



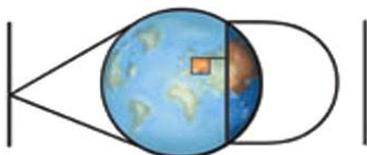
Organization for Security and Co-operation in Europe
MISSION IN KOSOVO

**CIVIL SOCIETY AND
THE LEGISLATIVE PROCESS
IN KOSOVO**

**Analytical Study at the End of the Second Mandate of the
Assembly of Kosovo**

Pristina, December 2007

Survey implemented by:



Instituti Kosovar për Hulumtim dhe Dokumentim
Kosovar Research and Documentation Institute

Introductory Note

Kosovo is going through a period of transition and consolidation of its democratic institutions. Following general elections, the Assembly of Kosovo will resume work with a fresh mandate and renewed composition. One of its most pressing challenges lies in passing the necessary legislation that reflects the developing and changing needs of the people of Kosovo. In order to achieve this successfully, regular and constructive public consultations are helpful and necessary.

For this reason, the OSCE Mission in Kosovo commissioned the Kosovar Research and Documentation Institute (KODI) to undertake a survey on “Civil Society Participation in Legislation at Central Assembly Level.”

The resulting recommendations speak of a clear need to increase the level of co-operation with civil society as a way of ensuring greater civic participation. It will also help the wider legitimacy, transparency and accountability for laws that are passed.

Members of the Assembly of Kosovo, other stakeholders from Provisional Institutions of Self-Government, as well as local and international organizations, will come across some thought-provoking findings, which highlight the areas of deficiency in the co-operation between the Assembly and civil society. Moreover, the report has valuable recommendations that will contribute to civil society’s enhanced role in law-drafting and policy-making.

I hope that the newly-mandated Assembly of Kosovo will consider this report as a useful tool to help them increase co-operation with civil society, which consequently should assist in better legislation being passed.

Tim Guldemann
Ambassador
Head of OSCE Mission in Kosovo

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EXECUTIVE SUMMARY

Strengthening civil society and widening its influence on policy making has been one of the key goals of international engagement in Kosovo since the early days. Indeed, it is one of the key goals in any internationally-sponsored democracy-building agendas in any region in transition. The reasoning for this lies in the belief that a vibrant and representative civil society represents one of the final consolidation factors of democracy. While this is a correct notion and one proven in advanced democracies, developing such vibrant civil society cannot be done hastily and independently of other socio-political conditions. Instead, the endeavour of facilitating a strong civil society in a post-conflict transition has to be comprehensive in terms of adjusting it with the requirements of timing and social/institutional development.

Eight years since the start of the internationally-sponsored democracy-building, Kosovo is clearly exhibiting features that illustrate the above point. While Kosovo now has a clear civil society structure, the overall impression was that it is unable to exert influence over public policy to the desirable extent. It was thus time for an analysis that focuses exactly on this crucial component of any civil society: its ability to project the interests of the groups it represents onto public policy. In addition, a study with this focus was needed to provide a lessons learned-type of analysis which would act as an informative and guiding tool for the Assembly in its new mandate. Thus, the study, commissioned by the OSCE Mission in Kosovo, and implemented by the Kosovar Research and Documentation Institute (KODI), analyzes the current interactive framework for civil society actors and policy making circles in the Kosovan political establishment. It has found numerous patterns of difficulty in this area and grouped them together in four major areas.

One of these areas is the capacity of civil society itself, as a major factor that obstructs its projection onto public policy. The study has found that, while there is a plethora of mostly internationally-financed NGOs in Kosovo, their influence is disproportionately limited as most of the NGOs follow the agenda of their donor, rather than that arising from society. Indeed, Kosovo's civil society is exhibiting classic features of a donor-driven agenda, and while this is changing for the better, it has been one of the most significant factors that curbed the capacity of the civil society to project societal interests in the sphere of legislation. Additionally, the international donor agenda has also by-passed some of the existing civil society structures and instead focused on creating new ones, modelled after the Western-type of NGO. Community structures, like the trade unions or councils of elders, were pushed aside and replaced by those which the society was unfamiliar with, thereby causing the need for a significant adjustment time during which the civil society's influence was limited. Finally, capacity of civil society has also been curbed by the lack of donor coordination in Kosovo. Donor coordination has been ad hoc and unstructured, often resulting in overlapping or even conflicting activities.

The study also analysed factors within a framework labelled "the enabling environment," which includes a number of factors that dictate the extent to which a civil society organization may effectively access and shape the outcome of a

legislative process. Within this framework, the topics for analysis are the government's *institutional capacity* to accommodate public participation, the *legal and constitutional mechanisms* that safeguard the citizens' right to influence policy, and the *level of information* available on what is legislated and how, all come together in creating the landscape of civic participation in policy making. In Kosovo, the institutional capacity to absorb civil society's participation is still relatively weak, as institutions are still young and inexperienced. On the side of the Kosovo normative framework, it seems it does not provide enough to secure substantive participation of the civil society in the legislative process. In addition, despite the promulgation of the Law on Access to Official Documents, information with the purpose of shaping public policy is also limited, due to the inexperience of the public administration and lack of normative provisions that would require this.

Kosovo's legislative agenda has also posed an obstacle for the civil society. There are many outside factors that have shaped the legislative agenda of Kosovo, often not those necessarily springing from the needs of society. Due to its special legal and international status, the complex system of governance shared by international and domestic agencies, and the international scrutiny over its affairs, Kosovo's legislative agenda was not transparent and clear enough for civil society to shape it. Legislative priorities came from different sources and often in response to unexpected factors, thereby leaving little space for civil society's input.

Finally, the study has also looked at the issue from the point of view of the overall democratic culture in Kosovo and found a number of related problems there. Namely, as Kosovo's institutions are relatively young and due to the complex system of governance, implementation of laws has had serious deficiencies. Proper democracy only started developing in 1999, after decades of communist rule followed by repressive governance and a conflict. Although this has been a struggle with increasing success, the fact remains that implementation of laws is lacking at the hands of weak institutions, which in turn leaves little motivation for people and civil society to shape the legislative process.

In response to the above problems, the paper puts forward a number of topic-specific recommendations for all three major stakeholders: civil society, the Assembly of Kosovo, and international donors. For civil society, recommendations call for a more proactive posture, more transparent agenda and financial records to build public confidence, and expanded capacity in the areas of policy making and law implementation. For the donors, recommendations aim to acknowledge the needs for the civil society organisations (CSOs) to formulate their own policy agendas, to focus on the CSOs capacity to influence public policy, encourage the Kosovo institutions to allow for more participation in making and monitoring laws, and develop the government's capacity for this inclusion. As for the Assembly, it should acknowledge the benefits of civil society participation in the legislative process, provide timely and accurate information on the process, develop legal mechanisms to guarantee the right of public participation, and build constructive and more structured relationships with civil society.

I. INTRODUCTION

The lengthy process of political and economic transition in south-east Europe has been characterized, to a great extent, by a massive mobilization of civil society organizations (CSOs). Yet, unlike largely spontaneous popular movements that toppled the totalitarian regimes in the late 1980s and early 1990s, post-communist civic groups have mainly been a creation of international donors who continue to perceive CSOs as instrumental in developing democracy and promoting good governance.

Subsequently, civil society actors have become firmly embedded in the political and social fabrics of post-communist and post-conflict communities, with Kosovo no exception. Since 1999, UNMIK has registered over 4000 non-governmental organizations (NGOs) with core activities ranging from facilitating reconciliation through provision of emergency relief to combating corruption¹. Nonetheless, one of the key roles carved out by the international community for civil society actors in Kosovo has been to directly participate in the business of making public policy through advocating underrepresented interests, providing policy alternatives, and scrutinizing the work of elected officials.

Eight years since the arrival of international administration, the time is ripe to assess how effective the CSOs have been in this regard and review some important lessons learned from their successes as well as failures. A number of issues will, therefore, require closer examination in order to determine which costly mistakes can be avoided and what good practices fostered, disseminated and institutionalised.

The study will open with a brief theoretical examination of key concepts under consideration, followed by a review of the principle assets that make CSOs vital to the outcome of the legislative process. The first section will review the following key points, each followed by a set of practical recommendations for both civil society organizations and the government:

- 1) **Capacity of the civil society** to engage in the policy generation process.
- 2) **Enabling environment** to include legal and constitutional frameworks; PISG institutional capacity; and access to information.
- 3) **Legislative agenda**, that will help identify how the need for policy is identified and by whom.
- 4) **Democratic culture** as a determining factor in the conduct of the civil society, government and the public at large.

The final, concluding section will review the main findings of the study and briefly reinforce its principle recommendations.

¹ NGOs account for only a segment of civil society. Other apolitical groupings, such as syndicates, associations, business and religions organisations account for civil society too.

II. PROJECT METHODOLOGY

To assess the influence of civil society on the legislative agenda in Kosovo, the project team devised a research strategy that consisted of several elements, with questionnaires and interviews conducted from early June to late August 2007. The core of the project was research among the stakeholders in Kosovo, consisting of two key components:

a) Twenty research interviews with persons most intimately involved in the matter at hand. Interviews were conducted with officials on both sides of the divide: from both executive and legislative branches of the PISG and from civil society. From the PISG side, KODI team interviewed officials such as ministerial advisors with experience in the law-making process, experts assisting the government in the process, members of the Assembly of Kosovo (AoK), who at the same time were members of different AoK committees involved in law-making and their staff.

On the side of the civil society, efforts were made to identify NGOs whose mandates require a relationship with the legislative bodies of Kosovo, upon which their members were contacted and interviewed. Attention was paid to the geographic and community background of these NGOs in terms of their area of responsibility and community they represent (be it ethnic or on the basis of disability, religion, gender and similar).

b) Surveys conducted in all areas of Kosovo with 500 respondents, mostly from the civil society sector and a number of respondents from the general public. A loose definition of civil society was adopted here, whereby not just representatives of NGOs, but also of associations, forums, businesses, and other apolitical groupings were considered as a worthy target group. The number of respondents was set at 500 as a result of mutual agreement with OSCE, considering that it would give a fair representation of the public opinion. The project team collaborated with specialists for conducting surveys in order to identify the best possible sample for questioning. Thus, respondents were carefully selected in order to best represent the issues and attitudes of those involved in the process, as well as the public perceptions on the matter. Here too, attention was paid to include on a proportional basis members of different sections of civil society and the general public. This resulted in surveying among all ethnic communities and in all regions of Kosovo, taking care to include international and local civil society activists with different backgrounds, measured in terms of area of focus, community they represent, financial and human resources capacity, years of experience, and so forth. The charts presented throughout the report and in Annex 3 are thus graphical illustrations of the survey results.

Prior to engaging in the above elements of primary research, the project team carried out wide consultations that included officials from the OSCE Mission in Kosovo, the civil society, and the government. Focus groups were organized with representatives of the AoK, the executive, and local and international CSOs, to collect recommendations on how to best conduct research for the purposes of this project. In addition to guidelines for conducting research, the questionnaires for surveys and interviews (samples attached in Annexes) were developed in the course of these consultations. It should be noted that, while the same questionnaire was used for all

surveys, research interviews were conducted on the basis of the attached questionnaire but included sub-questions and side-questions depending on the interviewee.

Additionally, the project team also carried out secondary research by studying relevant academic and policy reports relevant to the process under examination, relevant to Kosovo as well as Bosnia and Herzegovina which was taken as an example for the comparative analysis (*see Bibliography*).

III. CONCEPTUAL FRAMEWORK

3.1 On Legislative Process²

The legislative process, with its focus on free discourse and deliberation, represents the foundation of representative democracy and a clear expression of societal democratic values. It is *the* venue for elected policy makers to share opinions, express views and make policy in an environment that safeguards the freedom of dialogue that democracy is built around.

Of course, there are differences that exist among representative democracies in terms of constitutional or legal requirements as well as various political traditions. However, similar to the case in Kosovo, all legislative processes are characterised by lengthy and complicated proceedings that, although cumbersome, serve as a safeguard against making ill-informed and ill-advised decisions.

1. Introducing a draft law

In most instances, the development of a new law is initiated either by a member of cabinet through so-called “executive communication” or a member of parliament, with or without declared support from other MPs.

Legislative initiatives are also routinely introduced by legislative committees who may or may not have been previously instructed to produce the draft law by parliamentary leadership or assembly groups. Depending on constitutional arrangements and democratic tradition, legislative initiatives may also be brought forward by the public (for example in Denmark, Spain and Switzerland and the United States), provided that evidence of overwhelming citizen interest is secured, mainly in the form of signatures.

2. First reading

With the first reading, the legislative review officially commences as the initiative is considered by the parliamentary quorum. If the initiative is viewed favourably by a simple majority it will then be delegated to a parliamentary committee that has jurisdiction over the subject matter of the initiative. The

² This review of legislative process was provided purely for reference purposes and is based on the common steps found in most representative democracies. It is theoretical and its applicability to the Kosovo case study is intentionally not explored at this stage.

initiative may, at the same time, be assigned to several committees but one should generally be designated as the lead committee to chair deliberations.

3. Committees

It is in the committee that most of the actual work on the initiative takes place. At this stage, public hearings are organized and consultations with stakeholders, experts and citizens are held. The committee deliberates on the proposed initiative and comes up with a recommendation whether to accept or reject it. The committees may also make and propose amendments to the measure or, in some instances, decide to 'kill-off' an initiative at this stage, without it going to the parliamentary vote first.

