 specify the information that shall be attached to the draft law submitted to the National Assembly which includes, e.g., a justification for adopting the draft, specifying the existing problems, the proposed regulations, and the expected results. It is also possible to add information on the concepts that served as a basis for drafting, and other information on legal acts and other materials; this lies within the discretion of the author.
100. Article 84 par 5 enumerates additional documents that shall be attached to a draft law prepared by the Government. This includes “the state expert review conclusion and the regulatory impact assessment conclusion on the draft”, and the summary of comments and proposals received on the draft during the public discussions, among others.
101. While the submission of additional information on expert reviews and regulatory impact assessment (which presumably includes budgetary impact) is welcome, **such information should ideally be attached to all draft laws that, due to their focus, are required to undergo such review and/or assessment, regardless of the author.** Moreover, in line with previous OSCE/ODIHR recommendations pertaining to the legislative process in Armenia,¹⁵ **it would be preferable if, during a proper policy-making stage, different solutions to the identified problem would be contemplated, all of which would then undergo impact assessments.** The explanatory note accompanying the draft law would then, as part of the justification for the draft law, elaborate on these different options, and explain why in the end, the respective draft law was chosen as the preferred option.
102. It is likewise positive that governmental draft laws shall be accompanied by a “summary of comments and proposals received on the draft during public discussions”,¹⁶ though also here, it is not clear why such summaries should not be attached to draft laws submitted by other individuals or groups with legislative initiative, e.g. factions or deputies (in cases where public consultations took place). OSCE/ODIHR’s 2014 Assessment outlined in detail that public consultations were an important part of the law making process, and noted that **Armenian stakeholders should specify which draft laws should undergo public consultations; the same criteria should apply to all draft laws, regardless of who their author is.**
103. **Additionally, it would be helpful if the summary of comments and proposals received would also reflect, as much as possible, which proposals were incorporated into the text, and which were not (and why not).** Such a ‘feedback summary’ or ‘feedback table’ should also be shared with individuals and entities that took part in the public consultations, to enhance transparency in this process as well.
104. It is noted in this context that the Draft Rules of Procedure, while mentioning public hearings in a general manner, **do not outline the conduct of public consultations on**

¹⁵ See OSCE/ODIHR’s Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, pars 12 and 24.

¹⁶ See OSCE/ODIHR’s recommendation to that effect in the 2014 OSCE/ODIHR Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, par 14, recommendation H.

- draft legislation once a draft law has reached the National Assembly.** While such consultations may be done via public committee hearings under Article 21, other manners of conducting such consultations could also be envisaged, e.g. online consultations, or central and local level roundtables.
105. Generally, legislation, including the Draft Rules of Procedure, should specify which laws should undergo public consultations; this should ideally always include draft laws of high importance, e.g. codes, or laws with a direct impact on fundamental freedoms, economic or social rights. Public consultations need to be effective and timely, and information about consultations needs to be circulated among key stakeholders well in advance, to allow for proper and meaningful participation.¹⁷
106. It is welcome that Article 85 foresees the return of the draft law and supporting documentation to the author in cases where they do not conform to the requirements of Article 84 of the Draft Rules of Procedure. This should happen not only in cases where there are formal violations of Article 84 (e.g. certain documents are missing), but **also in cases where the contents of the supporting documents, e.g. the justification, impact assessment conclusions and other analyses, do not provide deputies with the information that they require in order to debate and form an opinion on a draft law.**
107. In addition to the above-mentioned ‘staff conclusion’ on a draft law, Article 87 also speaks of a “government conclusion on a draft law” – it is assumed that this applies to draft laws submitted by deputies or factions only, but **it may be better to clarify this in the wording of Article 87.**
108. Chapter 16 specifies the general procedure for discussing draft laws. Draft laws that amend, supplement or repeal a law, or part of a law, shall be discussed in two readings, other draft legislation in three. As already proposed in OSC/ODIHR’s 2014 Assessment Report, **it may be useful to devise a fast-track procedure for minor amendments.**¹⁸ In this context, it is noted that the Draft Rules of Procedure appear to allow multiple reports and texts of draft legislation to be under consideration simultaneously. Article 89 par 8, for example, foresees that the lead committee reviewing draft legislation shall prepare an opinion on a draft law by majority decision. At the same time, this provision allows a minimum of one third of the members of the lead committee reviewing draft legislation to also prepare a “special opinion”, which may be presented during the Assembly debate.
109. In contrast, parliamentary rules of procedure in many other countries have adopted a general principle that there shall be only one proposal before the plenary session at any one time. The reason for this is to focus debates and make it easier for the presiding officer to control the proceedings.
110. Thus, for instance, it is common practice, at the appropriate stages, to have amendments to each Article debated individually and serially. Related and consequential amendments are then usually grouped together with the principal amendment under debate, and the same is then done with respect to the next Article.
111. From a practical point of view, it may be helpful to reconsider the current procedure, and to seek ways to streamline and simplify it. For example, the special opinion

