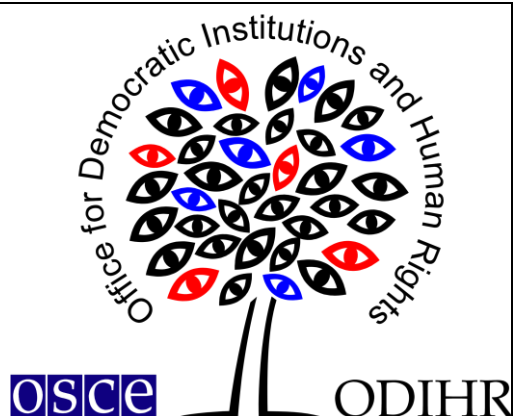


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PRELIMINARY ASSESSMENT OF THE LEGISLATIVE PROCESS IN THE REPUBLIC OF UZBEKISTAN

This Preliminary Assessment has been prepared by the OSCE Office of Democratic Institutions and Human Rights in collaboration with Professor Hanna Suchocka, professor of Constitutional Law of Adam Mickiewicz University, Poznan, Poland, Professor Alan Page of the University of Dundee, United Kingdom and Ms Marta Achler of European University Institute, Florence, Italy.

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This Opinion is also available in Russian.

However, the English version remains the only official version of the document.

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I. INTRODUCTION

BACKGROUND

1. The following assessment is drafted on the basis of the Memorandum of Understanding (hereinafter “MoU”) of 22 November, 2018, signed in Samarkand, Uzbekistan by and among, the Senate and Legislative Chamber of the *Oliy Majlis*, of the Republic of Uzbekistan, the Office of Democratic Institutions and Human Rights of the Organization for Co-operation and Security in Europe (OSCE/ODIHR) and the OSCE Project Co-ordinator in Uzbekistan .
2. In the Memorandum of Understanding OSCE/ODIHR undertook to conduct an assessment of the law-making system in the Republic of Uzbekistan in the light of OSCE commitments on democratic law-making and to make recommendations for reform. In particular, the MoU was signed for the purpose of enhancing the legislative process and parliamentary oversight in line with international standards as well as good practices. ODIHR undertook to analyse and evaluate the existing law-making process, develop recommendations based on international standards and best practices. The MoU also envisages, subject to further agreement, the organization of thematic workshops on different aspects of law-making, aimed at developing specific recommendations to supplement those identified in the assessment, and the preparation of a regulatory reform roadmap made up of concrete action points arising from the recommendations in the assessment and workshops.
3. Professor Hanna Suchocka, Professor Alan Page and Ms Marta Achler were invited to support OSCE/ODIHR in carrying out preliminary assessment of the legislative process in the republic of Uzbekistan. Professor Hanna Suchocka was a Prime Minister of the Republic of Poland in 1992 and 1993, former Minister of Justice and General Prosecutor of the Republic of Poland in 1997 – 2000 and is a professor of Constitutional Law at Adam Mickiewicz University, Poznan, Poland. Professor Alan Page is professor of Public Law at the University of Dundee, United Kingdom. Ms Marta Achler is former Deputy Head of ODIHR Democratization Department and former Chief of ODIHR Legislative Support Unit and is a PhD Candidate at the Department of Law, European University Institute, Florence, Italy.
4. As a first step, between 4 and 5 March 2019, an OSCE/ODIHR team of experts travelled to the Republic of Uzbekistan to conduct meetings with a number of relevant interlocutors, interview members of the Legislative Chamber and Senate of the *Oliy Majlis*, civil servants from the Ministry of Justice, and representatives of non-governmental organizations as well as international aid organizations. A second follow-up visit took place in July 2019.
5. The ODIHR expert team conducting the March visit, was comprised of the ODIHR Chief of the Legislative Support Unit, and, *Professor Hanna Suchocka*, professor of

Constitutional Law, Adam Mickiewicz University, Poznan, Poland, *Professor Alan Page*, professor of Public Law at the University of Dundee, United Kingdom, and *Marta Achler*, PhD Candidate, Department of Law, European University Institute, Florence, Italy.

6. The preliminary visit was preceded by the collection of relevant sources of law governing the law making process in the Republic of Uzbekistan (listed paragraph 14). This visit, coupled with the available documentation, provided important insights into the law-making process in the Republic of Uzbekistan. OSCE/ODIHR is grateful to the Ministry of Foreign Affairs, as well as the Permanent Mission of the Republic of Uzbekistan to the OSCE and the OSCE Project Co-ordinator in Uzbekistan for their assistance and co-operation in organizing the visit. ODIHR would also like to thank all of its interlocutors for meeting with the mission and sharing their views. The OSCE/ODIHR team also received written answers to questions on the law-making process from the Legislative Chamber and the Senate of the Oliy Majlis, on 1 April, 2019. The OSCE/ODIHR team is grateful to all those who took the time to meet and share their knowledge and experience.

SCOPE AND AIM OF THE PRELIMINARY ASSESSMENT

7. The Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan was conducted during a period of reform of the legislative process and practice taking place in the Republic of Uzbekistan. To a great extent, these reform efforts described in detail in Annex 2 of this report, have been spurred by the Decree of the President of the Republic of 8 August, 2018 (No. UP-5505) on Approval of the Concept of Improving Law-making (Presidential Decree of 8 August 2018). This Presidential Decree recognizes that the laws and regulations in place currently, do not meet the needs of society. In addition, and as repeatedly mentioned during the assessment visit in March, 2019, the use of secondary law by Ministries has created a large swathe of regulations which do not go through the ordinary legislative scrutiny of primary law and are often overlapping or redundant. Importantly, according to this Presidential Decree a Commission for the implementation of the Concept for Improving Rulemaking has been formed (see Annex 3 to the Presidential Decree of 8 August 2018) in order to carry out the reform.
8. The Preliminary Assessment accordingly concentrates on providing recommendations that would build upon those areas, which have already been identified as in need of reform. The Assessment also provides a description of the legislative process as it stands in the Republic of Uzbekistan and finally, a short overview of the effort to improve law-making in Uzbekistan as set out in the Presidential Decree of 8 August 2018.

9. The overall aim of this Preliminary Assessment is to promote better legislative efficiency in order to ensure that laws are of good quality and meet democratic standards, both in substance and the manner, in which they are adopted.
10. In particular, this Preliminary Assessment aims to provide recommendations that reflect and supplement the reform efforts already being undertaken by the authorities of the Republic of Uzbekistan under the Presidential Decree. It will therefore serve as a preliminary to the organization of expert roundtables on relevant topics, as envisaged by the MoU.
11. The Preliminary Assessment is made up of five main sections. The first section outlines the background to and principal features of the current efforts to improve the quality of legislative activity in the Republic of Uzbekistan. The second section examines the regulatory or normative framework governing law-making in the Republic of Uzbekistan, focusing in particular on the Constitution and the Law on Normative Legal Acts. The Assessment then looks at the legislative initiative before concentrating in the final two sections on the preparation of draft laws within government and the parliamentary stages of the law-making process.
12. OSCE/ODIHR should stress that this Preliminary Assessment is without prejudice to any description, analysis or written and oral recommendations and comments on the related legislation and legislative process that OSCE/ODIHR may have the opportunity to make in the future.
13. In accordance with the OSCE/ODIHR's established methodology this Preliminary Assessment is to be followed with a wider, more comprehensive, full-scale assessment of the law-making process and practices in the Republic of Uzbekistan. This Final Assessment Report will take into account and reflect on recent legislative reforms, include comprehensive legal reviews of the legislation pertaining to the law-making process, identify deficiencies and elaborate detailed recommendations to address them. The Final Assessment Report will be accompanied with the Roadmap, which will be developed jointly with the main stakeholders.

MATERIALS ANALYZED

14. This Assessment is based on non-official English translations of the following legal texts; errors from translation may consequently result. It is also possible that recent amendments to key laws were not yet taken into account in the English translations.
 - The Constitution of the Republic of Uzbekistan of 1993;¹

¹ Bulletin of the Supreme Council of the Republic of Uzbekistan, 1993, No. 1, art.4, 1994, No. 1, art. 5; Bulletin of the *Oliy Majlis* of the Republic of Uzbekistan, 2003, No. 3-4, art. 27; Bulletin of Chambers of the *Oliy Majlis* of the Republic of Uzbekistan, 2007, No. 4, art. 162; 2008, No. 12, art. 637, 2011, No. 4, art. 100; No. 12/1, art. 343; 2014, No. 4, art. 85

- Decree No. UP-5505 of the President of the Republic of Uzbekistan on Approval of the Concept of Improving Law-making, 8 August, 2018;
- Law of the Republic of Uzbekistan amending the Law on Normative Legal Acts, No LRU-342, 24 December, 2012;
- Law on the Rules of Procedure of the Legislative Chamber of the *Oliy Majlis* of the Republic of Uzbekistan, Section III on the Procedure for Considering Laws and Regulations in the Legislative Chamber, as amended, by Law No ZRU-369, 29 December, 2015, as amended 8 January, 2019;
- Law of the Republic of Uzbekistan on Social Partnership, No 3PY-376, 25 September, 2014;
- Law of the Republic of Uzbekistan on Transparency of Activities of State Bodies and Administration No 3PY-369, 5 May, 2014;
- Law of the Republic of Uzbekistan on Public Discussion of Bills No 166-II, December 14, 2000;
- Law of the Republic of Uzbekistan on Rules for Drafting and Submitting Bills to the Legislative Chamber of the *Oliy Majlis*, No. LRU-60, October 11, 2006
- Resolution of the Cabinet of Ministers of the Republic of Uzbekistan on Rules of Procedure of the Cabinet of Ministers, as amended by Resolution No 1023, 26 December, 2017;
- Resolution of the Cabinet of Ministers approving rules on the procedure for the drafting and approval of programmes for drafting and submitting of draft laws to the Legislative Chamber of the *Oliy Majlis*, as well as for monitoring their implementation (Government Resolution No 227 of 5 August 2011), as amended by Resolution of the Cabinet of Ministers on measures for further improving the law drafting activity of the Government of the Republic of Uzbekistan (Government Resolution No 345 of 17 October 2016).
- Joint Resolution of the *Kengash* of the Legislative Chamber of the *Oliy Majlis* of the Republic of Uzbekistan and the *Kengash* of the Senate of the *Oliy Majlis* of the Republic of Uzbekistan on the Legal and Technical Rules for Drafting Bills submitted to the Legislative Chamber of the *Oliy Majlis* of the Republic of Uzbekistan, submitted to the Senate of the *Oliy Majlis* of the Republic of Uzbekistan, No.237-II, 30 December 2010 (for the Legislative Chamber, and No.150-II, 30 December, 2010 (for the Senate);

- Order of the Minister of Justice of the Republic of Uzbekistan on Approval of the Rules for Drafting and Adopting Internal Legal Instruments, No 53-mx, 28 February, 2014.