4. Second reading

In addition to the recommendations of the lead committee, the parliament will consider amendments sponsored by individual MPs, other committees, parliamentary groups and/or the government. Each amendment will be assessed individually on its merit and either accepted or rejected. Once all the amendments have been addressed, the parliament will either adopt or reject the draft law in its second reading. Upon rejection, the draft may be sent back to the committee for further adjustment and prepared for the **third reading**.

5. Third Reading

In instances where the draft law was rejected by the floor and sent back to the committee, it can be re-introduced for a new vote, with or without any changes made to the text. In most cases, however, changes will be made as a result of a need to compromise in order to avoid the measure being rejected again.

6. Adoption

Once the initiative, now a law, is adopted by the parliament there are several avenues in use by which it is enacted ranging from the chief executive signing it into law to the measure coming into effect automatically upon passage by the legislature. This will depend on the constitutional arrangements and political traditions of individual countries (e.g. presidential *versus* parliamentary systems)³.

3.2 On Civil Society

Civil society organizations (CSOs) have steadily grown in influence over the past several decades and have, as a result, become an integral part of both national and global governance arrangements. In addition to influence, they have expanded in scope, interest and diversity with their activities ranging from promoting human rights and fighting poverty to tackling corruption and enhancing levels of citizen participation in the business of government. CSOs are also thriving on unprecedented

³ A summary of this information came from Research interview with Vedat Gashi, Chief Legal Adviser to the Prime Minister, 28 August 2007. Also, for more information on the subject please refer to Dardeli, Alexander *Paper on the law-making process in Kosovo*, prepared as part of SOFRECO consultancy project with the Kosovo Assembly, or KIPRED *Laws without Policy – Waste, Dead Letter and Futility*, Prishtina, November 2006.

levels of access to policy making circles, making for more transparent, accountable and inclusive governments. In particular, the importance of CSOs is near-impossible to overstate in developing and transitional environments; a vibrant, free and active civil society has become a major indicator of democratic progress and consolidation while its absence is a definite cause for concern.

The sudden dramatic rise in the number of CSOs in Kosovo in the last eight years was met with mixed feelings of apprehension, optimism, or cynicism. Whatever one's position *vis-à-vis* civil society, one of the main concerns continues to be the manufacturing of NGOs, foreign donor dependency, and lack of self-sustainability. As a cautionary note, CSOs should be understood to incorporate much more than the conventional notion of a "non-governmental organization" (NGO). According to the Economic and Social Committee of the European Union, "civil society organisations include:

- the so-called labour-market players, [i.e. trades unions and employers federations – also called the "social partners"];
- organizations representing social and economic players, which are not social partners in the strict sense of the term;
- NGOs (non-governmental organizations) which bring people together in a common cause, such as environmental organizations, human rights organizations, consumer associations, charitable organizations, educational and training organizations, etc.;
- CBOs (community-based organizations, i.e. organizations set up within society at grassroots level which pursue member-oriented objectives), e.g. youth organizations, family associations and all organizations through which citizens participate in local and municipal life;
- Religious communities."⁴

CSOs can also be broadly divided into one of the following functional categories:

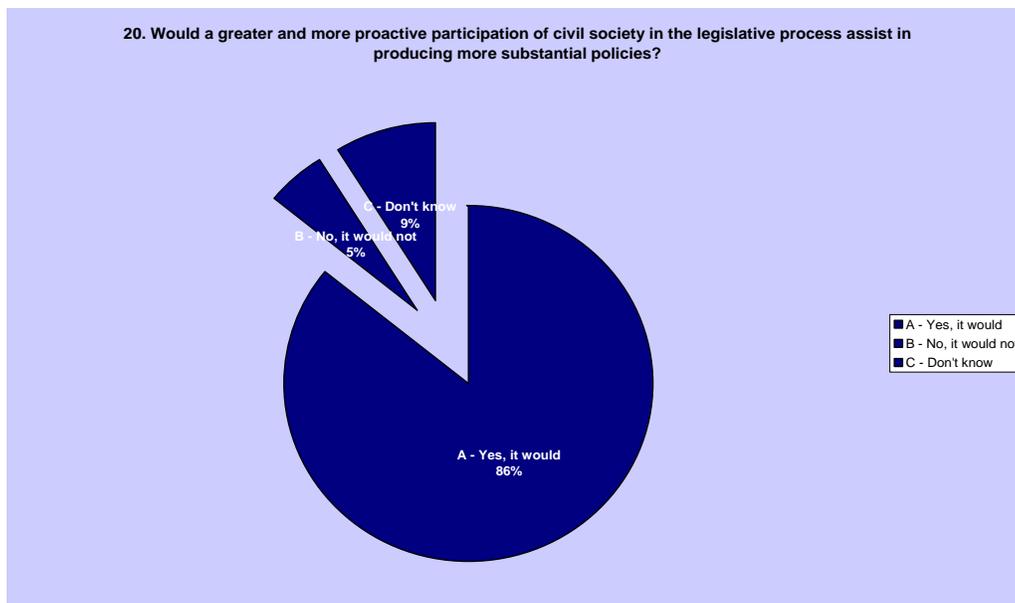
- **Advocacy, analysis and awareness raising** - acting as a voice for people both on a representative and self-appointed basis; researching, analyzing and informing the public about issues; mobilizing citizen action through media campaigns and other forms of activism; and lobbying business leaders and policymakers;
- **Brokerage** – acting as an intermediary between different sectors and groups;
- **Conflict resolution** – acting as a mediator and facilitator;
- **Capacity building** – providing education, training and information;

⁴ "Consultation, the European Commission and Civil Society (CONECCS)", on http://ec.europa.eu/civil_society/coneccs/question.cfm?CL=en, accessed on 1 September 2007.

- **Delivery of services** – operational delivery of essential humanitarian, development and/or social services;
- **Evaluation and monitoring** – serves as a 'watchdog', or third party/independent auditor, both invited and uninvited, of government and corporate performance, accountability and transparency.”⁵

It is the CSOs that fall in the first category, “*advocacy, analysis and awareness raising*”, that will form part of the subject to this report. As the World Bank notes, CSOs have helped shape global public policy over the past two decades. They have successfully campaigned for a ban on land mines, debt cancellation and environmental protection mechanisms.⁶ Domestically, they have helped shape trade agreements in the western world, and served as tools of positive change in emerging democracies.

During the research conducted by KODI Institute, the survey has confirmed positive perceptions about their contribution to policy making as respondents showed significant confidence in the potential of CSOs to effect constructive changes in the outcome of the legislative process.



The rationale for this overwhelmingly positive assessment can be traced to a number of key CSO assets that directly enhance democratic behaviour and inclusiveness of the legislative process in Kosovo:

⁵ Nelson, Jane *The Operation of Non-Governmental Organizations (NGOs) in a World of Corporate and Other Codes of Conduct*, Working Paper No. 34, Harvard University, March 2007, on http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_34_nelson.pdf, accessed on 1 September 2007.

⁶ “Defining Civil Society” The World Bank, on <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~pagePK:220503~piPK:264336~theSitePK:228717,00.html>, accessed on 2 September 2007.

Representing the Underrepresented

CSOs often bring to the fore voices of those who are either essentially disenfranchised, e.g. through electoral engineering, or drowned out and marginalized by more imposing interests such as those of major commercial entities. In such instances, CSOs are often the only viable avenue of effectively accessing policy making circles.

Providing Grassroots Information

Legislators often find themselves in a vacuum and disconnected from their respective constituencies. CSOs can give voice back to the electorate through advocating the interests of local communities and helping elected representatives reconnect with their voters (reversing the conventional top-down approach).

Promoting Risk-Free Dialogue

Opposing sides of the parliamentary aisle or even sections of society as a whole may at times become entrenched in their conflicting positions. This impasse can only be bridged with the assistance of an objective third-party whose primary interest is to nurture open dialogue, foster transparency and search for a compromise – key concerns of CSOs in this functional category.

Generating Alternative Policy and Providing Expertise

As fundamentally independent, CSOs have the freedom of either focusing on a single issue or tackling a limited number of problems that face their respective societies. This gives them a professional edge over the legislators who are asked to deliberate on the widest possible array of issues, often outside of their purview. At the same time, CSOs are not restricted in their thinking by the confines of conventional wisdom and may tap non-traditional sources of policy in order to identify a feasible solution to a particular legislative issue⁷

IV. CAPACITY OF CIVIL SOCIETY IN KOSOVO

Research for the purposes of this study revealed shortcomings existing in the dynamics between civil society and law-making have much to do with the capacity of civil society itself. Indeed, most of the interviews and survey answers identify problems on the side of civil society itself that prevent its successful projection into the legislative agenda. This chapter is thus meant to illustrate some of the shortcomings of Kosovo's civil society that adversely affect its potential to shape the legislative agenda, as well as presents key research findings in this direction.

All sectors in Kosovo received significant financial and other assistance, and so did civil society. Of course, the reason behind such assistance was to build a vibrant NGO sector as the ultimate corner stone of institution- and democracy-building. The

⁷ See Nelson, Jane ... http://www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_34_nelson.pdf, accessed on 1 September 2007.

millions of Euros invested in the civil society sector of Kosovo since 1999 have thus aimed to establish its structures and capacities, so that it gradually assumes its desired role in the policy making in Kosovo. However, the overall impression is that the success achieved is not at a desired level. The structures are indeed there, embodied in the high number of international and local NGOs in Kosovo, but civil society has not assumed a position that would enable it to challenge the government, shape policies, and otherwise help solve societal problems that the government cannot tackle. Instead, civil society continued to suffer from several deficiencies. One underlying factor for most of civil society is the business-like approach dictated by the requests of donors, and the resulting disconnectedness of the civil society with the “grass-root” levels and their needs. The following are some of the key shortcomings that civil society has exhibited as a result of this overall problem.

A major factor that shaped civil society in Kosovo is a donor-driven agenda. The influx of donor funds resulted in a proliferation of both local and international NGOs. There are approximately 4,000 registered NGOs in Kosovo, which is an impressive presence for a society of two million people. However, many of the organizations are NGOs that were opportunistically created to meet the requirements of an agenda set solely by the international community. Analyzing the stated goals of donors versus the activities of Kosovo’s NGOs, it is clearly visible that the majority of these organizations were set up in order to qualify for international grants and ceased to function when these grants ran out. Local ownership of projects remains at a low level⁸, as reportedly consultations with local counterparts are rare and reflect a larger problem of the international community crowding out their local counterparts from the decision-making processes. There is a need for empowerment of local CSOs, in this instance their relations vis-à-vis the AoK, in particular the Assembly committees⁹. Attempts at identifying the key issues for the population at large have been few and far between, which in turn curbs the capacity of the NGOs to adequately respond to these issues.

In addition, international donors failed to build on existing civil society structures, but rather created new ones, which need to spend much of their time and energy on establishing their role in a society unused to western-type NGOs. By focusing entirely on conventional NGOs, donors ignored community-based structures such as village leaders and councils of the elders. These informal organizations gained much popular clout during a lengthy boycott of government institutions by Kosovo Albanians prior to 1999. Also ignored were member-based organizations such as trade unions and professional associations, where widespread infiltration by political parties was also allowed to happen.

There have also been issues with donor coordination. Namely, such coordination is informal and ad hoc, rather than orchestrated. There is often overlap between different donor agencies, and competition between them is not a rarity. This problem was partly addressed in 2006, when an Office of Donor Coordination was set up as part of the Office of the Prime Minister of Kosovo. Placing donor coordination competencies on the side of the “receiving party” reflects the overall approach of the international community, which is based on the notion that Kosovo’s authorities will have the best

⁸ Research interview with Petar Miletic, Independent Liberal Party in Kosovo, 11 July 2007.

⁹ Research interview with Fitore Zeneli, Kosovo Democratic Institute (KDI), 21 June 2007.

idea of what its needs and priorities are. However, this office is understaffed and has thus not improved donor coordination much.

The above shortcomings naturally have an adverse effect on capacity of the civil society to advance the interests of different sectors of society in the law-making process. Interlocutors surveyed in the course of research for this paper have by an large identified problems on the side of civil society, in addition to those identified in other areas. “We ought to have in mind that officials in the public administration are simply overworked and too busy to respond to every enquiry that might come from the NGOs. The civil society therefore must be more pro-active, and that includes pressure groups, be it those from the business, media or sports, which have not shown enough initiative.”¹⁰ Indeed, a large number of interviewees pointed out the fact that Kosovo has a relatively young administration, which causes delays to the normal democratic functioning, and that therefore civil society must show more vigilance in order to overcome this problem.

Having a poor public administration is of course not an excuse; the argument is simply that the civil society must be aware of the circumstances in which it operates so as to make the best use of them and thereby advance the interests of the sectors of society it represents. For example, a number of interviewees have pointed out the mechanism of public hearings that are organized by the committees of the Assembly of Kosovo (AoK) involved in the drafting of a law.¹¹ While these public hearings are not an obligatory step in the legislative process, they are often organized as part of the effort to make the process more transparent and inclusive. In a normal democratic functioning, one cannot expect the average person to turn up and discuss the draft law with its makers on an equal footing in terms of information and expertise. Indeed, participation of the civil society is very much expected and desired, but the overall impression deriving from the research is that this mechanism has been underused in this sense.

