



SUPPLEMENTARY HUMAN DIMENSION MEETING ON DEMOCRATIC LAWMAKING

**6 - 7 November 2008
Hofburg, Vienna**

ANNOTATED AGENDA

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A distinctive hallmark of the OSCE is that it is explicitly founded on the premise that “democracy is the only system of government¹” for all of its participating States. 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 and fair elections. The commitment to the rule of law links the promotion of human dignity with the development of a system of rights through law.

Against this backdrop, lawmaking cannot be seen as an activity for specialists and experts only. Law is an essential element of democracy, and lawmaking can only be democratic if it is based on the free will of the people, on the one hand, and a range of checks and balances, on the other. It is essential to have a system based firmly on the rule of law, where laws are clear and transparent, apply equally to all and are designed and adopted through democratic procedures.

Everyday lawmaking is part of a historical process, embedded in the specific traditions of individual States. With the current trend to greater uniformity of law, attributable to factors such as globalization, many OSCE participating States are engaged in an unprecedented lawmaking effort and are undertaking significant overhauls of their legal structures, systems and frameworks. Legal reform in any democracy is a major endeavor replete with potential pitfalls. In younger democracies, the challenges are even greater. Concerns about the quality and impact of legislation are universal, and the way in which legislation is prepared and enacted is increasingly the object of scrutiny throughout the OSCE region. In particular, there is a developing understanding that both the content of legislation and the methods by which it is made must be more responsive to the

¹ Charter of Paris for a New Europe, 21 November 1990.

environment in which it is to operate. Experts and practitioners are calling for improved and more systematic methods of lawdrafting.

Calls have therefore been made to develop and implement more organized regulatory frameworks for drafting legislation. Legislation should emerge as the result of a planned and co-ordinated process which is structured to provide adequate time for preparation, consultation (inside and outside government), and parliamentary consideration. Above all, the legislative process needs to be considered in its entirety, not as a series of separate processes.

Even a technically excellent lawmaking system cannot operate effectively without a culture of openness and transparency within the government. In this regard, special attention needs to be paid to the contribution of civil society. If democracy is to be measured against the yardstick of its ability to respond to the demands and needs of society at large, an effective interaction with civil society and various interest groups is essential. This requires transparency in the work of governments and parliaments. More than a proper regulatory framework, what is needed is a culture of inclusiveness, enabling the authorities to give consideration to various views and interests during policy and lawmaking processes. It is important to examine how more participatory, deliberative or direct processes of engagement can revitalize and complement existing forms of representative democracy.

In addition to a public and transparent process, it is necessary that the legislation itself be made accessible. Information is the oxygen of democracy. Only if citizens are informed about what is being done on their behalf can they meaningfully take part in the affairs of the society. In that sense, access to law and democratic lawmaking are two faces of the same coin. In modern democracies, the public authorities are under an obligation to provide for access to legal norms. In this regard, new technologies have created opportunities for sharing information, but need to be adapted to the conditions of specific OSCE participating States. Among these solutions should also feature initiatives of the international community to empower legislators by providing information on the legal solutions adopted by other participating States.

Session I: Lawmaking in a Democratic System of Government: Transparency and Efficiency

A legislative process which is transparent, predictable and responsive to the needs of the population is the best means of ensuring enforceable and effective legislation. The process whereby laws are drafted and adopted is as important as the content of these laws. There are no good laws “on paper”, but only good laws in real life. In that sense, a good law requires a participatory approach aimed at tailoring the law to the realities and ensuring the best conditions possible for effective implementation of the resulting legislation.

Yet concerns about the quality and impact of legislation are widespread across the OSCE region. Too often the enactment of legislation is seen as the end of the legislative process. This reflects an overestimation of the significance of legal norms. This situation has generated a degree of reform fatigue in many participating States, which often accompanies the equally widespread recognition of the need for further reform.

