



Incomplete Chain

Policy Brief on Minimum
Standards for Public
Consultation

Kosovar Civil Society Foundation (KCSF)

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Policy Brief on Minimum Standards for Public Consultation

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Content

Introduction 3

Legal Framework..... 4

Implementation 11

Challenges 12

Conclusions and Recommendations..... 15

Annex I 17

Annex II 22

Annex III 23

Introduction

Civic participation is an inexhaustible topic, and its contribution to a healthy and developed democracy is very great. Involvement in the policy making process means an opportunity for citizens, CSO's and other parties interested in influencing the laws and policies that affect them. The possibility of citizens influencing the development of laws and policies does not mean that the legal and constitutional competencies of the executive and legislative powers would be suspended – on the contrary it enables public authorities to implement these competencies in a more efficient way.

Even though it is considered as one of the most basic forms of civic participation, public consultation has morphed into one of the most frequent means of communication between public authorities, citizens and civil society, in Kosovo and abroad. According to the European Council's Code of Good Practice for Civic Participation in the Decision-Making Process, public consultation represents “a form of civic participation in which public authorities ask for CSO's opinion on a specific topic of policies or developments”. Considering that initiatives for consultation need to always derive from public authorities, it is they who hold the main burden and responsibility for the success of this process.

In Kosovo, the majority of normative acts that are made by central institutions are mainly laws and secondary legislation. Strategies are fewer in number, whereas public policies only lately have become part of the work of central institutions, and only in a limited number of fields. The Government drafts the majority of laws and other normative acts, while the Government's field of activities include nearly all facets of Kosovar society. In addition, in this level all main elements of a specific document are determined, while discussion in the Assembly rarely results in significant changes. For these reasons the inclusion of the civil society in the drafting of public documents on the Governments level is of an extraordinary importance.

This inclusion has been happening for some time now. In the beginning this inclusion has been done without any rules or structure, but over the last years with a more favourable legal framework. Even though it contains quite positive general principles, the current legal framework does not translate those principles into concrete and clear mechanisms for those that use them. This represents one of the reasons that public consultation rarely satisfies all necessary preconditions in order to produce viable results.

This study aims to argue the need that these existing general principles are completed with concrete and detailed obligations and mechanisms. By analyzing the current legal framework, through this study KCSF proposes to the Government the drafting of a normative act of Minimum Standards for the process of public consultations, standards without which a process of consultation should not be considered viable. The concrete proposal for the content of the standards is also part of this study.

Legal Framework

Following the international administration in Kosovo and closed decision-making system, it was only in 2008 – after the declaration of independence – that the entire policy making cycle could be opened for involvement of citizens and civil society. However, until 2011 the legal framework restricted the opportunities for participation of citizens only based on the will of the institutions in charge. This resulted in an ad-hoc and non-standardized consultation based on personal contacts with most of the adopted laws not being consulted at all.

Currently, in Kosovo there is a set of documents regulating the process of policy and law making at central level, and involvement of the public is embedded in each and every of them. The **Constitution of the Republic of Kosovo** obliges all public institutions to inform citizens and all interested parties for all their work and documents (*Art. 41 – Right of Access to Public Documents*) and encourages participation of all citizens in public activities and the right to influence decisions of public institutions (*Art. 45 – Election and Participation rights*)¹.

Article 41 [Right of Access to Public Documents]

1. Every persons enjoys the right of access to public documents.

2. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification.

Article 45 [Freedom of Election and Participation]

...

3. State institutions support the possibility of every person to participate in public activities and everyone's right to democratically influence decisions of public bodies.

At governmental level, the policy and law making process is regulated by the **Rules of Procedure of the Government of Kosovo** (2011), while there are is also secondary legislation which details the drafting process, such as **Regulation on Government Legal Service** (2013) and **Administrative Instruction on the Procedures, Criteria and Methodology for the preparation and approval of Strategy Documents and Plans for their Implementation** (2012). In addition, the **Guideline for Public Consultation Process** (2011) is a non-binding document which entails detailed information on conducting public consultations for civil servants.

The **Rules of Procedures of the Government of the Republic of Kosovo No.09/2011** sets the rules and procedures on the drafting of legislation and policy recommendations by the Government and

¹ Constitution of the Republic of Kosovo, <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

ministries (Article 1.2).² The legislative initiative lies within the Prime Minister and every minister (Article 38.1) within their relevant fields of activity. In addition, the right to propose the start of a drafting procedure is extended to the General Secretaries and equivalent positions, Chief Executive Officers of Executive Agencies, Directors of the Office of OPM, Director of the Department and Director of the Legal Department (Article 38.2). The proposing/originating body is responsible for undertaking all the procedures of drafting the first draft (Articles 39 and 40), before submitting it for review to the General Secretary and approval to the Minister (Article 41). Upon approval from the Minister, the draft laws are forwarded to the Legal Office of the Office of Prime Minister for final review and submission to the Government (Article 42). Similar process is required also for preparation of the Annual Work Plan (Articles 47 and 48), drafting of the Concept Documents (Article 29 and 48.7) and preparation of Strategic Documents (Article 49).