Illustrating the points expressed herein, one interviewee stated: “NGOs should be more effective and efficient. One of the reasons why NGOs are facing these kinds of problems is that they do not have a proper organizational profile, and they change their profile/aims because of the donors.”¹² The same interlocutor, however, stressed an optimistic point: “Nowadays, NGOs are being filtrated, so only those which managed to preserve their profile can manage to get funds from donors.”¹³

The following chart also illustrates the above points, as it shows the small percentage of NGOs that take part in the legislative process in Kosovo:

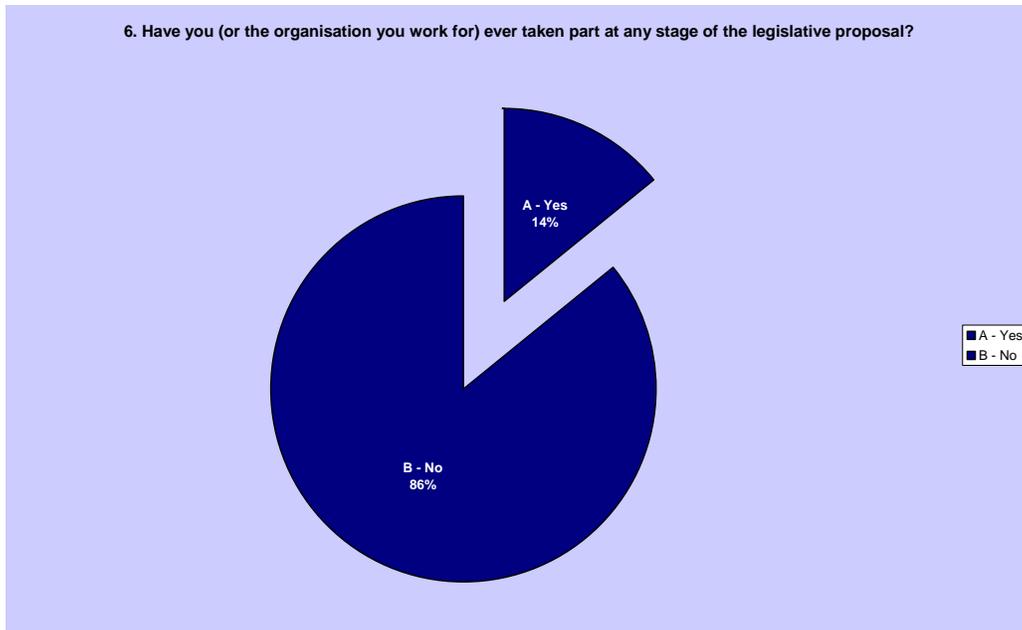
¹⁰ Research interview with Ardian Kryeziu, Kosovo Law Centre, 26 June 2007.

¹¹ Ibid.

¹² Research interview with Liridon Shurdhani, Kosova Young Lawyers, 10 July 2007.

¹³ Ibid. Indeed, the study has shown more awareness on the part of the donors of the need for profilization of NGOs.

6. Have you (or the organisation you work for) ever taken part at any stage of the legislative proposal?



Recommendation

- To donors, to allow for local agenda setting and support issues that rise in such a way, i.e. support NGOs and associations that are formed around issues that originate in society. In general, there should be more focus on professional associations in order to raise their capacity to influence laws and public policy in general. In addition, more should be invested in enhancing civil society's capacity to track the implementation of laws. The overall donor approach to civil society in Kosovo should include a component of rewarding vigilance and pro-active attitudes.

V. ENABLING ENVIRONMENT

A number of factors dictate the extent to which a civil society organization may effectively access and shape the outcome of a legislative process.

A government's *institutional capacity* to accommodate public participation, *legal and constitutional mechanisms* that safeguard the citizens' right to influence policy, and the *level of information* available on what is legislated and how, all come together in creating the landscape of civic participation in policy making.

The following is an overview of the three factors that make up Kosovo's enabling environment.

5.1 Institutional Capacity

It is worth noting at this point that democratic governance in Kosovo is in its early stages and much remains to be done; institutional capacity can not realistically develop in five or six years.¹⁴

As a result, the level of political, democratic and legal literacy of civil servants and appointed officials serving in ministerial bureaucracies and the Assembly is relatively low. This view is held by the majority of interviewees from both civil society organizations as well as international agencies working closely with the Provisional Institutions.¹⁵ In some instances, civil society representatives have found the civil servants simply overworked and unwilling to deal with the extra workload that the involvement of the CSOs would surely generate.¹⁶

Questions have also been raised regarding the professional competence of those public officials asked to manage the drafting process and their apparent inability to effectively engage with CSOs.¹⁷ Interviewees have also noted that the Assembly itself lacks a proper support structure embodied in a professional secretariat staffed with experienced and capable civil servants that would manage the legislative process for the elected officials.¹⁸

The respondents to the survey conducted by the project team have overwhelmingly assessed the Assembly's support in enabling access to the legislative process as inadequate.

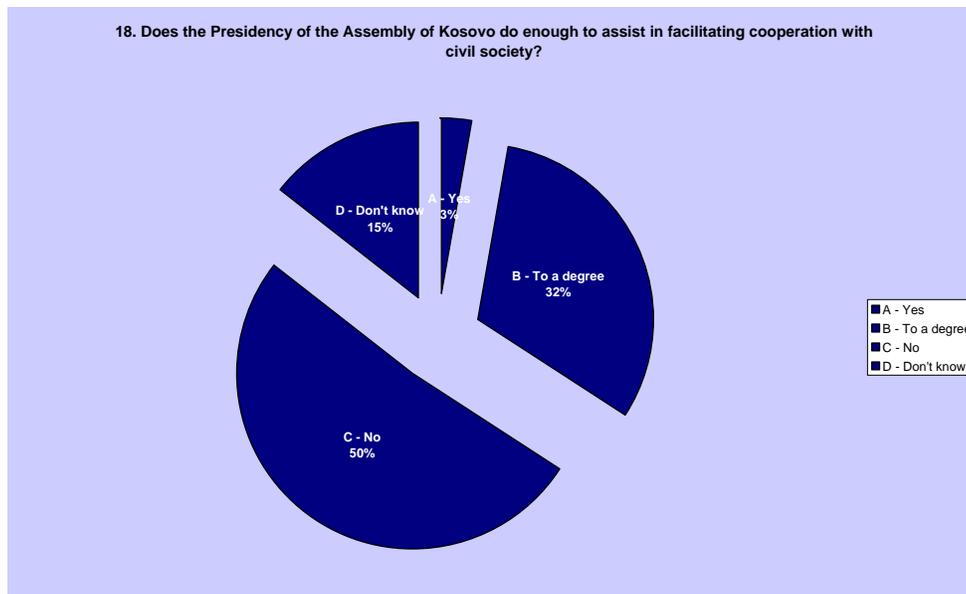
¹⁴ Some interviewees, however, brought forth positive examples, such as meetings that the Committee for Economy, Trade, Industry has organized with the Economics Chamber, Research interview with Mahir Yagcilar, 11 July 2007.

¹⁵ Research interview with Agron Kelmendi, Ombudsperson Institution in Kosovo, 11 July 2007.

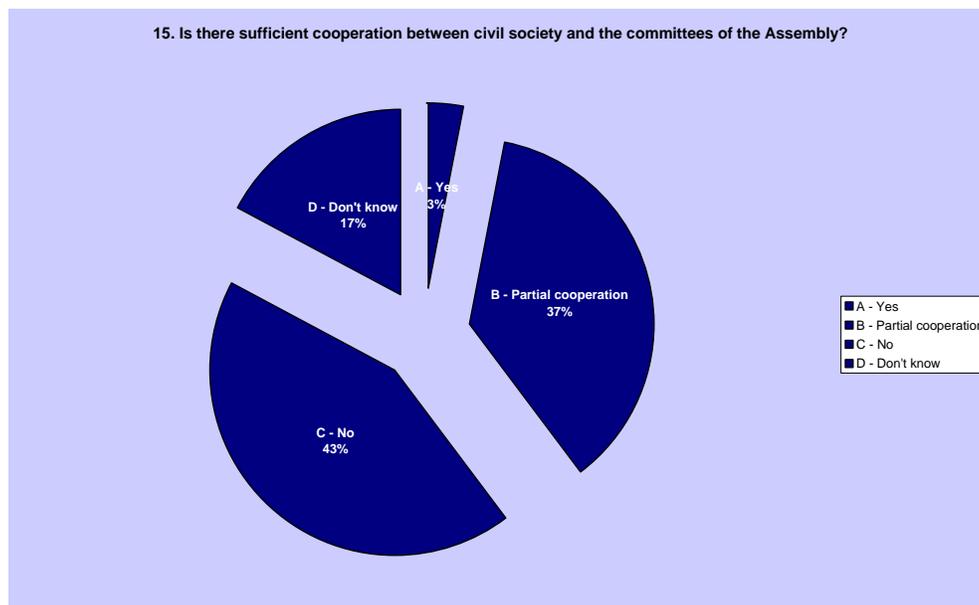
¹⁶ Research interview with Ardian Kryeziu, Kosovo Law Centre, 26 June 2007.

¹⁷ Research interview with Qerkin Berisha, Human Rights Centre, University of Pristina, 27 June 2007.

¹⁸ Research interview with Hugues de Courtivron, Further Support to the Assembly of Kosovo, European Agency for Reconstruction (EAR), 27 June 2007.



The situation with the committees does not necessarily cast a more positive image in terms of institutional cooperation with the civil society.



In addition, there appears to be a lack of awareness of the civil society sector by the public officials in both the cabinet and the assembly and a tendency to rely on those CSOs that the individual officials are comfortable with rather than those that the legislating process would benefit most from. Or, as the experience of one of our interviewees had shown, when an NGO expresses their willingness to cooperate, there might be an inclination within the AoK to assume that such an initiative is being driven by selfish interests of that NGO.¹⁹

¹⁹ Research interview with Luljeta Demolli, Kosovar Centre for Gender Studies, 16 July 2007.

Recommendations:

- **Develop a Guide** for public officials, particularly within the AoK, on how to effectively incorporate civil society organizations into the legislative process; this would include minimum standards for consultation, what to consult on, how to manage the process, how to identify relevant CSOs and how to keep the CSOs informed of progress, to name only select subjects that the guide could cover.
- **Create a roster** of active CSOs by area of expertise (based on track record) to serve as a reference to both drafters in the cabinet and committees in the Assembly; ²⁰ inviting CSOs to provide information on their profile, their capacities and assets, objectives and sources of finance. A standard questionnaire may be designed to aid data collection.
- **Designate liaison officers** for CSO contacts in drafting agencies (ministries and institutions) and the respective Assembly committees.²¹ This would greatly facilitate communication between interested CSOs and drafting agencies and would establish accountability for including or excluding civic participation.

5.2 Legal and Constitutional Frameworks

Democratic tradition and practice mandate that the citizens' right to participate in the formulation of public policy be enshrined in the constitution and further expanded and specified through special legislation. The normative framework in Kosovo provides for neither of these guarantees as there is no binding legislation in place and no mention of public participation in the constitutional framework.²² The lack of safeguards for public participation consequently means that CSOs' input is often plagued with inconsistency, which translates into lack of standardisation and institutionalisation of the civil society rapport *vis-à-vis* ministries and parliamentary committees.

Presently, there are two points of entry for CSOs in the policy making cycle: the drafting stage with the responsible ministry or agency, and the committee stage through the venue of public hearings and debates. While inviting CSOs to participate in working groups on new legislation is a matter of good practice by the cabinet only recently regulated by an internal operating procedure,²³ the Assembly Rules of Procedure do provide for the holding of public hearings during committee deliberations. There is little consistency in the work of the committees; some regularly hold public hearings while others do not. For example, the Committee for Judicial, Legislative Matters and Constitutional Framework, has endeavoured to create direct

²⁰ Research interview with Edi Efendija, National Democratic Institute (NDI), 22 June 2007.

²¹ Research interview with Liridon Shurdhani, Kosova Young Lawyers, 10 July 2007.

²² Research interview with Hajrulla Çeku, Forum 2015, 11 July 2007.

²³ Rules of Procedure of Government of January 1 2007 foresee an extensive process of consultation with stakeholders and experts.

links with NGOs, but the problem is that these connections have not been institutionalised as yet. “We need to include more experts in parliamentary commissions, as a more adequate form of professional assistance for the parliamentary commissions would be a great help for us, and it would improve relations with civil society too.”²⁴

Another complaint voiced regularly during the interview process was the lack of the so-called ‘right to initiative’, where citizens can directly access the legislative process through nominating legislation.²⁵

Nonetheless, the fact that most of the early legislation in Kosovo, to include the Constitutional Framework, should be viewed as ‘emergency legislation’ must be taken into consideration. At present, there are promising signs that the Government is starting to institutionalize and standardize its approach towards CSOs; the Prime Minister recently urged the government’s legal office to engage civil society actors in the drafting of all new legislation while the Law on Public Consultation is currently being drafted with EU assistance.²⁶

Recommendations:

- **Institute a safeguard, or an interpretive clause in law**, for public participation, which may be done through a simple statement affirming the framers’ intent to consult citizens in the development of public policy; and/or **create specific legislation** to mandate the participation of CSOs in the development of public policy; a law detailing civic consultation has a positive normative effect on inclusive decision making as it standardizes procedures and requires, rather than allows, public consultation.

