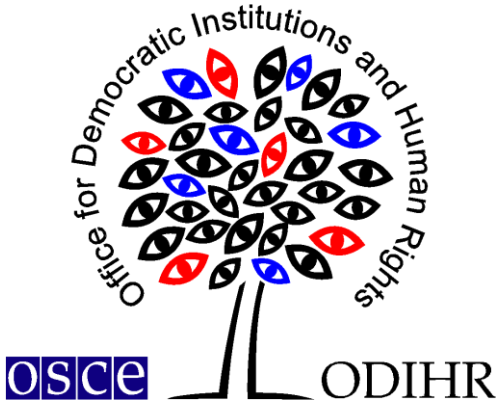
Warsaw, October 2015 Legis Paper-Nr.: 276/2015 [YA] www.legislationline.org	

ASSESSMENT
OF THE LEGISLATIVE PROCESS
IN THE KYRGYZ REPUBLIC

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INTRODUCTION

BACKGROUND

1. By letter of 4 November 2014, the Head of the Presidential Administration of the Kyrgyz Republic asked OSCE/ODIHR to conduct a comprehensive assessment of the law making process in the Kyrgyz Republic (the "Assessment"). The request followed an earlier preliminary assessment of the normative framework, i.e. the constitutional and legal framework governing the law making process in the Kyrgyz Republic, carried out by OSCE/ODIHR at the request of the OSCE Centre in Bishkek[1]. The Preliminary Assessment of the Legislative Process in the Kyrgyz Republic ("the Preliminary Assessment") was officially launched in June 2014, at an event attended by key counterparts from the Jogorku Kenesh (Parliament), the Government, the Presidential Administration and civil society.

2. On 7 January 2015, in response to the letter of 4 November 2014, OSCE/ODIHR and the Presidential Administration of the Kyrgyz Republic signed a Memorandum of Understanding (MoU) in which OSCE/ODIHR undertook to conduct a comprehensive assessment of the law making process, which would result in a report with general recommendations for reform ("Assessment Report"). In the MoU, OSCE/ODIHR, with the support of the OSCE Centre in Bishkek, also undertook to organise up to four thematic workshops on different aspects of the law making process, aimed at developing additional recommendations to supplement those already made in the Assessment Report. It was agreed that based on the recommendations from the Assessment Report and thematic workshops, OSCE//ODIHR would facilitate the preparation of a Regulatory Reform Roadmap for the Kyrgyz Republic, with concrete action points for reform.

3. This Assessment examines whether the law making process in the Kyrgyz Republic conforms to key standards and OSCE commitments on democratic law making, as part of the combined efforts of the OSCE Centre in Bishkek and OSCE/ODIHR to provide assistance to strengthening and improving the law-making process. As a first step, an OSCE/ODIHR team of experts and staff travelled to Bishkek on 16-21 February 2015 to interview senior officials from the Jogorku Kenesh and Government, and other relevant interlocutors, on the law making process (for more information on the interviewed interlocutors, see Annex 2 to this Assessment). The OSCE/ODIHR team is grateful to all those who took the time to meet and share their expertise.

SCOPE OF THE ASSESSMENT

4. The Assessment describes the current constitutional, legal and organizational

[1] The 2014 Preliminary Assessment of the Legislative Process in the Kyrgyz Republic can be found at http://legislationline.org/search/runSearch/1/category/93.

framework governing the law making process in the Kyrgyz Republic, analyses some particularly critical aspects and identifies those elements of the law making process that it considers to be in need of reform. It is based on the 2014 Preliminary Assessment, and on field interviews conducted by the OSCE/ODIHR team of experts and staff in February 2015 with pre-identified interlocutors from the Presidential Office, the Government, the Jogorku Kenesh, and civil society, among others. Prior to the interviews, questionnaires were sent to the interlocutors from Government and Parliament outlining the purpose and scope of the visit.[2] The purpose of the field interviews was to gather information on the actual practice of law making in the Kyrgyz Republic against the background of the Preliminary Assessment. The information gathered in the above manner was then analysed in the light of generally accepted law-making standards, in particular those set out in OSCE commitments on democratic law making[3].

5. The Assessment presents a detailed description of the current constitutional, legal and organizational framework of the legislative process in the Kyrgyz Republic, based mainly on an analysis of the Constitution, relevant domestic legislation and other official documents. It is, however, limited in scope as not all Kyrgyz laws and secondary legislation were taken into account, but only a selection of those that were considered relevant for the purposes of this Assessment.

6. The Assessment is based on unofficial English translations of the relevant legislation and documents; errors from translation may consequently result. It is also possible that amendments of key laws that were introduced after March 2015 have not yet been taken into account in the English translations of these laws.

7. In view of the above, OSCE/ODIHR would like to emphasize that this Assessment is without prejudice to any description, analysis or written and oral recommendations and comments to the related legislation and legislative process that OSCE/ODIHR may make in the future.

MATERIALS ANALYSED

8. The Assessment is based on non-official English translations of the following legal texts:

   - Constitution of the Kyrgyz Republic of June 27, 2010 (hereinafter, "the Constitution")

[2] The questionnaires are included in Annex 3 to this Assessment.

[3] The OSCE Copenhagen Document 1990 reads that "[The participating States] recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.", while the OSCE Moscow 1991 states that "(18.1) 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."

- Law of the Kyrgyz Republic on Normative Legal Acts of April 20, 2009 (hereinafter, the "Law on Normative Legal Acts")
- Constitutional Law of the Kyrgyz Republic on the Government of the Kyrgyz Republic of June 18, 2012 (hereinafter, the "Law on Government")
- Rules of Procedure of the Government of the Kyrgyz Republic of January 26, 2011 (hereinafter, the "Rules of Procedure of the Government")
- Rules of Procedure on Legal Drafting by the Government of the Kyrgyz Republic of October 24, 2012 (hereinafter, the "Rules of Procedure on Legal Drafting")
- Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic of October 14, 2011 (hereinafter, the "Rules of Procedure of the Jogorku Kenesh")
- Guidelines on Legal Drafting approved by resolution of the Jogorku Kenesh of June 8, 2006 (hereinafter, the "Guidelines on Legal Drafting").
- Standards for Conducting Certain Types of Specialised Impact Assessment of Draft Laws in the Jogorku Kenesh of the Kyrgyz Republic approved by resolution of the Jogorku Kenesh of January 18, 2008 (hereinafter, the "Standards for Conducting Certain Types of Specialised Impact Assessment")
- Methodology for Regulatory Impact Assessment on Business Activity approved by Resolution No 559 of the Government of the Kyrgyz Republic of September 30, 2014 (hereinafter the "Methodology for Regulatory Impact Assessment").

EXECUTIVE SUMMARY

10. This Assessment is firmly based on the consideration that any reform should be conceived by the Kyrgyz authorities, rather than handed down by the international community. Moreover, such reforms should be embarked upon only after a full process of consultation with all relevant and interested stakeholders; this is the only way to ensure that possible modifications will fit the specificities of the local legislative and political cultures. For this reason, the Assessment does not make specific recommendations for reform, but rather identifies areas where progress may be sought.

11. The Assessment is a situational analysis of the formal procedures and the actual practices whereby legislation in the Kyrgyz Republic is prepared, drafted and enacted. It discusses the main features of the law making process in the country and identifies current concerns. The Assessment also identifies a number of goals to be

achieved before the law making system will be able to function efficiently and result in high quality legislative outcomes. In light of its analysis, the Assessment makes a number of general recommendations for reform, which aim to enhance the effectiveness, efficiency, transparency, and accountability of the law making process. It also outlines a strategy whereby reform of the law making process may be pursued, with OSCE/ODIHR assistance, insofar as this is deemed both appropriate and desirable.

12. The normative framework governing the law making process in the Kyrgyz Republic appears to be clear and consistent; there are no obvious inconsistencies between the various texts or what might be described as major gaps. There are a number of issues, however, which the Kyrgyz authorities may wish to consider in the light of this Assessment:

13. **The machinery of legislative planning.** Overall, proper legislative planning seems to remain a challenge. Overall, the legislative planning process, as it emerges from the Assessment, is not sufficiently comprehensive. One explanation for this is that the time allowed for the preparation of laws included in the legislative plan of the Government – typically three months – is unrealistically short. Moreover, ministries allegedly prefer to not include potential initiatives in the legislative plan, so that they will not be seen as having failed to achieve their priorities as set out in the plan in case of delays. Reportedly those civil servants that are found "responsible" for such delays, may be held liable for such a failure and may receive, for instance, written warnings. The time allocated for the scrutiny of legislative initiatives is likewise deemed too short, both within the Government and within the legislature.

14. **Frequent amendments to legislation.** The high frequency with which laws are amended in the Kyrgyz Republic, together with reports on the lack of proper implementation of laws and the high number of *ad hoc* draft laws produced, indicates that legislative projects are not always sufficiently thought through at the outset, and then need to undergo numerous revisions. Further, laws are sometimes amended in a manner contrary to the concept or principle on which they are based.

15. **Insufficient policy making at the initial stage of the legislative process.** There appears to be insufficient emphasis on policy making as opposed to law drafting in the preparatory phase of law making. To start out, there is a need for a better understanding of the importance of good policy making for good law making. The current policy making process would thus benefit greatly from further development and systematization. Action plans or legislative agendas cannot be substitutes for proper policy making. The preparation of a law in the Kyrgyz Republic appears to typically start with the drafting of a text, with insufficient consideration being given to the policy to which the text is intended to give effect. In addition to the fact that policies in support of proposed legislation are not discussed or developed in detail prior to preparing legislation, an overwhelming emphasis seems to be put on legislation as the principal, if not the only means of achieving policy goals.

16. **Regulatory impact assessment.** Although the Government and the Jogorku Kenesh stakeholders recognize that regulatory impact assessment is an essential part of the formal legislative process, such assessments do not seem to always be implemented in an effective way. Assessments are also typically carried out *after* a law has already been drafted, at which point they tend to serve more as a means of justifying decisions that have already been taken rather than as an aid to evidence-based policy making. Furthermore, the Government and the Jogorku Kenesh lack sufficient human resources to conduct regulatory impact assessment in an adequate manner. Explanatory notes attached to draft legislation therefore tend to remain quite basic, and often do not provide proper information on the reasons for preparing the draft law, or on cost and other impact assessments undertaken. This is a widespread practice, both in the Government and in the Jogorku Kenesh that needs to be addressed.

17. **Inter-institutional co-ordination.** Based on the interviews with stakeholders, there is a lack of effective co-ordination between the Jogorku Kenesh and the Government (and within the Government). Draft laws prepared as part of the Government's programme are apparently at times delayed at the parliamentary level, while in other cases, (scarce) parliamentary time is taken up with the discussion of laws that reportedly have little prospect of being passed or which fail to meet minimum standards of quality. Further, there are reportedly instances when draft laws prepared by a ministry and state agency are submitted to the Jogorku Kenesh by Members of the Jogorku Kenesh, thereby by-passing the Government's approval process. If laws prepared by parts of the executive are to be introduced to the Jogorku Kenesh via Members of the Jogorku Kenesh, this should be done based on an official Government decision, and not by an individual ministry or state agency.

18. **Public participation.** The law making process as a whole does not appear to be sufficiently inclusive and transparent. Public discussion or consultation on draft laws takes place once they have been prepared, but not systematically or in a manner calculated to engender confidence among stakeholders and the public. There is a lack of public consultations at an earlier, pre-legislative, stage, in particular before the main lines of policy and draft legislation have been determined. Moreover, the lack of feedback on the outcome of consultations is a source of frustration for stakeholders and the public and a disincentive to participate in the process. Overall, there is no comprehensive approach to public consultation, meaning no regulatory framework outlining the procedure for consulting stakeholders, and no proper methodology or guidelines to explain this process in detail. Time constraints in the legislative procedure additionally affect the ability to conduct consultations properly, both on the side of the Government and on the side of the Jogorku Kenesh.

19. **The role of Government and of Members of the Jogorku Kenesh in the law making process.** There is no agreement between the political parties or factions represented in the Jogorku Kenesh over the role of the Government and of Members of the Jogorku Kenesh in the law making process. Currently, Members of the

Jogorku Kenesh appear to be responsible for submitting a larger percentage of legal proposals for adoption than is customary in many parliamentary democracies. This creates at the very least an urgent need to ensure that the same standards of preparation and assessment before enactment apply to laws drafted by Members of the Jogorku Kenesh as apply to laws drafted by the Government. The high number of draft laws initiated by Members of the Jogorku Kenesh outside the Government's legislative programme inevitably impacts negatively on the level of strategic legislative planning in the Kyrgyz Republic. This is due to the fact that law makers, due to their mandates, are not as involved in legislative planning and reform strategies as the Government.

20. **Law drafting.** Specialist resources in legislative drafting appear to be in short supply, with serious implications for the quality of the laws that are drafted and adopted. A greater concentration of specialist skills and resources for legal drafting is thus required within the Government, including individual ministries, and more guidance on drafting is needed. Currently, there are no written guidelines or manuals on legal drafting, to supplement the Law on Normative Legal Acts, even though there are guidelines for developing secondary legislation. So far, it is not clear whether sufficient efforts have been invested in making legislation clear and unambiguous and ensuring that its language is understandable for the lay person. The need to prepare legal texts in two languages (Kyrgyz and Russian) aggravates these pressing challenges; reportedly, there are problems with the quality of the Kyrgyz texts of numerous laws. Next to the lack of specialist drafting resources, there also appear to be few professional development opportunities, e.g. training opportunities for the existing staff. As far as the professional training in legal drafting techniques is concerned, the learning process for drafters is frequently confined to "learning by doing", although some welcome initiatives have been taken to replenish this gap. The legislative work of both the Government and the Jogorku Kenesh suffers from a lack of human resources to provide adequate technical support to relevant stakeholders in the legislative procedure.

21. **Alternatives to legislation.** One consequence of the lack of effective policy making is that there is too much emphasis on legislation as the principal, if not the only means of achieving policy goals. Currently, the law making process appears to be focused more on preparing and adopting legislation, rather than on open-ended policy and strategy discussions that would also contemplate alternative, non-legislative solutions to pressing issues. It is likely that far too many issues are being resolved through the adoption of laws, even in cases where they would be better achieved by other means. Alternative instruments could include more flexible, less traditional regulations, which are performance-based and include relevant incentives to ensure efficiency. Overall, policy makers should be allowed to develop their own approach to achieving the desired outcomes.