While specific ministries and executive agencies have the right to propose policies and laws, the Office of Prime Minister offices have a central coordinating and supervising role in each of these processes: Legal Office for the legislative agenda, the Government Coordination Secretariat for the Annual Work Plan and Concept Documents and Strategic Planning Office for the strategic documents.

The Rules of Procedures of the Government provides a good basis of inclusion of citizens and civil society. There are three specific articles related to participation of citizens in the policy and law making process (*Article 32, Article 39 and Article 69*), as well as other provisions which imply the requirements for informing on and involving citizens and external parties in the work of the government.

Article 32 – Public Consultation

1. In relation to any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies as required by article 7 of this regulation, the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-Governmental organization that would be substantially affected by the proposal.

2. In conducting this consultation, the originating body shall provide sufficient information in a publicly understandable form to permit the public to understand the nature and consequences of the proposal. The originating body shall also publicly announce the beginning of the consultation exercise, and shall permit sufficient time for the public and non-Governmental organizations to consider the recommendations and offer a considered response.

3. The results of such consultations shall be reported to the Government meeting or Ministerial Committee as part of the concept document or explanatory memorandum required by articles 29

² Rules of Procedure of the Government of the Republic of Kosovo http://www.kryeministri-ks.net/repository/docs/RREGULLORE_E_PUNES_SE_QEVERISE_SE_REPUBLIKES_SE_KOSOVES_NR_09_2011.pdf

and 30.

4. The consultation process shall be conducted in accordance with an instruction to be issued by the Secretary proposed by the Legal Office.

5. In addition to the requirements of paragraph 1, the Prime Minister, the Government meeting or a Ministerial Committee may require a Minister to undertake public consultation on any other issue.

Article 39 – Drafting Procedures in the Ministry

1. The originating body is responsible for the procedures of drafting the first draft in conformity with the principles and standards on legislative drafting specified by the Government and the OPM:

...

1.2. Conducts consultation with the public;

...

Article 69 – Government Cooperation with the Civil Society

1. The Government shall cooperate with the Chamber of Commerce and other chambers, associations, professional associations, NGOs, unions, communities and other entities through the Office of the Prime Minister or the relevant ministries.

2. The Government shall, in particular, debate their opinions and initiatives, take a position on them, inform them of its positions and measures and, where necessary, invite their representatives to attend the meetings of the working bodies of the Government, and organize other forms of cooperation.

Under **Article 32**, the proposing body publishes the contents of the proposal for public comment and specifically by NGOs. This body should provide also sufficient information and time for the public and CSOs to consider the recommendations and offer a considered response. The results of such consultations should be reported to the Government meeting or Ministerial Committee as part of the concept document or explanatory memorandum. **Article 39** sets the responsibility for conducting the consultation with the public to the proposing body, which is in charge for the procedures of drafting the first draft. **Article 69** obliges the Government to cooperate with different external entities, including associations, professional associations and NGOs, including debating their opinions and initiatives and inviting their representatives to attend the meetings of the working bodies of the Government.

Regulation No.13/2013 on Government Legal Service³ regulates the unification of the initiating, drafting, review and approval process for all draft normative acts of the Government. This regulation, among others, entails also three articles related to public consultation: **Article 8** (*Legislative Process*), **Article 10** (*Preliminary consultation and public process*) and **Article 12** (*Public Consultation*).

Article 8 – Legislative Process

1. The legislative process shall pass to the following steps:

1.1. Preliminary draft of the draft law;

1.2. Preliminary consultation;

1.3. Public consultation;

1.4. Final draft law;

1.5. Submission procedures for review and approval by the Government

1.6. Review and approval by the Government;

1.7. Review and approval by the Assembly;

1.8. Proclamation by the President of the Republic of Kosovo;

1.9. Publication in the Official Gazette and

1.10. Ensure the implementation of law of secondary legislations.

Article 10 - Preliminary Consultation and Public Process

1. Bearer Ministries for drafting the draft normative acts through the consultation process should seek public opinion on draft normative acts, on those that want to draft.

2. The consultation process takes place before and during the drafting of the draft normative act

3. Preliminary consultation process and public consultation shall be made in accordance with the guidelines and standards issued for public consultation in accordance with RRPGRP.

4. During the course of the preliminary consultation process and public consultation should be

³ Regulation No.13/2013 on government legal service was approved on 130 meeting of the Government of the Republic of Kosovo with the decision No.02/130, date 16.05.2013.

http://www.kryeministri-ks.net/repository/docs/Rregullore_Nr132013_per_sherbimin_ligjor_geberitar.pdf

used methods and forms that are most appropriate to achieve the proper effect inclusion consulting stakeholders in the process of drafting legislation.

5. In order to have a higher public participation in the process of consultation, initiator of the draft normative act, may apply other alternative forms of public consultation development, with uncondition that applied forms to be appropriate for interest groups that are affected by the draft normative act. Alternative forms of public consultation can be used but must adhere to the principles of democratic governance aimed at obtaining relevant stakeholders opinion on certain issue.

6. Legal Office shall promote and coordinate the consultation process with the legal departments of ministries and other relevant units.