- Investigate the possibility of introducing, and the impact of, a **“right to initiative”** clause in relevant legislation. This would allow individuals and groups to petition the assembly to initiate legislative regulation of an issue they deem crucial. The ‘right to initiative’ is generally exercised through the collection of signatures.

5.3 Access to Information

A vibrant and effective civil society is heavily reliant on unhindered access to relevant, accurate and up to date information. The willingness of government, however, to provide this information greatly depends on its recognition of a CSO as a trustworthy partner and contributor to the policy making process – on evidence, this relationship is yet to materialize in Kosovo. More concretely, the successful implementation of the Law on Access to Public Documents is a necessary precondition for a transparent and cooperative Assembly. However, as noted by

²⁴ Research interview with Hydajet Hyseni, Deputy of Kosovo Assembly, Chairperson of the Committee for Judicial, Legislative Matters and Constitutional Framework with Sub-committees for Gender Equality, Petitions and Public Complaints and Missing Persons, 11 July 2007.

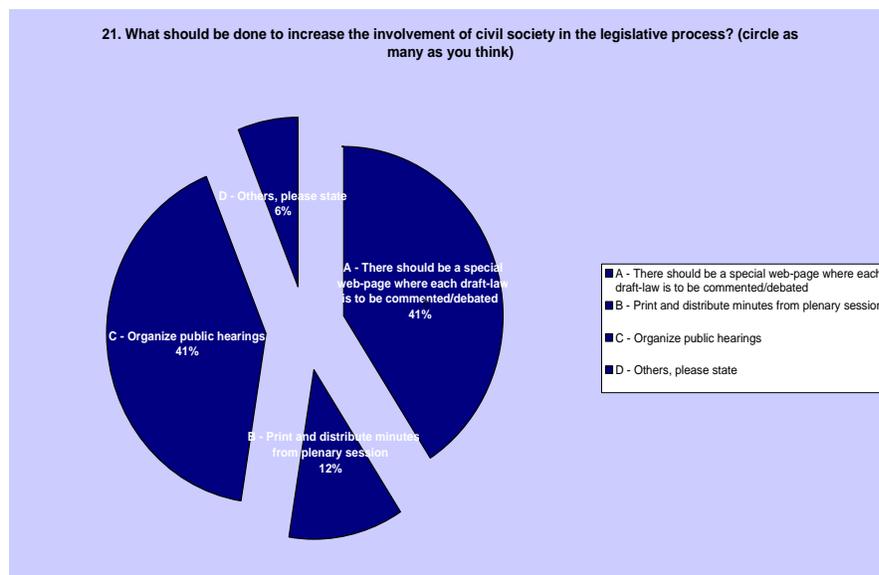
²⁵ Ibid.

²⁶ Research interview with Qerim Qerimi, Assistance to the PISG for Enhanced EU Compatibility, 18 June 2007.

several interviewees, an inexperienced and insufficient administration, combined by a lack of will, is hampering the law's successful execution.

Information on draft laws, provided by the institutions, is very limited, if any. The content of the draft measures under discussion is often unknown as little effort is made by the Assembly secretariat to share the subject matter of the legislation and the government's policy direction on the issue.²⁷ In general, civil society representatives interviewed for the purposes of this study have noted that precious little information is released about the draft laws that are discussed by the Assembly.²⁸

In addition, survey result suggest that sharing the content of the draft law at an early stage in the process is one of the two most cited improvements that the government needs to make in relation to CSOs (see illustration).



At the same time, the legislative agenda is not widely publicised so there is little time for CSOs to prepare even when they are invited to participate in the drafting or deliberation.²⁹ As a result, CSOs' contributions are not necessarily up to standard and often come at a stage of the process where the draft is too advanced to make any fundamental changes to the policy.³⁰

Recommendations:

- Unless specified by relevant legislation, **draft legislation should not be treated as confidential**; public officials from both the cabinet and the assembly are advised to make the drafts available to the CSOs for review as long as this practice does not have a considerably detrimental effect on the legislative process (through unreasonable delays);

²⁷ Research interview with Shqipe Pantina, IREX, 17 June 2007.

²⁸ Research interview with Edi Efendija, NDI, 22 June 2007.

²⁹ Research interview with Shqipe Pantina, IREX, 17 June 2007.

³⁰ Research interview with Ilir Dugolli, KIPRED, 29 June 2007.

- **Post a Q&A section** on the Assembly website that would help the public become better informed of the work of the Assembly members;³¹ The Q&A section could be maintained by the secretariat but hosted by individual Assembly members which would not only bring them closer to the public but also enhance their credibility.
- **Increase the awareness of the civil society organizations** to the law making process by producing and publishing a Guide to the Legislative Process; The Guide could take the form of a simple brochure outlining the stages in the process and potential entry points for CSOs.
- **Publicise the legislative agenda** with all the draft laws scheduled for deliberation on the assembly website; in addition to the current practice of publishing committee minutes, agendas and meeting times, a list of laws planned to come onto the agenda.
- **Publish contact details** for committee staff on the assembly website; this would greatly facilitate contacts between CSOs and the Assembly committees.
- When requested by CSOs, **provide information from the Legal Database** in the Office of the Prime Minister.³² The database, designed as a tracking tool for the implementation of the legislative agenda, should provide a good overview of the status for each piece of legislation to be considered by the Assembly and prepared by the cabinet.

³¹ Research interview with Hugues de Courtivron, Further Support to the Assembly of Kosovo, EAR, 27 June 2007.

³² "SOFRECO Deliverables" on <http://www.sap-ks.org/documents/deliverables/GuidelinestoOPM.pdf>, accessed on 24 July 2007.

VI. LEGISLATIVE AGENDA

The legislative agenda represents a statement of intent by the government to pursue select public policy objectives in the coming legislative year. Guiding principles contained in the agenda are routinely reflected in the government's spending priorities and dictate the makeup of the budget as well as other key planning documents.

A legislative agenda is traditionally born out of a lengthy and complicated process of negotiations and bargaining between stakeholders that tend to include political parties, interests groups, executive and legislative branches of government, independent institutions, and any and all actors with an interest to place an item on the legislative agenda or, conversely, remove it from consideration. The process of reconciling the individual legislative strategies and creating a single legislative agenda is considered part and parcel of democracy.

Although Kosovo's Assembly currently operates based on a legislative agenda, there are lingering issues regarding its development as well as its rate of implementation.

According to the Assembly of Kosovo Rules of Procedure, Chapter 10, Rule 33, "a draft law may be introduced for discussion to the Assembly by:

- a) the Government;
- b) a committee;
- c) a Member of the Assembly, supported by 5 members that have signed the draft law;
- d) a parliamentary group;
- e) in cases when the Assembly through a decision directs the government to draft a Law for debate in the Assembly, in accordance with Rule 34."³³

National Democratic Institute for International Affairs (NDI) estimates that some 90% of new laws are presently initiated by the cabinet via the executive communication route, with the remaining 10% launched within the halls of the legislature itself.³⁴ As regards inclusive participation, the PM's office is confident that CSOs are being consulted and engaged as members of working groups. Just recently, for instance, they state that organisations such as Council for the Defence of Human Rights and Freedoms (KMDLNJ – Albanian acronym) had been invited to contribute to the draft-law on symbols.³⁵ At the ministerial level, such as the Ministry of Local Government Administration, one of our interviewees confirmed that there is a mechanism in place to involve CSOs in each working group.³⁶ Others called for 'meaningful transparency' with civil society, by which is understood that the inclusion of CSOs in law-drafting has to be done with the clear aim of drawing the best and most efficient result out of such a collaboration.³⁷

³³ Rules of Procedure of the Assembly of Kosovo, on www.assembly-kosova.org, accessed on 08 Sep 2007.

³⁴ Research interview with Edi Efendija, NDI, 22 June 2007.

³⁵ Research interview with Suzana Krasniqi, Office of the PM, 27 June 2007.

³⁶ Research interview with Agron Maxhuni, Ministry of Local Government Administration, 25 June 2007.

³⁷ Research interview with Vedat Gashi, Chief Legal Adviser to the Prime Minister, 28 Aug 2007.

The question, however, remains whether this is representative of the actual dynamics of policy making begging the questions how, where and with whom policy ideas are formulated.

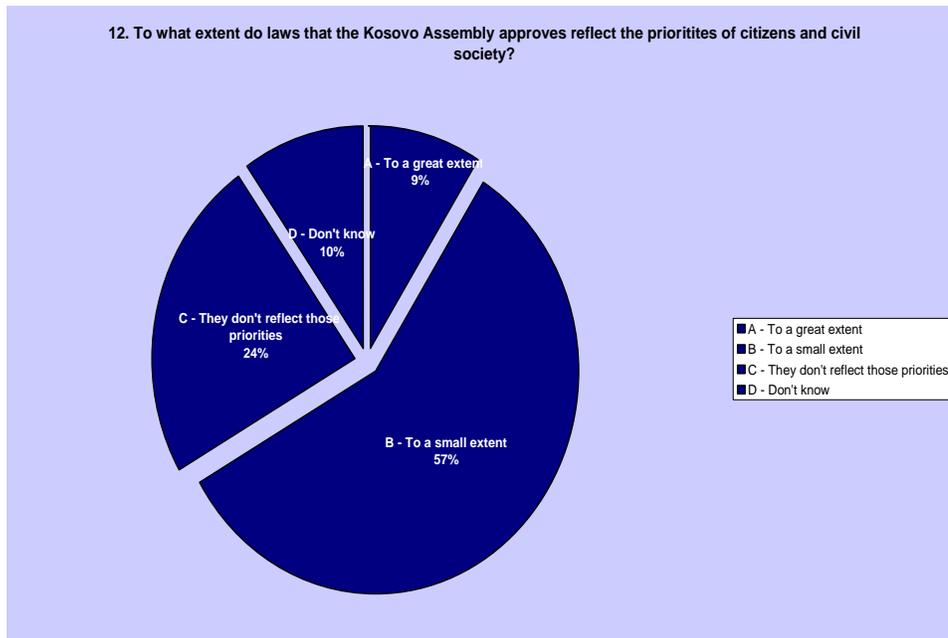
Local ownership had been conspicuous by its absence in the initial years of the PISG; the majority of laws passed were either promulgated directly by UNMIK or passed at its behest. This was in many ways only natural as there was a need for emergency legislation to stabilize and consolidate the rule of law in Kosovo. The process of consolidation was subsequently followed by the Standards for Kosovo programme where legislative priorities were again largely decided by international administrators charged with monitoring its implementation.

These repeated shifts in legislative platforms and a rapidly changing policy environment have meant that there was precious little stability in the legislative process in Kosovo Assembly but more importantly there was virtually no local ownership in setting legislative priorities. Coupled with the role of the highly influential international experts, seconded to the ministries and the Assembly, the unique environment that is Kosovo's political landscape realistically left little room for local CSOs or citizens to participate in the setting of the legislative agenda.

The large volume of legislation passed by the Assembly has also had a detrimental effect on normal legislative procedure; laws were often rushed through the Assembly to meet the changing political environment without proper consideration or public consultation.³⁸

This is reflected in the finding of the survey as well:

³⁸ For regular updates on the legislative agenda of the AoK, please see for example *OSCE Assembly Support Initiative Newsletter*, April 2007, No. 27 and *OSCE Assembly Support Initiative Newsletter*, July 2007, No. 28.



Recommendations:

- For the AoK, create a more **inclusive system of developing a legislative agenda**; this would ensure that more interests than the few from government are represented in the key policy document for the next legislative year. It will also enhance the legitimacy of the legislature as it will appeal to a boarder base in society and demonstrate responsiveness that is required from elected officials.
- For the civil society, **become more engaged in setting the policy priorities** for the legislative agenda through active lobbying and frequent contacts with the legislators.

VII. DEMOCRATIC CULTURE IN KOSOVO

The fact that Kosovo only began its proper democratic development in 1999 has also contributed its share of problems in the sphere of civil society's capability to influence public policies. Overall, Kosovo's politics during the stated period has had a number of "abnormalities", as compared to a western model of developed democracy, most of which had an adverse effect in this study's area of focus. Below are examples of how some of the major "abnormalities" worked to have negative effect on the potentials of the civil society in the legislative process.