II. EXECUTIVE SUMMARY AND RECOMMENDATIONS

15. This Preliminary Assessment examines the law-making process in the Republic of Uzbekistan and is part of the combined efforts of OSCE/ODIHR and the OSCE Project Co-ordinator in Uzbekistan to provide assistance to strengthening and improving the law-making process. As envisaged in the MoU, it examines the overall regulatory framework within which law-making takes place in the country. This includes the structure, methods, and levels of interaction between the two chambers of the *Oliy Majlis*, as well as the mechanisms and procedures in place for preparing, drafting, adopting, assessing (by conducting regulatory impact assessment), publishing and monitoring the implementation of legislation, and makes recommendations for reform.
16. OSCE/ODIHR emphasises that these recommendations are made in light of the OSCE commitments and general democratic law-making standards, deriving from human rights principles such as participation, non-discrimination and respect for the rule of law.
17. For this purpose OSCE/ODIHR has reviewed the legislative process from a legal, policy and practical perspective. In this respect it is important to recognize that law-making is not an isolated matter and always requires a combined effort of various state actors and a meaningful interaction with those whom the laws aim to serve. It is apparent from the reform initiatives that there is a shared understanding that further consolidation is needed for the whole of law-making process to be effective.
18. Having in mind these ongoing reform initiatives, OSCE/ODIHR would like to make the following observations with regard to issues that arise in the present law-making process as well as initial recommendations on the improvement of the law-making system in the Republic of Uzbekistan;
 - A. **Hierarchy of legal norms:** In order to avoid any possible confusion, ‘absolute supremacy’ should be confined to the Constitution only rather than the Constitution and laws as at present;
 - B. Consideration may be given to amending Article 15 of the Constitution to make it clear a) that the Constitution is supreme, and b) that all other laws (and legal acts) are subordinate to the Constitution, though those that derive their legal basis from

the Constitution take precedence over all other normative legal acts; consideration may also be given to deleting the first sentence of Article 7 of the Law on Normative Legal Acts;

- C. **Secondary legislation:** It is proposed that all secondary legislation should be based on primary law and be firmly situated at the bottom of the hierarchy of legal norms. Its role should revert to – or be confined to – implementing principles of law than establishing them. Ministries should receive only the delegated authority necessary to ensure effective implementation of laws, through by-laws, however, by no means for the purpose of making new rules. By-laws should always indicate or refer to the specific primary legislation that created the legal basis for their adoption;
- D. Ministerial rule-making should be limited, as envisaged in the Presidential Decree of 8 August 2018, by more clearly defining the competence of ministries. As a further step, in those areas in which laws have been adopted, ministerial rule-making should be confined to rules made in the exercise of powers conferred by the governing law;
- E. **Scope of legislative power:** The Constitution and the Law on Normative Legal Acts should define precisely the scope for presidential decrees, as well as their place in the hierarchy of normative legal acts. Acts of a normative nature issued by the President should not detract from the principle of democratic law-making in which laws are made by the supreme state representative body, the *Oliy Majlis*. Presidential decrees should be treated as a distinct species of normative legal act in the Law on Normative Legal Acts, subordinate to the Constitution and laws but superior to resolutions of the Cabinet of Ministers and ministerial and other acts. Similarly, the latter should not be used as an alternative to democratic law-making by the *Oliy Majlis*;
- F. It is recommended that the parameters of the law-making power vested in the *Oliy Majlis* should be more fully defined in the Constitution by listing areas or matters which should be governed by laws, and thus go through the legislative procedures of the Parliament and Senate. Furthermore, it is recommended to define in the Constitution the parameters of ‘constitutional laws’ as well as the manner in which they should be adopted;
- G. **Legislative Initiative:** The multiplicity of actors that can currently initiate legislative acts gives cause for concern. In this light consideration may be given to

excluding the courts and the Prosecutor General from the right of legislative initiative;

- H. Consideration could be given to introducing the institution of legislative initiative by citizens, the scope and limitations of which would be further defined in a legislative act, including a threshold for the minimum numbers of signatures collected for an initiative to be considered;
- I. **Policy-making:** With a view to feed into the introduction of the “regulatory guillotine” and to ensure the envisaged results in the reduction of the high number of regulations and by-laws, the policy development stage should undergo significant reform in order to allow broader discussion prior to adoption of a concept for a new law and to gauge public needs prior to the initiation of legislative activity;
- J. In this respect, overarching and cross-governmental coordination bodies may be appointed within ministries and other governing bodies to guarantee a institutionalised methodology for the inception phases of law-making;
- K. **Regulatory Impact Assessment:** The introduction of a methodology for ex-ante assessment of policies and laws would be advantageous as one way in which a further or future accumulation of redundant policies or acts might be avoided and in order to provide the opportunity for systemizing the laws already in place;
- L. Approval for the drafting of laws or regulations should be preceded by consideration of policy alternatives, one outcome of which may be a decision that legislative intervention is not needed or appropriate. It should be a condition of inclusion in the law drafting programme that consideration has been given to the need for legislative intervention, and prior approval secured for the policy to which the law is intended to give effect. To this end, a framework for conducting regulatory impact assessments (RIAs) is recommended to be put into place and required prior to the initiation of any regulatory and legislative activity.
- M. Legislation should undergo a gender impact assessment. In this respect, to determine the gender pertinence of a proposal, the potential impact on any identified target group(s) should be evaluated.

- N. Transparency and Inclusiveness: Public consultations should become a routine feature of the overall and a meaningful part of every stage of the legislative process, particularly in the Legislative Chamber;
- O. Policies and concepts should be discussed in order to ensure that the direction of legislative activity is apt to achieve the desired result and complies with international obligations and standards;
- P. Schedules and time-table for when laws will be available for comment should be established and communicated to the public with adequate time given for feedback. Drafts should be accompanied by relevant documentation, including regulatory impact assessments;
- Q. New technologies should, to the extent possible, be used to increase the opportunities for public comment on draft laws and the policies on which they are based;
- R. Consultation responses are recommended to be made public, and the points raised, in so far as they pertain to the subject-matter, should be adequately addressed;
- S. **Develop and Invest in Expertise:** Legal and drafting expertise should be both systematized and strengthened at all levels - whether governmental, ministerial or in the *Oliy Majlis*;
- T. The capacity of the Legislative Chamber, to scrutinize laws emanating from the executive, should be strengthened and a clear division of tasks should be worked out with the Cabinet of Ministers;
- U. The increase of the law drafting capacity of the Legislative Chamber and the Senate is welcomed but should be reinforced further, including with financial resources.

III. THEMATIC ANALYSIS

INTRODUCTION

19. The law-making system in the Republic of Uzbekistan faces potentially significant change following the Presidential Decree on improving rule-making of 8 August 2018 (UP-5505 of 8 August 2018, described in detail in Annex II hereto). The decree was issued further to the National Development Strategy 2017-2021. The Strategy, which was approved by the Presidential Decree of February 2017 (UP-4947 of 7 February 2017) identifies the following five areas for development:
- Enhancing the state and public construction system;
 - the rule of law and reform of the judicial system;
 - economic development and liberalisation;
 - development of the social sphere; and
 - security, inter-ethnic harmony and religious tolerance, together with the implementation of a balanced, mutually beneficial and constructive foreign policy.
20. The development of the National Development Strategy was followed by the Presidential Decree of 8 August 2018, which identified the existing legal framework and the quality of the rule-making process in the Republic of the Uzbekistan as critical to the success of the National Development Strategy.
21. The preamble to this Presidential Decree highlights the following weaknesses of the existing rule-making system:
- ‘the patchy regulation’ of social relations in various areas, which causes ‘legal conflicts, discrepancies and difficulties in law enforcement’;
 - the lack of a quick response to, or the failure to address, ‘systemic issues’;
 - the failure to assess the impact of legal instruments on sectors of the country’s economy;
 - the failure to ensure that the objectives for improving the lives and well-being of citizens are achieved;
 - the ‘predominance of laws of a framework nature’;
 - the adoption of individual decisions ‘without a specific mechanism for their implementation’; and
 - the heavy reliance on executive rule-making rather than laws in the regulation of social relations.
22. In terms of the last of these weaknesses, it is estimated that only 5 per cent of the total stock of rules at present takes the form of primary laws, with 95 per cent of the remainder taking the form of rules and other instruments made by ministries, and the

balance being made up by a combination of presidential decrees and government resolutions. The United Nations Development Programme and the Development Strategy Centre, have also been working in Uzbekistan on the reform of the law-making process. Their report² *“Towards 2030: SDG Policy Dialogue - Transformation of law-making in Uzbekistan: new approaches for sustainable development”* accurately states in recommendation VI. Paragraph 1 (a) that the normative powers of the ministries and departments should be limited by *“defining a limited list of competencies and jurisdictions of each ministry and department within which they have the right to make decisions”* and paragraph 6 recommending to *“develop and introduce an additional classification of normative legal acts that would allow them to be divided according to their functional purposes”*.

23. One of the key objectives for improving the state and public construction system, identified by the National Development Strategy, is ‘fundamental improvement’ in the ‘quality of legislative activity’, aimed at strengthening the impact of adopted laws on political, economic, judicial and legal reforms. The Presidential Decree of 8 August 2018 also points out, that at the same time, successful implementation of the planned large-scale reforms largely depends on the legal framework that has been formed over the past years, as well as on the quality of the rule-making process. Importantly, the Presidential Decree of 8 August, 2018 goes on to recognize that the existing shortcomings in the field lead to the continuation of the negative practice of patchy regulation of social relations in various areas, which causes legal conflicts, discrepancies and difficulties in law enforcement.
24. The Presidential Decree of 8 August 2018 lays down five ‘main directions of improvement’ of rule-making:
 - ‘systematisation of the legal framework, ensuring the stability of legal regulation of public relations’;
 - improving the ‘quality of the processes of drafting and adopting legal instruments’, as well as ‘better monitoring of their implementation’;
 - the introduction of modern information and communication technologies into the rule-making process;
 - the application of ‘smart regulation’ or ‘better regulation’ techniques in rule-making; and
 - strengthening the institutional framework for rule-making.
25. Key individual elements of the Plan of Action to Implement the Concept of Improving Law-Making approved by the Presidential Decree of 8 August 2018 include:
 - a greater role for laws as opposed to regulations to direct social relations. Over the course of the next decade (to 2030) it is proposed that the percentage of the

² Report from the second session of the SDG Policy Dialogue on “Transformation in the Lawmaking in Uzbekistan: New Approaches to Sustainable Development”, held on June 20, 2018.

total stock of rules that take the form of laws should rise to 12 per cent with the percentage of ministerial regulations falling to 16 per cent, the difference being made up by an increase in presidential decrees. The percentage of rules taking the form of government resolutions is planned to remain unchanged;

- the replacement of ‘framework’ laws by so called ‘direct’ laws, which do not require further elaboration. The intention therefore is that, as well as their number increasing, laws should become more detailed;
- a reduction in the number of regulations, through the ‘regulatory guillotine’ mechanism, of unnecessary or redundant regulations and the codification or recasting of the remainder; and
- a reduction in or cutting back of the rule-making powers of ministries /ministerial rule-making (ministries should no longer have the power to approve procedures, rules and guidelines applicable to citizens and the private sector).

26. The concept of improving rule-making also envisages that there should be changes to the way in which laws are prepared and enacted. Viewed from the standpoint of democratic law-making, the concept of improving rule-making and plan of action for its implementation represent a modest (in terms of the percentage of the total stock of rules that it is planned should take the form of laws) but nevertheless potentially significant step in the implementation of the principle of democratic law-making, in which the most important laws are laid down by the democratically elected legislature.

CONSTITUTIONAL FRAMEWORK AND POLITICAL SYSTEM

27. The Assessment of the Legislative Process in the Republic of Uzbekistan takes place in the context of the following constitutional framework and political system (see Annex 1).
28. The Constitution of the Republic of Uzbekistan was adopted in 1993 and has been most recently amended in 2017. It states that the system of state authority is based on the separation of powers between the executive, legislative and judicial branches of government (Article 11).
29. The political system concentrates most decision-making and executive powers in the office of the President, who shares legislative power with Parliament. The President is directly elected by popular vote for a five-year term.³
30. The bi-cameral Parliament comprises a 100-member Senate and a 150-member lower chamber, both elected for five-year terms. The Senate comprises 84 members indirectly

³ Article 90 of the [Constitution of Uzbekistan](#) of 1993 (as amended 2014), for more information see: OSCE/ODIHR Election Observation Mission Final Report on the Early Presidential Elections of the Republic of Uzbekistan, 4 December 2016.

elected by 12 regional councils, the city of Tashkent and the Republic of Karakalpakstan, as well as 16 senators appointed by the President.

NORMATIVE FRAMEWORK AND SOURCES OF LAW

31. A precise and certain normative framework for the establishment of a hierarchy of legal norms, the adoption of laws as well as the sources of law, constitutes an essential foundation for a system of good, open and democratic law-making. The significance of constitutional clarity on these matters and normative acts comprising the framework serves the adherence to the principle of the rule of law in a democratic society.
32. The principal instruments governing law-making in the Republic of Uzbekistan are: the Constitution; the Law on Normative Legal Acts; the Law on the Rules for Drafting and Submitting Bills to the Legislative Chamber; the Law on the Rules of Procedure of the Legislative Chamber; the Law on the Rules of the Procedure of the Senate; and the Law on Public Discussion of Bills; there are also Rules of Procedure of the Cabinet of Ministers.
33. Detailed legislative drafting rules are set out in Joint Resolution of the Legislative Chamber and Senate of the *Oliy Majlis* on the legal and technical rules for drafting bills submitted to the Legislative Chamber and laws submitted to the Senate.
34. There is also a Resolution of the Cabinet of Ministers approving rules on the procedure for the drafting and approval of programmes for drafting and submitting of draft laws to the Legislative Chamber of the *Oliy Majlis*, as well as for monitoring their implementation (Government Resolution No 227 of 5 August 2011), which has been amended by a Resolution of the Cabinet of Ministers on measures for further improving the law drafting activity of the Government of the Republic of Uzbekistan (Government Resolution No 345 of 17 October 2016).
35. Chapter III of the Constitution is entitled “Supremacy of the Constitution and law”. The chapter is very short, consisting of two articles. The first is Article 15 of the Constitution, which states that “[t]he Constitution and laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan.” This formulation constituting a basis for the activities of all subjects in the state – “The state, its bodies, officials, public associations and citizens shall act in accordance with the Constitution and laws” - is rather imprecise and places the Constitution and the laws at the same level. The term “absolute” supremacy is not recommended to be ascribed to ordinary laws, but should rather be reserved for the fundamental acts which is the Constitution alone. Otherwise, *prima facie*, this may create legal confusion about whether there exists a legal difference between the Constitution and ordinary law.
36. Indeed, the Constitution is a legal document of such significant rank that it needs to attain the highest level of precision possible. While it is understood that this seems not have been the intention, the *prima facie* equalizing of constitutional norms and primary

law is to an extent mitigated by Article 16.2 being part of the same Chapter, which provides that “[n]one of laws or normative legal acts may run counter to the norms and principles of the Constitution.” Therefore, Article 16 regulates the matter in a more precise way, if it is to be seen as an interpretation of Article 15.