22. **Problems with the implementation of laws.** The problem of insufficient implementation of laws appears to be widespread. This may be due to shortcomings in the laws themselves, which is to be expected given the considerable pressure under which they appear to be prepared and enacted. However, other factors may play a role here as well, such as the alleged lack of independent judicial review of the validity of legislation. Reportedly, there are pieces of legislation which are in conflict with the legislation that they are meant to implement; however, competent courts have allegedly not become involved in the review of such legislation.

23. The Assessment, in light of its findings above, makes the following recommendations:

A. It is recommended that the Kyrgyz Government and the Jorgorku Kenesh articulate unified standards that should be observed in the preparation, assessment and enactment of legislation. The same standards should apply to all laws, regardless of whether they are prepared by the Government or by Members of the Jogorku Kenesh. Compliance with those standards should be monitored as an integral part of the law making process.

B. It is recommended that the Kyrgyz Government and the Jogorku Kenesh consider how well the machinery of legislative planning is working and assess the possibility for allocating more time and setting more realistic deadlines for the preparation of laws of an appropriate quality and for their effective scrutiny by the Jogorku Kenesh.

C. There should be a debate aimed at clarifying the different roles of the Government and of Members of the Jogorku Kenesh in the law making process. As part of that debate, the question of defining criteria for the legislative initiative of Members of the Jogorku Kenesh could be addressed, without undermining the role of Members of Jogorku Kenesh *per se*. Such criteria might include, for instance, a requirement of cross party support or a restriction on the number of draft laws that one Member can promote at any one time.

D. It is recommended that the Kyrgyz Government and the Jogorku Kenesh take action to improve the effective coordination of their law making activities in a manner that seeks to balance the Government's need to legislate in order to implement its programmes with the rights of Members of the Jogorku Kenesh to bring forward their own proposals.

E. It is recommended that the Kyrgyz Government and Jogorku Kenesh consider initiating the preparation of a law with policy discussions rather than with the drafting of an actual text; next to ensuring a more meaningful process of public consultation, this would mean that possible alternatives to legislation are also contemplated.

F. A change in the approach to law making within the Kyrgyz Government would be advisable, whereby the Government would treat law making as a co-operative activity, which is binding on the Government as one collective body; ministries and state agencies should be discouraged or prevented from submitting draft laws to the Jogorku Kenesh other than through the Government.

G. Presidential proposals of new or amended legislation should be taken forward through the Government rather than by individual Members of the Jogorku Kenesh; where such initiatives are introduced via Members of the Jogorku Kenesh, this should be done with the official agreement of the Government.

H. The Kyrgyz Government should make the process of legislative planning more comprehensive so that it includes all potential draft laws that form part of the Government's legislative programme and not just those draft laws that Ministries are confident can be prepared within the allocated time.

I. The Kyrgyz Government and the Jogorku Kenesh should undertake a more intense examination of the merits of legislative initiatives before they are included in the legislative plan; in order to help encourage a more comprehensive legislative planning process, the time allowed for the preparation of individual laws should also be increased.

J. The Kyrgyz Government and the Jogorku Kenesh should develop a unified manual on legislative drafting, or a handbook on the preparation of laws, which would set out the basic rules of law making, and would offer or include practical examples and illustrations; this would enable those involved in the preparation of proposals to see more readily, and clearly, what is required in order to prepare laws of an established standard of quality; it should also ensure that the quality of the Kyrgyz texts of laws is monitored in light of the recently published Russian –Kyrgyz Dictionary of Legal and Other Terms.

K. The Kyrgyz Government and the Jogorku Kenesh should give more consideration to alternatives to legislation before starting to draft a legal text, such as, for instance, self-regulation, or codes of conduct, which the defined entities are responsible for enforcing, as well as the option of enhancing implementation of existing legislation, or of simply not taking any action at all.

L. The Kyrgyz Government and the Jogorku Kenesh are invited to introduce a system of mandatory periodic review of existing laws (ex-post evaluation of legislation); it would also be advisable to make this an official policy, and to consider giving the leading role in establishing such a system and of preparing standardized forms for the ex-post evaluation of legislation to the Ministry of Justice or the Ministry of Economy.

M. It would be advisable for the Kyrgyz Government to, where appropriate, monitor the enforcement of legislation in certain fields and, based on these findings, present proposals for adjusting legislation and/or established practices to those public bodies which would be competent to intervene to address the identified gaps.

N. Each Ministry should be under an obligation to monitor the implementation of legislation in the most important policy fields for which it is responsible; monitoring of legislation should be undertaken in consultation with stakeholders and social partners.

O. It is recommended that the Kyrgyz Government and the Jogorku Kenesh produce a unified handbook of practice on public consultation, and compliance with this document should be monitored by respective staff as an integral part of the law making process

P. The Kyrgyz Government should consider creating a list of entities that should be involved in the process of consultations on draft legislation, maintained by each Ministry in order to ensure that relevant stakeholders are invited to consultations; these lists can be divided into policy areas falling under their responsibility and entities potentially interested in taking part in the consultation process.

Q. It is recommended that the Kyrgyz Government and the Jogorku Kenesh create an electronic online portal for on-line consultations with stakeholders that should include a tool for tracking all the comments relating to a proposal as well as answers from the authorities.

R. It is recommended that the Kyrgyz Government consider carrying out regulatory impact assessments before the policy to which the law is supposed to give effect has been finalised, as part of an evidence-based policy making process; consultations should be also made a mandatory part of the regulatory impact assessment process.

S. The Kyrgyz Government should consider strengthening public control over the quality of regulatory impact assessments; an advisory committee made up of key stakeholders could be created to serve as a watchdog and partner with the Ministry of Economy in overseeing the quality of regulatory impact assessments.

T. It is recommended that the Jogorku Kenesh set a minimum period for public consultation on draft laws that are initiated by Members of the Jogorku Kenesh.

U. It is recommended that the Kyrgyz Government contemplate strengthening the regulatory impact assessment unit within the Ministry of Economy that is

responsible for assessing the quality of regulatory impact assessments prepared by individual ministries.

V. The Kyrgyz Government should give thought to establishing regulatory impact assessment coordinators in each Ministry, who will provide relevant analytical and methodological support for all departments in this Ministry responsible for preparing regulatory impact assessments and coordinate the preparation of such assessments.

W. It is recommended that the Kyrgyz Government and the Jogorku Kenesh invest more efforts into comprehensive and sustainable training of staff, not only on legal expertise, but also on legislative drafting techniques, and into retaining qualified staff in the public service.

X. It is recommended that the Kyrgyz Government debate the merits of setting up a centralised drafting agency in order to secure more coherence and accuracy within the law making system; such an agency should look to coordinate the legislative activities of the Ministers, the Prime Minister, and of all bodies of government administration which remain under the authority of the Prime Minister.

Y. The Kyrgyz Government should extend the scope of the expertise undertaken within the Government, i.e. by the Ministry of Justice, to include the operational features of draft laws and the process by which they have been prepared, and in particular whether they have been prepared in accordance with the principles or standards of good law making.

Z. It is further recommended to strengthen the capacity of the Legal Department within the Ministry of Justice, which currently provides four types of expertise: gender, legal, anticorruption and human rights, by hiring additional experts for all four areas of expertise.

AA. The Jogorku Kenesh should consider extending the scope of its gender, legal, anticorruption and human rights expertise so that it is similar to the expertise provided by the Government. In the case of Government draft laws, the expertise provided by the Government and its line ministries and state agencies on the draft laws prior to their submission to the Jogorku Kenesh should also be transmitted to the Jogorku Kenesh, to support the work of the legal and expertise departments of the latter.

BB. The Jogorku Kenesh should encourage parliamentary committees to seek written and oral evidence on draft laws, as part of their process of considering such draft laws, both as a means of informing themselves about the issues at stake, and to check the extent and quality of consultations undertaken by the Government and by Members of the Jogorku Kenesh in their preparation.

CC. It is recommended that the Kyrgyz Government use information technology-based communication channels to communicate with stakeholders, which will have a positive impact on streamlining the process of public consultation.

DD. The Jogorku Kenesh should contemplate introducing new rules to govern the admissibility of amendments of draft laws, to the effect that during the second reading of a draft law, only those amendments that are consistent with the concept or principle of the draft law approved at first reading may be made: all amendments made during the second reading should be checked, and those that are inconsistent with the above concept or principle should be ruled inadmissible.

EE. The Jogorku Kenesh should contemplate strengthening the role of the Ombudsperson in the legislative process within the scope of his/her competence by granting this office the right to legislative initiative; it is also recommended to amend relevant legislation by establishing deadlines within which Members of the Jogorku Kenesh shall respond to requests received from the Ombudsperson.

THEMATIC ANALYSIS

INTRODUCTION

24. This Assessment outlines a condensed version of the legislative process in the Kyrgyz Republic, embedded in the constitutional order. It focuses on norms that determine the functioning of the legislative process and attempts to provide a brief overview of the rules defining the legislative process as a whole.

25. This Assessment is based on written law as well as on information collected during the country visit that OSCE/ODIHR experts conducted to Bishkek in February 2015. It further explores certain discrepancies between the law and its implementation, also in relation to how they affect the many positive aspects of the legislative process in the Kyrgyz Republic.

26. The Assessment aims at promoting better legislative efficiency to ensure good quality, and enforceable legislation in all fields of law, also by encouraging the relevant public authorities to improve the effectiveness and transparency of the legislative procedures in practice. It involved re-visiting many issues raised in the Preliminary Assessment, but is also based on semi-structured field interviews with pre-identified interlocutors, including presidential, governmental and parliamentary bodies involved in law making activities. Discussions with representatives of the Kyrgyz authorities, as well as with practitioners and scholars familiar with the

Kyrgyz legislative practice, were necessary to conduct a more thorough analysis and to be able to formulate precise practical recommendations for reform.

PRINCIPLES OF GOOD LAW MAKING

27. The most striking feature of the law making process in the Kyrgyz Republic is the extent to which the legislative initiative is exercised by Members of the Jogorku Kenesh, in a manner that is nearly equal to that of the Government. In most parliamentary democracies, the Government is responsible for approximately 90 per cent of all legislative initiatives. In the Kyrgyz Republic, it is closer to 60 per cent.[4] Whether this is because coalition governments since 2010 have chosen not to exercise their right of legislative initiative to its fullest extent – the assessment team were told that the Government exercises 'self-restraint' in its exercise of the legislative initiative - or because Members of the Jogorku Kenesh, more than in other countries, regard their initiatives as no less deserving of enactment than those of the Government, is not clear. However, what is clear is that the challenges the Kyrgyz authorities face in terms of law making are not confined to draft laws initiated by the Government, which is the situation in many countries, but extend to draft laws prepared by Members of the Jogorku Kenesh as well. In particular, there is a pressing need to ensure that the same standards of preparation and enactment apply to all laws, regardless of whether they are prepared by Members of the Jogorku Kenesh or by the Government.

28. As a first step towards achieving this goal, the Kyrgyz authorities – namely the Jogorku Kenesh, the Government and the Presidential Administration - may wish to consider working together to agree on a statement of principles, or a code of standards, of good law making, which would clearly reflect the standards that the Kyrgyz authorities expect to see observed in the law making process. Some of these principles are mentioned in Article 3 of the current Law on Legal Normative Acts, namely compliance with the rights, freedoms and lawful interests of citizens and legal persons, as well as legality, validity, appropriateness, equity, and publicity. These principles could also include proportionality, effectiveness, efficiency, transparency, inclusiveness and accountability of legislative processes.

29. As things stand, legislation does not sufficiently specify how individual elements of an effective law-making process should be carried out. Notably, there is lack of clear guidance on different aspects of the law making process. As a result, it is left to ministries and other involved in the preparation of draft laws to work out how best to proceed. A statement of principles, or code of standards, would bring a welcome degree of clarity to the standards of law making expected in the Kyrgyz Republic. Compliance of practice with these standards could then be monitored as part of an extended system of expertise. Lawmakers may also consider rejecting draft laws

[4] The proportion drops once allowance is made for laws initiated /promoted by line ministries and the presidential administration via MPs (below). Even so it remains far higher than in most parliamentary systems.

where the basic standards of good law making are not adhered to. This could contribute to a situation where the legislative system is operationalised and anchored to a set of agreed principles of good law-making. Such practice would also help reduce the workload of the Jogorku Kenesh.

30. One potentially extremely valuable feature of the normative framework governing the law making process in the Kyrgyz Republic is that it lays down out a series of principles of law making activity, including compliance or compatibility with the rights, freedoms and lawful interests of citizens and legal persons; legality; validity; appropriateness; equity; and publicity (Article 3 of the Law on Normative Legal Acts). The meaning of some of these principles is readily apparent, e.g. laws should be compliant with the rights, freedoms and lawful interests of citizens and legal persons, which are set out in the Constitution (though that is not necessarily true of all of them, e.g. appropriateness or equity). At the same time, consideration could be given to providing a fuller explanation or definition of what is meant by those principles, so that all persons and bodies involved in the law making process can more readily understand the standards which laws are expected to conform to. Moreover, consideration might also be given to outlining the extent and the effectiveness of the checks by which these principles are meant to be secured. Currently, there are various checks built into the law making process by which at least some of these principles may be safeguarded (e.g. the fact that all draft laws shall be checked for their compliance with the Constitution), but it is not clear whether the checks in place extend to all of the principles.

INITIATION OF DRAFT LAWS

31. A second feature of the law making process in the Kyrgyz Republic is the extent to which ministries and state agencies reportedly initiate laws through Members of the Jogorku Kenesh rather than through the Government. Approximately 50 per cent of the laws initiated by Members of the Jogorku Kenesh are said to originate from ministries and state agencies. The assessment team was offered two explanations for this. First, it is allegedly often quicker and easier for a ministry to promote legislation via a Member of the Jogorku Kenesh rather than through the collective decision-making apparatus of the Government. Second, such cases may arise where there was a disagreement or conflict within the Government over the desirability of a draft law: a ministry which found its initiative blocked might thus nevertheless choose to pursue it via a Member of the Jogorku Kenesh.