Due to the complicated system of governance and lack of clear accountability structure, in combination with the inexperience and weakness of Kosovo's formal institutions, implementation of laws in Kosovo has serious shortcomings. Indeed, with all the contributions of international experts and agencies, laws produced in Kosovo are at a satisfactory level in terms of legal quality, but in most cases there is insufficient capacity among the institutions to implement them.³⁹ On the other hand, non-institutional regulatory mechanisms, such as those based on family or clientelism-like connections, remain strong in the Kosovo society. Indeed, most Kosovans will have more trust in their family or circle of friends to resolve a major problem than they would have in Kosovo's institutions⁴⁰. The judiciary here is a good case in point, as a sector which has vital importance on the implementation of laws and rule of law in general, but which has shown major deficiencies in functioning.⁴¹

All this causes public apathy, as laws and institutions are not seen to shape their lives to an extent as in developed democracies. Naturally, people will be less inclined to debate policies under such circumstances, which in turn has its adverse effects on the capacity of civil society to influence the legislative process. There is thus no major incentive to organize in civil associations and/or support those already existing, as this would require spending time and sometimes funds with a goal of influencing something that does not change the citizens' lives greatly. One of the study interlocutors provided an appropriate summary of the notion presented in this paragraph: "One cannot say that the democracy in Kosovo is taking into account the interests and wishes of the common citizens. However, we must remember that this is a new democracy... The citizen of Kosovo has not had a chance to become empowered and become fully aware of the meaning of the notion 'citizenship'."⁴² Below is a chart that illustrates the points on apathy and its effects on the activism of the civil society in the legislative process of Kosovo:

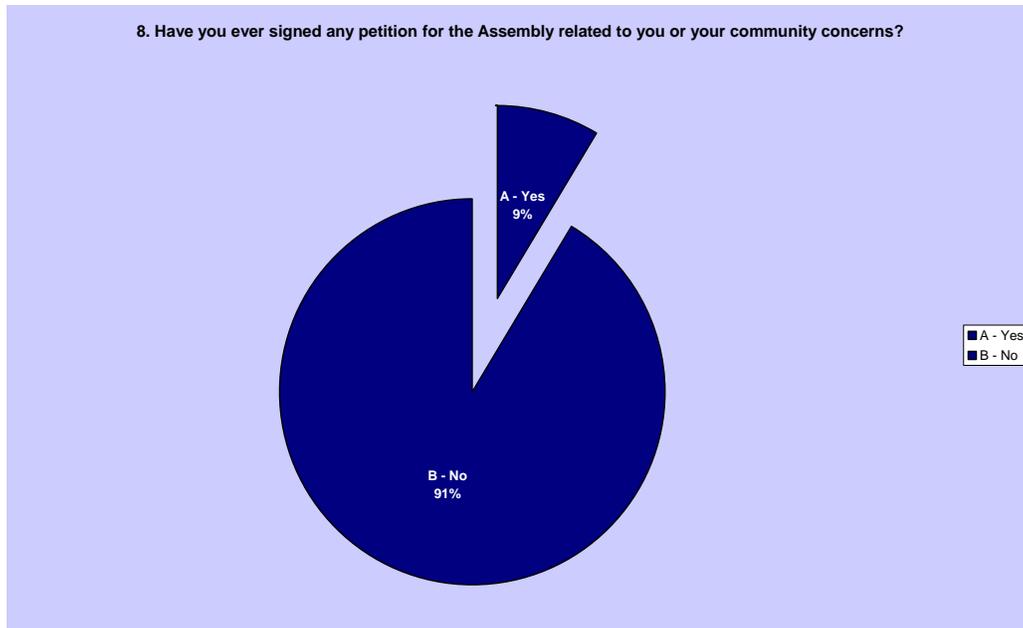
³⁹ This is gradually improving, as institutions grow in experience and maturity, but at the time of the research it was still a major factor of life in Kosovo. For background, see the recent OSCE Mission in Kosovo analysis on the implementation of laws in Kosovo, at www.osce.org/kosovo.

⁴⁰ Saferworld "Human Security in Kosovo – A Survey of Perceptions", May 2007, on http://www.saferworld.org.uk/images/pubdocs/Human_Security_in_Kosovo_English.pdf, accessed on 27 July 2007.

⁴¹ Ambassador Kai Eide outlined Kosovo's judiciary as an especially problematic sector in his *Comprehensive Review of the Situation in Kosovo*. See the Kai Eide report at <http://www.unosek.org/docref/KaiEidereport.pdf>. The OSCE Mission in Kosovo also conducts regular surveys of the judiciary in Kosovo, see at www.osce.org/kosovo.

⁴² Research interview with Hydajet Hyseni, Deputy of Kosovo Assembly, 11 July 2007.

8. Have you ever signed any petition for the Assembly related to you or your community concerns?



In addition to the above factors, it should be noted that the concept of civil society and its influence in public policy, as defined in western democracies, is by itself new to Kosovo. In 1999, when the proliferation of NGOs started, Kosovo had just emerged from a bloody conflict, which superseded a decade of repressive governance, which in turn came after more than four decades of Yugoslav communism. Under such circumstances, the perception of the civil society deviated from what it is supposed to be. The public in Kosovo began to perceive the NGOs as part of the “international community”, rather than as a tool that is supposed to serve the citizens and empower them vis-à-vis the government. In addition, the government also failed to recognize the civil society as their partner in meeting the interests and demands of citizens. At worst, the government saw the civil society as an obstacle to its intentions and at best it was a box to tick to impress the international community. Naturally, there have been individual exceptions and this has changed for the better over the years, but it is still a major factor. Indeed, most of the interviewees stated arguments along the lines of “the civil society participation in the legislative process in new and the government structures continue not to have a serious approach towards the civil society”.⁴³ A representative from the Ministry of Justice noted that “the government in general has not placed standard operating procedures for communicating and cooperating with the civil society,” on the other hand, however, “civil society has also shown a serious lack of will to cooperate and contribute. Nothing prohibits a think tank, for example, to sign a memorandum of understanding with a certain ministry, so that they could contribute occasionally”.⁴⁴

⁴³ Research interview with Agron Kelmendi, Ombudsperson Institution of Kosovo, 11 July 2007

⁴⁴ Research interview with Kujtim Kërveshi, Ministry of Justice, 04 September 2007. The chapter “Enabling Environment,” above, has more on the topic of operating procedures between the government and civil society.

Asked about the obstacles to civil society's participation in the legislative process, one interlocutor summed up the arguments above:

“Firstly, it is the insufficient political culture of Kosovo institutions that would encourage such approach [active participation of the civil society]. Civil society actors are not perceived by Kosovo institutions as stakeholders that have to be consulted in drafting a law. This is mainly because of the state-centred approach promoted under years of communism in Kosovo. Secondly, much of the involvement of the civil society in the legislative process is left to the good will or personal connection of a government/assembly official with the representative of the civil society. This informal approach should be transformed into an institutional communication between these institutions, hence avoiding situations where input from the civil society is required only on a case-by-case basis... Thirdly, related to the first one, even though there are more than a thousand organizations representing different groups of the civil society, we have yet to see their maturing and profiling, so that they can respond efficiently to calls to regulate problems in the society”⁴⁵.

Recommendations:

- For the AoK, to raise awareness about the civil society as a governmental partner which has experience and interest in assisting the government and thus helping the citizens achieve their goals through public policy.
- For the AoK and international donors, to commit resources for identifying the most appropriate operating procedures for cooperation between the civil society and all branches of government and formalize these procedures as much as appropriate.
- For the civil society, to get more involved on the side of the causes of public apathy, such as by tracking the implementation of laws, identifying problem areas for the rule of law, identifying and calling for accountability.

⁴⁵ Research interview with Blerim Vela, OSCE Mission in Kosovo, 15 July 2007.

VIII. COMPARATIVE CASE STUDY: BOSNIA AND HERZEGOVINA

The end of the war in Bosnia and Herzegovina witnessed an unprecedented expansion of its civil society ranging from traditional NGOs through trade associations to religious groups. Much of this growth came about as the international community, mirroring its later work in Kosovo, attempted to provide a social and political alternative to the ethnically divided realm of politics.

While initially ignored and later discredited as a creature of the international community, the civil society sector in Bosnia and Herzegovina has finally begun establishing itself as a legitimate actor in the political arena and a stakeholder in the political process. The change has come about as a result of three factors: 1) creation of a positive enabling environment; 2) increase in the capacity of the civil society; and, 3) substantial changes in the democratic culture of Bosnia and Herzegovina.

8.1 Enabling the Environment

Institutional Capacity:

According to the Government's *Rules on Consultation in the Development of Legislation*, every institution is obliged to designate a rules coordinator, charged with ensuring compliance with consultative requirements set out in the measure. This includes fostering civil society contacts and maintaining a registry of organizations and individuals with an expressed interest in the policy-making activities of the institution.⁴⁶

In practice, however, the implementation of the Rules is not universal and the duties of the coordinator are routinely assigned to random staff members with little consideration for the importance of the post.

On the legislative side, the Parliamentary Assembly enjoys the services of a professionally run secretariat that manages civil society contacts for each committee and sub-committee (a minimum of one civil servant is designated to act as the secretary for every committee and sub-committee).⁴⁷

Access to Information:

Details on all draft laws to be considered by the Assembly are posted on its website to include: full text of the draft law; committee in charge; details on public hearing or discussion, if one is scheduled; and registration form for attending the hearing. The information is updated periodically with the inclusion of any amendments made during deliberations.

⁴⁶ www.parlament.ba, accessed on 15th Aug 2007.

⁴⁷ *Ibid.*

The relevant committee section of the Assembly website also contains the names and short biographies of all committee members with the contact details for the secretary of the committee (phone, e-mail, address and fax). This section also contains an electronic copy of the agenda for the next committee meeting and a mini-archive of relevant documents.

The website also provides information on the Assembly's legislative agenda 2006-2010 with an overview of the laws that have already been adopted and those currently under review. Assembly rules of procedure are posted on the website and also available in hard copy at the Assembly building and in other government institutions.

Legal and Constitutional Frameworks:

Much like Kosovo's constitutional framework, the constitution of Bosnia and Herzegovina should be viewed in its unique political context, as a temporary tool aimed at ending war and preventing further conflict in the near term. Unsurprisingly, it makes no mention of civil society or its role in policy making. The normative framework, however, has since carved out a role for the CSOs in the legislative process.

The abovementioned Rules for Public Consultation require that minimum standards be met by the drafting institution before the draft measure is submitted for approval to the Government. As a minimum, the institution is required to:

- a) post the draft law on its website;
- b) enable the submission of comments electronically;
- c) solicit comments and suggestions from those institutions that are on the register of interested organizations.⁴⁸

According to the Rules, the following forms of consultations can be pursued:

- a) notifying the public of and publishing the draft law in the print media;
- b) informing and educating the public of the draft measure through TV or radio;
- c) notifying the public of and publishing the draft law on the internet;
- d) directly delivering the draft to select organization or individuals;
- e) organizing public meetings or roundtables with select organizations and individuals;
- f) organizing working groups to include experts, representatives of interested organizations and interested individuals.⁴⁹

On the Assembly side, the Rules of Procedure enable but do not mandate the organization of public hearings during the committee stage of the legislative process, much like those of the Kosovo Assembly.⁵⁰ However, it does appear that the

⁴⁸ Article 6. Rules on Consultation, Council of Ministers of October 9, 2006.

⁴⁹ Article 17. Rules on Consultation, Council of Ministers of October 9, 2006.

⁵⁰ Article 37, BiH RoP at www.parlament.ba, accessed on 15 August 2007.

Assembly of Bosnia and Herzegovina organizes hearings much more frequently than its Kosovo counterpart.

8.2 Capacity of the Civil Society

The post-war civil society sector in Bosnia and Herzegovina was plagued by many of the same issues that have retarded the development of CSOs in Kosovo. As a result of the post-conflict surge in international interest, countless CSOs have sprung up to meet the demand of various donor driven agendas. CSOs, and NGOs in particular, were created on a daily basis to compete for funds without consideration for the organization's original programme or agenda, acting more like private contractors than civic organizations. The "donor effect", as a result, created a heavily distorted external image of its civil society as vibrant and diverse when in fact it had precious little substance and virtually no hope of self-sustainability.⁵¹

However, things have begun to change significantly in the past several years. While diminishing donor funds spelled the end for numerous client-type CSOs that had no local backing, surviving organizations have grown stronger, with alternative sources of funding and clear, distinguishable agendas. This greatly enhanced the fledgling reputation of the civil society sector in Bosnia and Herzegovina as *property* of the international community and facilitated a more constructive engagement with the government.

Most CSOs now have a clearly articulated niche and pursue their objectives in an informed and responsible fashion. Through joining forces via resource centres and associations, CSOs are able to disseminate best practices and conduct capacity building activities at little or no cost. For example, the Association of Election Officials, a professional network with offices around the country, recently delivered a series of trainings to interested CSOs on how to participate in public hearings. In addition, resource centres and CSO networks provide assistance with financing, legal queries, donor linkages and offer a venue for CSO coordination on policy and other issues.⁵²

CSOs have also improved their communication with the public. Most if not all have websites that showcase clearly articulated agendas, membership and sources of financing. Several key documents have also been developed and adopted by the civil society community at large to include a Code of Conduct, Strategy for Development of the civil society sector, and Quality Control Standards for Interaction with the Government. A directory of CSOs was created several years back and represents a useful point of departure for civic society contacts for both the government and potential donors.

Linkages with government have also been strengthened at all levels with some 40% of municipal governments now financing CSOs and their activities. Earlier this year, the Prime Minister signed a Memorandum of Cooperation with representatives of the civil

⁵¹ Civil Society / NGO Development Policy, 05 January 2000, on http://www.ohr.int/ohr-dept/hr-rol/thedept/cs-ngo/default.asp?content_id=381, accessed on 18 August 2007.

⁵² For reference see www.aeobih.com.ba/generalinfo.htm, accessed on 20 August 2007.

society in Bosnia and Herzegovina. The Memorandum serves to institutionalize cooperation between the two and envisions the establishment of a government office for CSO coordination, among other things.⁵³

8.3 Democratic Culture

The evolution of democracy in Bosnia and Herzegovina has largely been hampered by an invasive international presence with sweeping extra-institutional powers. Regular decision making processes have routinely been bypassed and elected officials removed from office based on decisions by international community representatives in the country.⁵⁴ Initially, there was little space for the civil society sector to intervene when the government was often crowded out of policy making due to its inability to achieve inter-ethnic consensus. The ethnic divisions represented a major obstacle to the promotion of a civic identity many CSO blindly advocated; others turned to the oft profitable promotion of mono-ethnic agendas and became a tool of nationalist propaganda in their own right.