37. Furthermore, yet another set of wording can be found in the Law on Normative Legal Acts, where Article 7 states that “[t]he Constitution and laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan. The Constitution of the Republic of Uzbekistan shall have the supreme legal force and shall apply in the entire territory of the Republic of Uzbekistan. Laws of the Republic of Uzbekistan and other regulatory legal acts shall be adopted pursuant to the Constitution of the Republic of Uzbekistan and shall not be contrary to its norms and principles.”
38. The first sentence of Article 7 also uses potentially vague language that would seem to equate the importance of the norms set out in the Constitution with ordinary “laws” of Uzbekistan. It is also worth noting that the first and second sentences highlight potential contradiction in terms. According to the first sentence of Article 7, the Constitution and laws have absolute supremacy, however, the second sentence stipulates that only the Constitution shall have the supreme (or higher) legal force on the territory of the Republic of Uzbekistan. It is advised to consider amending the wording contained in this first sentence to ensure that “absolute supremacy” is reserved solely for the provisions of the Constitution of the Republic of Uzbekistan.
39. Laws are and should be second in authority only to the Constitution. However, what should be regulated by law and what by other types of normative legal act – is left undefined in the Constitution. Instead, Article 8 of the Law on Normative Legal Acts provides that laws regulate or govern the most important and well-established societal interactions. Given the importance attached to the principle of democratic law-making, i.e. increasing the part played by laws as opposed to ministerial and other acts, in the plan of action approved by the Presidential Decree of 8 August 2018, it may be recommended to specify in the Law on Normative Legal Acts and/or the Constitution that the areas of public life and societal relationships defined on the constitutional level should be further regulated by laws.
40. Consideration may also be given to defining in the Constitution what is meant by “constitutional laws”, for instance, where it concerns legislation the adoption of which requires the ‘presence’ of two thirds of the total number of deputies and senators (Article 81).
41. An important part of the regulatory framework for law-making is the current Law on Normative Legal Acts. As the aforementioned reform process laid down by Presidential Decree of 8 August 2018, aims, among others, to give greater prominence to the use of

primary law or laws as the preferred mode of regulation, it came as no surprise to the OSCE/ODIHR team to learn that this law will be amended.

42. The main purposes of the Law on Normative Legal Acts are “*to define the concept, types and correlation of regulatory legal acts, to establish the main requirements to the drafting procedure and content of regulatory legal acts, and to ensure their enforcement*” (Article 1).
43. Article 5 of the Law on Normative Legal Acts lists the acts which together form the ‘legislation of Uzbekistan’: the Constitution; laws of the Republic of Uzbekistan; resolutions of the chambers of the *Oliy Majlis* of the Republic of Uzbekistan; decrees and resolutions of the President of the Republic of Uzbekistan; resolutions of the Cabinet of Ministers of the Republic of Uzbekistan; orders and resolutions of ministries, state committees and agencies; and decisions of local state authorities. The Constitution, laws, and resolutions of the chambers of the *Oliy Majlis* are ‘primary legislation’, although the Law on Normative Legal Acts does not use that term. The rest - decrees and resolutions of the President, resolutions of the Cabinet of Ministers, orders and resolutions of ministries, state committees and agencies, and decisions of local state authorities – are ‘by-laws’, or species of secondary legislation (Article 6 of the Law on Normative Legal Acts).
44. Article 16 of the Law on Normative Legal Acts provides that “[c]orrelation of different regulatory legal acts depending on their legal force shall be in accordance with the Constitution of the Republic of Uzbekistan, jurisdiction and status of the authorities adopting them, types of acts and their adoption dates. A regulatory legal act shall comply with regulatory legal acts of higher legal force. If there is any conflict between regulatory legal acts, an act of higher legal force shall prevail. If there is any conflict between regulatory legal acts of equal legal force, the legal act adopted more recently shall prevail except in cases provided by the fifth part of this article. A regulatory legal act, adopted by a ministry, a state committee or an agency authorized with legal regulation of a particular area of public relations shall be of higher legal force than an act adopted by a different ministry, a state committee or an agency of an equal status.”
45. In practice however, from the information gathered during the expert visit, it became clear that, given the amount of secondary law that is being generated, conflicts may not be easily resolved simply through applying this provision. Secondary legislation – normative acts adopted by ministries should not be regarded as an alternative to law-making by the *Oliy Majlis*. As already referred to above, the UNDP report⁴ “*Towards 2030: SDG Policy Dialogue - Transformation of law-making in Uzbekistan: new approaches for sustainable development*” issued immediately before the Presidential

⁴ Report from the second session of the SDG Policy Dialogue on “Transformation in the Lawmaking in Uzbekistan: New Approaches to Sustainable Development”, held on June 20, 2018.

Decree on improving rule-making was adopted - recommended that a distinction be drawn in law between ‘regulatory’ normative legal acts and ‘mandatory or law enforcing’ normative legal acts, with the *Oliy Majlis* and the President having the power to adopt both types of act and state and other authorities having the power to adopt mandatory acts only. It remains to be seen, whether this recommendation will be given effect in the proposed amendments to the Law on Normative Legal Acts, but however it is done the OSCE/ODIHR believes that it is critical to the successful implementation of the National Development Strategy that the legislative power of ministries be limited by more clearly defining their competence as envisaged in the Presidential Decree of 8 August 2018, on improving rule-making (Annex 2).

46. Under Article 94 of the Constitution, the President enjoys wide legislative powers. The constitution provides for the right of the President, to issue decrees, resolutions and ordinances binding on the entire territory of the Republic on the basis of and for enforcement of the Constitution and laws of the Republic of Uzbekistan.
47. The Law on Normative Legal Acts, in Article 6 states that “[d]ecrees and Resolutions of the President of the Republic, resolutions of the Cabinet of Ministers of the Republic of Uzbekistan, orders of resolutions of ministries, state committees and agencies, and decisions of local state authorities are by-laws.” In practice, however, it appears that Presidential decrees are of a higher level of importance than other by-laws, issued by other states bodies. Presidential decrees should therefore be treated as a distinct species of normative legal act in the Law on Normative Acts, subordinate to the Constitution and laws, but superior to resolutions of the Cabinet of Ministers and ministerial and other acts.
48. Article 94 of the Constitution stating that acts of the President are issued not only on the basis of the Constitution but also laws, which invites us to conclude that all acts of the President are in character by-laws, not laws. Nonetheless, the formulation of this constitutional provision raises concerns. The wording would require clarification. In particular, the differentiation between decrees and other acts of the President is not clearly regulated by the Constitution nor are there any specific conditions provided at the constitutional level for decrees of the President. In light of this, the President is authorized to issue his legal acts at any time and on any matter. There are no subjects, issues or matters that are excluded from the scope of presidential “decrees”. Unfortunately, the Law on Normative Legal Acts, does not provide any further clarification in this regard. It is important that as with other types of ‘subordinate’ legal acts, presidential decrees do not detract from the principle of democratic law-making in which laws are made by the supreme state representative body, that is, the *Oliy Majlis*.

LEGISLATIVE INITIATIVE

49. Article 83 of the Constitution vests the right of legislative initiative in:

- the President of the Republic of Uzbekistan,
- the Republic of Karakalpakstan, through its highest representative body,
- deputies of the Legislative Chamber of the Oliy Majlis,
- the Cabinet of Ministers,
- the Constitutional Court,
- the Supreme Court, and
- the Prosecutor–General.

50. The OSCE/ODIHR team did not obtain any information on the use of the right of legislative initiative, if at all, by the courts listed in Article 83 of the Constitution or by the Prosecutor General. The legislative initiative provided to the Constitutional Court, Supreme Court and the Prosecutor General seems to be a legacy of the past and in conflict with a law-making system in which most proposals for legislation are brought forward by the executive or the legislative branch. The right of courts and prosecution to initiate the legislative procedure is rather unique and its exercise may mean that these institutions find themselves embroiled in political debate, which could be detrimental to ensuring the independence of the judiciary.

51. While the list of potential initiators of primary law appears rather long, it does not include legislative initiative of a number of citizens. It may be considered for the right of citizens' initiative to be included, provided that certain criteria and thresholds are clearly defined.

52. The list of potential initiators of legislation also does not include the Senate (upper House of Parliament). In a number of OSCE participating States and beyond, where the parliament is bi-cameral, the members of the upper house of Parliament (the senators) have the right of legislative initiative and can put forward draft laws, which then undergo the same process as a draft initiated by government or members of the lower house of Parliament. Much depends on the historical context of the upper house, the constitutional system in place and, the manner in which members of the upper house are chosen or elected. In Poland, Senators are elected for a term of four years in general election in a direct vote by secret ballot⁵, and the Senate as a whole possess the right to legislative initiative.⁶ In France, the upper house is composed of 348 senators indirectly elected⁷ by an electoral college⁸ comprising members of the National Assembly,

⁵ See Article 62 of the Constitution of the Republic of Poland, of 7 April, 1997 and OSCE Office for Democratic Institutions and Human Rights Limited Election Observation Mission Republic of Poland Parliamentary Elections, 13 October 2019 states that «Members of the *Senate* are elected through a first-past-the-post system in 100 single-mandate constituencies. The candidate who receives the largest number of votes is elected.»

⁶ Article 118 of the Constitution of the Republic of Poland, of 7 April, 1997

⁷ Article 24, Constitution of the Republic of France of 4 October, 1958 (as amended 2008) and OSCE ODIHR Final Report of the Election Assessment Mission to the Republic of France, Parliamentary Elections, 10 and 17 June 2012, page 3.

⁸ https://www.senat.fr/lng/en/senators/the_senatorial_elections.html, and Article L280, Code électoral, Republic of France, as amended 2013.

Senate, Departmental Council and Regional Council and delegates from municipal councils who in fact account for 95 per cent of the members of the electoral colleges. This means that “Senators are principally elected by municipal councillors. The number of delegates varies according to the population of the municipalities.” Furthermore, about 52 per cent of the Senate (180 of its membership) is elected under the system of proportional representation.⁹ French Senators are empowered to take legislative initiative.¹⁰ Germany, is a federal republic composed of 16 states (Länder) vested with large autonomy.¹¹ The upper house of parliament (Bundesrat) represents the Länder. Each Land has a predetermined number of seats in the Bundesrat. “Landtagswahlen” (regional elections) are held every four to five years. After each “Landtagswahl”, the respective Länder government appoints its members to the Bundesrat. This means that voters first and foremost determine the composition of their regional Länder parliaments in their Land and thus which party or parties will govern their Land, at the same time this indirectly determines who will have a seat and a say in the Bundesrat, for the majority in each Land parliament makes up the government of that federal state, which in turn appoints members from its ranks to the Bundesrat¹². In this way, while not direct, the political power of the Bundesrat continues to reflect the will of the electorate in each Land. Members of the Bundesrat cannot vote individually but the representatives of each Land have to vote *en bloc*. The Bundesrat has legislative initiative, and the bills which it proposes are forwarded to the Bundestag by the Federal Government. In Australia, which is also a federal state, the Senate (upper house) is elected in a general election in a direct vote by the people by secret ballot.¹³ Although outside the OSCE region, the Australian Senate is an interesting example. The Senate possesses significant powers in relation to law-making, one of which is initiating legislation, which then undergoes the same process as a government or House of Representatives (lower house) draft.

