



SUPPLEMENTARY HUMAN DIMENSION MEETING

on Democratic Law-Making: Ensuring Participation

26-27 April 2021
(online)

ANNOTATED AGENDA

BACKGROUND

Legislation has a profound impact on everyday life, on people's rights and livelihoods, therefore the manner in which legislation is made is of great importance. The entire system whereby laws are prepared, debated and adopted, as well as their contents, needs to uphold the rule of law. The rule of law "promotes democracy by establishing accountability of those wielding public power,"¹ and serves as a foundation for ensuring the respect and enjoyment of human rights by all. Further, a transparent and accountable law-making process supports anti-corruption efforts, reinforces democratic governance, and contributes to international development efforts, including in achieving the UN Sustainable Development Goals.

Democratic law-making ensures that the process of making laws is open, transparent, inclusive and consultative and the resulting laws are human rights compliant and comply with rule of law and principles of democracy. It further promotes pluralism, inclusivity and broader diversity, including meaningful political participation by women, young persons, persons with disabilities, minorities amongst others, and secures involvement of civil society. Legislative and policy decisions should thus be informed by the recognition of the diversity inherent in societies. In constitutional democracies where laws are made through democratic processes, the process is more than a mechanical function of the legislature.

The guiding principles for ensuring laws are made democratically are strongly rooted in OSCE commitments. The Copenhagen Document (1990) and the Moscow Document (1991) specify that legislation should be "adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability" and that "legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives".² Furthermore, promotion of democratic

¹ Rule of Law Checklist, Venice Commission 106th Plenary Session (CDL-AD(2016)007-e, Venice, 11–12 March 2016.

² 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"; OSCE, 1991 Moscow Document provides that "[l]egislation

governance is an integral part of the commitments undertaken by OSCE participating States, who in the Istanbul Document (1999) pledged to strengthen “their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity”. Further, the Paris Document (1990) held that “democracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially”.

States have further committed to “secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society”,³ as well as to enable non-governmental organizations to contribute to matters of public debate and, in particular, to the development of the law and policy at all levels, whether local, national, regional or international.⁴ Participating States also specifically committed to ensure equal opportunity for participation of persons with disabilities in political and public life,⁵ and to “encourage and promote equal opportunity for full participation by women in all aspects of political and public life”, including in decision-making processes.⁶

ODIHR has developed considerable insight into the realities of law-making processes in the OSCE region.⁷ A wealth of experience has been accumulated through ODIHR’s legislative assessments and the review of a wide range of laws to assist lawmakers in undertaking legal reforms in areas addressed by human dimension commitments.

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”.

3 Maastricht Ministerial Council (2003)

4 Moscow Document (1991), para. 43

5 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”. 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)⁵ and the Bolzano-Bozen Recommendations on National Minorities in Inter-State Relations (HCNM, 2008)

6 Moscow Document (1991), para. 40.8. See also: <https://www.osce.org/files/f/documents/4/3/19575.pdf>.

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

Day 1

15:00 – 16:00 **OPENING SESSION**

Opening remarks

Introductory addresses

Technical Information

16:00 – 18:00 **SESSION I: Open and Inclusive Law-Making**

OSCE commitments define democracy as an inherent element of the rule of law, which is itself founded on the will of the people, expressed regularly through free, fair and credible elections. The commitment to the rule of law is essential for protection and promotion of human rights. Further, a distinctive feature of the OSCE is that it is explicitly founded on the premise that pluralistic democracy based on the rule of law is the only system of government suitable to guarantee human rights effectively.⁸

Openness and inclusiveness are key elements of democratic law-making processes. This requires transparency in the work of parliaments, an important condition for accountability and key for combating corruption through the process of making laws as well as by ensuring that this very body is held to rigorous standards of ethics (OSCE Parliamentary Assembly, Brussels Declaration (2006)). As noted, participating States have pledged to strengthen “their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity” Istanbul Document (1999). The process of law-making, when carried out and implemented in line with the principles of rule of law and democracy, supports good and effective governance and ensures that the laws enacted are human rights compliant.

The legislative process thus creates a platform for dialogue on issues that matter most in society and may foster the expression of multiple voices and perspectives. The legislative process is also an important vehicle for gender mainstreaming. As legislation can have differentiated impact on women, promotion of gender equality values and principles should be a cornerstone of law-making. In this respect it is important to review how legislation and the regulatory framework governing lawmaking can be made more effective, while examining how the policy capacities of governments and parliaments in OSCE participating States can be further developed to ensure that laws and programmes meet the needs of society and are effectively and efficiently designed and implemented.

This Session will focus on the interlinkages of rule of law and democracy and law-making processes, the importance of transparent legislative processes for countering corruption, and the development of gender-sensitive legislation.

⁸ Charter of Paris for a New Europe, 21 November 1990.