All this has an adverse effect on the development of representative democracy and political accountability, leading to an onset of apathy and general lack of interest in the business of government by the public.

With the phased decrease in the powers of the international community, the Bosnian political model is starting to resemble 'normal politics' but there is much work to be done in ensuring that CSOs are recognized as legitimate political actors.

⁵³ www.ohr.int, accessed on 16 August 2007.

⁵⁴ *Ibid.*

IX. CONCLUSION

This study, although often focused on failures and problem areas, is by no means an attempt to point fingers or lay blame; thriving democracies take many years to develop, and structured and constructive dialogue, the cornerstone of civic participation, is largely reliant on mature institutions that Kosovo will be lacking for some time to come.

Nonetheless, taking into consideration realistic constraints and the political environment, there is still more that can be done to promote civil inclusion into the policy making process in Kosovo. The following represents an overview of the project team's recommendations.

The CSOs should:

- be more proactive in their interactions with the executive and AoK, via focused and productive lobbying and frequent contacts with policy makers and public officials;
- present a transparent agenda and publicise sources of financing in the interest of building public confidence;
- build capacity in the areas of policy making and law implementation through forming/joining both local and international networks and exchanging best practices;
- publicise instances where access to information/policy making was denied in order to build public pressure;
- become more engaged in setting the policy priorities for the legislative agenda through active lobbying and frequent contacts with the legislators;
- explore the causes of citizens' apathy, which seem to stem from the disconnect between civil society and the constituencies they ought to represent, and track the implementation of laws, identifying problem areas for the rule of law, and calling for accountability.

The donors should:

- acknowledge the need for CSOs to formulate their policy agendas locally in the interest of future self-sustainability (local problems = local solutions = local interest);
- build awareness and capacity of CSOs to participate in the making of public policy (through advocacy and direct participation) and monitoring the implementation of laws;
- encourage Provisional Institutions, in particular AoK committees, to include CSOs in the drafting and development of future legislation;
- develop capacities of government officials to interact with CSO representatives through trainings and publications;
- allow for local agenda setting and support issues that rise in such a way, i.e. support NGOs and associations that are formed around issues that originate in the society. In general, there should be more focus and financial impetus on professional associations in order to raise their capacity to influence laws and public policy in general.

- invest in enhancing civil society's capacity to track the implementation of laws. The overall donor approach to civil society in Kosovo should include a component of rewarding vigilance and pro-active attitudes.

The Executive should:

- designate liaison officers for CSO contacts in drafting agencies (ministries and institutions). This would greatly facilitate communication between interested CSOs and drafting agencies and would establish accountability for including or excluding civic participation; this would be one lesson learned from the case of Bosnia and Herzegovina;
- when requested by CSOs, provide information from the Legal Data Base in the Office of the Prime Minister. The database, designed as a tracking tool for the implementation of the legislative agenda, should provide a good overview of the status for each piece of legislation to be considered by the Assembly and prepared by the cabinet.

The Assembly of Kosovo should:

- raise awareness about civil society as a governmental partner which has experience and interest in assisting the government and thus helping people achieve their goals through public policy;
- develop and update a Guide for public officials, particularly within the AoK, on how to effectively incorporate CSOs into the legislative process; this would include minimum standards for consultation, what to consult on, how to manage the process, how to identify relevant CSOs and how to keep them informed of progress etc;
- increase the awareness of CSOs to the law making process by publishing updated Guides to the Legislative Process; the Guide could take the form of a simple brochure outlining the stages in the process and potential entry points for CSOs;
- create and/or update a roster of active CSOs by area of expertise (based on track record) to serve as a reference to both drafters in the cabinet and committees in the Assembly; through inviting CSOs to provide information on their profile, their capacities and assets, objectives and sources of finance;
- in addition to administrative measures, institute a safeguard, or an interpretive clause in law, for public participation, which may be done through a simple statement affirming the framers' intent to consult the public in the development of public policy; and/or create specific legislation to mandate the participation of CSOs in the development of public policy; a law detailing civic consultation has a positive normative effect on inclusive decision making as it standardizes procedures and requires, rather than allows, public consultation;
- investigate the possibility of introducing, and the impact of, a "right to initiative" clause in relevant legislation. This would allow people to petition the Assembly to initiate legislative regulation of an issue they deem crucial. The 'right to initiative' is generally exercised through the collection of signatures;

- draft legislation should not be treated as confidential, unless specified by relevant legislation; public officials from both the cabinet and the Assembly are advised to make the drafts available to the CSOs for review as long as this practice does not have a considerably detrimental effect on the legislative process (through unreasonable delays);
- publish contact details for committee staff and post a Q&A section on the Assembly website that would help the public become better informed of the work of Assembly members. As seen from the chapter on Bosnia and Herzegovina, a secretariat or liaison office within the Assembly that manages civil society contacts for each committee and sub-committee will help foster such mutual links;
- publicise the legislative agenda with all the draft laws scheduled for deliberation on the Assembly website; in addition to the current practice of publishing committee minutes, agendas and meeting times, notes from Assembly proceedings and a list of laws planned to come onto the agenda should be published also;
- transform a more inclusive system of developing the legislative agenda into a standard operating procedure; this would ensure that more interests than the few from government are represented in the key policy document for the next legislative year; it will also enhance the legitimacy of the legislature as it will appeal to a boarder base in society and demonstrate responsiveness that is required from elected officials;
- commit resources, in cooperation with international donors, for identifying the most appropriate operating procedures for cooperation between the civil society and all branches of government and formalize these procedures as much as appropriate.

X. SELECTED SOURCES

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“Rules on Consultation in the Development of Legislation”, on www.parlament.ba

Saferworld “Human Security in Kosovo – A Survey of Perceptions”, May 2007, on http://www.saferworld.org.uk/images/pubdocs/Human_Security_in_Kosovo_English.pdf

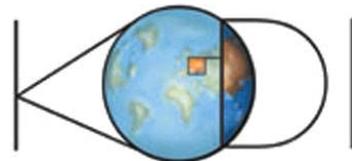
“SOFRECO Deliverables” on <http://www.sap-ks.org/documents/deliverables/GuidelinestoOPM.pdf>

Surveys of the Judiciary in Kosovo, on www.osce.org/kosovo

ANNEX 1. Survey Questionnaire

**Survey on Civil Society Participation in the Legislative Process in
Kosovo**

- QUESTIONNAIRE -



The active participation of citizens in the decision-making process is a prerequisite for a democratic society. Civil society's contribution during all the different stages of the drafting of legislation is reflective of the transparency and legitimacy of the governing institutions. The questionnaire will aim to tackle these issues and subsequently come out with data on the position of civil society vis-à-vis the legislative process in Kosovo. The survey will be based around two broad categories – questions on the drafting of legislation and questions on policy-making – with civil society's contribution as its aim.

Name and surname: (optional) _____ **Gender:** _____

Age: _____ **Ethnicity:** _____

Formal education: _____ **Profession:** _____

Address: (optional) _____ **Phone No: (optional)** _____

Municipality: _____ **Location:** _____

(The following questions aim at contributing to the clarification of the inner dynamics of the law-drafting through its different stages, as well as civil society's position in this process)

1. To what degree are you informed of the practices of law-drafting in Kosovo?

- a) fully informed;
- b) sufficiently informed;
- c) partially informed;
- d) not informed at all.

2. Which of the following laws are applicable in Kosovo? (circle as many as you think)

- a) un-discriminatory laws (pre-1989);
- b) laws approved by Kosovo Assembly;
- c) UNMIK regulations;
- d) international conventions.

3. Which of the following groupings is involved in the drafting of laws? (please circle as many as you think)

- a) members of parliament;
- b) ministers;
- c) legislative advisors (international and domestic);
- d) NGOs, think tanks;
- e) representatives of political parties;
- f) citizens.

4. Which one of the following is representative of civil society during the drafting of legislation?

- a) NGOs and other similar organizations;
- b) citizens themselves;
- c) other, please mention _____

5. Do civil society organizations need to have the right to make legislative proposals?

- a) yes;
- b) no;
- c) don't know.

6. Have you (or the organisation you work for) ever taken part in any stage of the legislative proposal?

- a) yes;
- b) no.

7. If you have answered "yes" to question 6, please explain your contribution.

8. Have you ever signed any petition for the Assembly related to you or your community concerns?

- a) yes;
- b) no.

9. If the answer to the question 8 is "yes", what petition was that?

10. To what extent does the government involve civil society in its consultations during the overall legislative process?

- a) Government always includes civil society in its consultations;
- b) Government rarely includes civil society in its consultations;
- c) Government never includes civil society in its consultations;
- d) don't know.

(The following questions aim at tackling the advantages and deficiencies of policy-making and development procedures in legislation. Also, the last few questions contain an inward-looking approach of civil society's role in this process)

11. To what extent does legislation reflect the party politics of the ministry which is responsible for its drafting?

- a) legislation always reflects party politics of ministries;
- b) legislation rarely reflects party politics of ministries;
- c) legislation never reflects party politics of ministries;
- d) don't know.

12. To what extent do laws that the Kosovo Assembly approves reflect the priorities of citizens and civil society?

- a) to a great extent;
- b) to a small extent;
- c) they don't reflect those priorities;
- d) don't know.

13. Please state any law that you think reflects / doesn't reflect the citizens' priorities.

a) laws that reflect priorities:

b) laws that
don't: _____

14. What is the level of access and participation of civil society representatives at the Assembly plenary sessions?

- a) its access and participation are high and satisfactory;
- b) its access and participation are medium and insufficient;
- c) its access and participation are low;
- c) don't know.

15. Is there sufficient cooperation between civil society and the committees of the Assembly?

- a) yes;
- b) partial cooperation;
- c) no;
- d) don't know.

16. Is there sufficient cooperation between civil society and parliamentary groups?

- a) yes;
- b) partial cooperation;
- c) no;
- d) don't know.

17. Which parliamentary groups have worked more closely with civil society?

- a) parliamentary groups that are in power;
- b) parliamentary groups that are in opposition;
- c) all parliamentary groups;
- d) none of the parliamentary groups.

18. Does the Presidency of the Assembly of Kosovo do enough to assist in facilitating cooperation with civil society?

- a) yes;
- b) to a degree;
- c) no;
- d) don't know.

19. To what extent is civil society involved or consulted in the policy development of laws that are to be drafted?

- a) to a great extent;
- b) to a small extent;
- c) there is no such involvement or consultation;
- d) don't know.

20. Would a greater and more proactive participation of civil society in the legislative process assist in producing more substantial policies?

- a) yes, it would;
- b) no, it would not;
- c) don't know.

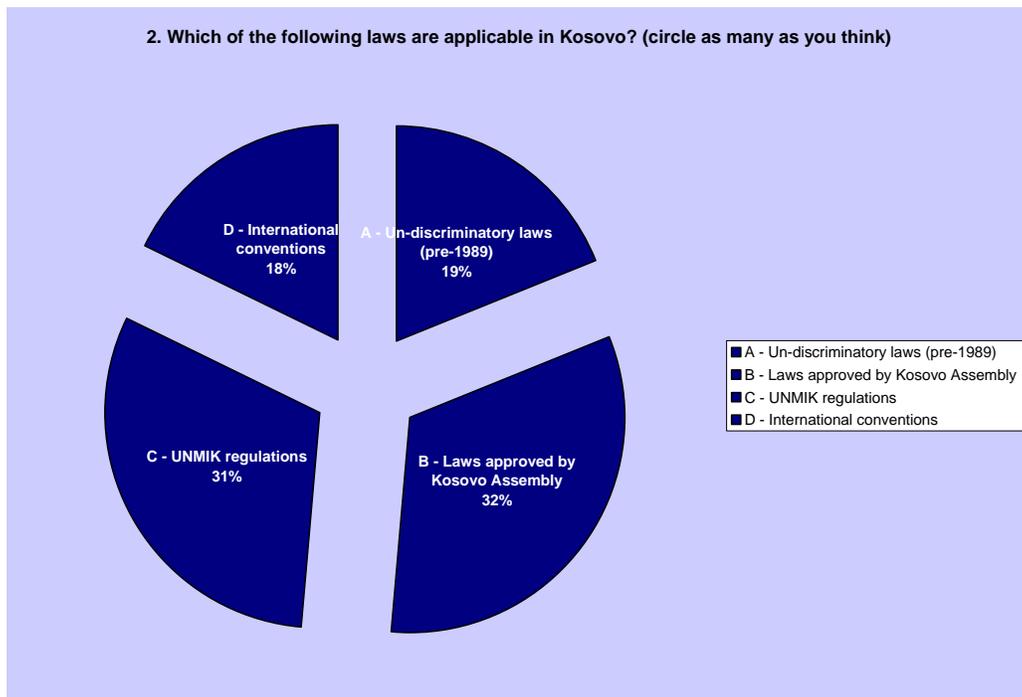
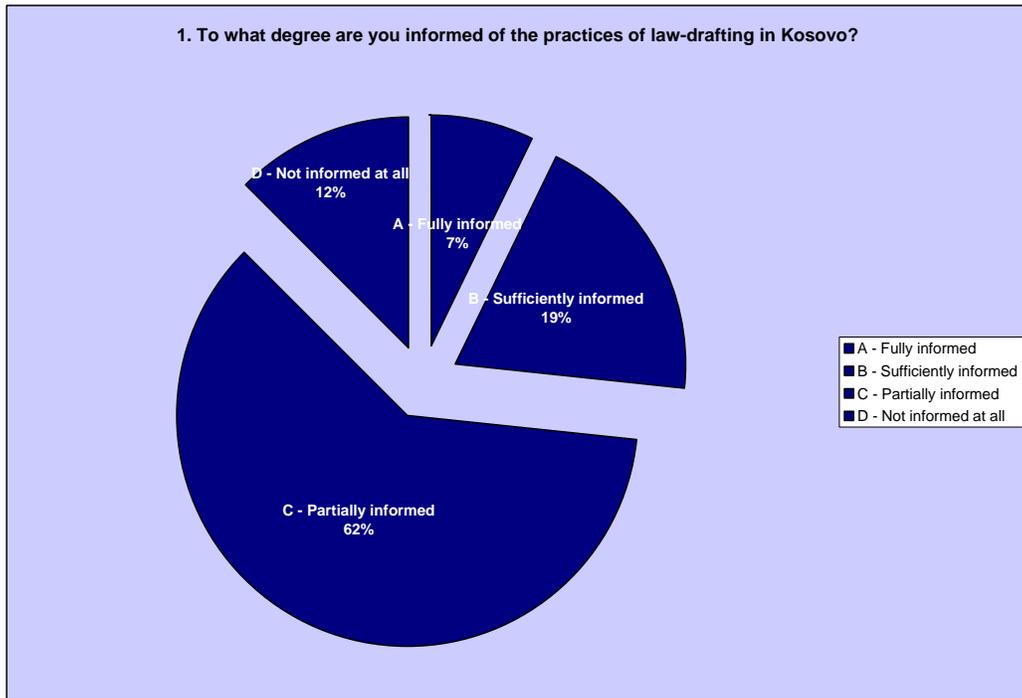
21. What should be done to increase the involvement of civil society in the legislative process? (circle as many as you think)