53. These examples show that one of the main concerns and criticisms of the upper house having the right of legislative initiative, arises when there is significant executive influence on its composition. Even in the above illustrated cases where the upper house is not elected directly by popular vote, an intricate, usually historically based, system of representation has been designed, in order that through votes by parliament, councillors of regions, electoral colleges or in some other manner, the popular will is represented.

54. In Uzbekistan, as established by Article 77 of the Constitution, the regional Electoral College elects 84 senators, while 16 are selected directly by the President of the

(<https://www.legislationline.org/legislation/section/legislation/country/30/topic/6>)

⁹ https://www.senat.fr/Ing/en/senators/the_senatorial_elections.html

¹⁰ Article 39, Constitution of the Republic of France of 4 October, 1958 (as amended 2008), and https://www.senat.fr/Ing/en/the_senates_role/the_senate_votes_the_law.html

¹¹ OSCE/ODIHR Needs Assessment Mission Report Federal Republic of Germany Elections to the Federal Parliament (Bundestag), 24 September 2017, page 3

¹² Article 51, Sub-section 1, Basic Law, Federal Republic of Germany, 1994

¹³ Chapter I, part II – the Senate, Commonwealth of Australia Constitution Act, 9 July, 1900

Republic. Therefore, any expansion of powers of senators in Uzbekistan to include legislative initiative should be seen in the context of the system in place and a consideration of wider constitutional changes which would ensure that the Senate, as a legislative body, is separate from the executive. Furthermore, if legislative initiative of senators were to be introduced, any such bill should receive the same scrutiny and go through the same process as a bill submitted by members of the lower house or the government, which would require changes to the current law-making procedure.

LEGISLATIVE PLANNING AND POLICY-MAKING

55. Policy-making and legislative plans for reform are made at the level of the Presidential Administration and the Cabinet of Ministers. While in accordance with Article 6 of the Law on Normative Legal Acts, presidential decrees are considered by-laws, in practice they carry much weight in setting the agenda on national priorities and the Cabinet is accountable to the President of the country for considering and implementing the orders in practice.
56. The Resolution of the Cabinet of Ministers on the Rules of Procedure of the Cabinet of Ministers sets out the powers and responsibilities of the Cabinet of Ministers in the policy-making as well as implementation fields.
57. Ministries also come up with their annual legislative plans, and present them to the Cabinet. It was not clear from the meeting of the ODIHR team with the Ministry of Justice, for example, whether this would ordinarily include a plan for by-laws; in practice, however, given the volume of the secondary laws in the country, it would logically seem to have been the case, at least to date (see paragraph below on the “regulatory guillotine” introduced by the Presidential Decree). Article 17 of the Law on Normative Legal Acts stipulates that “[t]he authorities adopting (drafting) regulatory legal acts may develop and approve current (up to one year) or prospective (more than one year) plans (programs) for legal act drafting with the purpose of legal regulation of public relations or improvement of the legislation. Planning procedure for regulatory legal act drafting shall be determined by the authorities adopting (drafting) such acts.”
58. Government policy-making is a feature of most democratic states. However, this pre-legislative stage is being increasingly considered as a separate and distinct stage, worthy of particular attention.¹⁴ Good policy-making underpins laws that are effective, evidence-based and coherent. In order to achieve this, early stakeholder engagement and consultation process before a draft is tabled can ensure better quality law, and thus is

¹⁴ For more information please see: OSCE/ODIHR Election Observation Mission Final Report on the Early Presidential Elections of the Republic of Uzbekistan, 4 December 2016.

essential. A process which includes open and transparent policy-making meets rule of law standards of accountable, transparent and inclusive law-making processes, in particular through the involvement of the wider public.¹⁵ It also permits a thorough assessment of the impact of the proposed law, and indeed whether a new bill, or other legislative action is needed at all.

59. Apart from this general observation on policy-making, more specifically, a process of *ex-ante* policy considerations in order to evaluate whether or not an actual new regulation or law is actually needed could significantly contribute to the reduction or aversion of a future accumulation of a large number of by-laws.
60. The plan for reform set out in Presidential Decree introduces the so-called “regulatory guillotine” in order to rid the system of redundant or overlapping regulations. The Ministry of Justice is tasked with stocktaking of all regulations in order that those redundant ones may be removed, through this “guillotine method”. In order that such a situation (of over regulation through by-law) does not repeat itself, *ex-ante* assessment of policies and the need for regulations should be introduced as standard.

REGULATORY IMPACT ASSESSMENTS

61. OSCE/ODIHR has previously (and above) stated that “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.”¹⁶
62. The legal framework for regulatory impact assessment needs to be based on internationally acknowledged methodology and practices, while taking into account the administrative and cultural specifics of the Republic of Uzbekistan. In this context, it is

¹⁵ See paragraph 5.8 of the [1990 OSCE Copenhagen Document](#), which requires “legislation, adopted at the end of a public procedure.”

¹⁶ See paragraph 50 of [ODIHR Assessment of the Legislative Process in the Kyrgyz Republic](#) (2015).

advised to take the recommendations made by the Organisation for Economic Co-operation and Development (OECD) on the consultation of stakeholders as a baseline.¹⁷

63. There appears to be no formalized *ex-ante* regulatory impact assessment, of regulations in place in the Republic of Uzbekistan. According to the UNDP, there is no agency that would evaluate a law, or a policy decision, and currently no methodology exists to do so.¹⁸ Logically, this also means that there is no recourse or procedure in place to stop a law in case of unacceptable impact. The ODIHR team was informed, during its visit that ordinarily there would be no discussion about the option of rejecting a regulatory solution, instead discussion would always focus on the wording of regulations, rather than their impact or necessity.
64. What is in place, however, as already mentioned above, is the responsibility of the Ministry of Justice for providing expert assessment of all bills before submission to the government or Parliament. The evaluation has to be done by the drafting bodies and the analysis they have to provide should contain: economic and financial, evaluations and the final verdict has to be provided by the Ministry of Justice. This however, does not amount to a full and comprehensive regulatory impact assessment even if it provides some elements thereof. As most laws are secondary, it is not clear whether this standard of expertise applies equally or with equal force to by-laws. By -laws ordinarily would not undergo such a level of scrutiny nor would they be accompanied by the relevant documents required for laws.
65. During the assessment visit the OSCE/ODIHR team was informed that, there exists an established legal unit within the Senate which identifies whether a law is needed and practicable. However, there was no elaboration of the kind of methodology used to make such assessments and what is done in the case that a law is found unnecessary.
66. The Presidential Decree of 8 August 2018, in fact recognizes the lack of regulatory impact assessments and mandates the introduction of smart regulation practices (Section IV of the Presidential Decree of 8 August 2018), stating that “[i]ntroduction of a system, positively tested in foreign countries, for conducting mandatory regulatory impact assessment of draft legal instruments, providing for the analysis of the issue, ways to address it, the impact on competition, forecasting and evaluating the possible consequences of introducing new tools and regulatory procedures, including the analysis of benefits and costs for citizens and businesses.”

¹⁷ See the [OECD Background Document on Public Consultations](#).

¹⁸ “Support to enhancement of lawmaking, rulemaking and RIA” UNDP project- PPP presentation from May 2018.

LEGISLATIVE GENDER IMPACT ASSESSMENT

67. A Commission on Family and Women’s Issues operates within the parliament. However, it does not appear that this commission has the task of providing a gender impact assessment of all laws passing through the Legislative Chamber. Indeed a report of the Westminster Foundation¹⁹ specifically notes that “[F]urther, there is also no methodology to actively promote gender equality in legislation and to conduct gender-based analysis of all legislation. Tools to conduct a gender-specific analysis when scrutinising legislation and other instruments, such as the budget, and oversight have not been adopted yet.”
68. It is common to most democracies that a significant, if not overwhelming, share of legislative activity happens in the ministries and executive branch of power and originates therefrom (described in the section above). What is very specific to the current state of play in Uzbekistan, is that the major part of this activity, by reason of being made through by-laws, is not subject to any form of parliamentary oversight. This includes presidential decrees. At the outset, it must be noted once again that this is a major subject of reform initiated by the Presidential Decree of 8 August 2018.
69. During the assessment visit, the OSCE/ODIHR team learned that a roadmap for the adoption of 60 primary laws has been laid down and some 600 by-laws have already been earmarked for deletion. The parliament will initiate the 60 laws, the drafts of which will be worked on by the relevant ministries. As mentioned already, the parliament expressed confidence in the ability to deal with what is now a very heavy legislative agenda, as the legislative chamber is undergoing restructuring, with a new budget unit and a new secretariat with experts supporting the drafting of laws being added. Also, the legal institute servicing the Legislative Chamber and the Senate, currently employs 40 persons and the goal is to increase this to 70.
70. It is the firm belief of OSCE/ODIHR that significantly strengthening the capacity of parliament to draft and adopt primary laws is needed in order to reform the current system from one ruled by by-law to one ruled by principles of law enshrined in primary acts. At the same time, what is needed and highly recommended by OSCE/ODIHR is the establishment of the *Oily Majlis* firmly in its function to conduct scrutiny of acts coming from all levels of the executive structure- that is, effective parliamentary scrutiny and oversight over government bills. A division of labor needs to be agreed, perhaps through the conduit of the order that must be worked out between the Cabinet of Ministers and the *Oliy Majlis* (paragraph 3 of the Presidential Decree of 8 August 2018), whereby the Cabinet of Ministers are responsible for bringing forward properly worked out legislative proposals, which are then subject to effective scrutiny by the Legislative Chamber and Senate.

¹⁹ Westminster Foundation for Democracy, Review of Parliamentary Practice in Uzbekistan, March 2019.

PREPARATION OF A DRAFT LAW

71. The preparation of draft laws by the Cabinet of Ministers is governed by: the Law on the Rules for Drafting and Submitting Bills to the Legislative Chamber of the *Oliy Majlis* (“LRDSB”); and Resolution No 227 of the Cabinet of Ministers of August 5, 2011 approving rules on the procedure for the drafting and approval of programmes for drafting and submitting of draft laws to the Legislative Chamber of the *Oliy Majlis*, as well as for monitoring their implementation, as amended by Resolution No 345 of the Cabinet of Ministers of October 17, 2016 on measures for further improving the law drafting activity of the Government of the Republic of Uzbekistan. The law-drafting activities of public and economic administrative agencies and local executive authorities are governed by a ‘model regulation’ set out in annex 1 to Resolution No 345 of the Cabinet of Ministers of October 17, 2016.
72. As in most participating states of the OSCE, in Uzbekistan the law drafting takes place primarily within the executive, that is, the Ministry of Justice and specialized ministries. The Ministry of Justice is tasked with verifying all laws, not only its own. This applies equally to primary laws and by-laws.
73. The preparation of a draft law begins with consideration and approval of a proposal to draft a law (Article 7 LRDSB). Despite the requirement of prior approval, it appears that not enough consideration is always given to the need for legislation before approval for law drafting is granted (also discussed above under policy-making). The Presidential Decree on improving rule-making accordingly emphasises the need to ensure the practical application of the principle of ‘sufficiency of grounds for making regulatory decisions’, according to which regulatory intervention by a state is allowed only if other measures cannot address the issue and the need for it is properly informed (Annex 1, I paragraph 4). Instead of the legislative process beginning with an initial instruction to draft laws (and regulations), the abovementioned UNDP report²⁰ recommends that RIAs be embedded in the law-making process; a decision to develop a draft would therefore be preceded by an analysis of the situation and the rationale for regulatory intervention. This would provide an opportunity to assess whether legislative intervention is necessary in the first place. Therefore, as already mentioned above, the OSCE/ODIHR suggests that a more clearly defined policy-making process is needed in which consideration is given to the need for legislation as well as the policy to which it should give effect before approval for law drafting is granted, including through the development of a methodology for RIAs.
74. Meanwhile, in parliament, the Legislative Chamber is required to elect from among the deputies the committees for, among other things, drafting laws and control over the implementation of laws (Article 87 of the Constitution). There are no equivalent Senate committees for the former, suggesting drafting laws is seen as the responsibility of the Legislative Chamber rather than the Senate. What is meant by ‘drafting laws’ is not

²⁰ Report from the second session of the SDG Policy Dialogue on “Transformation in the Lawmaking in Uzbekistan: New Approaches to Sustainable Development”, held on June 20, 2018, point VII paras 1-5

explained but the actual drafting of laws is assumed to take place - in ministries using the working group method - before bills are submitted to the Legislative Chamber.

i. Availability of legal and specialist expertise

75. In terms of legal and specialist expertise, during the assessment visit OSCE/ODIHR was informed that as a result of the reform effort to regulate increasingly through primary law, the parliament's legal and specialist expertise would be strengthened. Meanwhile the ministries appear to have the most capacity and legal expertise available to draft laws and by-laws. The UNDP Report²¹ also highlights the necessity for Parliament to have the personnel, expertise, organizational and financial capacity to undertake the tasks set out in the Presidential Decree of 8 August, 2018, where Parliament will be tasked to scrutinize a far greater quantity of primary laws coming from the government, or indeed initiated by itself.