32. If the quality of legislation in the Kyrgyz Republic is to be improved, it is essential that law making is treated as collective activity, which engages the responsibility of the Government as whole, and not as a matter where individual line ministries and state agencies are free to go their own ways. Ministries and state agencies should therefore be discouraged or prevented from initiating laws in a manner that does not lead through the Government. Insofar as the time-consuming and burdensome nature of the decision-making processes within the Government is offered as a justification

for ministries promoting laws through Members of the Jogorku Kenesh, the decision-making processes should be examined and if appropriate revised to ensure that they are no more time-consuming or burdensome than is necessary. The introduction of an electronic signature system may also help in this regard, as it seems that currently, all documents need to be signed off by hand. While cases where Government draft laws are "handed out" or submitted to Parliament through Members of Parliament happen in many countries, this is usually, and also should be a result of a collective official decision taken by the Government, and not based on the decision of an individual ministry or state agency.

33. According to the current Constitution, the President has no formal right of legislative initiative. He nevertheless continues to play what was described in interviews as a "supportive role" in the law making process "appropriate to the situation that the Kyrgyz Republic faces". This supportive role has seen the development of a number of important draft laws under the auspices of the Presidential Administration. Following a presidential decree in 2012[5], for example, expert working groups were set up to draft a criminal code and a criminal procedure code, among others. In the current political circumstances it is to be expected that the Presidential Administration will continue to encourage the development of draft laws that, for whatever reason, have not been or are not being developed within the Government. While this may be beneficial in some cases, it may also be seen as detracting from a responsibility that ought properly to belong to the Government.

34. Such draft laws are, at times, also being taken forward by individual Members of the Jogorku Kenesh, but it would be preferable if they would be taken forward through the Government. On one hand, this would ensure that the same standards of preparation and enactment are applied to those laws as apply to laws initiated by the Government. On the other, it would also to help to establish and reinforce the perception, which appears to be lacking at the moment, of the Government as a central actor in the law making process with a key responsibility for the development of the laws of the country as a whole.

LEGISLATIVE PLANNING

35. In practice, legislative planning takes place within the Government on a biannual basis - rather than the annual basis envisaged in the Law on Normative Legal Acts - but as currently practised, this process does not seem to be comprehensive. More laws are commonly initiated outside the biannual plan, than are initiated as part of the plan. As many as 60 per cent of Government draft laws are reported to be developed *ad hoc* and not planned in advance. During the interviews, a number of reasons were suggested for this, including the speed with which certain situations confronting the country arise and change, and the planned membership of the Kyrgyz Republic in the Eurasian Customs Union. Another reason that emerged from

[5] On measures to improve justice in the Kyrgyz Republic, of 8 August 2012, No 147.

the interviews was that the time allowed for the preparation of laws under the legislative plan – typically three months – was unrealistically short. Ministries, it was said, preferred not to include initiatives in the plan unless they are quite sure that they will manage to produce a draft law within three months, to avoid the perception of having failed to achieve their priorities as set out in the plan in cases where a draft law takes longer to prepare.

36. Proper legislative planning matters because it sets realistic and achievable goals in terms of law making, and thereby enables high-quality legal outcome, avoids potential gaps and errors and prevents numerous revisions of laws over a (relatively) short period of time. If draft laws are envisaged and planned well ahead of time, this ensures that the law making system functions in an orderly fashion and that civil society and other stakeholders can be involved in the legislative process at the initial stage.

37. Common standards for the legislative process help introduce legal certainty and legal security. Proper legislative planning enables the setting of both long-term and short-term priorities. It helps use limited human, financial and time resources in a more effective and efficient way, and facilitates the choice of the proper form and methods of implementation of legal initiatives.

38. The process of legislative planning in the Kyrgyz Republic should be made more comprehensive so that it includes all the draft laws that form part of the Government's legislative programme for a specific time period, and not just those draft laws that ministries are confident can be prepared within the allocated time.

39. Moreover, the merits of legal initiatives should also be considered before they are included in the plan. At present, draft laws are apparently included in the plan without adequate prior verification as to whether or not they are in line with the Government's priorities. A more comprehensive legislative planning process would help ensure that scarce policy making and drafting resources would be concentrated on those draft laws that are most important to the Government. It would also mean that resources would not be wasted on the preparation of laws which the Government is not committed to. Additionally, in order to help encourage a more comprehensive legislative planning process, the time allowed for the preparation of individual laws should be increased. One of the preconditions for good law making is that sufficient time is allowed for the preparation of laws of a requisite quality. A certain flexibility should also exist for complex or lengthy pieces of legislation, that may require more time than others.

40. Generally, a common weakness of the machinery of legislative planning in many countries is that insufficient time is allowed for the preparation of proposals and for their scrutiny both within governments and by the legislature. The usual reported timeline (three months) as provided in the current legislative plans of the Government seems to be rather restrictive and does not appear to provide sufficient

time to conduct all expert assessments of draft laws that are required by law. Further, it does not appear to cover the time required for their consideration by the Jogorku Kenesh, at least this is not clearly spelled out. There is thus a risk that more draft laws are prepared than there is time available to consider them, in which case scarce resources are wasted by preparing draft laws which are then not processed. Another concern is that the limited time available for the consideration of such draft laws is not sufficient to allow proper public participation in the process, which usually provides an additional level of effective scrutiny and therefore, ultimately, leads to "better" legislation. The Kyrgyz authorities may wish to consider explicitly widening the range of factors that would need to be taken into account when planning the legislative programme, including the time required for preparing the draft laws, and for their effective parliamentary scrutiny.

POLICY MAKING

41. In each country, the Government is usually responsible for determining state policy. In the Kyrgyz Republic, there seems to be a lack of clear distinction between the process of discussing and elaborating the policy which legislation should implement and the process of converting that policy into law. During the interviews, it was suggested that one of the weaknesses of the law making process is that there is too much emphasis on legislation as the principal, if not the only means of achieving policy goals. A proper policy making stage appears to be missing and even where such a stage exists, it does not appear to be a sufficiently inclusive and transparent exercise. As a result, an explicit separation between policy formation and law drafting, i.e. the translation of the agreed policy into law, is also not evident.

42. One widely recognised consequence of this approach is that not enough consideration may then be given to developing the policy that the law is intended to implement. Instead of having the process start out with the development of a policy, which is debated and consulted prior to being translated into law, the task of preparing a draft law usually begins with the drafting of a text. A lack of proper policy making may lead to the adoption of laws which, rather than tackling the issues in question, hinder their effective resolution. As a result, legislation may not always meet actual domestic needs.

43. The adoption of a distinct policy making stage, or a greater emphasis on policy making, would allow each policy to be properly thought through prior to being committed to paper. Also, in this case, more consideration would be given to alternatives to legislation, including proper implementation of existing legislation: in many cases, a problem may lie not in the regulation itself, but in its proper implementation. Policy discussions on future legislation need to be open and transparent, and need to involve a wide range of relevant stakeholders; this is crucial to a consistent and good law making process.

LAW DRAFTING

44. Good legislation can be achieved through the proper preparation and drafting of legislation, an effective management of the preparatory and legislative processes, and proper communication between all relevant stakeholders, including the public and civil society. The timely publication of legislative materials, as well as the consistent evaluation of existing legislation are also important elements of good law making. Further, the preparatory stages in the legislative process should include not only evidence-based policy making but also discussions on the proper textual composition of draft legislation and mechanisms to identify and respond to common shortcomings. The focus should however not be only on the technical aspects of drafting. It is essential to familiarise drafters with all stages of the legislative cycle, and make them aware of gender mainstreaming specifics, human rights issues, and other relevant areas. It is also important to provide tips for the logical structure and style of a legal act, how to include references to other legislation, how to use certain words and phrases, how to use the active and passive voice while drafting legislation, and/or how to define concepts.

45. The lack of sufficient specialist legislative drafting resources in both the Government and Jogorku Kenesh is said to be considerable in the Kyrgyz Republic. This can only be overcome through considerable investments in training and in the retention of existing qualified staff. It is welcome that in April 2014, a Legislative Drafting Training Centre was established in the Kyrgyz Republic State Law Academy. The Centre trains drafters for the Jogorku Kenesh, and the Government, in particular the Ministry of Justice, but the focus appears to be more on "expertise" than on legislative drafting. In order to make the best use of limited drafting resources, discussions should take place as to whether there would be merit in setting up a centralised drafting agency. Such an agency would have advantages and disadvantages, which would require careful consideration before a final decision is taken. A centralized drafting system has advantages in terms of ensuring consistency in the application of standards and increased efficiency in the use of limited drafting resources. It also has disadvantages in terms of the limited involvement of drafters at the stage of policy formation and the risk that drafters become a closed cadre of professionals perpetuating outmoded practices. A particular model should therefore only be selected after a thorough weighing of the advantages and disadvantages[6].

46. Additionally, the Kyrgyz authorities may wish to consider, as part of their efforts to

[6] "Law Drafting and Regulatory Management in Central and Eastern Europe", Sigma papers: no. 18: checks in respect of policy options include general regulatory checks, checks on administrative requirements, costs and economic impact checks, efficiency checks, practicability checks, and implementation checks; checks of legislative drafts include checks for constitutional and legal compliance, checks for approximation to EU law, checks for compliance with international treaties, implementation checks, checks as to secondary law-making powers, and checks on legal form, clarity and comprehensibility. SIGMA Papers are a series of specialised reports that are focused on particular issues in governance and management, such as expenditure control, administrative oversight, interministerial co-ordination, public procurement and public service management, see at http://www.oecd-ilibrary.org/governance/sigma-papers_20786581.

improve the quality of legislation, the further development of the guidelines on legal drafting into a manual or handbook on legislative drafting, which would include practical examples. Such a manual could be designed in a way that clarifies and specifies the rules of the legislative technique, and specifies when and in which way they should be used, taking into consideration different situations that may emerge during the drafting process.

47. Legislative drafting is a highly skilled process. Elected Members of the Jogorku Kenesh are expected to be good at identifying the needs of their constituents and debating policy considerations in the development of legislation; however, on the whole, they are usually not qualified to translate policy decisions into legislative language. Nor do Members of the Jogorku Kenesh ordinarily possess sufficient knowledge of the legal context to appreciate the impact of any proposed legislation on the existing legal regime, a matter which must be carefully elaborated before any final decisions are made as to the content of legislation.

48. It is therefore imperative that those who draft legislation are able to freely draw on the resources of skilled drafting specialists with suitable experience. While a law drafting manual has been developed, it does not appear to be fully compliant with the current wording of the Law on Normative Legal Acts. Moreover, there seems to be no manual or handbook that would demonstrate to law drafters how to handle the task or ways of dealing with the kinds of difficulties that may arise, such as how to use references in a legal act, how and when to use passive or active voice, etc. The result is a system, in which the quality of legislation varies, sometimes quite markedly, from ministry to ministry and from the Government to the Jogorku Kenesh, though reportedly the quality of the governmental drafts is improving.

49. The quality of the Kyrgyz language texts of many laws likewise appears to be an issue. While laws may be drafted in either the state (Kyrgyz) or official (Russian) languages, the usual practice is for them to be drafted in Russian and then translated into Kyrgyz (this appears to apply to some 95 per cent of all draft laws). The quality of the Kyrgyz texts or version of laws, however, is said to not always be satisfactory, despite several linguistic assessments provided by the drafting agencies of the Government, the Jogorku Kenesh and the Presidential Administration. This is a major problem because in the event of a conflict between different language versions of the same law, it is the version in the state language that prevails. The recent preparation of an unofficial Russian – Kyrgyz Dictionary of Legal and Other Terms, that was developed under the auspices of a USAID/DFID programme in cooperation with the Jogorku Kenesh[7], and that contains up to 14,000 legal terms, may help ease this problem, but there is no certainty that this resource will be used in a

[7] This dictionary was approved by the Committee of the Jogorku Kenesh on Education, Science, Culture and Sports Issues and is recommended for use by Aytmatov Institute for Language and Literature under the National Science Academy of the Kyrgyz Republic and the National Commission on the Sate Language under the President of the Kyrgyz Republic.

comprehensive manner.

REGULATORY IMPACT ASSESSMENT

50. Regulatory impact assessment is an important tool to ensure good quality legislation throughout the entire cycle of policy and law making. Such assessment usually starts with a needs analysis and an outline of the assumed outcomes of a legal act and of non-legislative solutions, continues with a discussion on and determination of the most viable solution (ex-ante evaluation), and ends with the evaluation and monitoring of enacted legislation (ex post evaluation). It aims at assisting policy and decision makers in adopting efficient and effective regulatory options (including the "no regulation" option), and in using evidence-based techniques to justify the best option. For this reason, it may be more efficient and cost-effective to conduct impact assessment at the earlier, policy-making stage: if the wrong policy is chosen at the outset, then ensuing regulatory measures may in the end prove to be ineffective. Where relevant, the costs of regulation should not exceed its benefits, and alternative options should also be examined: regulatory impact assessments help authorities ensure that administrative burdens stemming from newly adopted regulations will not outweigh the existing burden.

51. Regulatory impact assessment in the Kyrgyz Republic is mandatory for laws affecting "business activity" (Article 19 of the Law on Legal Normative Acts). The author of a draft law is responsible for the assessment, which is then checked by the Ministry of Economy. The Ministry prepares between ten and fifteen opinions on regulatory impact assessments each month. In many cases, the standard of assessments is said to be "not good", largely because of a lack of expertise on the part of those carrying out assessments, as well as a lack of human and other resources. The timing of the assessment also needs further attention: at present, only two weeks are reportedly allocated for producing the first draft regulatory impact assessment. The Ministry of Economy could, for instance, as part of its role of assessing the quality of regulatory impact assessments conducted by other Ministries (in addition to its role to issue such assessment for any legislation that falls within its competence), also assess the quality and completeness of consultations held with stakeholders. In doing so, it could apply the consultation cycle regulation model, starting from a problem analysis (the so-called pre-consultation stage), through the stage of preparing the regulatory impact assessment and leading to a legislative proposal.