Questions for discussion:

- What are the interlinkages between principles of rule of law and democracy and law-making, and how can initiatives for promoting the rule of law contribute to a transparent, open and inclusive legislative process?
- What are key aspects that should be integrated into democratic law-making processes to combat corruption?
- What tools are available to make gender-informed policy decisions and gender-sensitive legislation?

Day 2

10:30 – 12:30

SESSION II: Recent Challenges and Opportunities of Law-Making

The effectiveness of law-making processes correlates with the extent to which democratic principles and rule of law are respected and upheld. In recent years, deficits in upholding democratic principles have emerged and challenges posed by democratic backsliding have come to forefront. This can undermine the very integrity of the legislative processes. It exposes systemic weaknesses, including laws that are poorly drafted, lack of co-ordination among the various state institutions involved in the legislative process and an unbalanced relationship between the legislature and the executive. Safeguards need to be put in place to address the lack of quality in the laws and their failure to meet international norms and standards as a result of a failing or porous legislative process.

ODIHR has directly observed in its legislative assistance activities the impact of laws drafted through expedited processes. Often draft laws are adopted without consultations or analyses of their impact, including from a human rights and gender perspective. In times of crisis, authorities are often inclined or compelled to shorten procedures, circumventing normal legislative processes, adopting laws and policy decisions in an expedited manner, avoiding meaningful discussions and public consultations. While such situations may justify the use of fast and simple legislative processes, even in times of crises, the principles of transparency, inclusiveness and accountability should guide legislative processes to ensure that laws are legitimate and accessible, as well as compliant with human rights and the rule of law. Law-making processes should further include consideration of the unintended consequences and the possible discriminatory impact of the emergency measures themselves, including on women.

With respect to emergency situations, the OSCE Moscow Document (1991) introduces several requirements and conditions for the declaration of a state of emergency. It provides that OSCE participating States ensure that the normal functioning of legislative bodies will be guaranteed to the highest possible extent during a state of public emergency (par. 28.5). States have further committed to “secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society” (Maastricht Ministerial Council (2003)), as well as to enable non-governmental organizations to contribute to matters of public debate and, in particular, to the development of the law and policy at all levels, whether local, national, regional or international (Moscow Document (1991)).

The current Covid-19 pandemic is exemplary of the challenges as well as opportunities states have in this respect. Public authorities across the OSCE region have been facing plentiful challenges and the role of parliaments has become more vital, especially in protecting human rights and fundamental freedoms.

This session gives an opportunity to discuss recent trends in law-making, looking closely at the challenges and opportunities, as well as the elements needed for a good law-making environment. Participants will also discuss legislation in times of crisis, with an emphasis on the ongoing COVID-19 pandemic.

Questions for discussion:

- How can rule of law bring balance between the executive and legislature in the legislative process, and what are the elements that contribute to a good law-making environment?
- What are the challenges for participating States when legislating during times of crises?
- Which good and innovative practices can be discerned from national legislative processes during the Covid-19 pandemic?

14:30 – 16:30

SESSION III: Public Participation and the Digital Space

Public participation is an essential element of democratic law-making processes. Participation through public consultations increases public engagement and trust in democratic institutions, and creates a sense of ownership. Public consultations promote pluralism, inclusivity and broader diversity, and secure meaningful involvement of civil society and special interest groups including trade unions, offering equal opportunities for women and men to participate. Public participation should be a two-way street - used not only to receive input but also to share information with the public. It should be a recurring, integral aspect of the law-making process.

It is a good practice that when initiating fundamental reforms, civil society and other stakeholders are consulted and should play an active part in the process. As such, public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.

It is important to examine how more participatory, deliberative or direct processes of engagement can revitalize and complement existing forms of representative democracy. ICT solutions could help boost public participation and, consequently, enhance understanding and public trust in those delegated to make decisions. At the same time however, the use of new technologies can negatively impact the work of parliaments, if not properly designed. To this end, parliaments need to prioritize principles of transparency, accessibility, openness, and representativeness, whenever adopting ICT solutions, as to maximize the benefits new technologies can offer.

As mentioned the Copenhagen Document (1990) and the Moscow Document (1991) specify that legislation should be “adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability” and that “legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.⁹ In the Istanbul Document (1999) participating States have pledged to strengthen “their efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity”.

This session will center on meaningful public participation in the law-making process. Participants will also debate the potential the use of digital tools has for promoting consultative law-making, helping to increase public trust in the democratic decision-making process, as well as for vocalizing underrepresented voices.

Questions for discussion:

- What is meaningful public participation in the context of law-making, and what conditions should be met?
- How can inclusion be made an integral part of legislative processes, to have more informed legislative responses and work to counteract biases? How can new technologies contribute to a more inclusive law-making process?
- What has been the impact of the use of digital tools in the promotion of consultative law-making and what can be learned from states’ experiences?

16:30 – 17:30

CLOSING SESSION

Rapports from the working sessions
Comments from the floor
Closing remarks

17:30

Closing of the meeting

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⁹ 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”; 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”.