76. ODIHR was informed that ministries rely upon external expertise, from civil society or expert community to assist in law drafting efforts, however this is sporadic rather than systematized. That means, that experts and specialists are invited to join the drafting committees for various laws where they may be of assistance.²² For example, ODIHR was informed that, as happened during the drafting process of the Investment Law, Ministry of Finance calls on non-governmental experts to come to the meetings of the working groups and be in the working group (who are occasionally supported by international organizations), when a new law must be drafted. Ministries have pools of experts that they know and work with. During the drafting process, chapters are assigned to different people and when they are ready they are discussed at different meetings. Sometimes, these experts are invited for discussions to parliament, but less so recently. A more uniform approach to drafting and sufficient resources ensuring quality would ensure greater consistency internally within the draft law in question, but also vis-à-vis other laws in the whole legal framework.

ii. Consultation of Draft Laws

77. Creation of good law means that the legislative process must be consistent with the principles of the rule of law and thus be conducted in an open, transparent manner, in a genuine interaction between the government, parliament and the general public. The Presidential Decree of 8 August 2018, recognizes the needs for law-making to be open and transparent to the public in order that it serves the needs of citizens to better their everyday life.

78. The ODIHR team, during its expert visit, was informed that good examples of public consultation with stakeholders exist – and that this has been the experience so far with

²¹ Report from the second session of the SDG Policy Dialogue on “Transformation in the Lawmaking in Uzbekistan: New Approaches to Sustainable Development”, held on June 20, 2018, point VII paras 1-5

²² This is also in line with Article 19 of the Law on Normative Legal Acts.

the draft Law on Domestic Violence, where organizations working with victims of domestic violence were asked to contribute to the development of the draft law with their comments and suggestions and reported a positive interaction on this account.

79. However, it is important to bear in mind that since 95 per cent of normative legal acts take the form of by-laws only 5 per cent of the acts currently being made undergo any form of public consultation; the heavy reliance on secondary law-making means that any requirement for public discussion is effectively circumvented.
80. During the meeting with the Ministry of Justice, officials told the ODIHR delegation that the capacity of the non-governmental sector to take part in a constructive and open consultation process was limited. The Ministry of Justice admitted though that the level of expertise both at the Ministry and for instance in the business sector, is not very high either - and that there is little capacity to provide feedback from the Government to the public that could help create an inclusive law-making environment. However, the OSCE ODIHR- Venice Commission Guidelines on Freedom of Association clearly state that “NGOs should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.” Moreover, the Council of Europe has found that “it is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed.”
81. The experience of many OSCE participating States is that it is often difficult for the public or relevant stakeholders to engage with the government and/or parliament on a draft bill, because of lack of information on whether and when a draft bill will be the subject of consultation. Transparency as to the timing of the consultations is a crucial factor in achieving the desired result, with a lack thereof inhibiting effective consultation.
82. If the public is consulted sporadically, without adequate warning and without the adequate time to provide feedback, engagement will be minimal and will affect the most vulnerable groups of society first, who often rely on volunteer legal assistance to provide the feedback necessary, as opposed to business interest groups, which would have legal expertise at their immediate disposal. Even if it is recognized that government policy can change course rather swiftly, or that delays in providing the space for consultation may be justifiable, there is a case for making all reasonable efforts to create and stick to agendas for adoption of draft laws and openness for comment thereon, which are accessible to the public ahead of time.

83. Furthermore, the quality of the submissions of the consulted stakeholders can also be increased through efforts undertaken by governments, to build the capacity of specialist organizations to provide feedback in a form that would be useful and coherent to the law-drafting entity. Stakeholders and the public would also be able to provide quality feedback if they were provided with the accompanying documentation such as regulatory impact assessments and the concepts behind the draft law.
84. Meanwhile, the ODIHR team noted that another overarching and inherent problem with the public consultations is that most consultation processes are primarily addressed to the presidential think-tank, which is intended to serve as an overarching institution for all NGOs. Additionally, the inclusion of experts in drafting committees should not be confused with public consultation of a draft law, which is an entirely different matter.
85. Interestingly, the Presidential Decree of 8 August 2018, is cognizant of the current lack of public consultations and states that: the Ministry of Justice is responsible for “conducting public and professional discussion of drafts, including analysis of benefits, costs and expected results, as well as an assessment of their impact on the rights and interests of individuals and legal entities, the social sphere, business activities, the state of the environment, as well as possible consequences” And that “the Ministry for the Development of Information Technologies and Communications of the Republic of Uzbekistan, shall, by 1 February 1 2019, create a publicly accessible online information system containing proposals for improving legislation resulting from research and analysis by members of the academia and experts, students of higher educational institutions and candidates for academic degrees.”

ANNEX 1: OVERVIEW OF THE LEGISLATIVE PROCESS IN THE REPUBLIC OF UZBEKISTAN

1. LEGISLATIVE POWER AND THE RIGHT OF LEGAL INITIATIVE

1. According to the Constitution, *Oliy Majlis* is the “supreme state representative body” which exercises legislative power. This is shared between its two chambers the Legislative Chamber (lower) and the Senate (upper).
2. According to Article 78, the two chambers’ joint responsibilities include: adoption of the Constitution, introducing alterations and additions (paragraph 1); adoption of the Constitutional laws and laws of the Republic of Uzbekistan, introducing alterations and additions (paragraph 2); adoption of decision on holding a referendum of the Republic of Uzbekistan and designation of the date of its holding (paragraph 3); determination of the structure and powers of the bodies of the legislative, executive and judicial authorities (paragraph 5); legislative regulation of customs, currency and credit systems (paragraph 7); approval of the State budget submitted by the Cabinet of Ministers and control over its execution (paragraph 8); determination of taxes and other compulsory payments (paragraph 9); legislative regulations of the administrative and territorial structure, and alteration of the country boundaries (paragraph 10); ratification of decrees of the President on announcement of general and partial mobilization, introducing, prolongation and discontinuance of the state of emergency (paragraph 19); and ratification and denouncement of international treaties (paragraph 20).
3. In addition, Article 83 of the Constitution vests the right of legislative initiative in the President of the Republic of Uzbekistan; the Republic of Karakalpakstan, through its highest representative body; deputies of the Legislative Chamber of the *Oliy Majlis*; the Cabinet of Ministers; the Constitutional Court; the Supreme Court; and the Prosecutor General.

2. STAGES OF LAW-MAKING IN THE PARLIAMENT

A. Legislative Planning and Policy-Making

4. Taking the Presidential Decree as an example, policy-making and legislative plans for reform, are made at the level of the Presidential Administration and the Cabinet of Ministers. While in accordance with Article 6 of the Law on Normative Legal Acts, presidential decrees are considered by-laws, in practice they carry much weight in setting the agenda on national priorities.
5. The Resolution of the Cabinet of Ministers on the Rules of Procedure of the Cabinet of Ministers sets out the powers and responsibilities of the Cabinet of Ministers in the policy-making as well as implementation fields. As the Cabinet is accountable to the

President, they consider and implement the orders and decrees of the President of the Republic.

6. Ministries also come up with their annual legislative plans, but it was not clear from the meeting with the Ministry of Justice, for example, whether this includes a plan predominantly for by-laws, in practice. They are responsible for presenting their plan to the Cabinet. Article 17 of the Law on Normative Legal Acts stipulates that “[t]he authorities adopting (drafting) regulatory legal acts may develop and approve current (up to one year) or prospective (more than one year) plans (programs) for legal act drafting with the purpose of legal regulation of public relations or improvement of the legislation. Planning procedure for regulatory legal act drafting shall be determined by the authorities adopting (drafting) such acts.”
7. Based on the Resolution on the Rules of Procedure of the Cabinet of Ministers (as amended 2017), the Cabinet of Ministers establishes policies within the realm and scope outlined by the Constitution and the Law on the Cabinet of Ministers, as well as issues defined by the President.²³
8. The Cabinet also considers and implements orders submitted to it by the President and those which are submitted by the members of the Cabinet of Ministers, heads of state and economic administrations, the Chairperson of the Council of Ministers of the Republic of *Karakalpakstan*, *hokims* of the regions and city of Tashkent.²⁴
9. At the parliamentary level, in response to the ODIHR Questionnaire, the Legislative Chamber and Senate of the *Oliy Majlis* responded that issues to be considered at a meeting of the Legislative Chamber and the Senate are included in the draft agenda of the meeting, indicating the sequence of their consideration, the committees responsible for preparing each issue for the consideration, the rapporteurs (co-rapporteurs), and other information. The draft agenda of the meeting of the Legislative Chamber and the Senate is formed by the *Kengash*.
10. Issues to be considered at meetings of the Legislative Chamber and the Senate are included in the draft agenda of meetings, as a rule, based on the sequence of their receipt and readiness. The responsible committee submits to the *Kengash* of the Chamber its conclusions on the issues prepared by it and proposals for their inclusion in the agenda of the meeting of the Legislative Chamber and the Senate.
11. The Legislative Chamber and Senate informed OSCE/ODIHR that, as a matter of priority, the following are included in the agenda and are subject to consideration at a meeting of the Legislative Chamber:

²³ See paragraph 16 of the [Resolution of the Cabinet of Ministers on the Rules of Procedure of the Cabinet of Minister](#).

²⁴ See paragraphs 17 and 18, *ibid*.

- draft Constitution of the Republic of Uzbekistan, draft law on introducing amendments and additions to it, drafts of constitutional laws, and draft laws on amending and supplementing constitutional laws;
 - draft laws recognized by the President as urgent, as well as decrees of the President of the Republic of Uzbekistan submitted for approval;
 - laws returned by the President;
 - the decision to hold a referendum in the Republic of Uzbekistan and set a date for its holding;
 - the draft State budget, as well as amendments and additions to the State budget;
 - draft laws on ratification, denunciation, termination and suspension of international treaties of the Republic of Uzbekistan;
 - the election of the Speaker of the Legislative Chamber, the Chairman of the Senate, their deputies, the chairmen of the committees and their deputies, as well as other questions about the election, appointment and approval of government officials;
 - draft regulations of the Chamber and resolutions of the Legislative Chamber on amendments and additions to the Regulations of the chamber.
12. At meetings of the Legislative Chamber, laws that were rejected by the Senate are also considered as a matter of priority. At meetings of the Legislative Chamber and the Senate, other issues can be considered as a matter of priority only by decision of the Legislative Chamber and the Senate adopted by a majority of votes from the total number of deputies and senators. Issues in respect of which the law establishes the terms of consideration at meetings of these two chambers are subject to consideration with respect to these deadlines.
13. The draft agenda of the meeting of the Legislative Chamber and the Senate is approved by their decisions by a majority vote of the total number of deputies and senators.
14. Drafts are included in the draft agenda of the meeting of the Legislative Chamber in the following sequence: draft laws considered in the third reading; draft laws considered in the second reading; draft laws considered in the first reading.
15. Items on the approved agenda of the meeting of the Legislative Chamber and the Senate may be considered in a sequence other than stipulated, postponed, changed or excluded from the discussion. At the same time, the initiator of such a proposal provides

substantiation and reports on the preparatory work completed, the degree of preparedness of the issue for consideration, the timing of distribution of relevant materials and documents to deputies, senators, and the presentation on this issue by the chairman of the relevant committee is heard. The resolution of the Legislative Chamber and the Senate on changing the order of consideration of items or their exclusion from the approved agenda is adopted by a majority vote of the total number of deputies and senators. Deputies and senators are notified in advance of the issues included in the draft agenda of the chamber meeting. Draft laws, resolutions of the Legislative Chamber and other necessary materials are provided to deputies no later than three days before their consideration at a meeting of the Legislative Chamber, unless the latter provides for another procedure.