¹⁷ See OSCE/ODIHR’s Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, pars 31-32.

¹⁸ See OSCE/ODIHR’s Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, par 14, recommendation D, and par 50, which also propose extended procedures for more complex legislation.

prepared by other members of a committee could be annexed to the report of the committee. In this way, it could be considered by the deputies prior to the Assembly debate and all arguments from the committee opinion, and from the special opinion could be discussed before the Assembly at the same time.

112. Similar considerations apply to multiple reports on draft legislation made by a number of standing committees (Article 89 par 4).
113. At a later stage, when the draft law is submitted to the National Assembly plenary, Article 96 permits the lead committee to authorize alternative drafts to be debated before the National Assembly simultaneously and voted on concurrently at First Reading. A parallel procedure is adopted in Article 99 par 5 with respect to amendments to draft legislation proposed during the Second Reading.
114. In addition to other considerations, this procedural approach would appear to make it difficult for the Assembly to agree on a draft if deputies prefer certain articles of one draft, and certain articles of another. Also at this later stage, it may thus be preferable to avoid alternative drafts, and instead encourage deputies to submit amendments, that will be discussed together with the respective provision of the draft law submitted to plenary. This may already have been amended in a more recent version of the Draft Rules of Procedure that apparently provide that, after first reading, amendments will be debated and voted on separately in the standing committees.
115. Moreover, it may be helpful to include in the Draft Rules of Procedure a provision **requiring the lead committees to update draft laws on the National Assembly website** as they pass through the legislative process, to allow all stakeholders to monitor the progress of such draft legislation.¹⁹

5.4 The Accelerated Procedure

116. Article 90 outlines the timeframe for presenting and discussing a draft law deemed urgent under a Government Decree. In such cases, the respective draft laws shall be adopted or rejected within a two-month period, although that period is extendable by decision of the Assembly on a proposal made by the Government (Article 90 par 11).
117. It is generally not uncommon for the rules of procedure of parliaments to contain explicit provisions that allow draft legislation to be considered and enacted by accelerated procedure.²⁰ While this may be necessary to allow the parliament to address urgent matters, such provisions should be carefully constructed to maintain a necessary balance between effective government and responsible parliamentary scrutiny.
118. Importantly, such fast-track procedures should be limited to situations of genuine urgency, and not used to circumvent parliamentary scrutiny. Many parliaments therefore have procedures which require the government to apply to the presiding officer to activate the accelerated process, provided that the Government justifies the request for use of the accelerated procedure with reasoned arguments that often include reference to specified, pre-determined criteria.

¹⁹ OSCE/ODIHR's Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1, par 14, recommendation E.

²⁰ See also OSCE/ODIHR's recommendation in that respect in its Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 1.

