
WEBINAR
**DEMOCRATIC LAW-MAKING: PRINCIPLES OF LAW-MAKING AND
PUBLIC CONSULTATIONS**



28 OCTOBER 2020

Principles of democratic law-making are strongly rooted in OSCE commitments. Democratic law-making ensures that the process of making laws is open, inclusive and consultative and the resulting laws are human rights compliant. The Supplementary Human Dimension Meeting on Democratic Law-making, held in November 2008, highlighted the importance of a lawmaking process rooted in a democratic system of government as to yield clear, transparent and enforceable legislation.¹ Investing in the proper conduct of legislative processes increases public engagement and civic trust in democratic institutions creating a sense of ownership. It further promotes pluralism, inclusivity and broader diversity, including political participation by women, youth, persons with disabilities, minorities amongst others, and secures involvement of civil society.

Law-making, when done well, supports anti-corruption activities, reinforces good governance, and contributes to international development efforts, including in achieving UN Sustainable Development Goals (especially SDG 16, on peace, justice and strong institutions)². The very integrity of democratic processes correlates with the extent to which the rule of law is observed, including that the law-making process is not arbitrary. Good laws are simply a result of a good law-making procedure.

Still, worrying trends, some of which are usual, recurring and others re-emerging, in law-making processes have made way throughout the OSCE region with authorities using speedy procedures, circumventing guarantees that are put in place to ensure a discussion, and avoiding public consultations. The current pandemic, especially where states have resorted to emergency measures, demonstrate how the limited role of parliaments could accelerate these downward trends and how weak legislative processes are utilized to adopt laws that disproportionately restrict human rights and fundamental freedoms.

OSCE commitments relating to law-making, are concerned with the openness and inclusivity of the process of making laws (1990 Copenhagen Document³, par 5.8, 1991 Moscow Document,

¹ https://www.legislationline.org/download/id/4316/file/SHDM_Final_Report_on_DEM_law_making_2008_en.pdf

² Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Target 16.7 is to 'ensure responsive, inclusive, participatory and representative decision-making at all levels'. See for more information: <https://www.un.org/sustainabledevelopment/peace-justice/>.

³ CSCE/OSCE, [1990 Copenhagen Document](#) provides that legislation will be "adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability",

par 18.1⁴). Participating States also specifically committed to ensure equal opportunity for participation of women in political and public life,⁵ respect the right of persons belonging to minorities to effective participation in public affairs,⁶ to take special measures to enhance the participation of Roma and Sinti, especially of Roma and Sinti women, in public and political life⁷ and persons with disabilities.⁸ Inclusivity and public participation is also recognized as a key principle of decision-making, in other international documents, including the Aarhus Convention 1998 (UNECE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)⁹ and the Bolzano-Bozen Recommendations on National Minorities in Inter-State Relations (HCNM, 2008)¹⁰.

ODIHR has developed considerable insight into the realities of the law-making process in the OSCE region.¹¹ A wealth of experience has been accumulated through ODIHR's legislative assessments and the review of a vast range of legislations to assist lawmakers in undertaking legal reform in areas addressed by human dimension commitments.

The proposed webinar on democratic law-making will seek to address how respect for democratic principles contributes to a good law-making process that strengthens the rule of law and good governance as well as promotes inclusive and diverse democratic societies. The webinar, dealing with the technical nature of the legislative process, will identify the main ODIHR's experiences with law-making assessments in selected OSCE participating States and provide an opportunity to discuss how they can be met, in order to ensure the full enjoyment of human rights and fundamental freedoms. The webinar will devote particular attention to the current trends, both positive and negative, including the challenges and opportunities linked to public consultations. The webinar will also provide a forum for discussion on elements that contribute to a conducive environment for good law-making and opportunities offered by new technologies in this field. The webinar recommendations will support reforms in OSCE participating States which improve the efficiency and transparency of their legislative process; to increase exposure among relevant stakeholders to good practices of other participating States.

⁴ OSCE, [1991 Moscow Document](#) provides that "[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives".

⁵ [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), pars 32 and 44(d).

⁶ See e.g., CSCE/OSCE, [1990 Copenhagen Document](#), par 35.

⁷ See e.g., OSCE, [Annex to Decision No. 3/03: Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area](#), Maastricht, 2003, pars 87-98.

⁸ OSCE, [1991 Moscow Document](#), pars 41.1-41.2, provides to "take steps to ensure the equal opportunity of [persons with disabilities] to participate fully in the life of their society [and] to promote the appropriate participation of such persons in decision-making in fields concerning them".

⁹ See Article 6 of the Aarhus Convention.

¹⁰ See in particular Principle No. 7 which states that: "States should promote the integration of society and strengthen social cohesion. This implies that persons belonging to national minorities are given an effective voice at all levels of governance, especially with regard to, but not limited to, those matters which affect them."

¹¹ <https://www.osce.org/odihr/legislative-support>