Against this backdrop, the way in which legislation is prepared and enacted has come under scrutiny in many places. There is a growing understanding that the quality of legislation – its effectiveness and efficiency – largely depends on the quality of the process through which it was prepared and developed. This has several practical implications that were emphasized in the OSCE *Copenhagen* and *Moscow documents*. The *Copenhagen document* states that legislation shall be “*adopted at the end of a public procedure*”, that “*regulations will be published, that being the condition for their applicability*” and that they “*will be accessible to everyone*”. The *Moscow document* further stipulates 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*”. Consequently, democratic lawmaking requires an approach whereby both the content of legislation and the methods by which it is made are responsive to the environment in which the given law is to operate. As a result, improved and more systematic methods of lawmaking have been adopted or recommended in a growing number of participating States. Underlying such recommendations is a recognition of the need to manage the legislative process in its entirety, as opposed to managing different phases in isolation from one another.

This Session will focus on how legislation and the regulatory framework governing lawmaking can be made more effective. Participants will examine the practical steps needed to further develop the policy capacities of governments and parliaments in OSCE participating States and to ensure that laws and programmes meet the needs of society and are effectively and efficiently designed and implemented.

Issues to be discussed:

- *Legislative policy development*: How is the need for legislation assessed? Are alternatives to legislation given consideration? What are the checks performed when considering draft legislation (regulatory checks, cost assessment, implementation checks, etc)?
- *Legislative programming and budgeting for drafting*: What is the process for developing and approving an overall programme of legislation?
- *Drafting procedures*: What are the tools and techniques required to draft legislation and which are best suited to the needs and the local conditions? What level of specialization and expertise is required from law drafters? How are they trained?

- *Co-ordination of legislative preparation:* How can the effectiveness of relations between the legislature and the executive be improved?
- *Non-governmental consultation:* How can the lawmaking process become more transparent to affected groups? How can government be enabled to become responsive to the needs and interests of these persons or groups?
- *Access to legislation:* How can ready access to legislation be secured? How can techniques be developed which ensure the availability of legislation in a timely and responsive manner? What procedures are used for registering, archiving and authenticating legislation?
- *Monitoring the implementation of legislation:* What mechanisms are foreseen for monitoring the implementation of legislation adopted? How can these mechanisms be used to encourage or improve compliance with the legislation?
- *Best practices and lessons learned:* What legislative assistance programmes in the OSCE region have effectively provided support to home-grown legislative reform efforts aimed at increasing the efficiency and transparency of the legislative process?

Session II: Ensuring Inclusiveness in Democratic Lawmaking

Transparency requires public deliberations, and such deliberations are a necessary prerequisite for a functioning democratic government. While the ultimate test of democratic governance takes place at election time, democracy is also about the responsiveness of governments to the demands and needs of society at large, which presupposes an effective interaction with civil society and various interest groups as well as the ability to take various views and interests into consideration in policy and lawmaking processes. In this regard, transparency in the work of the executive and legislative branches of the government is crucial to responsiveness. The more citizens understand how their government operates and makes policy, the more likely they are to give input. In turn, the more the citizen provides input to governance, the more likely governments are to be in tune with the public and to respond to its concerns and needs. New debates are emerging about whether and how more participatory, deliberative or direct processes of engagement can revitalize and complement existing forms of representative democracy.

This Session will take stock of the international assistance initiatives taken to empower civil society organizations to effectively contribute to strengthening democratic legislative processes. The discussion will also explore how representative forms of governance can be complemented with more direct citizen involvement, which, in turn, may further enhance accountability. In this respect, an overview of emerging practices, new opportunities and recurrent challenges across the OSCE region will help discern which approaches might best contribute to a more democratic lawmaking.