B. Preparation of a Draft Law

16. In the response to the OSCE/ODIHR questionnaire received from the Legislative Chamber and Senate of the *Oliy Majlis*, it was noted that the holder of the right of legislative initiative may appeal to other holders of the right with a proposal to jointly prepare a draft law, and that to prepare a draft law, a working group (commission) may be created by the holder of the right of legislative initiative.
17. Working groups (commissions) may include representatives of the relevant units of the subject of the right of legislative initiative, ministries, state committees or departments responsible for the state and development of relevant industries, other interested state bodies, scientific and other organizations, as well as citizens. At the same time, as submitted in the Senate response, representatives of non-governmental organizations, as well as citizens, are included in the composition of the working group (commission) with their consent- and in any case, the members of the working group (commission) should have the relevant knowledge and experience necessary to prepare a draft law. Representative of civil society confirmed that on occasion they are invited as experts to participate in such working groups; one such example was the recent Law on Investment.
18. The Legislative Chamber and Senate also noted that to ensure the work of the working group (commission), the subject of the right of legislative initiative has the right to receive from state bodies and other organizations materials, statistical and other data necessary for the preparation of the draft law, to receive advice and recommendations from scientific and other organizations, researchers and scholars, as well as expert opinions on the draft law. Furthermore, the subject of the right of legislative initiative, in cases of need, within the limits of its competence, may entrust, in accordance with the established procedure, or contract state bodies, scientific institutions and other organizations, individual citizens to prepare a draft law. Lastly, the Senate response to the questionnaire states that the subject of the right of legislative initiative, in cases of need, within its competence, has the right to entrust the preparation of alternative draft

laws to several state bodies, scientific institutions and other organizations, individual citizens or to enter into agreements with them, as well as to announce contests for the best draft law.

19. The response to the OSCE/ODIHR questionnaire goes on to describe that, for each draft law, the main executing entity develops a schedule for its preparation. The schedule is approved by the head of the body, unless otherwise provided in the instruction on the preparation of the draft law. The monitoring of the implementation of the schedule is carried out by the legal department and the results of the monitoring are monthly submitted for discussion to the head of the body.
20. The main executing entity informs the legal service about the process of preparing the draft law, and if necessary involves, with the consent of the head of the body, the legal service to resolve the legal issues arising during the preparation. At the request of the main executing entity, the co-executing entity submits information-analytical and other materials necessary for the preparation of the draft law, and, if necessary, participates in the preparation of the draft law.
21. For the preparation of draft laws, as a rule, working groups (commissions) are created. The decision to establish a working group (commission) with an indication of its personal composition is made by the head of the body. The working groups (commissions) include employees of the main executing entity, its subdivisions, and if necessary, may include (by agreement) representatives of ministries and departments responsible for the state and development of relevant industries, other interested state bodies, scientific and other organizations, as well as citizens. Preparation of a draft law begins with the development of its concept.
22. The main executing entity or working group (commission) collects the necessary materials and information, conducts the necessary study, and as a result prepares the concept, and, if necessary, also aides, tables, charts and other informational and analytical materials.
23. According to the response to the OSCE/ODIHR questionnaire received from the Legislative Chamber and Senate, the concept of the draft law should define:
 - the main idea, purpose and subject of legal regulation;
 - general description and assessment of the state of legal regulation of corresponding public relations with the analysis of laws and other regulatory legal acts in force in this area;
 - justification of the need to develop a draft law;
 - the main provisions of the draft law;
 - forecast of socio-economic, legal and other impact of the future law.
 - the prepared concept is approved by the head of the body, unless otherwise provided in the instruction on the preparation of the draft law.

24. Once the concept is approved, drafting begins and the body responsible (executive entity or working group/commission) must examine the state of legislation; the practice of its application on what the draft intends to regulate; identify gaps and conflicts that adversely affect the legal regulation of a particular area of public relations, as well as the public need for legal regulation, the causes and conditions affecting the effectiveness of legislation; summarize and use proposals from government bodies and other organizations, as well as individual citizens, media materials, advice and recommendations from scientific and other organizations, scientists and specialists, data from other means of collecting public opinion; conduct a comparative analysis of the provisions of international documents and legislation of foreign countries in accordance with the methodology for a comparative analysis of the provisions of international documents and legislation of foreign countries in the preparation of draft laws approved by the Joint Resolution of the *Kengash* of the Legislative Chamber of the *Oliy Majlis* of the Republic of Uzbekistan and the *Kengash* of the Senate of the *Oliy Majlis*.²⁵
25. The response to the OSCE/ODIHR questionnaire further elaborates that preparation of the draft law should be based on a thorough and comprehensive analysis of the effectiveness of the future law in practice. In addition in the process of preparing draft laws, special attention should be paid to: ensuring the direct effect of the norms, systemic and codification of legal instruments contained in the draft law; defining of clear mechanisms, including administrative law and judicial law mechanisms for the implementation of the future law.
26. Legal and technical support of draft laws is carried out in accordance with the rules of legal and technical support of draft laws submitted to the Legislative Chamber and to the Senate, approved by the Joint Resolution of the *Kengash* of the Legislative Chamber and the *Kengash* of the Senate.²⁶
27. In the event that a draft law entails the need to make changes and additions to other legal instruments or to declare them (fully or partially) null and void, these amendments and additions, as well as proposals to declare invalid, are included in the draft law to be prepared. If a significant number of legal instruments or parts thereof are subject to amendment, addition or invalidation, then they are presented simultaneously as a separate draft law. At the same time, the corresponding comparison tables of the current and the proposed wording of the text of the act with explanations are attached to it.
28. After the preparation of the draft law, the main executing entity or working group (commission) sends it for approval to the co-executing subdivisions. If the draft is endorsed in accordance with the established procedure by the heads of all subdivisions-subcontractors, the draft law is submitted to the legal service for their expertise. If the

²⁵ Adopted on 15 September 2015, No. 220-III/PK-41-III.

²⁶ Adopted on 30 December 2010, No. 237-II/150-II.

draft law complies with the law, the rules of law-making and other requirements for draft laws, the head of legal service endorses the draft law by putting a signature on the back of each page of the draft law. At the same time with endorsement of the draft law, the legal service prepares a legal opinion.

29. The legal opinion of the legal service reflects: information on regulatory legal acts stipulating preparation of the draft law, as well as on instructions from a superior authority (if there is an instruction); a summary of the essence and meaning of the main provisions of the draft law explaining their legal nature; conclusion on the compliance of the draft law with the legislation, the rules of law-making, as well as the feasibility and expediency of applying each reference of the draft law and is signed by the head of legal service.
30. If the draft law does not comply with the laws and regulations of law-making, other requirements for draft laws, the legal service returns the draft law to the main executing entity for revision with appropriate comments and suggestions.
31. After receiving the legal opinion of the legal service, the main executing entity reports to the head of the body on the possibility of sending the draft law for approval to stakeholders and other organizations. Having considered the draft law, the head of the state body decides on the revision of the draft law or on sending the draft law to stakeholders and other organizations for approval.
32. The draft law is discussed and the issue of its submission to the Legislative Chamber is considered respectively at a meeting of *Zhokargy Kenes* of the Republic of Karakalpakstan, the Cabinet of Ministers of the Republic of Uzbekistan, the Constitutional Court of the Republic of Uzbekistan, the Plenum of the Supreme Court of the Republic of Uzbekistan. The decision to submit a draft law to the Legislative Chamber includes information on the representative of the subject of the right of legislative initiative who will participate in the consideration of the draft law in the Legislative Chamber.
33. The subject of the right of legislative initiative when submitting a draft law to the Legislative Chamber shall be accompanied by the following documents:²⁷
 - an explanatory note to the draft law outlining its concept;
 - the draft law on the introduction of amendments and additions, as well as on the invalidation of legal instruments related to the introduction of the draft law;
 - a list of by-laws to be amended, supplemented, invalidated or adopted;

²⁷ See Article 6 of the Legal and Technical Rules for Drafting Bills submitted to the Legislative Chamber of the *Oliy Majlis*, submitted to the Senate of the *Oliy Majlis*, No.237-II, 30 December 2010 (for the Legislative Chamber, and No.150-II, 30 December, 2010 (for the Senate).

- an analytical comparative table indicating, in a sequential manner, the relevant provisions of international documents and legislation of foreign countries, the legislation of the Republic of Uzbekistan, justified proposals on applicability of corresponding international experience and their applicability in the county;
- financial and economic rationale - for draft laws requiring material costs;
- the conclusion of the Cabinet of Ministers on draft laws providing for the reduction of state revenues or an increase in government expenditures, as well as changes in the items of the State Budget.

34. When draft laws are submitted to the Legislative Chamber by *Zhokargy Kenes* of the Republic of Karakalpakstan, the Cabinet of Ministers of the Republic of Uzbekistan, the Constitutional Court of the Republic of Uzbekistan, the Supreme Court of the Republic of Uzbekistan, the relevant decision of these bodies on the submission of the draft law to the Legislative Chamber should be submitted. All copies of the text of the draft law and materials should be submitted in electronic form.

C. Structure of the Draft Law

35. The formal structure of a draft law must be in compliance with the Joint Resolution of the Legislative Chamber and the Senate on Legal and Technical Rules for Drafting Bills.²⁸ While Chapter I of the said resolution reiterates who are the initiators and what documents must accompany a draft law (described above), Chapter II gives detailed instructions on the title, on the preamble, on numbering, indents, and references to others laws etc. It also gives guidance on how amendments must be structured (Chapter 7 of the said resolution) and how articles regulating entry into force should look like as well as how to draft laws which invalidate other laws. The entire resolution is filled with examples to guide the legislator and ends with the list of documents which should accompany the draft when being sent to the Senate.

D. Legal and Special Expertise

36. According to Article 21 of the Law on Normative Legal Acts, draft normative legal acts are subject to mandatory legal review. In addition, they are conditional other forms of review, including environmental and anti-corruption, at the discretion of the body adopting.

37. Furthermore, the Ministry of Economy, Ministry of Finance and Ministry of Justice are responsible for ‘systematically provid[ing] critical and comprehensive expertise of

²⁸ See the Joint Resolution of the Kengashes of the Legislative Chamber and the Senate of the Oliy Majlis on the Legal and Technical Rules for Drafting Bills submitted to the Legislative Chamber of the *Oliy Majlis* , submitted to the Senate of the *Oliy Majlis*, No.237-II, 30 December 2010 (for the Legislative Chamber, and No.150-II, 30 December, 2010 (for the Senate).

proposals and draft normative legal acts initiated by state bodies and administration' (Rules of Procedure of the Cabinet of Ministers, Article 3), which implies that they should be equipped with legal and specialist expertise.

38. The Ministry of Justice is responsible for the 'legal expertise' of draft normative legal acts of the Cabinet of Ministers for their compliance with the Constitution and national legislation, rules of legislative technique, as well as for proper and expedient references to other acts. It is also responsible for the analysis of draft laws for their compliance with the aims and tasks of the current reforms, for identification of the rules that could create conditions for corruption or other infringements in the system of state bodies, as well as for those rules imposing burdensome administrative and other restrictions and provisions, leading to unreasonable expenses of business entities. The submission of draft normative legal acts to the Cabinet of Ministers is conditional upon confirmation by the Ministry of Justice of the expediency of their adoption following legal expertise.²⁹ During the expert visit, OSCE/ODIHR was informed that the Ministries also make use of external experts to draft laws for them.

E. Regulatory Impact Assessment

39. As mentioned above, there appears to be no formalized *ex-ante* regulatory impact assessment, of regulations. The ODIHR delegation was informed, during its visit that ordinarily there would be no discussion about the option of rejecting a regulatory solution, instead discussion always focus on the wording of regulations, rather than their impact or necessity.

40. What is in place however, as already mentioned above, is the responsibility of the Ministry of Justice to provide expert assessment of all bills before submission to the government or Parliament. The expertise/evaluation has to be done by the drafting bodies, by providing economic and financial analyses, while the final verdict remains with the Ministry of Justice.

41. The Prime-Minister also has the power to send back laws that do not comply with requirements in accordance with paragraph 30 of the Resolution of the Cabinet of Ministers on the Rules of Procedure of the Cabinet of Ministers.

42. Whereas, at the parliamentary level, the OSCE/ODIHR team was informed that the Senate uses its oversight functions over government and identifies inconsistencies and gaps in draft laws. Sometimes the Senate comes across provisions that should be deleted, and when this occurs, they send the draft law back to the Legislative Chamber (or to the government) for the law to be changed.