- a) there should be a special web-page where each draft-law is to be commented/debated;
- b) print and distribute minutes from plenary sessions;
- c) organize public hearings;
- d) other, please state_____.

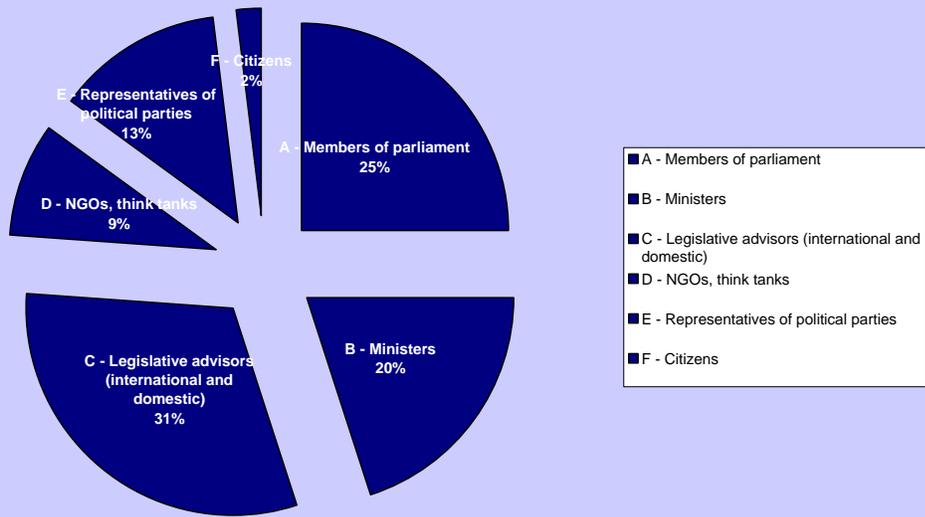
ANNEX 2. List of Interviewees

- Berisha, Qerkin - Human Rights Centre at the University of Prishtina, 27th June 2007
- Çeku, Hajrulla – Forumi 2015, 11th June 2007
- de Courtivron, Hugues – Further Support to the Assembly of Kosovo, European Agency for Reconstruction (EAR), 27th June 2007
- Demolli, Luljeta - Kosova Centre for Gender Studies, 16th July 2007
- Dugolli, Ilir - KIPRED, 10th June 2007
- Efendija, Edi – National Democratic Institute, 22nd June 2007
- Gashi, Vedat - Chief Legal Adviser to the PM, 28th Aug 2007
- Hyseni, Hydajet – Deputy of the Assembly of Kosovo, Chairperson of the Committee for Judicial, Legislative Matters and Constitutional Framework with Sub-committees for Gender Equality, Petitions and Public Complaints and Missing Persons, 11th July 2007
- Kelmendi, Agron – Ombudsperson Institution in Kosovo, 11th July 2007
- Kërveshi, Kujtim - Ministry of Justice, 30th Aug 2007
- Krasniqi, Suzana - Office of the PM, 27th June 2007
- Kryeziu, Ardian – Kosovo Law Centre, 26th June 2007
- Maxhuni, Agron – Ministry of Local Governance in Kosovo, 25th June 2007
- Miletic, Petar - Independent Liberal Party in Kosovo, 11th July 2007
- Pantina, Shqipe - IREX, 17th June 2007
- Qerim, Qerim - Assistance to the PISG for Enhanced EU Compatibility, 18th June 2007
- Shurdhani, Liridon – Kosova Young Lawyers, 10th July 2007
- Vela, Blerim - OSCE Mission in Kosovo, 15th July 2007
- Yagcilar, Mahir – Kosovo Turkish Democratic Party, 11th July 2007
- Zeneli, Fitore – Kosovo Democratic Institute, 20th June 2007

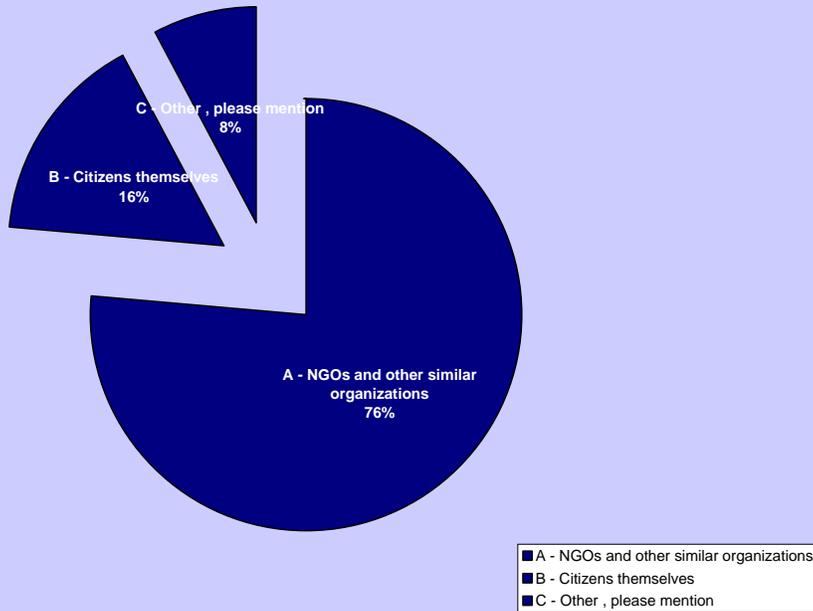
ANNEX 3. Charts of Questionnaire



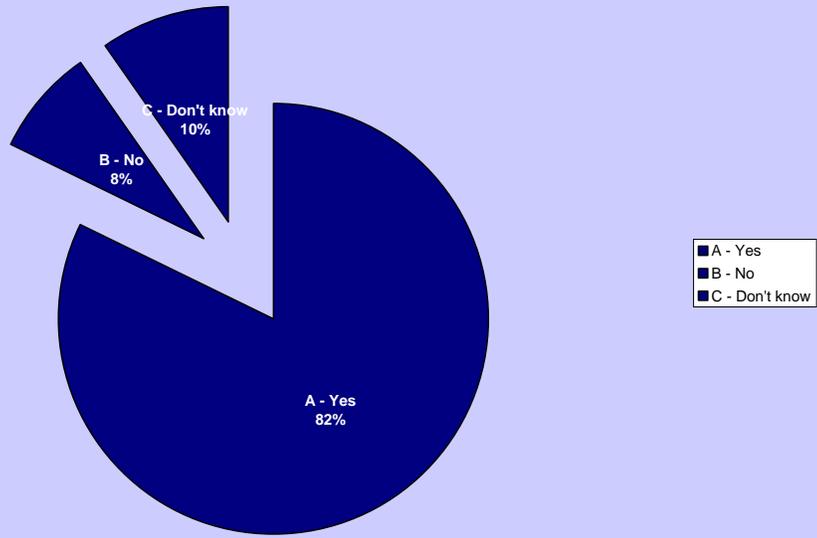
3. Which of the following groupings is involved in the drafting of laws? (please circle as many as you think)



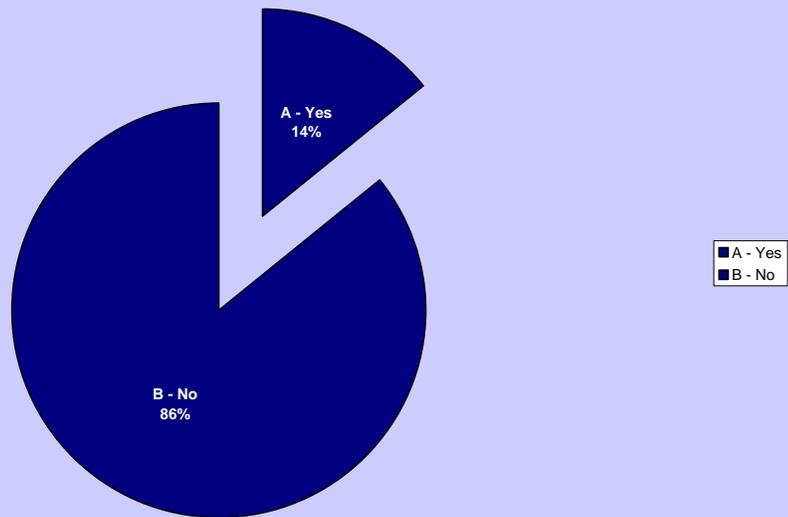
4. Which one of the following is representative of civil society during the drafting of legislation?



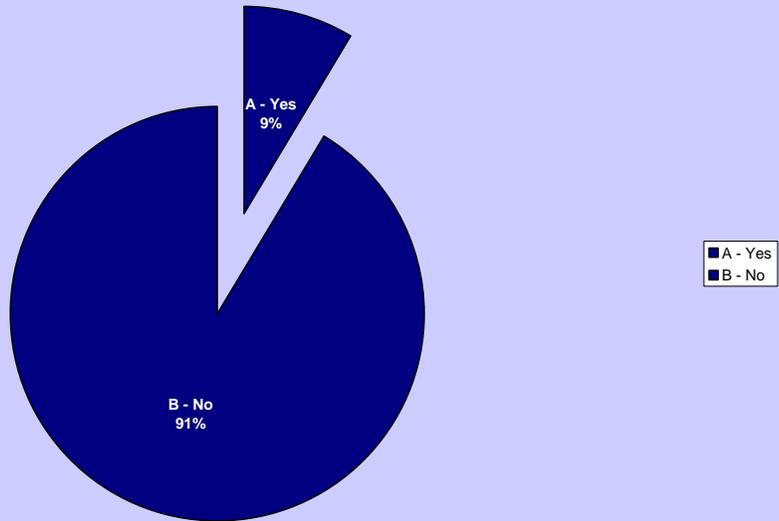
5. Do civil society organisations need to have the right to make legislative proposals?



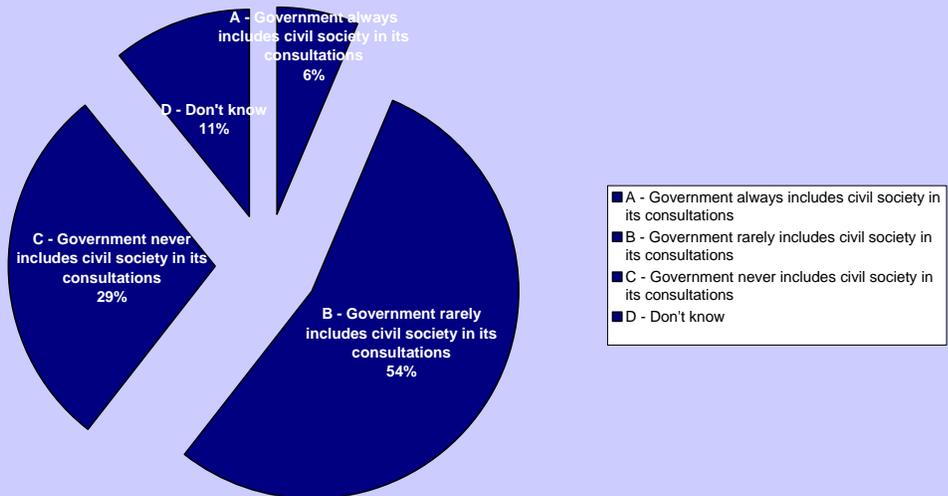
6. Have you (or the organisation you work for) ever taken part at any stage of the legislative proposal?