52. At present, regulatory impact assessment is carried out after a law has been drafted, at which point it tends to serve as a means of justifying decisions that have already been taken rather than as an aid to evidence-based policy making. Consideration should thus be given to debating whether there would be merit in carrying out the assessment at an earlier stage in the process, before key decisions have been taken. At this earlier stage, a fuller and more open-ended consideration of the issue could be conducted, which would include an assessment of the various ways in which such

issue might be addressed. The assessment process is meant to involve consultations with stakeholders, and the methodology for conducting regulatory impact assessments envisages creating working groups that may involve not only experts and representatives of state agencies and self-government bodies, but also the business community and other stakeholders. However, these stakeholders reportedly frequently lack a proper understanding of the process and their engagement is thus limited.

53. Carrying out impact assessments at an earlier stage in the law drafting process might also increase the likelihood of stakeholder participation in the process, as it enhances the possible impact of their contributions. Sufficient time must also be allowed for the process to be carried out properly and in a meaningful way: depending on the issue, the timeline can vary from, for instance, three weeks to several months.

THE PARLIAMENTARY STAGES OF THE LAW MAKING PROCESS

54. One issue that has already been mentioned concerns the lack of effective coordination of the law making activities of the Government and the Jogorku Kenesh. This lack of effective co-ordination may mean that discussions on draft laws prepared as part of the Government's programme are delayed, while it was reported that (scarce) parliamentary time is sometimes taken up with discussions of laws that have little prospect of being passed or which fail to meet minimum standards of quality. A discussion should take place as to whether this position is sustainable in the long term given the need for law making in the Kyrgyz Republic, and in particular the need for laws that meet a minimum standard of quality.

55. One way in which this issue might be addressed, which draws on the experience of other countries, for instance the UK, is through an agreement between political parties represented in parliament over the allocation of parliamentary time in the Jogorku Kenesh, during which questions can be asked to the Government. Such an agreement would seek to balance the Government's need to legislate in order to implement its programme with the right of Members of the Jogorku Kenesh to bring forward their own proposals. Thus, at the beginning of the session, the Government can present its legislative programme to the plenary. Among other things, this would provide the basis for a more realistic legislative planning process within the Government, which would be based on an assessment of how many laws could be passed in any one year. If, as would need to be the case, the Government' programme were then to be made public at the start of the parliamentary year, there would be no uncertainty over the number and type of draft laws that the Government was planning to bring forward in the course of the year. Rules on the allocation of parliamentary time would also need to be accompanied by a business plan concerning the legislative process within the Jogorku Kenesh – as happens at present but against the background of the Government's legislative programme.

LEGAL AND SPECIALIST EXPERTISE

56. Different assessments and verification checks can be carried out as regards both policy options and legal initiatives that give effect to a particular policy option. In the Kyrgyz Republic, such checks are apparently conducted only on legal drafts. Existing mandatory verification checks conducted by the drafters of laws are focused on assessing the conformity with higher ranking legal norms but rarely appear to extend to the operational features of the legislation. Such additional checks could involve, for instance, ensuring the inclusion of provisions needed to make a law operative and enforceable, or the use of expressions that would reduce the likelihood of diverse interpretations of the law, and of ensuing disputes.[8]

57. The checks-and balance system for ensuring good quality draft legislation does not appear to be developed sufficiently. Primary legislation can be scrutinized as to its compatibility with the Constitution by lodging a complaint with the Constitutional Chamber. However, there is no operational system to check the consistency of laws or by-laws with primary legislation. Mandatory checks by the Ministry of Justice or by the Legal Department of the Jogorku Kenesh do not extend to the operational features of draft legislation. Such operational features would include necessary provisions to make the scheme operative and enforceable, or terminology that would reduce the likelihood of disputes, or other aspects ensuring legal compliance. There is also no follow-up monitoring system in place that would efficiently evaluate the operation and effectiveness of enacted laws. Further, there is no system of advance planning of regular amendments or updates to existing legislation, as amendments appear to be launched mainly as a response to implementation problems. This can partially be explained with the limited human resources available. The lack of unified standards for conducting such checks, that would be applicable for both the Government and the Jogorku Kenesh, adds to the challenge.

58. All draft laws submitted to the Jogorku Kenesh, whether by the Government or by Members of the Jogorku Kenesh, are subject to legal and specialist expertise; the latter comprises human rights, anti-corruption, gender and environment expertise. The legal and expertise departments within the Jogorku Kenesh examine around 50 draft laws a month, before they are then submitted to the parliamentary committees. A committee can reject a draft law that has been subjected to a negative opinion by one of these departments, but is not prevented from discussing it further, as

[8] "Law Drafting and Regulatory Management in Central and Eastern Europe", Sigma papers: no. 18: checks in respect of policy options include general regulatory checks, checks on administrative requirements, costs and economic impact checks, efficiency checks, practicability checks, and implementation checks; checks of legislative drafts include checks for constitutional and legal compliance, checks for approximation to EU law, checks for compliance with international treaties, implementation checks, checks as to secondary law-making powers, and checks on legal form, clarity and comprehensibility. SIGMA Papers are a series of specialised reports that are focused on particular issues in governance and management, such as expenditure control, administrative oversight, interministerial co-ordination, public procurement and public service management, see at http://www.oecd-ilibrary.org/governance/sigma-papers_20786581.

sometimes apparently happens. Amendments are also sent to the legal and specialist expertise service, which has five days to review them.

59. In the interviews, the question was raised whether, in view of the limited resources available, the expertise of the relevant services of the Ministry of Justice and of the Jogorku Kenesh should be integrated or combined. While it is anticipated that the Government and the Jogorku Kenesh will each want to retain their own expertise services, the scope of the expertise conducted by the relevant departments of the Jogorku Kenesh should perhaps be extended. Notably, such expertise could also examine the operational features of draft laws and whether they have been prepared in compliance with the principles or standards of good law making (as was already suggested in relation to the Ministry of Justice's expertise service). In the case of Government draft laws, the expertise conducted by the Ministry of Justice should be submitted to the Jogorku Kenesh, to support and inform the work of its legal and expertise departments.

LAW MAKING BY MEMBERS OF THE JOGORKU KENESH

60. As has been mentioned, one feature of the current law making process in the Kyrgyz Republic is the number of laws initiated by Members of the Jogorku Kenesh; estimates in interviews ranged from between 40 to 60 per cent of the draft laws initiated each year, with up to half of these said to be originating in ministries and state agencies. In comparison to draft laws prepared by the Government, many of the draft laws prepared by Members of Jogorku Kenesh are said to involve "minor" amendments to existing laws. Several interlocutors also noted that they were of a "poorer" quality than Government draft laws, which may be due to the fact that Members of Jogorku Kenesh do not have access to the same policy making and legislative drafting resources as the Government. There is, for example, no legislative drafting unit within the Jogorku Kenesh dedicated to assisting Members of Jogorku Kenesh in the preparation of draft laws. The staff of the legal department, for instance, who can help Members of Jogorku Kenesh with their legal initiatives are overwhelmed with work and frequently do not have the human resources, or the time to provide such support. To enhance the quality of draft laws prepared by Members of Jogorku Kenesh, the Jogorku Kenesh may consider establishing such a unit.

61. However, before the question of support for Members of Jogorku Kenesh in preparing draft laws is addressed, the question of the scope of such law making should also be discussed, which should include an attempt to arrive at a shared understanding of this scope. In many countries there are restrictions on the scope and opportunities for Members of Jogorku Kenesh in the area of law making that seek to balance the Members' of Parliament right of legislative initiative with the Government's need to be able to legislate in order to achieve its purposes. In the Kyrgyz Republic there appear to be no such restrictions, with the result that Members of Jogorku Kenesh use their right to initiate the legislation as often as the

Government; this may result in a less consistent approach to legislative reforms overall. Consideration may be given to introducing some criteria for legislative proposals of Members of the Jogorku Kenesh, without undermining the role of Members of Jogorku Kenesh *per se*, e.g. by way of a requirement of cross-party support, and /or a limit on the number of laws that an individual Member of Jogorku Kenesh may initiate at any one time.[9] Such restrictions could ultimately help increase the chance of adoption of such draft laws, and improve the overall quality of legislation in the Kyrgyz Republic, as the legislative initiative is then more clearly consolidated in the hands of the Government.

62. As mentioned, the possible introduction of such restrictions would need to be preceded by a debate aimed at achieving a common understanding of the scope of law making by Members of Jogorku Kenesh under the Constitution. As part of that debate, discussions should also focus on, and challenge the apparently widespread assumption that the only meaningful way for Members of Jogorku Kenesh to participate in the law making process is by initiating draft laws, as opposed to scrutinising and proposing amendments to draft laws initiated by others. Regardless, however, of the view taken on the scope of legislative initiative of Members of Jogorku Kenesh, it is essential that such initiatives be subjected to the same standards of preparation and enactment that apply to laws initiated by the Government. In particular, it is of critical importance that they be subjected to the same levels of public consultation and regulatory impact assessment as draft laws prepared by the Government.

PUBLIC CONSULTATION

63. A proper consultation process promotes both transparency and accountability in the law making process, and serves to improve awareness and understanding of the policies pursued among relevant stakeholders and the public. It further encourages public ownership of these policies, thereby increasing public commitment to them. Public consultation on draft laws is practised in the Kyrgyz Republic but not systematically or in a manner always calculated to engender confidence among stakeholders and the public. Moreover, there is little to no consultation with stakeholders and the public at the pre-legislative stage. The lack of feedback on the outcome of consultations in particular is a source of frustration for stakeholders and the public and a disincentive to participation in the process. There is a need for clear rules on the publication and dissemination of draft laws for public consultation.

64. Such rules might be set out in the proposed code of standards on good law making, or else in a stand-alone code of practice on public consultation. The rules should include provisions for consultation both at the initial policy making stage and later

[9] Where laws have budgetary implications, consideration might also be given to the introduction of a requirement that such laws should be supported by a financial resolution, which only the Government's representative to the Jogorku Kenesh should be able to put forward.

when the details of the legislation have been worked out but not yet finalised. There should also be a provision on providing feedback to consultees and this same provision should oblige the authors of draft laws to prepare summaries of the consultations. These summaries, which should include information on the outcomes of consultations, should be part of the supporting documents submitted together with a draft law to the Jogorku Kenesh.

65. At present, there appears to be no institutionalised feedback mechanism for stakeholders involved in the policy making and law drafting process, both in the Government and the Jogorku Kenesh. One reason for this may be the insufficient documentation of consultation meetings. It would therefore be advisable to keep public record of whether proposed amendments were taken into consideration or not, and the reasons for accepting some amendments, and rejecting others.

66. The lack of adequate time provided by law to individual stages of the legislative process is a critical issue for consultations. Many stakeholders are often unable to form a proper opinion on a draft law due to a lack of transparency and timeliness of agenda-setting and information practices particularly within the Government.

67. Both the Law on Normative Legal Acts and the Law on Government envisage public discussion on draft laws. One benefit of public consultation in this form is that it is often only at this stage that citizens and affected persons can begin to properly understand or fully appreciate what is being proposed. At the same time, there may be merit in having public consultation at an earlier stage in the legislative process when the Government's proposals have crystallized sufficiently to make consultation meaningful, but the policy has yet to be fully worked out and translated into a draft law. The Kyrgyz Government may therefore wish to consider extending the practice of public discussion in appropriate cases to include consultations on the main policy issues raised in a legislative proposal before the drafting of a detailed proposal has begun. Such consultation could usefully be combined with the process of regulatory impact assessment. Further, since the draft law during its elaboration can undergo significant changes, conducting consultations on the finalized version of the draft law at a later stage may prove to be important as well.

68. Some draft laws are published on the Parliament's website for consultation. The Parliament's practice on consultation is said to compare favourably with that of the Government. Even so, feedback is reported to be limited. Work is being undertaken on an "E-law", which would allow online feedback, but it was said that this would only work if the majority of Members of Jogorku Kenesh would use more IT tools in their daily work.

69. Sometimes the committees of the Jogorku Kenesh hold hearings on draft laws, as stipulated by the Article 29 par 15 of the Jogorku Kenesh's Rules of Procedure that provide that committees may invite representatives of civil society for the discussion of draft laws. It should be noted that requests from the committees for written and

oral evidence provide a potentially valuable tool to check the extent and quality of consultation undertaken by the Government and by Members of Jogorku Kenesh in the preparation of draft laws. Committees should therefore be encouraged to make provision for such consultation as part of their consideration of draft laws. A stakeholder whose voice is not heard by the ministry or by the Member of Parliament preparing a draft law can thereby make his or her views known to the relevant committee.

70. The timely publication of both general and detailed information about new draft laws is also likely to foster greater opportunities for consultation by the public, lobbying groups, political organisations and parties, as well as civil society generally. A proper consultation process promotes both transparency and accountability of the law-making process, improves awareness and understanding of the policies pursued and encourages public ownership of these policies, thereby increasing public commitment to them.

71. The Kyrgyz Government may wish to consider the possibility of publishing all draft laws exposed to public consultation on one website in order to streamline discussions. The inclusion of stakeholders willing to provide comments should be facilitated by informing them promptly of the fact that consultations are being held. It would also be helpful if such information could be found in one place so that stakeholders are not obliged to search for it on a variety of government websites; this makes the process burdensome and may discourage some stakeholders from engaging in it. Clearly defined procedures should be in place, which are known and regularly followed. A feedback mechanism is also important: if the results of consultations are not acknowledged, the risk of "consultation fatigue" is quite high.

72. To properly carry out the consultations it is necessary to establish and maintain contact with the stakeholders involved in the consultation process. In order to increase their involvement in the law making process, it is recommended to use communication channels through which the executive branch and the legislature can communicate with stakeholders, based on information technologies, such as emails, data networks (an electronic communications process that allows for the orderly transmission and reception of data, such as letters, spreadsheets, or other types of documents) or websites, which will have a positive impact on streamlining the process of public consultation (for example, electronic portal).

AMENDMENTS TO DRAFT LAWS

73. In principle, all amendments that are proposed to be introduced into a draft law should not contradict the overall concept of this draft law as approved during the first reading. The practice of amending a law contrary to the concept on which it is based was reported to be a problem in the Jogorku Kenesh. At the moment, it would seem that there are no restrictions on the amendments that may be made to a draft law, nor are amendments reportedly checked against the concept or principle of a draft law

approved at first reading. Rules governing the admissibility of amendments should therefore be introduced in the Rules of Procedure of the Jogorku Keneshso specifying that the only amendments permitted or accepted are those that are consistent with the concept or principle of the draft law approved at first reading.