Issues to be discussed:

- *Interface between government and civil society:* How does government interact with civil society throughout the lawmaking process? How systematic are consultations on legislation? Are there procedures in place to this effect and established bodies permitting such consultations? How is it determined which legislation requires consultations and how are these consultations organized? What are the methods used to make draft legislation publicly accessible? In general, how can greater public acceptance of legislative proposals be developed?
- *Interface between parliament and civil society:* How do parliaments interact with civil society throughout the lawmaking process? How systematic are consultations on legislation and at which stages are they taking place? Are there procedures in place to this effect? Is the use of public hearings a well-established practice? Are committee proceedings open to the public? Are plenary sessions open to the public? Is public broadcasting of plenary sessions a useful means of increasing transparency? How is it determined which legislation requires consultations and how are these consultations organized? What are the methods used to make draft legislation publicly accessible?
- *Interface between political parties and civil society:* How do political parties interact with civil society? What consultation mechanisms and cooperation models provide a transparent, effective and fair exchange of opinions and priorities? How can political parties increase the public's trust in their work?
- *New forms of engagement:* Are there new ways and opportunities of linking citizens and states, ranging from traditional citizen consultation methods (e.g. hearings) to a vast array of more innovative forms of public participation and deliberation?
- *Best practices and lessons learned:* What legislative assistance programmes have effectively contributed to increasing transparency of the legislative processes in the OSCE region?

Session III: Access to Law

As much as the process whereby legislation is being developed must be public and transparent, also legislation itself needs to be made accessible to the public. Access to law is an essential element of a State governed by the rule of law. The public authorities are under an obligation to provide for access to legal norms. Implicit in freedom of expression is the right of the public to open access to information and in particular, to know what governments are doing on their behalf – a precondition for public participation. In the realm of the OSCE human dimension, this was formulated through the linkage established between “*the right of the individual to know and act upon his rights and duties*” and the commitment of participating States to “*publish and make accessible all laws,*

regulations and procedures relating to human rights and fundamental freedoms.”²

Access to law and legislative transparency run parallel to one another. In this regard, the *Copenhagen document* provides that legislation shall be “*adopted at the end of a public procedure*”, that “*regulations will be published, that being the condition for their applicability*” and that they “*will be accessible to everyone*”³.

Apart from the traditional means of publicising laws such as official gazettes, information technology is now extensively used to provide wide-ranging possibilities for electronic access to legal texts. The management of the system of official legal publications, including by electronic means, accordingly constitutes a major component of the access to law policy. It is essential to promote practical solutions which can be realistically implemented in different social, political and legal systems.

Furthermore, the concept of access to law should be understood as including access by legislators to good practices and legislative precedents from other participating States. In many participating States, the challenges faced by legislators do not differ significantly, particularly when the legislation under consideration pertains to issues regulated in ratified international treaties and conventions and/or when there is no precedent in the domestic jurisdiction. However, the scarcity of legal resources available to legislators continues to constitute an impediment.

Discussion in this session will focus primarily on how public access to laws is regulated in law and practice across the OSCE region and how greater access to this information can help strengthen a culture of openness and transparency, which, in turn, bolsters citizen trust and participation in public affairs. Participants will also exchange views on the opportunities available to the lawmakers for accessing examples of good practice from other participating States.

Issues to be discussed:

- *Access to legislation and case-law*: How can laws and regulations be made publicly accessible? How can public access to draft legislation be assured? What are the experiences in giving constitutional and/or legislative recognition to freedom of information in general and access to law in particular? How can costs be reduced so as not to constitute a barrier to the access of individuals, media, interests groups and civil society to legislation? What are the systems employed in OSCE participating States to reduce such costs? How can new technologies facilitate public access to laws and regulations? What limitations to

² Concluding Document of the Vienna Meeting, Third Follow-up Meeting to the Helsinki Conference, Vienna 1989, Questions Relating to Security in Europe: Principles, paragraph 13.4.

³ Copenhagen document, 1990, paragraph 5.8.

access to legislation are permissible under national and international law? How are laws and regulations made accessible in participating States where more than one language is in use? How can access to court decisions and to local government legislation be assured?

- *Access to legal solutions applied in other jurisdictions:* How can the exposure of legislators to legal solutions which have proved successful in other jurisdictions be assured? How can the legal space in which policy- and lawmakers operate be broadened? How can they be empowered through broader access to precedents and solutions in use in other participating States? How can co-operation among international organizations providing legal advice on national legislation be strengthened to avoid unnecessary duplications and the best use of resources?
- *Best practices and lessons learned:* What legislative assistance programmes have effectively contributed to increase access to law in the OSCE region?