119. It is noted that in Armenia, the Government can initiate the accelerated process by decree. This is a different means of approaching this matter, which, when reading Article 90 further, appears to preclude any discussion within the National Assembly as to whether the accelerated procedure is justified in a given situation or not. The reasons for this are unclear, as it is questionable whether, given the principle of the separation of powers, a Government decree should solely determine the matter and thus effectively bind the National Assembly.
120. Given the fact that one of the roles of the National Assembly is to oversee the Government (see Article 88 par 3 of the Constitution), it may be advisable to amend the procedure under Article 90 accordingly. This would mean that the Government should apply for the accelerated procedure, and provide a justification for it, but that the Council or the plenary of the National Assembly should be the ones to decide on whether to apply the accelerated procedure or not.
121. A second important element with regard to **accelerated procedures is that they should not be so swift that they render nugatory or ineffective the parliamentary scrutiny of the draft legislation.**
122. While the overall time period for the fast-track procedure under Article 90 is 2 months, this period can only be assessed properly when looking at the individual deadlines for specific reviews of draft legislation.
123. Article 90 par 2 provides that when a draft law is presented prior to the week preceding regular sittings, the staff opinion on the draft legislation must be provided “no later three days prior” to regular sittings on the Assembly and the standing committee opinion shall be provided “no later than two hours prior to such sittings”. If a draft law is presented during the week of regular sittings of the National Assembly (Article 90 par 3), the staff opinion must be presented “within a two-week period” and the standing committee opinion presented “within a three-week period, but no later than two hours” before such sittings. Amendments must be presented “within three working days” of the adoption of the draft legislation at first reading (Article 90 par 5). The standing committee must present its opinion on the amendments “within a week but no later than two hours” of the sitting at which the draft law shall undergo the second reading (Article 90 par 6). The timings of the first and second readings of draft legislation subject to the accelerated procedure are not precisely specified, but if a third reading is required, it must be “within a week of [the draft law’s] adoption in the second reading” (Article 90 par 7).
124. The time provided for review during these types of accelerated procedures would appear to be quite short, especially in cases involving lengthy or complex pieces of legislation.²¹ **It is thus recommended that these provisions be reviewed to satisfy the Assembly that also during the accelerated procedure, deputies will have sufficient time** to assimilate and evaluate the draft legislation, and to take professional account of the opinions of the staff and the relevant committee.

²¹ See OSCE/ODIHR’s Assessment of the Legislative Process in the Republic of Armenia, op cit footnote 12.

6. Liability for Non-Compliance with the Rules of Procedure

125. To ensure compliance with norms in the Draft Rules of Procedure, it is necessary to provide for the consequences of non-compliance. Throughout the Draft Rules of Procedure, certain provisions state that an action, or a failure to provide a certain action will lead to liability under the law, but do not specify the type of liability, or the relevant legislation.
126. In numerous cases, the draft law does not contain any consequence or liability for the failure to adhere to the Draft Rules of Procedure. A good illustration of this can be found in norms providing specific time limits without specifying consequences for non-compliance with the time limits.
127. For example, Article 3 par 2 (1) requires specified recipients to reply to a query or proposal from a deputy “within a two-week period”. Aside from not specifying whether the time limit begins to run once the deputy has sent the query or proposal, or from the moment when it is received, the provision is also silent about the consequences of not meeting the time limit.
128. Similarly, Article 32 par 5 stipulates that the National Assembly Speaker will send signed Assembly resolutions and inquiry committee reports to “the competent persons” (unspecified) within a week of signing them. These persons shall then send their written response “within a one-month period” or longer period if specified (again without making it clear whether the period runs from the moment of sending or receipt). Article 32 par 6 requires the staff of the Assembly to transmit the response in various ways “within 24 hours of receiving it”. However, Article 32 is silent on the implications of failing to meet any of these time limits.
129. It may be argued that to the extent that time limits apply to deputies, the sanctions may be implicitly contained in their mandates. However, this does not address sanctions for breach of time limits, or other failure to comply with the Draft Rules of Procedure by others. Moreover, also in that case, sanctions would need to be clearly tied to specific behaviour or actions, and it may be easier, and more transparent, to add such information to the Draft Rules of Procedure.
130. It would be advisable to review the Draft Rules of Procedure in their entirety, and, as far as feasible, insert the sanctions applicable in case of failure to comply with its provisions. In this context, it should be borne in mind that sanctions should be necessary and proportionate and that those in breach of provisions need to have the opportunity to contest an alleged breach and to also appeal against the level of sanction imposed.

[END OF TEXT]