74. Rather than submit amendments to draft laws that are being considered by the Jogorku Kenesh, Members of the Jogorku Kenesh sometimes prefer to promote their own draft laws on the same subject. The result is a proliferation of draft laws, additional work for the Government and Parliament's expertise services and an increased risk of contradiction between the two texts. In one case, a committee allegedly approved two draft laws on the same topic, which contradicted one another. Members of Jogorku Kenesh ought to be encouraged to treat the scrutiny and amendment of draft laws via parliamentary discussions as an important part of the Jogorku Kenesh's role in the law making process that is no less important than the drafting, and passing of new laws.

THE PRESIDENTIAL VETO

75. The presidential veto provides a means whereby the President - or the Government through the President - may prevent draft laws from becoming law. The threat of the use of such veto may also lead to changes to draft laws. The assessment team was told that the shortcomings of a draft law sometimes only become fully apparently when it reaches the Presidential Administration. Figures on the use of the presidential veto show that it was used on 24 occasions in 2012,[10] on 33 occasions in 2013, but then on only 12 occasions in 2014. Such veto also appears to be used more often against draft laws initiated by Members of the Jogorku Kenesh than against draft laws prepared by the Government. Of the 76 occasions where the veto was used since between December 2011 and February 2015, 59 involved draft laws prepared by Members of the Jogorku Kenesh, 15 draft laws prepared by the Government, and two joint initiatives of Members of the Jogorku Kenesh and the Government.

76. While the veto is a powerful weapon in the hands of a determined President, it is not a guarantee that "weak" draft laws will not become law. The President can only go so far in pushing for changes to a draft law and on two occasions between December 2011 and February 2015, the Jogorku Kenesh has insisted on its version of a draft law even after the President had exercised his right of veto. The presidential veto is also no guarantee that only draft laws of a minimum standard of quality will become law. There may well be occasions when the use of the veto would be justified as a way of underlining the importance attached to standard-setting laws, but it would be far better to prevent laws that are not of the appropriate standard from being introduced or passed in the first place rather than to have to rely on the presidential veto.

[10] It was not used in 2011 because the need for it was apparently not recognised.

ANNEX 1:
OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED AND ADOPTED

1. The normative framework based on which law making is carried out in the Kyrgyz Republic includes: the Constitution of the Kyrgyz Republic of June 27, 2010; the Law on Normative Legal Acts of April 20, 2009; the Law on the Government of the Kyrgyz Republic of June 18, 2012; the Rules of Procedure of the Government of the Kyrgyz Republic of January 26, 2011; the Rules of Procedure on Legal Drafting by the Government of the Kyrgyz Republic of October 24, 2012; and the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic of October 14, 2011.

THE CONSTITUTION

2. The Constitution of the Kyrgyz Republic has "supreme legal force" (Article 6 par 1) and provides the basis for the adoption of "constitutional laws, laws and other regulatory legal acts" (Article 6 par 2; with "other regulatory legal acts" presumably referring to "normative legal acts"). The system of government established by the Constitution is a parliamentary system in which the Government is formed by and accountable to the Jogorku Kenesh – the Parliament of the Kyrgyz Republic. However, the label "parliamentary" hardly denotes a uniform structure of government. "At best, it identifies a basic criterion that many systems satisfy. The criterion can be stated thus: a collective executive is accountable to an elected legislative chamber. This accountability is expressed through expressions of "confidence" by the chamber. Should this confidence be withdrawn (by what is usually called a "vote of no confidence"), a (written or unwritten) rule prescribes that the executive (i.e. the Prime Minister and major cabinet ministers) must resign. Nothing else is required to join the club of parliamentary governments."[11] Nevertheless, it is clear from an analysis of the normative framework that the law-making power under the Constitution belongs to the Jogorku Kenesh and that the Government is the principal initiator of legislation; the practice, however, shows that almost half of the legislative proposals considered by the Jogorku Kenesh, are initiated by Members of the Jogorku Kenesh.

The President

3. The President is the head of State and directly elected for a term of six years (Constitution, Article 61 par 1). He/she may not be re-elected (Constitution, Article 61 par 2). He/she is required to suspend his/her membership of political parties for his/her term of office and to cease participation in their activities (Constitution, Article 61 par 3). The President's powers under the Constitution are limited. The President calls elections; signs and promulgates laws; and participates in the

[11] Baranger and Murray, in Tushnet, Fleiner and Saunders (eds), *Routledge Handbook of Constitutional Law* (2013)

appointment of various office holders, either by nominating them for election by the Jorgorku Kenesh or by appointing them with the consent of the Jogorku Kenesh. He/she represents the Kyrgyz Republic inside and outside the country, and negotiates and signs international treaties, the latter with the consent of the Prime Minister (Constitution, Article 64; Article 89 par 3 states that the Prime Minister "shall conduct negotiations and sign international treaties").

The Jogorku Kenesh

4. The Jogorku Kenesh is "the highest representative body exercising legislative power and oversight functions within the limits of its competence" (Constitution, Article 70 par 1). It consists of 120 deputies elected for a five year term on the basis of proportional representation (Article 70 par 2). The Constitution sets a ceiling of 65 on the number of "mandates" that a single political party may win at an election (Constitution, Article 70 par 2).

5. The Jogorku Kenesh is responsible for the formation of the Government under the Constitution. Next to its role in the formation of a government, and in sustaining it in office, its functions include: the adoption of laws, the ratification of international treaties; the approval of the budget; the approval of the Government's programme of activity; the approval of motions of confidence and of no confidence in the Government; the election and dismissal of a wide range of office holders, in some cases acting on the nomination of the President; the declaration of states of emergency; and decisions on matters of war and peace (Constitution, Article 74).

6. Members of the Jogorku Kenesh are also vested with the right of legislative initiative (Constitution, Article 79). The work of the Jogorku Kenesh is carried out through committees, as well as in plenary sessions (Constitution, Article 76 par 1). Committees prepare and conduct a preliminary review of issues referred to the competence of the Jogorku Kenesh and oversee the implementation of the laws and resolutions adopted by the Jogorku Kenesh (Constitution, Article 76 par 2). Laws and regulatory acts of the Jogorku Kenesh are adopted after a preliminary review of their drafts by the relevant committees of the Jogorku Kenesh (Constitution, Article 76 par 3). Further, the chairpersons of the Committee on Budget and the Committee on Law-Enforcement are representatives of the opposition (Constitution, Article 76 par 1).

7. The Jogorku Kenesh may dissolve itself by decision of a two-thirds majority of the total number of deputies, i.e. 80 deputies (Constitution, Article 78 par 2). In the event of the Jogorku Kenesh dissolving itself, an early election is called (Constitution, Article 78 par 3).

The Government

8. The Government is "the highest body of executive power in the Kyrgyz Republic" (Constitution, Article 83 par 2). The Prime Minister is the head of the Government.

Next to the Prime Minister, the Government consists of vice-prime ministers, ministers and chairpersons of state committees (Constitution, Article 83 par 3).

9. The formation of a Government follows the Jogorku Kenesh's approval of proposals for the "programme, structure and composition of the Government" submitted by a candidate for Prime Minister (Article 84 pars 1-4). If approval is secured, the President must issue a decree on the appointment of the Prime Minister and other members of the Government (Article 84 par 5). If approval is not secured, an early election must be called (Article 84 par 6). It should be noted that the President appoints and dismisses from office the members of the Government in charge of state agencies dealing with the issues of defense and national security, as well as their deputies, without the approval of the Jogorku Kenesh (Constitution, Article 64, par 4, subpar 2).

10. The Government is "responsible and accountable" to the Jogorku Kenesh within the limits stipulated in the Constitution (Article 85 par 1). If the Jogorku Kenesh passes a motion of no confidence in the Government, the President may either dismiss the Government or ask the Jogorku Kenesh to reconsider (Article 85 par 6). If the Jogorku Kenesh repeatedly expresses no confidence in the Government within three months of the first motion of no confidence, the President must dismiss the Government (85 par 7). The Constitution is silent on what happens once the Government is dismissed, but presumably either a new Government would be formed or an early election called.

11. The Government's responsibilities are defined in Article 88 of the Constitution. They include the implementation of the Constitution and laws; the implementation of the domestic and foreign policy of the state, taking measures to ensure law and order, the rights and freedoms of citizens, protecting public order and combating crime, the preparation of the budget and its submission to the Jogorku Kenesh, and ensuring interaction between the Government and civil society (Article 88 par 1).

12. The Government has the right of legislative initiative under the Constitution (Article 79). Deputies of the Jogorku Kenesh and citizens also have the right of legislative initiative; in the case of the latter, this is exercised by way of the right of popular initiative. The Government exercises its right of legislative initiative through the development of draft laws and their submission to the Jogorku Kenesh (Law on Government, Article 31 par 2).

The Supreme Court

13. The Supreme Court is the "highest body of judicial power" in the Kyrgyz Republic (Article 96 par 1 of the Constitution). A Constitutional Chamber of the Supreme Court is responsible for "constitutional oversight" (Article 97 par 1). It has the power to rule on the constitutionality of laws and other regulatory acts, as well as of international treaties to which the Kyrgyz Republic is a party, which have not yet entered into force (Article 97 par 6). It is also required to "conclude on" draft laws

on changes to the Constitution (Article 97 par 6). The Constitution provides that everyone has the right to challenge the constitutionality of a law or other regulatory legal act which he or she believes to violate rights and freedoms recognized in the Constitution (Article 97 par 7).

THE LAW ON NORMATIVE LEGAL ACTS

14. The Law on Normative Legal Acts is a key element of the overall framework within which law making takes place in the Kyrgyz Republic. As well as laying down a number of principles of law-making (Article 3), the Law defines the various types of normative legal acts (Article 4), and the relationship between them, i.e. the hierarchy of normative legal acts (Article 6). It also lays down requirements as to the form and structure of normative legal acts (Articles 11-16), and sets out procedures for drafting, adopting and publishing laws, and rules for their enforcement, interpretation and the resolution of conflicts between laws.

The hierarchy of laws

15. The Law on Normative Legal Acts sets out the following hierarchy of normative legal acts: the Constitution, constitutional laws, codes, and laws (Article 6 par 1; the hierarchy also includes decrees, resolutions and other normative legal acts, which do not form part of this Assessment). The Constitution has "the highest legal effect and embodies fundamental principles and norms of legal regulation of major social relations"; it also provides the "legal basis for adopting laws and other normative legal effects" (Article 4 par 1; see also Articles 6 par 1 and 6 par 2 of the Constitution). A "constitutional law" is a normative legal act adopted by the Jogorku Kenesh "as prescribed by, and on issues stipulated in, the Constitution" (Article 4); the organisation and procedures of the Government, for example, are defined by a constitutional law (Article 88 par 2 of the Constitution). A "code" is a normative legal act adopted by the Jogorku Kenesh "ensuring systemic regulation of social relations of similar nature" (Article 4). A "law", finally, is a normative legal act adopted by the Jogorku Kenesh "regulating vital social relations in a respective field" (Article 4).

16. The essential principle on which the hierarchy is based is that an act may not "contradict" an act that has "higher legal effect" (Article 6 par 2). A law cannot therefore contradict a code, a constitutional law or the Constitution; a code cannot contradict a constitutional law or the Constitution; and a constitutional law cannot contradict the Constitution. In the event of a contradiction or conflict between normative legal acts, acts with "higher legal effect" prevail over those with less legal effect (Article 32 par 1). The Constitution thus prevails over constitutional laws, codes and laws; constitutional laws over codes and laws; and codes over laws. Where the conflict is between acts that have the same legal effect, the act that is more specific to the matter in question takes precedence (Article 32 par 3).

The interpretation of laws

17. Mention may also be made of the "official interpretation" or "clarification" of laws which is treated as a matter for the law maker – in the case of laws, the Jogorku Kenesh – rather than the courts. In the case of the Constitution, its interpretation is a matter for the Constitutional Chamber of the Supreme Court (the Constitution, Article 97 pars 6-10). Official interpretation of all normative legal acts, except for the Constitution, shall be given by the lawmaking entity that adopted the normative legal act (Law on Normative Legal Acts, Article 31 par 2). This means effectively that the law maker has two opportunities to define what the law means –the first being when the law is laid down, and the second when concrete questions of interpretation arise.

THE LAW MAKING PROCESS

The legislative initiative

18. According to the Constitution, the right of legislative initiative belongs to the Government and to deputies of the Jogorku Kenesh; there is also a right of popular initiative, which may be exercised by 10,000 voters (the Constitution, Article 79; further, Article 45 par 1 of the Rules of Procedure of the Jogorku Kenesh states that the right of popular initiative is regulated by the Law on Public Initiative. The Government exercises its right of legislative initiative through the development of laws and their submission to the Jogorku Kenesh (Law on Government, Article 31 par 2). The right of legislative initiative of Members of the Jogorku Kenesh is enshrined in the Constitution and the Law on Status of Members of Jogorku Kenesh (Article 25).

19. The Government's role in the legislative process is reinforced by its possession of the financial initiative. The Constitution provides that "[b]ills that provide for increased expenditures to be covered from the state budget may be adopted by the Jogorku Kenesh after the Government has determined the source of funding' (Article 80 par 3). The Law on Normative Legal Acts and the Law on Government are more explicit. The former provides that normative legal acts that require funding from the national budget "shall not be adopted until a source of funding is defined" (Article 26 par 1); while the later provides that 'bills pertaining to an increase in spending covered from the State Budget or reduction of budget revenues shall be adopted by the Jogorku Kenesh only after the Government defines a funding source (Article 31 par 4).