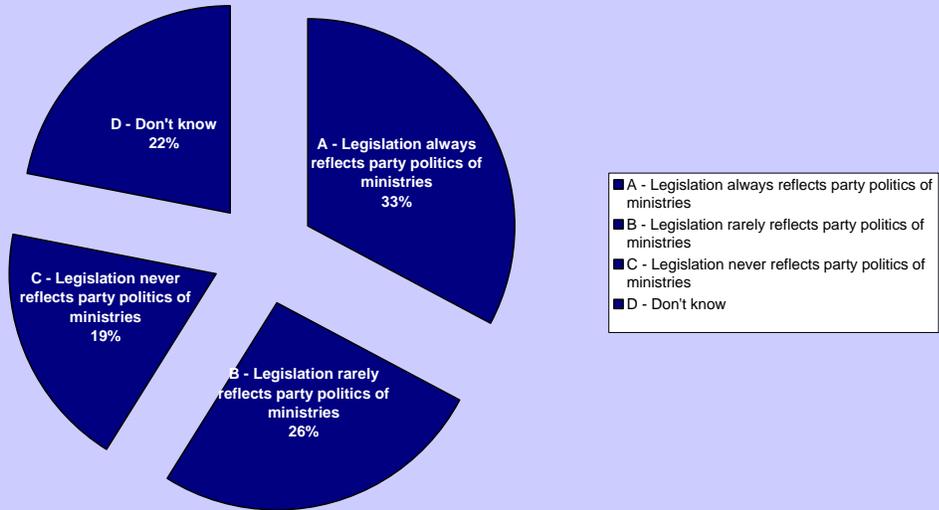
8. Have you ever signed any petition for the Assembly related to you or your community concerns?



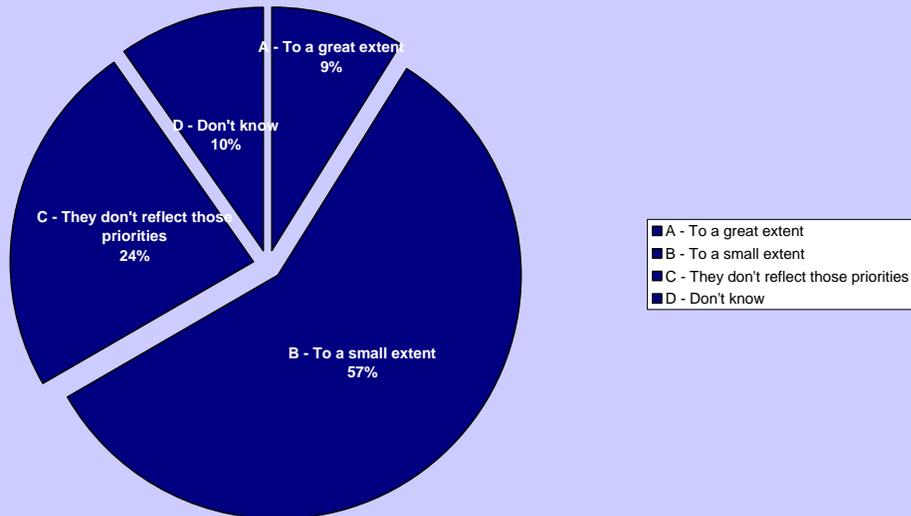
10. To what extent does the government involve civil society in its consultations during the overall legislative process?



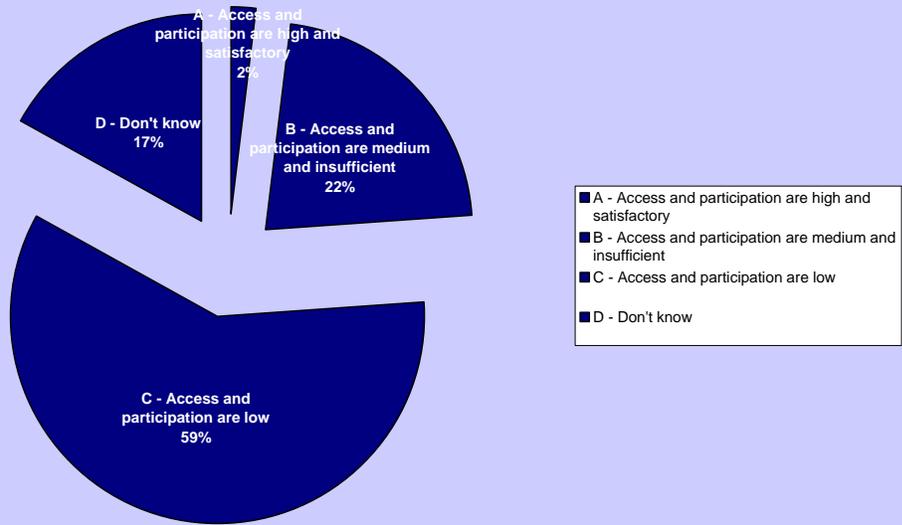
11. To what extent does legislation reflect the party politics of the ministry which is responsible for its drafting?



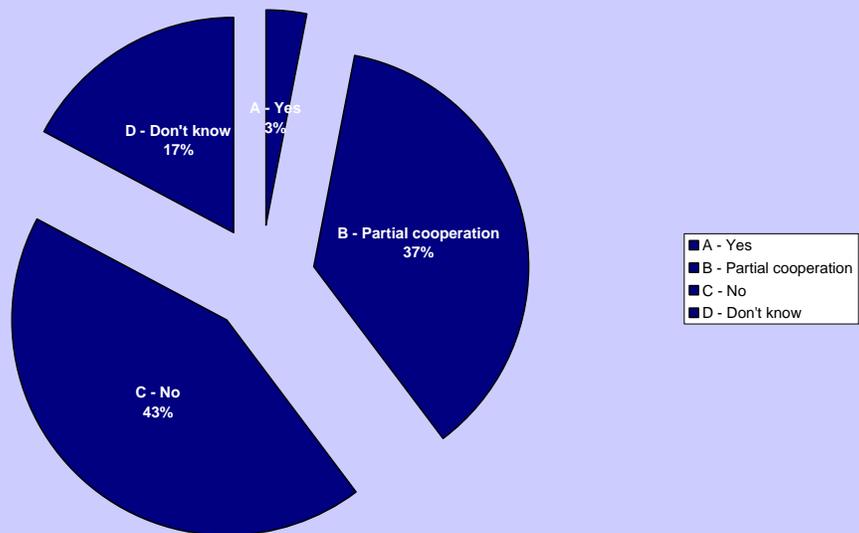
12. To what extent do laws that the Kosovo Assembly approves reflect the priorities of citizens and civil society?



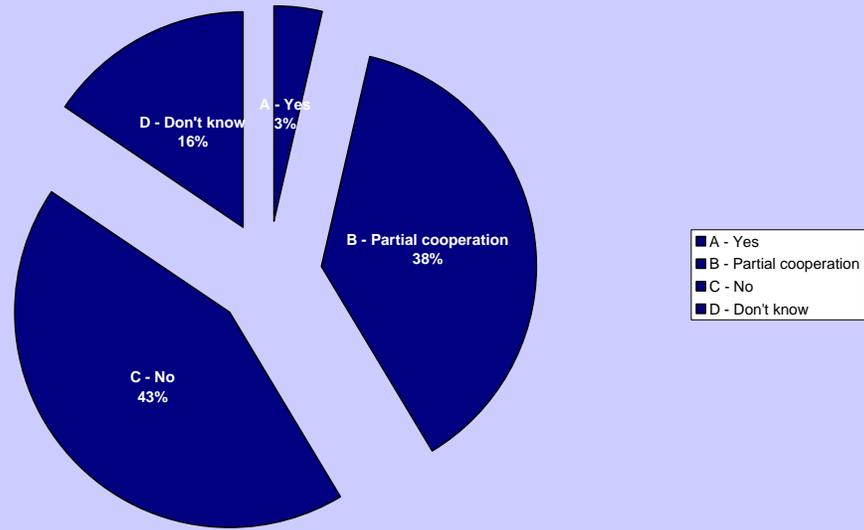
14. What is the level of access and participation of civil society representatives at the Assembly plenary sessions?



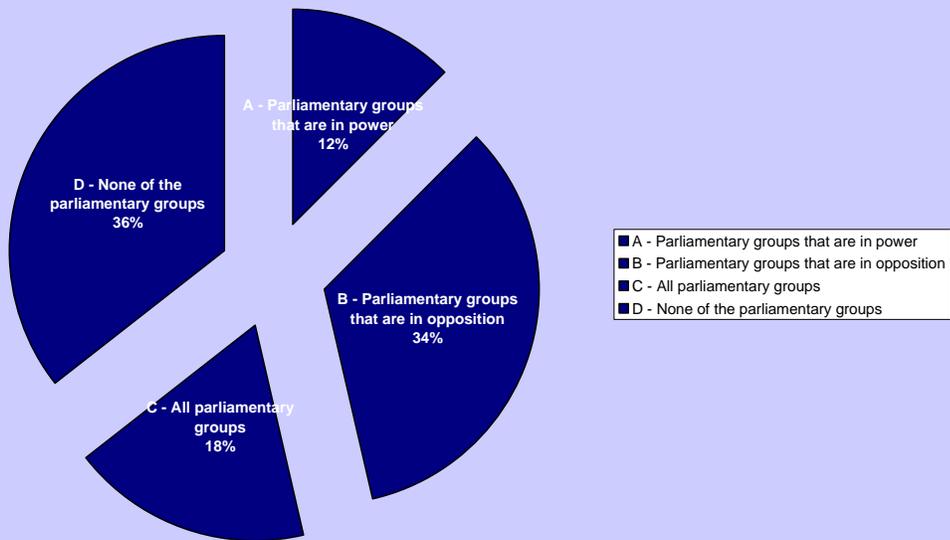
15. Is there sufficient cooperation between civil society and the committees of the Assembly?



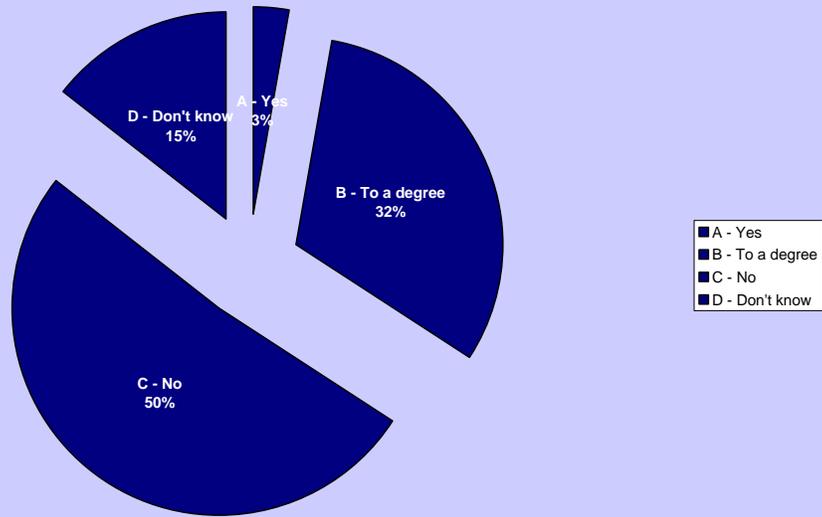
16. Is there sufficient cooperation between civil society and parliamentary groups?



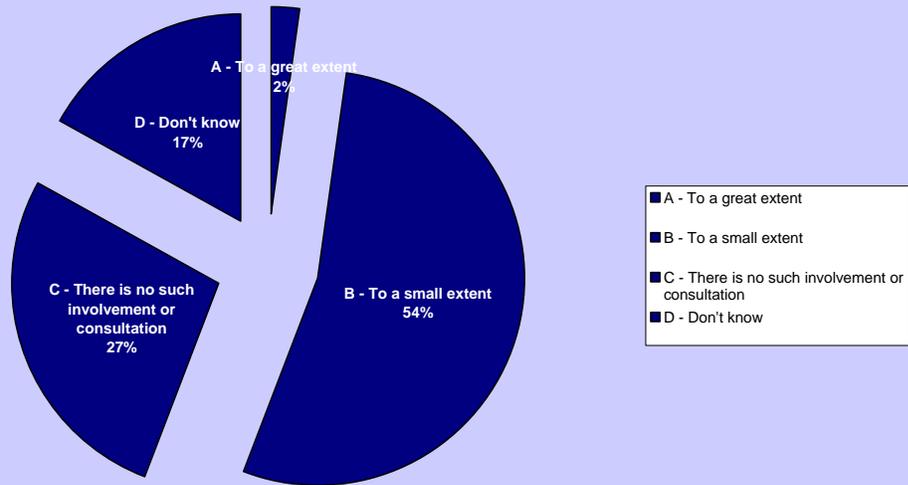
17. Which parliamentary groups have worked more closely with civil society?



18. Does the Presidency of the Assembly of Kosovo do enough to assist in facilitating cooperation with civil society?



19. To what extent is civil society involved or consulted in the policy development of laws that are to be drafted?



20. Would a greater and more proactive participation of civil society in the legislative process assist in producing more substantial policies?