²⁹See Rules of Procedure of the Cabinet of Ministers, Annex 1, paragraph 28, introduced on 9 August 2018 following the issuance of Presidential Decree (UP-5505).

43. During the assessment visit, the OSCE/ODIHR team was provided with an example, wherein, on 28 February 2019, the Senate rejected the law on the new procedure for drafting the budget (which will now be adopted by law and not by resolution) due to the failure to meet two criteria: (i) there was no communication to the general public; (ii) since the budget is approved by primary law it should go through the senate and Parliament failed to do this.
44. Furthermore, during the assessment visit OSCE/ODIHR was informed that, there exists an established legal unit within the Senate, which identifies whether the law is needed and practicable. There was no elaboration, however, of the kind of methodology used to make such assessments and what is done in the case that the law is found unnecessary and not practicable.

3. LAW-MAKING BY THE EXECUTIVE

A. Cabinet of Ministers

45. According to Article 83 of the Constitution, the Cabinet of Ministers has its own legislative initiative. An elaboration of these powers, of both policy-making, policy implementation and law-making can be found in the Resolution of the Cabinet of Ministers of the Rules of Procedure.
46. The job of the Cabinet is to regulate the economy, the social and spiritual environment, provide for implementation of laws, decisions of the *Oliy Majlis*, decrees, resolutions and orders of the President. The Cabinet of Ministers is accountable to the President and the *Oliy Majlis* for its activities.
47. The decisions of the Cabinet, having a normative nature, are adopted in the form of resolutions³⁰ Furthermore, Article 17 of the said Rules, states that orders of the President are subject to the consideration and implementation by the Cabinet of Ministers.
48. According to Article 24, draft normative legal acts, submitted to the Cabinet of Ministers, must comply with the requirements of the Law on Normative Legal Acts, as well as with the Resolution “On procedure of preparation of draft laws and their submission to the Legislative Chamber of *Oliy Majlis* of the Republic of Uzbekistan”. Non-compliance with the said rules allows the Cabinet of Ministers to return the law to

³⁰ See Article 6 of the Resolution of the Cabinet of Ministers of the Rules of Procedure of the Cabinet of Ministers.

the drafting body (Article 30) and must have been first approved by the Ministry of Justice (Article 28) as well as accompanied by a “conclusion” therefrom.

B. Presidential Decrees

49. Drafts of decrees, resolutions and orders of the President, submitted to the Cabinet of Ministers, must comply with the requirements of the Secretariat of the President, approved by the Resolution No PP 3161 of the President of the Republic of Uzbekistan from 28 July 2017.

50. Furthermore, as also noted, although Presidential decrees are categorized by the Law on Normative Legal Acts as by-laws, in practice they appear to be higher in the hierarchy of norms, than other acts. Taking the Presidential Decree of 8 August 2018 as an example, a Presidential decree has the force to set a reform agenda, outline its direction and set the executive and parliament into motion, establishing responsibility and tasks for all branches of power, not only the executive, but also the legislative.

51. Lastly, Article 93.16 of the Constitution states that the President has the power to “suspend, repeal acts of the bodies of state administration of the republic and *khokims* in case of non-compliance with the norms of legislation” meaning that powers to retract obsolete laws already exist and lie with the President and his administration.

4. PASSING PRIMARY LAWS IN THE PARLIAMENT

52. The passage of primary laws through the parliament is regulated by the Constitution. Specifically, Article 83 stipulates who may initiate laws, meanwhile Article 84 describes in general terms the process of adoption within the Parliament while details of the process are to be found in the Law on the Rules of Procedure for Considering Laws and Regulations in The Legislative Chamber, Part III.

53. According to Article 84 a law comes into effect, when it is adopted by the Legislative Assembly, approved by the Senate, signed by the President and issued in the official publications specified by law. A law which is adopted in the Legislative Assembly must be passed to the Senate within 10 days, therefrom after approval by the Senate it must be passed to the President within 10 days for signing and promulgation, who should sign the law and promulgate it within 30 days.

54. Article 15 of Law on the Rules of Procedure for Considering Laws and Regulations in The Legislative Chamber, Part III, states that “as a rule” the Legislative Chamber shall consider the bills in three readings. The first reading, naturally, involves a debate and consideration of other alternative versions of the draft, if existing – the draft with the highest number of votes passes to the second reading and it is then posted “as a rule” on

the official website of the Legislative Chamber. It is at this point that Article 15, herein referred to, provides the possibility of public consultations on the draft law. Such public consultations of bills following passage in the first reading can be open for public discussion based on a resolution of the Legislative Chamber. At this junction, should public consultation takes place the law obliges the Chamber to collect the feedback, opinions and proposals and summarize them ahead of the second reading. Thereafter, a public hearing is organized.

55. The second reading involves voting on the draft law article by article, or alternatively, chapter by chapter. The Legislative Chamber then makes a decision to reject the bill or pass it onto the last, third reading, where no debate takes place and the bill is voted on as a whole. A bill passed in the third reading is then sent to the Senate (within 10 days, as states above) for approval.
56. Article 84 of the Constitution stipulates that if the law is rejected by the Senate, it goes back to the Legislative Chamber for a second consideration and must then be approved by the Legislative Chamber, by a majority of two third of votes of the total number of deputies.
57. A law rejected by the Senate may also give rise to the creation of a conciliatory commission, composed of members of both houses in order to overcome the disagreements. The OSCE/ODIHR team was informed that such conciliatory committee would re-draft the law, which is then re-sent (as per the Constitution) once again through the ordinary procedure. The commission is also regulated by Article 16 of the Law on the Rules of Procedure for Considering Laws and Regulations in The Legislative Chamber, Part III.
58. The President also has the right to return the law to the Parliament with objections. The Parliament if then obliged to re-consider the law, under the Constitution but also in accordance with Article 17 of the Law on the Rules of Procedure for Considering Laws and Regulations in The Legislative Chamber, Part III.

5. LEGISLATIVE GENDER IMPACT ASSESSMENT

59. A Commission on Family and Women's Issues³¹ operates within the parliament. It is composed of eight members of parliament and has a number of tasks and a broad mandate in the implementation of state policies aimed at strengthening the family, protecting motherhood, fatherhood and childhood, ensuring the rights, freedoms and legitimate interests of women, enhancing their role and status in society, further

³¹ <http://parliament.gov.uz/ru/structure/commission/23567/?el=23567>

enhancing the participation of women in social, economic, political, legal and cultural life.³²

60. In the realm of legislative activity the mandate of the Commission is to:

- analyzing gaps, deficiencies and problems in legislation on family and women issues identified during monitoring and analytical activities and studies conducted by local deputies, making corresponding recommendations for elimination of cases of violation of laws on women and family identified by relevant state authorities and management bodies, non-governmental non-profit organizations, the root-causes and enabling conditions;
- developing of proposals for the improvement of legislation on family and women issues, and assistance in ensuring the implementation of international treaties of the Republic of Uzbekistan in this area;
- developing proposals for the implementation of effective and efficient parliamentary and deputy control on the implementation of legislation on family and women.

61. Based on the materials analyzed it does not appear that this commission has the task of providing a gender impact assessment of all laws passing through the Legislative Chamber. Indeed a report of the Westminster Foundation, issued at the time of writing of this report, specifically notes that “[F]urther, there is also no methodology to actively promote gender equality in legislation and to conduct gender-based analysis of all legislation. Tools to conduct a gender-specific analysis when scrutinising legislation and other instruments, such as the budget, and oversight have not been adopted yet.”³³

6. PUBLIC CONSULTATIONS

62. It is important to note that since 95 per cent of laws are by-laws, only 5 per cent of the primary legislation currently being passed may undergo public consultation process.

63. Nevertheless, as already described above, Article 15 of the Law on the Rules of Procedure for Considering Laws and Regulations in The Legislative Chamber, Part III, the public may be consulted on a draft law following its passage through the first reading. Based on a resolution of the Legislative Chamber, public consultations may be organized and feedback and proposals must be gathered and submitted for consideration to the second reading.

³² <http://parliament.gov.uz/ru/structure/commission/23567/?el=23567>

³³ Westminster Foundation for Democracy, «Review of Parliamentary Practice in Uzbekistan», March 2019, p.19, <https://www.wfd.org/wp-content/uploads/2019/06/WFD-Report-on-Parliamentary-Practices-in-Uzbekistan-2019-in-English.pdf>

64. In addition, Article 3 of the Law on the Public Discussions of Bills sets out principles of public discussions including their publication in newspapers and other mass media. Article 15 goes on to state that public discussions may take place through the organization of seminars involving experts, academia, and specialists.
65. Article 19 further notes that that the proposals and comments made by the public must be taken into account - without any further instruction as to how they are to be taken into account, however these comments are advisory and consultative in nature.
66. Article 21 (1) of the on the Resolution of the Cabinet of Ministers of the Rules of Procedure of the Cabinet of Ministers states that “[a]ll drafts of normative legal acts are posted by the developing organizations on the joint portal of interactive government services of the Republic of Uzbekistan, with the aim of holding discussions in accordance with the rules.”
67. During the meeting with the Ministry of Justice, officials told the OSCE/ODIHR team that the capacity of the non-governmental sector to take part in a constructive and open consultation process is limited. The Ministry of Justice admitted though that the level of expertise both at the Ministry and for instance in the business sector, is not very high - and that there is little feedback from the Government to the public that could help create an inclusive law-making environment.

7. PUBLICATION OF LAWS

68. Publication of laws is a mandatory condition of their coming into force. 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. It is also welcomed that the Reform introduced through Presidential Decree of 8 August 2018, foresees the improvement of electronic access to laws.

8. SECONDARY LAWS AND BY-LAWS

69. In theory, secondary law-making is governed by the Order of the Minister of Justice on Approval of the Rules for Drafting and Adopting Internal Legal Instruments. Article 2 of these Rules states that “[m]inistries and departments adopt internal legal instruments based on and pursuant to the Constitution and laws of the Republic of Uzbekistan, resolutions of the chambers of the *Oliy Majlis*, decrees, resolutions and orders of the President, as well as resolutions and orders of the Cabinet of Ministers. The adoption of an internal legal instrument is within the competence of the ministry and respective

departments, if these acts authorize them to adopt the corresponding internal legal instrument or administer legal regulation of certain relations.”³⁴

70. According to the Order the definition of such an “internal legal instrument” is — “*an official document adopted by a ministry, state committee or department in a certain form, aimed at establishing, changing or repealing legal norms as obligatory state regulations.*” According also to the templates provided on the annexes of this Order, the approvals necessary to adopt such secondary legislation affecting major areas of laws, such as tax, import-export issues, are inter-ministerial and do not require the scrutiny of the *Oliy Majlis*.
71. The Order also provides the following authority to the ministries: “Ministries and departments adopt internal legal instruments based on and pursuant to the Constitution and laws of the Republic of Uzbekistan, resolutions of the chambers of the *Oliy Majlis* of the Republic of Uzbekistan, decrees, resolutions and orders of the President of the Republic of Uzbekistan, resolutions and orders of the Cabinet of Ministers of the Republic of Uzbekistan. The adoption of an internal legal instrument is within the competence of the ministry and department, if these acts authorize them to adopt the corresponding internal legal instrument or administer legal regulation of certain relations” (Annex 1 paragraph 2).

³⁴ See Chapter 1 General Provisions, §2 paragraph 3.

ANNEX 2: IMPROVING LAW-MAKING AND THE CURRENT REFORM

AGENDA

1. As already outlined in the introduction above, the OSCE/ODIHR visit took place against the background of the implementation of a comprehensive programme of reform: The Five-Area Development Strategy 2017-2021 (referred to as “National Development Strategy”). One key area of this reform agenda was introduced through Presidential Decree (UP-5505) “On Approval of the Concept of Improving Rulemaking,” 8 August 2018, and contains three annexes which seek to set out the reform plan in detail. The Decree states that “one of the key objectives for enhancing the state and public system is fundamental improvement in the quality of the rule-making process.” The OSCE/ODIHR team was informed that Annex 2 on Plan of Action to Implement the Concept of Improving Law-Making and Annex 3 establishing the Composition of the Commission for Implementation of the Concept of Improving Law-making, are both currently being implemented, with the Commission already established and working.
2. From the text of the Presidential Decree of 8 August 2018 as well as the discussion on the decree during the OSCE/ODIHR visit, it appears that there are three main drivers for the reform effort, which include:
 - ‘democratization’ as in bringing government closer to the people (ensuring the rights, freedoms and legitimate interests of citizens);
 - economic development (as in providing guarantees for the protection and support of business entities, fully incorporating their opinions); and
 - accountability’ to the international community, i.e. demands of international community and increasing protection of human rights, and compliance with international obligations.
3. In addition, the OSCE/ODIHR delegation was informed that Uzbekistan is interested in raising its profile on international indexes.
4. The preamble to the Presidential Decree of 8 August 2018 explains that the success of the reform programme largely depends on the existing legal framework as well as on the quality of the rule-making process. The existing legal framework, and rule-making process are both seen as obstacles to the reforms the administration wants to achieve. As further weaknesses, the preamble identifies the ‘predominance of laws of a framework nature’ as well as the adoption of individual decisions ‘without a specific mechanism for their implementation’.
5. in conclusion, the preamble to Annex 1 of the Presidential Decree of 8 August 2018 states that the large number of regulations, sometimes in conflict with current legislation, necessitates a ‘radical review of the entire body of legislation’ in order to achieve the aims of the reforms (Annex 1).