The planning and management of the legislative programme

20. Next to the preparation of individual pieces of legislation, the Government is responsible for the planning and management of the legislative programme as a

whole. The Law on Normative Legal Acts requires the Government to 'elaborate and approve' an annual law making agenda or programme (Article 18 par 1). The Rules of Procedure of the Government likewise require the Government to plan its 'legislative drafting activity' (Rules of Procedure of the Government, par 27). 'Legislative drafting' is used here in the broad sense of the preparation of laws rather than the narrow technical sense of the conversion of policy into law. In elaborating its law making or legislative drafting agenda, the Government is required to take account of addresses and statements made by the President, proposals made by deputies of the Jogorku Kenesh, by stakeholder agencies, academic institutions, and representatives of civil society (Law on Normative Legal Acts, Article 18 par 2). The agenda or plan is drawn up by the Ministry of Justice on the basis, among other things, of the programme of activities of the Government, instructions of the President or Prime Minister, recommendations of the Jogorku Kenesh, and proposals from ministries and committees, and is submitted to the Government by November 25 each year (Rules of Procedure of the Government, pars 109 -112; Rules of Procedure on Legal Drafting by the Government, par 13). Detailed rules on the preparation of the legal drafting agenda are contained in the Rules of Procedure on Legal Drafting by the Government (see pars 9-14).

21. Normative legal acts may be drafted "over and above" the law making agenda (Law on Normative Legal Acts, Article 18 par 3). This would allow the preparation of laws in response to emergencies or other unforeseen circumstances. "Unscheduled" acts may be drafted following instructions by the President or the Government, the latter on the recommendation of the Jogorku Kenesh, or at the initiative of a ministry or agency (Rules of Procedure on Legal Drafting, par 28).

22. The Rules of Procedure on Legal Drafting by the Government also require ministries and agencies to draw up their own internal legal drafting agendas, which must be sent to the Ministry of Justice; ministries and agencies must also report on a quarterly basis to the Ministry of Justice on progress in the implementation of their agendas (Rules of Procedure on Legal Drafting, pars 15, 17 and 19).

The preparation of individual laws

23. The preparation of individual laws is undertaken by the ministries and agencies, in many if not most cases via a working group created for this purpose, and coordinated by the Ministry of Justice (see Rules of Procedure on Legal Drafting by the Government, par 3 subpars 3 and 4, and par 23). The Ministry is also responsible for "improving the quality of bills drafted by ministries and agencies" (Rules of Procedure on Legal Drafting by the Government, par 3 subpar 3).

24. The Law on Normative Legal Acts sets out rules governing the drafting of normative legal acts (see Articles 11-17). Guidelines on Legal Drafting were approved by resolution of the Jogorku Kenesh in 2006.

Internal consultation and endorsement

25. The Law on Normative Legal Acts provides that before submission to the "President or Government", draft laws must be "agreed with" the Ministry of Justice and the Ministry of Finance and any other public authorities whose competence is involved or affected (Law on Normative Legal Acts, Article 21). A draft law needs to be endorsed by at least half the members of the Government before being submitted to the Government Office (Rules of Procedure of the Government, par 70). There are extensive rules governing the submission and consideration of draft acts by the Government (Rules of Procedure of the Government, pars 64-101).

Public consultation

26. The Constitution guarantees citizens the right to "participate in the discussion and adoption of laws" (Article 52 par 1 subpar 1). The Law on Normative Legal Acts provides that draft laws that "directly involve interests of citizens and legal entities" or "regulate entrepreneurship" must be "offered for public discussion" by publishing them on the official site of the law making body or in the mass media if the law making body does not have an official site (Law on Normative Legal Acts, Article 22 par 1; see also the Rules of Procedure of the Government, par 92). Next to the text of the draft law, the information published must include a statement of its rationale, a list of persons and organisations that participated in its drafting, and a forecast of its potential social, economic, legal and other impacts (see Article 22 par 3). As stipulated by Article 23, the consultation period must last for at least two months. According to Article 22 par 2, the results must be published and reasons given for the inclusion or non-inclusion of points made in the final draft of the law. The Law on Government also requires the Government to conduct public consultations on bills and other normative legal acts pertaining to human and civil rights and freedoms by posting them on the Government's official website before submitting them to the Jogorku Kenesh (Article 40 par 2 subpar 2).

Regulatory impact assessment

27. The Law on Normative Legal Acts provides that drafts of normative legal acts "regulating entrepreneurship" must be analysed for regulatory impact in compliance with the methodology approved by the Government (Law on Normative Legal Acts, Article 19 par 1 and the Methodology for Regulatory Impact Assessment). The Law on Normative Legal Acts also provides that the drafter of the act is responsible for carrying out the assessment, and that drafts which are not accompanied by a justification prepared on the basis of the assessment will not be approved (Article 19 pars 2 and 3).

Scientific expertise

28. The Law on Normative Legal Acts provides that certain draft normative legal acts are subject to "scientific expertise" or verification (Law on Normative Legal Acts,

Article 20). The laws, which are subject to scientific expertise are laws relating to: the enforcement of the constitutional rights, freedoms and obligations of citizens; the legal status of public associations; the mass media; the national budget; the tax system; environmental safety; the struggle against crime; and new forms of regulation of entrepreneurship (see Article 20 par 1). The scientific expertise to which they may be subjected includes legal, human rights, gender, environmental, and anti-corruption expertise, the type of expertise to which they are subjected then depends on the individual draft law.

29. The objectives or purposes of verification, which must be carried out by experts who were not directly involved in drafting the law, include: assessing the quality, justification and timeliness of the draft, and its compliance with the requirements of "the law making technique"; assessing its compliance with the Constitution, constitutional laws, laws and international commitments of the Kyrgyz Republic; assessing its potential effectiveness; and identifying and assessing its "negative impacts", including its negative social, economic, scientific and technical and environmental impacts (Article 20 pars 2 and 3).

The parliamentary stages of legislative process

30. The parliamentary stages of the legislative process normally involve three readings (the Constitution, Article 80 par 4), with the preparation for each reading being undertaken by a committee of the Jogorku Kenesh (the Constitution, Article 76 par 4). Laws amending the Constitution, constitutional laws and laws changing the state borders may be subject to a fourth reading (the Constitution, Article 80 par 5; Rules of Procedure of the Jogorku Kenesh, Articles 54 par 1 and 55 par 4). Such laws also require a two-thirds majority of deputies in order to be adopted, i.e. 80 out of the total of 120 deputies (the Constitution, Article 80 par 5). Other laws are adopted by a majority of deputies, with at least 50 of the 120 deputies voting in favour (the Constitution, Article 80 par 4).

Supporting documentation

31. A draft law must be accompanied by various documents, including a statement of its rationale (which must among other things cover its aims and objectives, possible effects, the results of public discussion, and sources of funding), any consequential legislation and, in the case of laws aimed at business regulation, an analysis of the law's 'regulatory influence' (Rules of Procedure of the Jogorku Kenesh, Article 47; see also Rules of Procedure of the Government, par 114).

Registration and verification

32. Once submitted, a draft law is registered and sent to the Jogorku Kenesh's legal service, which checks that the supporting documentation is in place; it is also checked for its compliance with "the national security principles" (Rules of Procedure of the Jogorku Kenesh, Article 48 par 1). The checks carried out by the

legal service also extend to the draft law's compliance with "the legal drafting technique" (Article 49). A draft law that does not comply with the requirements is returned to its initiator (Article 49).

33. Draft laws initiated by the Government are then sent to the responsible committee and to the "expert service" for "special expertise" (Article 48 par 3), including legal expertise. Draft laws initiated by deputies and by way of public initiative are sent to the Government (Article 48 par 4), which has the right to express its opinion on them; its opinion must be disseminated and published during their consideration (Law on Government, Article 31 pars 6 and 7). They are also sent to the President (Rules of Procedure of the Jogorku Kenesh, Article 48 par 4).

34. The expert service is responsible for legal, human rights, gender, environmental and anti-corruption "expertise" (Rules of Procedure of the Jogorku Kenesh, Article 50 par 1). A separate linguistic service carries out a comparative and editorial examination of the texts of laws in the state and official languages to establish their authenticity and internal consistency (Rules of Procedure of the Jogorku Kenesh, Article 50 par 2).

First reading

35. The first reading is devoted to discussions on the concept, aims and objectives, structure, topicality, expediency and constitutionality of the draft law (Rules of Procedure of the Jogorku Kenesh, Article 56 par 1). Amendments are not permitted at this stage and the draft law is either approved in principle or rejected in its entirety (Rules of Procedure of the Jogorku Kenesh, Article 56 par 3 and 4).

36. The first reading is preceded by a preliminary examination of the draft law by the responsible committee - normally within 30 days of receiving the draft law – which then submits a report to the Jogorku Kenesh, and its recommendation on whether the draft law should be approved or rejected (Rules of Procedure of the Jogorku Kenesh, Article 51 pars 1 and 6). It is open to factions, deputies, the Government and representatives of civil society to send "written comments and proposals", i.e. amendments, to the responsible committee at this stage (Rules of Procedure of the Jogorku Kenesh, Article 51 par 2; see also Article 154 (openness and transparency in the legislative activity of the Jogorku Kenesh)).

Second reading

37. The second reading is the stage where the main amendments to the draft law are made, with the preparation of this again being undertaken by the responsible committee. In the Rules of Procedure of the Jogorku Kenesh, Article 57 par 1 states that the second reading is devoted to the consideration of articles in connection with which amendments have been submitted to the committee "during the first reading", but Article 52 par 1 simply requires amendments to have been submitted by the date specified by the Jogorku Kenesh, which shall be not more than 10 working days

after the first reading (Rules of Procedure of the Jogorku Kenesh, Article 56 par 5). Amendments are submitted to the Jogorku Kenesh's expert service as well as the responsible committee (Rules of Procedure of the Jogorku Kenesh, Article 52 par 1). According to Article 52 par 6, amendments are considered by the responsible committee, which may approve or reject them; approved amendments are included in the draft of the law prepared for the second reading.

38. The draft law is then considered by the plenary of the Jogorku Kenesh. If there are no objections to any of the amendments approved by the committee, the amendments are voted on en bloc (Rules of Procedure of the Jogorku Kenesh, Article 57 par 4). If there are objections to some but not all of the approved amendments, those to which there no objections are voted on before those to which there are objections (Rules of Procedure of the Jogorku Kenesh, Article 57 par 5). The responsible committee's recommendation on an amendment to which there are objections is heard first. If this amendment is approved, no further discussion on this particular matter takes place. If it is not approved, the amendment proposed by the initiator of the draft law is then considered. If this other amendment is approved, no further discussion takes place. If neither is approved, the original version of the draft law passed at first reading stands (Rules of Procedure of the Jogorku Kenesh, Article 57 par 6). Once all the amendments have been considered the draft law as a whole is then approved or rejected (Rules of Procedure of the Jogorku Kenesh, Article 57 par 8).

39. Amendments are to be distinguished from "new proposals", i.e. additions to the draft law. If new proposals are introduced in the course of the second reading, the draft law is returned to the responsible committee for reconsideration (Rules of Procedure of the Jogorku Kenesh, Article 57 par 7).

Third reading

40. At the third reading, the Jogorku Kenesh decides whether to approve or reject the final text of the draft law. In preparation for the third reading, the draft law is returned to the responsible committee, which prepares the final text with the assistance of the Jogorku Kenesh Office (Rules of Procedure of the Jogorku Kenesh, Article 53). The Jogorku Kenesh then receives a report from the responsible committee's representative summarising the discussion of the draft in the committee, together with an account of the approved amendments, after which the plenary decides whether to approve or reject the final text of the draft law (Article 58 par 5). No amendments or discussion of the draft law or its separate elements are allowed at this stage (Article 58 pars 2 and 3).

Return to second reading

41. Where grammatical, editorial or technical errors affecting a draft law's content are detected, its third reading may be postponed by vote of the Jogorku Kenesh. The draft law is then returned to the second reading procedure to allow these to be

corrected (Rules of Procedure of the Jogorku Kenesh, Article 59 par 1).

Fourth reading

42. As already noted, laws amending the Constitution, constitutional laws, and laws amending state borders may be subject to a fourth reading. The fourth reading is confined to consideration of only those parts of the law which were subject to technical or editorial amendments during its third reading (Rules of Procedure of the Jogorku Kenesh, Article 60 par 1). A draft law which is not approved at fourth reading stands rejected (Article 60 par 2).

Urgent draft laws

43. Under the Constitution, it is open to the Government to define draft laws as "urgent": a draft law that is defined as urgent must be considered by the Jogorku Kenesh "as a matter of priority" (the Constitution, Article 80 par 2). The Rules of Procedure of the Government state that the Government shall 'if necessary' submit to the Jogorku Kenesh "a list of draft laws […] defined as urgent and requiring priority consideration' (Rules of Procedure of the Government, par 113). It implies that they must be considered as a matter of priority. Article 43 par 6 of the Rules of Procedure of the Jogorku Kenesh, which states that draft laws defined by the Committee as urgent shall be put on the agenda for a sitting (regular sittings are held on Wednesdays and Thursdays) subject to the existence of the appropriate committee report, and considered as a priority, suggests that the normal procedure continues to apply.

Signing of laws, presidential veto and veto override

44. Within 14 days of the date when the Jogorku Kenesh adopts a law, it is sent to the President for signing (the Constitution, Article 81 par 1). Within one month of receiving an adopted law, the President shall either sign it, or refuse to sign.

45. According to the Constitution, it is open to the President to withhold his consent from a law which has been adopted by the Jogorku Kenesh, except for the laws on the budget and on taxes, by not signing the law and returning it to the Jogorku Kenesh with his objections for re-examination (the Constitution, Article 81 par 2). Before deciding whether to sign a law, the President must seek the opinion of the Government (Law on Government, Article 30 par 2).

46. Where the President objects to a law, the Jogorku Kenesh has three possible ways of action open to it:

- it may agree with the President's objections, in which case the law is revised accordingly and returned to the President for signature; if the President's objection is that the law is "inexpedient", the law falls (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 1 and par 3);

- it may form a "conciliatory group" to elaborate a "co-ordinated" version of the law (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 3), in which case the finally agreed version of the law must then be passed by the Jogorku Kenesh by the requisite majority (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 3 and Article 63 par7); or

- it may "override" the President's veto by passing the earlier approved version of the law by a two-thirds majority of deputies; i.e. 80 deputies, in which case the law is returned to the President for signature (Rules of Procedure of the Jogorku Kenesh, Article 62 par 2 subpar 2 and Article 62 par 4). If the President fails to sign the law, it is signed by the Toraga (Speaker) of the Jogorku Kenesh (the Constitution, Article 81 par 3; Rules of Procedure of the Jogorku Kenesh, Article 62 par 5).

47. If the Jogorku Kenesh fails to take a decision, the law is rejected (Rules of Procedure of the Jogorku Kenesh, Article 62 par 7).

Publication and enactment of a law

48. Publication of a law and other regulatory legal acts is mandatory in order for it to take effect (the Constitution, Article 6 par 4 and Law on Normative Legal Acts, Articles 29 and 30 par 1). According to the Law on Normative Legal Acts, laws must also be registered by the Presidential Administration in the State Registry of Normative Legal Acts in order to have legal effect (see Articles 27-28). In the absence of a provision on this in the law itself, laws passed by the Jogorku Kenesh and signed by the President or the Toraga must be published within 10 days of their signing (the Constitution, Article 6 par 4 and Law on Normative Legal Acts, Article 29 par 2). A passed law enters into force 10 days after its official publication (the Constitution, Article 82; Law on Normative Legal Acts, Article 30 par 2). Laws and other regulatory acts which establish new obligations or "aggravate responsibility" cannot have retroactive effect (the Constitution, Article 6 par 5).

49. The enactment of a law may be delayed by either the law itself, if it contains a provision that sets a later date of entry into force, or by a separate law providing for a later date of entry into force, that is applicable either to the entire adopted law or to only some of its provisions. In the latter case, prior to publication, the law setting out the date of entry into force must accompany the respective draft law, be passed by the Jogorku Kenesh, and then be signed by the President or the Toraga.

ANNEX 2:

LIST OF INTERLOCUTORS

President's Office

Mr. Danyar Narynbaev, Head of President's Office

Mr. Anarbek Ismailov, Deputy Representative of the Kyrgyz President to the Jogorku Kenesh, Head of the Legislative Support Department

Ms. Nurjan Shaildabekova, Deputy Head of the Legislative Support Department

Government

Mr. Nurkhanbek Momunaliev, Minister, Head of the Central Office of the Government

Mr. Ashirbek Temirbaev, Deputy Head of the Central Office of the Government, Permanent Representative of the Government in the Jogorku Kenesh

Mr. Marat Djamankulov, Head of the Legislative Support Department, Central Office of the Government

Mr. Ulan Dootaliev, Deputy Head of the Legislative Support Department, Central Office of the Government

Mr. Mirlanbek Baigonchokov, Deputy Minister of Finance

Mr. Emil Kaikiev, Acting State Secretary of the Ministry for Foreign Affairs

Ms. Aida Kurmanbaeva, Head of the Legal Drafting and Legal Expertise Department, Ministry of Justice

Ms. Ayana Koduranova, Head of the Legal Expertise Unit, Legal Drafting and Legal Expertise Department, Ministry of Justice

Mr. Kylychbek Jakypov, Deputy Minister of Economy

Mr. Ermek Ormotoev, Head of the Department on Regulating Business Activities and Regulatory Impact Assessment, Ministry of Economy

Ms. Aynura Usenbekova, Head of the Regulatory Impact Assessment Department, Ministry of Economy

Jogorku Kenesh

Ms Natalya Nikitenko, Head, Committee on Human Rights, Constitutional Law and State Structure

Ms. Altybaeva Ainura, Head, Committee on Parliamentary Rules of Procedure and Ethics

Mr. Toktogul Tumanov, Head, Committee on Judicial Affairs and Legality Issues

Mr. Abdykaiyum Omorov, Budget and Finance Committee

Caucus of Women Members of the Jogorku Kenesh

Ms. Roza Aknazarova, Member, "Republic" Party

Ms. Shirin Aytmatova, Member, "Ata Meken" Party

Ms. Irina Karamushkina, Member, "Social-Democratic Party of Kyrgyzstan" (SDPK)

Factions

Ms Zhyldyzkan Joldoshova, Member, "Ata-Jurt" faction

Mr. Chynybai Tursunbekov, Member, SDPK faction

Mr. Maksat Sabirov, Member, "Respublika" faction

Staff of the Jogorku Kenesh

Mr. Abdykaim Omorov, Deputy Head of the Department, Budget Committee
Mr. Baktybek Takenov, Head, Scientific and Research Centre of the Jogorky Kenesh

Mr. Aybek Akmoldoev, Head, Legal Expertise Department.

Ms Raikan Kurmanbekova, Head, Special Expertise Department

Independent Institutions and Experts

Mr. Baktybek Amanbaev, Ombudsman of the Kyrgyz Republic

Mr. Bakyt Rysbekov, Director, National Centre on Torture Prevention

Mr. Bakyt Sydygaliev, Deputy Director, National Centre on Torture Prevention

Mr. Mahamatjan Iminov, Independent Legal Expert, former Head of the Legal Department of the Prime-Minister's Office

Ms. Leila Sydykova, Legal Expert, Head of the Working Group on a new Criminal Code

Mr. Kynatbek Smanaliev, Legal Expert, Head of the Working Group on a new Criminal Procedure Code

Mr. Tilek Asanaliev, Legal Expert, Head of the Working Group on a new Criminal Execution Code

Mr. Kemal Ismailov, Independent Expert on Regulatory Impact Assessment

Mr. Alisher Sabirov, Independent Legal Expert

Ms Gulnara Sheishekeeva, Deputy Chairwoman, Board of the Association of Advocates of the Kyrgyz Republic

Non-Governmental Organisations

Ms. Cholpon Jakupova, Adilet Legal Clinic

Ms. Dinara Oshurahunova, Coalition for Democracy and Civil Society

Ms. Nurgul Janaeva, Forum of Women's NGOs

Ms. Asel Koilubaeva, Voice of Freedom Foundation

International Organisations

Mr. Kregg Halstead, Chief of Party, USAID/DFID Kyrgyzstan Parliamentary Strengthening Program

Mr. Jenishbek Arzymatov, USAID/DFID Kyrgyzstan Parliamentary Strengthening Program

Mr. Matt Tappert, USAID/DFID Kyrgyzstan Parliamentary Strengthening Program

Mr. Meder Dastanbekov, USAID/DFID Kyrgyzstan Parliamentary Strengthening Program

Ms. Gulmira Mamatkerimova, UNDP Democratic Governance Programme

Mr. Kurmanbek Turdaliev, UNDP Democratic Governance Programme

Ms. Vera Tkachenko, UNODC office in Kyrgyzstan

Ms. Takhmina Ashuralieva, Soros Foundation Kyrgyzstan

Ms. Nuriana Kartanbaeva, Soros Foundation Kyrgyzstan

Mr. Rustam Madaliev, GIZ office in Kyrgyzstan

Mr. Nurlan Alymbaev, IDLO

Ms. Asel Jamankulova, American Bar Association – Rule of Law Initiative

ANNEX 3

QUESTIONNAIRES ON THE LEGISLATIVE PROCESS

These questionnaires were drafted in preparation for interviews with senior level Government and Parliament officials. All interlocutors in both the Government and the Parliament received the questionnaire shortly before the meetings.

EXECUTIVE BRANCH

Legislative planning

1. How are annual legislative plans prepared? Who coordinates the submission of ministry inputs to the presidential apparatus?

2. How are decisions to initiate a new legislative project taken? Does this happen at the Ministry level or at the Cabinet level?

3. How does the Government collectively determine its priorities with respect to new proposed legislative projects?

The policy making process

4. Prior to initiating the drafting process, is there an examination of whether new legislation is required at all, as the matter may already have been dealt with under the existing law or via alternative measures (e.g. administrative action, public awareness raising, etc.)? In which circumstances could the issue in question be addressed by other non-legislative measures? How are decisions on this taken? What factors are taken into consideration? Is a general equality, anti-discrimination and gender mainstreaming strategy in place in policy and law making processes and related institutional frameworks?

5. Are outside advisers used in the policymaking process? If so, in which cases, and at which stages of the process?

6. Are stakeholder consultations held during initial policy discussions?

7. Is a cost assessment standard practice for all new legislation? If not, in which cases is it undertaken? Are there any cases where it is compulsory? Who has the power to decide whether a cost assessment is required? Are such assessments also made with respect to new legislation proposed by the Parliament or regarding amendments to legislation, whether proposed by the Government or by Parliament?

8. Where a cost assessment is conducted, does the assessment focus solely on the impact of legislation on the central Government's budget or does it also assess the impact on other governmental authorities' (e.g. local governments, autonomous

units) budgets? Are fiscal/financial authorities involved in these consultations? In your view, is there room for improvement? If so, what would you recommend?

9. What procedures are followed when assessing the impact of proposed new legislation on the Government's budget, in terms of capital and recurring costs, in particular personnel and organizational running costs? What procedures are followed to assess the impact of such proposals on the budgets of other governmental authorities (such as local government or provincial authorities)? What procedures are in place to assess the impact on private sector bodies which are likely to be affected by proposed new legislation? Is there a mechanism in place for a gender responsive budgeting approach? If so, which specific entities are designated to ensure gender-responsive budgeting?

10. Are cost assessments carried out as part of the initial consideration of policy options, or once a particular option has been selected, or once a draft law has been completed, or at several of these stages? If the latter, what are the differences between cost assessments at different stages? Do law drafters play any part in these exercises?

11. Are any other formal instruments used to assist in the impact assessment of draft laws? If so, please indicate the types of instruments and the usual purposes and circumstances in which they will be applied.

12. If such formal instruments are used when conducting an impact assessment, who developed them, and who usually uses them?

13. What information on projected costs is provided to the Parliament, and in which form? To what extent is such information made available to the public?

14. In case a draft law is not accompanied by a proper impact assessment, when required, is there a possibility to return such draft law to its initiators? If so, who decides this?

15. At the policy stage, is there a process whereby the compliance of policy proposals or policy options with the text of the Constitution is verified? If so, how?

16. At the policy stage, is there a process whereby the compliance of policy proposals or policy options with the requirements of the existing law is verified? If so, how?

The drafting process

17. Are policy discussions and law drafting undertaken as distinct exercises? Are they undertaken by different units or by the same team? If they are undertaken by different units, at what stage does the law drafter step in? How is the policy decision communicated to the law drafter?

18. Does your Ministry have its own specialized unit of law drafters? If so, how many law drafters are engaged in this unit, and what are the required qualifications? Do

they have separate portfolios based on different areas of law? If there is no specialized unit of law drafters, who undertakes the task of drafting laws? If it is the legal officers of the Ministry, do they have specific job descriptions, and do these mention this task? Is experience in drafting laws an asset for candidates applying for these positions? Do they undergo targeted and regular professional training?

19. We know that the Law on Normative Acts sets out the general principles of law drafting. Is the law supplemented by any government regulations or non-binding instruments, such as guidelines that would detail the drafting standards? Does your Ministry have any other tools that it uses for additional guidance?

20. Have specific guidelines / toolkits / checklists for gender sensitive drafting of legislation been developed for legal drafters? If so, by whom? Which commissions/offices/bodies within the Government apparatus and/or the Parliament, or other independent entities, if any, have the mandate or obligation to review all proposed policy or legislation from a gender perspective?

21. How is the process of law drafting carried out? What are the usual steps that the law drafter follows, and are these, and the overall sequence of the lawmaking process, laid down in a specific document? In your view, is there room for improvement? If so, what would you recommend?

22. Is it common for more than one law drafter to be involved in the drafting of a particular piece of legislation? Is a law drafter engaged in preparing primary legislation a member of a team of Ministry officers charged with policymaking?

23. Does it happen that staff from more than one Ministry drafts a particular law? How is the process coordinated? Who monitors the progress of law drafting, and how?

24. How is the quality of law drafting monitored (e.g. by supervisors)? Is this a concern for the individual ministry, or a separate body, or is there an existing coordination effort under the auspices of the Council of Ministers?

25. When do the law drafter's responsibilities in connection with a draft law end? Is the law drafter responsible for proofreading all versions of the draft law?

26. Have you outsourced law drafting projects to consultants? If so, who decides on this, and what type of consultants were they, for the most part (e.g. international consultants/donor agencies, academia, NGOs)? What budget paid for these consultancies? In case of amendments to laws, are the same experts used? And how is the quality of their work?

27. To what extent is legislation from other countries used either as a model for policy makers or as a legislative precedent for law drafters?

28. Are there fixed time schedules for the preparation of each draft law? Who is responsible for monitoring them, and how? In case more than one ministry is

responsible for the preparation of a draft law, is there a separate team in each ministry or is a joint team established?

29. Does each draft law, before it is introduced to the Parliament, have to be approved by the Government (in addition to the Ministry of Justice's review)?

30. What procedures does the Government need to pursue once the draft law is submitted to the Government for approval?

31. During the law drafting stages, is there a process whereby the compliance of draft legislation with the text of the Constitution is verified? If so, at which stage, and how? In your view, is there room for improvement? If so, what would you recommend?

32. During the law drafting stages, is there a process whereby the compliance of draft legislation with the text of the international conventions / treaties that the Kyrgyz Republic is a party to is verified? If so, at which stage, and how? In your view, is there room for improvement? If so, what would you recommend?

33. During the law drafting stages, is there a process whereby the compliance of draft legislation with the existing law is verified? In your view, is there room for improvement? If so, what would you recommend?

34. Are any other assessments /verifications of draft laws conducted, apart from the legal assessment? Does this list include gender assessments, human rights assessments, impact assessments, and/or anti-corruption assessments?

35. Is there a legal obligation (in primary or secondary legislation) for the drafters to include a gender analysis as part of the regulatory impact assessment? What are the consequences of non-inclusion of such gender analysis? Is there a possibility to return such draft law to its initiators? If so, who decides this?

36. Have specific guidelines / toolkits / checklists on gender impact assessment been developed for legal drafters? If so, by whom? Could you provide us with a copy?

37. Does law and/or policy provide sufficient guidance on how such assessments should be conducted? If so, could you provide us with a copy of such written guidance?

38. Is there a general gender equality and mainstreaming strategy which addresses the issue of gender mainstreaming in policy and law making processes (and related institutional frameworks)?

39. Is there a specific body in charge of gender mainstreaming in the law-making process? If so, how and at what stage does this body get involved in the law-making process? Is this involvement mandatory? Is there a mechanism for ensuring that all ministries send legislative proposals to this specific body to get its comments?

Consultations

40. Are all relevant stakeholders consulted in the law drafting process? If so, are such consultations undertaken in all legal reform processes, or only in some? If the latter, then in which situations? How are the relevant stakeholders identified?