6. The improving rule-making agenda consists of five elements, which are elaborated in Annex 1:
 - Element 1: systematization of the legal framework, ensuring the stability of legal regulation of public relations;
 - Element 2: improving the quality of the processes of drafting and adopting legal instruments, as well as better monitoring of their implementation;
 - Element 3: the introduction of modern information and communication technologies into the rule-making process;
 - Element 4: the application of ‘smart regulation’ elements in rule-making;³⁵
 - Element 5: strengthening the institutional framework for rule-making.

7. In addition, paragraph 3 of the Presidential Decree of 8 August 2018 accepts the proposals of the chambers of the *Oliy Majlis* and the Cabinet of Ministers for the establishment of ‘an order,’ in accordance with which:
 - the drafting or adoption of new laws and decrees should only be permitted where the issue cannot be addressed through the existing laws and procedures (no ‘unnecessary’ laws);
 - laws and decrees should apply from the moment they come into effect without imposing obligations to adopt additional interdepartmental acts The concept of ‘directly applicable’ laws is further elaborated in Annex 2 (paragraph 3);
 - subjects of the right of legislative initiative when submitting the bill to the Legislative Chamber of the *Oliy Majlis*, should do so together with a ‘plan of action’ on implementation of the law, which would contain as a rule, include a number of components, such as implementation of organizational measures and technical measures, dissemination of the draft and raising awareness on the meaning, among others.

8. The Presidential Decree of 8 August 2018 importantly, also recommends that the Legislative Chamber of the *Oliy Majlis* and Cabinet of Ministers develop, within three months, a unified methodology for the legal and technical execution of drafts or legal instruments, as well as information and analytical materials attached to them.

9. Finally, the Presidential Decree of 8 August 2018 establishes a Commission for implementation of the concept (paragraph 6, annex 3), which the OSCE/ODIHR team

³⁵ Regarding ‘smart regulation’: in its October 2010 Communication on [Smart Regulation in the European Union](#), the Commission defined smart regulation as having three main characteristics: it concerns the whole policy cycle - from the design of a piece of legislation, to implementation, enforcement, evaluation and revision; it must be a shared responsibility of the European institutions and of Member States; and the views of those most affected by regulation have a key role to play in smart regulation. Although ‘smart regulation’ was initially to be a successor to ‘better regulation’, it is the EU’s better regulation/law-making programme which provides the better guide to many elements of the improving rulemaking agenda, including the replacement of directives by ‘directly applicable’ regulations, thereby eliminating the ‘gold plating’ of directives by, in Uzbekistan’s case, ministries, and the ‘recasting’ of legislation.

was informed has been established (mentioned above) and is working. The mandate of the Commission is to ensure high-quality drafting and submission of the draft legal instruments necessary to implement the Decree. This includes:

- the organization, within the framework of the implementation of the concept, meetings, seminars, round tables, and conferences with broad involvement of civil society representatives, the media, academia and foreign experts;
- the conduct of a complete stock-taking of the legal-framework and revision of legal instruments for the purpose of (broadly speaking) systematization within one month;
- the preparation of a list of the international treaty provisions that need to be considered and complied with, for the purpose of identifying and repealing acts which are conflicting or redundant; and
- the modernization of the electronic database of legal acts.

10. The Presidential Decree also attempts to minimize the use of *regulatory guillotine*.³⁶

Paragraph 6 provides that “within two months, to make proposals on drawing up a specific list of internal legal instruments adopted by each department, providing for a phased narrowing and downscaling of powers with the translation of the norms contained therein into legal instruments of superior legal force and the use of the “*regulatory guillotine*” method for the remaining instruments, including in the framework of systematization of legislation.” The OSCE/ODIHR team was informed by all interlocutors who seemed to converge on this one issue - that the proliferation of ministerial by-laws must cease, if the system is to improve.

11. To this end, paragraph 5 of the Annex 1 , urges for “[l]imiting the legislative powers of departments by clearly defining the list of jurisdictions of each of them, the regulation of which is associated with the adoption of legal instruments, providing for the phased narrowing and downscaling of powers to adopt internal legal instruments.”

12. As already mentioned above, the OSCE/ODIHR team was informed that the Commission established by the Decree, with nominations in Annex 3, is already working and that the stock-taking of regulatory acts was being done by the Ministry of Justice – that is, those that must be prepared for the *regulatory guillotine*. OSCE/ODIHR did not receive further information regarding the meeting of other benchmarks set out in the Decree.

13. On one view the current system is a relic of a time gone by, in which primary law was scarce and, when it existed and was passed by parliament, it was vague in order to allow the interpretation to be undertaken through executive by-laws and orders. The reform efforts being undertaken are therefore all the more ambitious as they represent the need

³⁶ The guillotine eliminates and simplifies many regulations in a short period at low cost, while strengthening the government’s ability to focus on regulations needed to protect health, safety, and the environment.

of change not only on paper but a complete revolutionizing of the legal culture and paradigm shift to making laws with withstand not only legal tests, but parliamentary scrutiny and, with that, scrutiny of the public.

14. The Presidential Decree of 8 August 2018 targets a number of issues concerning the law-making process, which require attention and rectification in order for the objectives of the “National Development Strategy 2017-2021” to be met by the Republic of Uzbekistan. This assessment report and the recommendations contained herein, as already mentioned above, should serve to echo the concerns and fortify the self-reflection.

ANNEX 3: LIST OF INTERLOCUTORS

Senate of the Oliy Majlis

Ms. Svetlana Artikova, Deputy Chairperson of the Senate of the Oliy Majlis;

Mr. Shukhrat Chulliev, Member of the Senate of the Oliy Majlis;

Mr. Ildar Azizov, Chief Consultant of the Apparatus of the Senate of the Oliy Majlis

Legislative Chamber of the Oliy Majlis

Mr. Sarvar Otamuratov, Deputy Speaker of the Legislative Chamber, the Members of the Legislative Chamber of the Oliy Majlis;

Ms. Feruza Eshmatova, Deputy Chairperson of the Committee for International Affairs of the Legislative Chamber of the Oliy Majlis;

Dr. Akmal Saidov, Chairperson of the Committee for Democratic Institutions, Non-Governmental Institutions and Self-Government Bodies of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, Director of the National Human Rights Centre of the Republic of Uzbekistan and other representatives of the National Human Rights Centre;

Ministry of Justice

Mr. Alisher Karimov, Head of the Main Department of Legislation, other representatives of the Ministry of Justice, and the Cabinet of Ministers;

Ministry of Foreign Affairs

Mr. Ildar Shigabudinov, Head of the Department for Multilateral Co-operation

SCOs

Mr. Abdurakhmon Tashanov, Chairperson of the NGO “Human Rights Society “EZGULIK” and Mr. Bekhzod Nurmatov, Assistant to the Chairperson;

Mr. Shamil Asyanov, Director of the NGO “Legal Problems Research Centre”

Ms. Shirin Rashidova, Director of the NGO “Centre for Development and Support of Initiatives “NIHOL”;

Ms. Sayyora Khodzhaeva, Director of the NGO “Institute for Democracy and Human Rights”

Mr. Ildar Shigabudinov, Head of the Department for Multilateral Co-operation;

International Organizations and NGOs

Ms. Nargiza Abdukadirova, Representative in Uzbekistan of the Westminster Foundation for Democracy (United Kingdom);

Ms. Natasa Rasic, Deputy Chief of Party, Office of the Justice Reform in Uzbekistan Project;
UNDP Good Governance Unit staff and the Regulatory Impact Assessment Project team;

Embassies

Ambassador John MacGregor, OSCE Project Co-ordinator in Uzbekistan;

H.E. Ms. Violaine de Villemeur, Ambassador of France to Uzbekistan;

H.E. Piotr Iwaszkiewicz, Ambassador of Poland to Uzbekistan;

H.E. Ambassador Eduards Stiprais, Head of the EU Delegation in Uzbekistan;

Mr. Alan Meltzer, Charge d'Affaires a.i., Embassy of the United States of America in Tashkent;

Mr. Christopher Fuchs, Deputy Head of Mission, Embassy of Germany in Tashkent;

Mr. Michael Baum, Human Rights Officer, Embassy of the United Kingdom of Great Britain and Northern Ireland in Tashkent.

ANNEX 4: QUESTIONNAIRE

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.

A. 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?
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?
8. 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?
9. 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?
10. In case a draft law is not accompanied by an impact assessment, when required, is there a possibility to return such draft law to its initiators? If so, who decides this?
11. 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?

12. 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

13. Are policy discussions and law drafting undertaken? By whom?
14. 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?
15. 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?
16. 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 law-making process, laid down in a specific document? In your view, is there room for improvement? If so, what would you recommend?
17. 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?
18. 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?
19. 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?
20. 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?
21. 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? And how is the quality of their work?
22. To what extent is legislation from other countries used either as a model for policy makers or as a legislative precedent for law drafters?
23. 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?

24. Does each draft law, before it is introduced to the Parliament, have to be approved by the Government?
25. What procedures does the Government need to pursue once the draft law is submitted to the Government for approval?
26. 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?
27. During the law drafting stages, is there a process whereby the compliance of draft legislation with the text of the international conventions / treaties that Uzbekistan 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?
28. 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?
29. 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?
30. 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?

Consultations

31. 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?
32. 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?
33. Is there an obligation to include a report summarizing the findings of the consultation in the package of documents attached to a draft law?
34. 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?

35. 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

36. To what extent can the original law drafters be involved in drafting amendments to the draft law put forward by the Parliament?
37. 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?
38. Do officials of the drafting Ministry follow the progress of a draft law in the Parliament? If so, how is this done?
39. 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

40. What usual steps need to be followed when secondary legislation is being prepared? Do these differ according to the type of secondary legislation?
41. 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?
42. Is secondary legislation ever prepared as part of the same drafting process as the primary legislation which it is supposed to implement?
43. Who is responsible for policymaking with respect to secondary legislation? Is this the same unit that developed the policy for primary legislation?
44. Are stakeholders consulted in the process of preparing secondary legislation?
45. Who undertakes the drafting of secondary legislation? Is it the same staff that drafts primary legislation?

Access to legislation

46. Which unit in the Ministry maintains the central registry of legislation? Is the central registry computerized?
47. 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?
48. Are any groups of persons eligible to receive free copies of legislation (e.g. judges, bar associations, etc.)?
 49. In what instances can a draft law be published before official legislation? Who decides that a draft law should be published?
 50. 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?
 51. 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?
 52. 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?
 53. 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?

B. OLIY MAJLIS

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 Oliy Majlis?
7. How is the process of law drafting carried out in the Oliy Majlis? 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 Uzbekistan 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 Oliy Majlis? 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 Oliy Majlis? How is this done?
19. If the Government concludes that a draft law currently being considered by the Oliy Majlis needs to be altered, can the drafting Ministry itself draft the necessary amendments and submit them to Oliy Majlis? If so, how is this done from a procedural point of view?
20. In which cases does the Oliy Majlis 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 Oliy Majlis 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 5: THE BASIS FOR ODIHR'S LAW-MAKING 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 programme³⁷, 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, parliament and government so as to increase the probability that the adopted legislation yields consensus and is, thereby, properly implemented. Further, particular attention is given to the concept of

³⁷ SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe, <http://www.sigmaweb.org/>.

“legislative transparency”, which is specifically referred to in two key OSCE documents³⁸, 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 following³⁹:

- 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;
- 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.

³⁸ *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).

³⁹ These recommendations are extracted from the original documents.

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.