41. What opportunities does the general public have to comment upon legislative proposals or draft legislation, and at what stage? How is the public made aware of legislative proposals and how are public responses sought, made and considered? How much time is usually allocated for consultation? In your view, is it sufficient or there is room for improvement? If so, what would you recommend?

42. How are consultations organized? In your view, is there room for improvement? If so, what would you recommend?

43. Whose responsibility is it to ensure that consultations take place? How are they usually carried out - via formal or informal meetings, or in writing? What information is provided to the persons or groups being consulted during the consultation process? How, and in what form are responses typically provided?

44. Is there an obligation to include a report summarizing the findings of the consultation in the package of documents attached to a draft law?

45. Are there guidelines for consultations in place? How is compliance with public consultation procedures monitored? If such consultations are required, how is this requirement enforced? How are consultations made effective, fair and open?

46. Is there a public consultation mechanism that ensures the participation of men and women, including vulnerable and marginalized groups, as well as civil society organisations working on gender related issues?

The parliamentary stage of the legislative process

47. To what extent can the original law drafters be involved in drafting amendments to the draft law put forward by the Parliament?

48. When a rapporteur presents a draft law to a parliamentary committee, what do such presentations typically involve? Who is normally nominated to present the draft law? Is it one of the actual drafters?

49. Do officials of the drafting Ministry follow the progress of a draft law in the Parliament? If so, how is this done?

50. If the Government concludes that a draft law currently being considered by the Parliament needs to be altered, can the drafting Ministry itself draft the necessary amendments and submit them to the Parliament? If so, how is this arranged? Does this sometimes involve additional consultations and impact assessment?

Secondary legislation

51. What usual steps need to be followed when secondary legislation is being prepared? Do these differ according to the type of secondary legislation?

52. Who decides that secondary legislation needs to be prepared for the purpose of implementing primary legislation? Are there any cases where this requires the collective prior consent of the Government?

53. Is secondary legislation ever prepared as part of the same drafting process as the primary legislation which it is supposed to implement?

54. Who is responsible for policymaking with respect to secondary legislation? Is this the same unit that developed the policy for primary legislation?

55. Are stakeholders consulted in the process of preparing secondary legislation?

56. Who undertakes the drafting of secondary legislation? Is it the same staff that drafts primary legislation?

Access to legislation

57. Which unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?

58. Does the Ministry have ready access to all legislation that is likely to concern it? Does the staff who undertakes law drafting in your Ministry have access to a full set of legislation? Is there an electronic legal database? How is it maintained? Does the respective staff have access to it?

59. Are any groups of persons eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?

60. In what instances can a draft law be published before official legislation? Who decides that a draft law should be published?

61. Is there a consolidated collection of all applicable primary and/or secondary legislation (containing the law in force at the moment of publication)? How is it published?

62. Is there an official and up-to-date index of legislation currently in force that would also show where amendments were made to earlier legislation that is still in force? What other means of finding applicable legislation are in general use?

63. How do members of the public and lawyers in the private sector acquire access to an authentic and complete collection of legislation in force, or to copies of individual laws? Are such texts readily available throughout the country? Are they provided for free, or do they require a fee?

64. Is any entity charged with monitoring the state of current legislation (e.g. with a view to submitting proposals for repealing legislation that is obsolete or spent) or with preparing and publishing consolidated versions of the primary and/or secondary legislation currently in force?

JOGORKU KENESH

1. We know that the Law on Normative Acts sets out the general principles of law drafting. Is the law supplemented by any government regulations or non-binding instruments such as guidelines that would detail the drafting standards?

2. How are the parliamentary legislative agendas compiled?

3. How are the agendas for committee session prepared? Are these agendas communicated to external actors? Who may be present at committee sessions?

4. How are committee hearings, interpellation, parliamentary question sessions organized? How are committees of inquiry organized? How is the quality of legislation ensured – is this the individual responsibility of each committee, or is one committee in particular tasked with coordinating this?

5. What parliamentary techniques are used when fulfilling the Parliament's oversight function? What oversight tools do the parliamentary committees dispose of and how do they apply them?

6. Is there a parliamentary committee on gender issues and / or a women's caucus? If so, does it/do they have a mandate to review all draft legislation from a gender perspective? Is there a specific institutional gender equality strategy in place for the Jogorku Kenesh?

7. How is the process of law drafting carried out in the Jogorku Kenesh? What are the usual steps that the law drafter follows? In your view, is there room for improvement? If so, what would you recommend?

8. Is the drafting of laws ever outsourced to consultants? If so, who decides this, based on which criteria, and which types of consultants are habitually used? What is the quality of their work?

9. During the different stages of drafting laws, is there a process whereby the compliance of draft legislation with the contents of the Constitution is verified? In your view, is there room for improvement in this regard? If so, what would you recommend?

10. During the different stages of drafting laws, is there a process whereby the compliance of draft legislation with the contents of the international treaties/ conventions that the Kyrgyz Republic is a party to is verified? In your view, is there room for improvement in this regard? If so, what would you recommend?

11. During the law drafting stages, is there a process whereby the compliance of draft legislation with existing law is verified? In your view, is there room for improvement? If so, what would you recommend?

12. How is the cost assessment done, and at what stage? Does the assessment focus solely on the impact of a proposed law on the central Government's budget or does it also look at the impact on other governmental authorities' (e.g. local governments, autonomous units) budgets? Are these other authorities involved in the consultations of the draft laws? In your view, is there room for improvement? If so, what would you recommend?

13. Are all relevant stakeholders consulted in the law drafting process? If so, are stakeholders consulted in all legal reform activities? If they are only consulted in certain cases, please specify in which cases. How are relevant stakeholders identified, and if a selection of stakeholders takes place, what criteria is it based on? In your view, is there room for improvement? If so, what would you recommend?

14. Whose responsibility is it to ensure that public consultations take place? How are such consultations usually carried out - via formal or informal meetings or in writing? How, and in what form is input to draft laws typically provided?

15. When do the law drafter's responsibilities in connection with a draft law end? Is the law drafter responsible for proofreading all versions of the draft law?

16. Who drafts amendments put forward while the draft law is being reviewed in the Jogorku Kenesh? To what extent are the original law drafters involved?

17. When a rapporteur presents a draft law during parliamentary committee discussions, what does such a presentation typically involve and focus on? Who is normally nominated to present the draft law? Is it one of the actual drafters of the draft law?

18. In cases where draft laws were introduced by the Government, do officials of the drafting Ministry follow the progress of the draft law in Jogorku Kenesh? How is this done?

19. If the Government concludes that a draft law currently being considered by the Jogorku Kenesh needs to be altered, can the drafting Ministry itself draft the necessary amendments and submit them to Jogorku Kenesh? If so, how is this done from a procedural point of view?

20. In which cases does the Jogorku Kenesh make use of expert opinions from officials, experts or members of the public when considering a draft law? How frequently does this happen? Are there any mechanisms to ensure the participation of men and women, including vulnerable and marginalized groups as well as civil society organisations working on gender related issues, where appropriate?

21. Is any parliamentary body specifically charged with monitoring the preparation of draft laws, to ensure that the standards set are being followed? If so, how does it carry out its responsibilities, and is it effective?

22. Is there a mechanism in place for conducting public consultations? Are there any guidelines in place? How is compliance with consultation procedures monitored? If consultation procedures are required, how is this requirement enforced? How are consultations made effective, fair and open?

23. What opportunities does the general public have to comment on legislative proposals or draft legislation? How is the public made aware of legislative proposals and how are public responses sought, submitted and considered?

24. Are any groups of persons in the Jogorku Kenesh eligible to receive free copies of legislation?

25. Is there an official and up-to-date index of legislation currently in force that would also show where amendments were made to earlier legislation that is still in force?

26. How do members of the public and lawyers in the private sector acquire access to an authentic and complete collection of legislation in force, or copies of individual laws? Are such texts readily available throughout the country? Are they provided for free, or do they require a fee?

27. Is any entity charged with monitoring the state of current legislation (e.g. with a view to submitting proposals for repealing legislation that is obsolete or spent) or with preparing and publishing consolidated versions of the primary and/or secondary legislation currently in force?

ANNEX 4

THE BASIS FOR OSCE/ODIHR's LAWMAKING REFORM ASSISTANCE ACTIVITIES

Scrutiny of individual laws often reveals deep-seated weaknesses in a country's law-making system. Laws adopted with the best intentions in response to pressing social needs may prove inefficient or ineffective because of underlying deficiencies in the system of preparing legislation itself. Frequently, political priority considerations prevail over any other considerations while enacting legislation on substantive issues. The most effective way of rectifying the situation is to address the underlying causes. Often, little work is done in terms of finding methods for rationalizing legislative procedures, whilst considerable resources are devoted to the building or strengthening of institutions involved in law-making. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme[12], a joint initiative of the European Union and the Organization for Economic Co-operation and Development.

A successful law-making process includes the following components: a proper policy discussion and analysis; an impact assessment of the proposed legislation (including possible budgetary effects); a legislative agenda and timetables; the application of clear and standardized drafting techniques; wide circulation of the drafts to all those who may be affected by the proposed legislation; and mechanisms to monitor the efficiency and implementation of legislation in real life on a regular and permanent basis. Further, an effective and efficient law-making system requires a certain degree of inclusiveness and transparency within the government and the parliament. This includes providing meaningful opportunities for the public, including minority groups, to contribute to the process of preparing draft proposals and to the quality of the supporting analysis, including the regulatory impact assessment and gender impact assessment, which involves the adaptation of policies and practices to make sure that any discriminatory effects on men and women are eliminated. Proposed legislation should be comprehensible and clear so that parties can easily understand their rights and obligations. The efficiency of the legislation in real life should be monitored on a permanent basis.

While reviewing a number of legal drafts pertaining to some OSCE participating States, ODIHR came to the conclusion that some of the stages of the legislative process which are outlined above are either missing, not properly regulated or not implemented. Further, limited attention is paid to ensuring the preconditions for effective implementation of legislation, such as the capacity of the administrative infrastructure, the availability of human or financial resources, etc. There is also insufficient exposure to methodologies that may help minimize the risks of impractical laws, such as broad consultations with stakeholders outside Jogorku Kenesh and government so as to increase the probability that

[12] SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe, http://www.sigmaweb.org/.

the adopted legislation yields consensus and is, thereby, properly implemented. Further, particular attention is given to the concept of "legislative transparency", which is specifically referred to in two key OSCE documents[13], and to take into consideration recommendations or special interests manifested in discussions during the OSCE Supplementary Human Dimension Meeting in November 2008, and identified in the assessment reports on various domestic law-making processes that ODIHR has been producing since 2006. Among these recommendations, it is worth recalling the following[14]:

a) The preparation of legislative proposals needs to be based on an effective policy making process and sufficient time should be allowed for their preparation; it should be recognised that elaboration of policy and law drafting are distinct processes, and that law drafting should follow from policy formation, rather than serve as a substitute for it;

b) Public consultation should be an indispensable element of legislative process. A clear and well-articulated strategy on promoting the development of civil society to ensure that their input in policy development and law-making is given proper consideration shall be in place: such a strategy can ensure better quality, more widely accepted legislation and more effective implementation of the legislation adopted;

c) An effective system of legislative verification should be in place to embrace operational features of the legislation as well as questions of legal compliance and to ensure the proper legal wording, clarity and comprehensibility of the draft law; impact assessment, an important and valuable tool in both policy development and in drafting legislation to implement state policy, should be planned and implemented properly and needs to become compulsory, at least in cases involving complex legislation, or laws that have a severe impact on large parts of the population;

d) The required secondary legislation should be introduced in a timely manner to ensure the effective implementation of primary legislation;

[13] *Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (…) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone*;" (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). "*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*" (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991).

[14] These recommendations are extracted from the original documents.

e) Effective and efficient parliamentary oversight of the implementation of legislation should be ensured;

f) Governments should monitor the implementation of adopted laws, assess their impact and publicly report on their findings, formulating specific recommendations for amendments, where necessary; mechanisms for monitoring the implementation of legislation and its effects should become an inherent part of the legislative procedure, based on an analysis of existing practices.

Following an official request from a OSCE participating State, ODIHR, in close co-ordination with the national authorities, may conduct a full-fledged comprehensive assessment of the country's legislative system and assist the authorities in designing a comprehensive legislative reform roadmap. This work features three main aspects:

1. the assessment is comprehensive, covering the entirety of the process by which legislation is prepared, drafted, assessed, discussed, consulted, adopted, published, communicated, and evaluated;

2. the assessment describes the current law-making system both on paper and in practice;

3. the assessment will provide a sufficiently detailed account in order to support credible recommendations for reform tailored to the particular needs of the country.

The purpose of such assessment is to collect, synthesize and analyze information with sufficient objectivity and detail to support credible recommendations for reform in the area in question. Information for the assessment is collected through semi-structured field interviews with pre-identified interlocutors, as well as through compiling relevant domestic legislation and regulations. The information gathered through field interviews and the collection of domestic laws and regulations is then analyzed in the light of generally accepted international standards in relation to legislation.

Frequently, the comprehensive assessment is preceded by a preliminary assessment that presents a quite detailed description of the current constitutional, legal, infra-legal and organisational framework of the legislative process in the country. Such assessment analyses some particularly critical aspects of the legislative process and formulates recommendations for possible improvements. The purpose of the preliminary report is to provide a description and systematic account of the legislative process in the country and offer an analysis of identified vulnerabilities in the law-making process and the way in which they may be addressed. The preliminary report does not reveal how procedures are used in practice, as it focuses on the legislative framework regulating the law-making process.

The comprehensive assessment reviews both legal and practical aspects of the law-making process and is expected to act as a catalyst for reform. The recommendations contained in the assessment report are to serve as a working basis for conducting thematic workshops

that provide a forum for discussing the recommendations and developing more specific recommendations. The topics of the workshops are jointly identified by ODIHR and the national authorities. The workshops aim at creating a platform for inclusive discussions among key national stakeholders, including non-governmental organizations, on methods that may be employed to make the law-making process more efficient, transparent, accessible, inclusive and accountable. The recommendations, stemming from the assessment and the thematic workshops are then put together in the form of a reform package and officially submitted to the State authorities for approval and adoption.