Article 12 – Public Consultation

1. Following preliminary consultation and eventual incorporation of comments, the relevant Ministry shall publish on the website the content of the draft normative act for public comments and specifically seeks comments by the groups of interest that are affected by the proposal.

2. According to the needs and requirements, Legal Office shall coordinate the process of public consultation on the draft normative acts of Ministries, along with legal departments or official responsible for drafting the draft laws of the relevant ministries

3. Results of the consultation process will be part of the explanatory memorandum. Memorandum presents the results from the consultation.

Article 8 recognizes public consultation as part of legislative process that should be undertaken in order to complete the legislative cycle. **Article 10** obliges proposing Ministries to use the consultation process for **seeking public opinion**, while consultation process should take place **before and during the drafting** of the normative acts. The public consultation shall be made in accordance with the Guidelines for Public Consultation deriving from Government’s Rules of Procedure. The methods to be used during the public consultation process shall be appropriate to achieve the proper effect of inclusion of different stakeholders, including alternative forms of public consultations. Last, according to the **Article 12**, after the preliminary consultation and eventual incorporation of comments, the proposing Ministry shall publish on the website the content of the draft normative act for public comments, and specifically seeks comments by the groups of interest that are affected by the proposal. Last, the results of the consultation process shall be part of the explanatory memorandum.

According to the needs and requirements, it enables the Legal Office to coordinate the process of public consultation on the draft normative acts of Ministries, along with legal departments or offices responsible for drafting the draft laws of the relevant ministries.

The purpose of the **Administrative Instruction No. 02/2012 on the procedures, criteria and methodology for the preparation and approval of strategy documents and plans for their**

implementation⁴ is to establish a unified practice (criteria and methodology) for the process of planning and drafting strategy documents. This document entails two articles related to public consultation: **Article 8** (*Drafting the strategy document*) and **Article 12** (*Review and commenting on the draft by other institutions and public consultation*).

Article 8 – Drafting the Strategy Document

4. The main phases of the strategy development project include:

4.6. Consultation: The team may conduct both formal or informal consultations and can be focused on securing views of stakeholders within or outside government. It is particularly important to consult with experts who can bring their knowledge to bear on addressing the issue in question, and with those who are likely to be most affected by policies arising from the strategy. Consultation can (and should) take place at various stages throughout the project.

Article 12 - Review and Commenting on the Draft by other Institutions and Public Consultation

1. The draft strategy document shall be sent to all ministries that might be affected by the proposed strategy, including the Ministry of Finance and the Ministry of European Integration, as required by Article 7 of the Rules of Procedure.

2. Ministries being consulted should be given 15 days to provide comments, and these comments should be listed in a table attached to the Explanatory Memorandums, along with an indication of whether such comments were incorporated into the strategy document;

Article 8 lists the consultation as one of the main phases of the strategy development project. Both formal and informal consultations can be undertaken at various stages throughout the project, and should be focused on securing views of stakeholders/experts within or outside government. **Article 12** is meant to set the obligation to consult with other public institution and the general public. However, despite the title, which includes public consultation, the content of this article fails to mention any provision on public consultation process. While the obligation to consult other public institutions is a brief summary of the Article 7 of the Rules of Procedures of the Government, Article 12 does not do the same for the Article 32 of the Rules of Procedures of the Government, which sets the requirement for public consultation for all draft-documents produced by the Government.

In addition to the above mentioned regulations, in 2011 government also adopted a **Guideline on Public Consultation Process** (Nr. 062/2011), which provides information on different skills and techniques to implement the Article 32 of the Rules of Procedures of the Government. This document was drafted in cooperation between KCSF and the Legal Office of the Office of Prime Minister and is dedicated to all civil servants that are responsible for drafting policies and legislation. The Guideline encourages civil servants to conduct public consultations at all stages of decision-

⁴Administrative Instruction Nr.02/2012 on the procedures, criteria and methodology for the preparation and approval of strategy documents and plans for their implementation http://www.kryeministri-ks.net/repository/docs/Draft_Udhezimi_Administrativ_Per_Strategjiite_FINAL_2012_2_.pdf

making process, starting from the phase of agenda-setting to the reformulation. It also intends to instruct civil servants on consulting both specific groups of interest and the general public. In addition, it provides detailed information on organizing different forms of consultation, such as written consultations, public meetings, stakeholders meetings, workshops, etc. The Guidelines describe all necessary steps to organize a public consultation process from planning to utilizing the results of the public consultations, as well as providing the feedback on the results of the consultations. Each of the phases has its respective checklist. Last but not least, it provides a template for written consultation, as a common form of consulting with civil society and the general public.

As noted above, the set of acts regulating the process of drafting different types of documents at government level provides with numerous requirements to conduct public consultations. Moreover, it implies that public consultation should be undertaken at all phases of the drafting process, not be limited only to written consultations and utilize of different tools. Nevertheless, it does not determine specific provisions for translating these requirements into concrete and practical mechanisms and tools for public consultations. The Guidelines for Public Consultations is the only document which contains some concrete and practical elements on the matter, but it lacks the explicit status of a binding document.

Implementation

While the legal framework provides an opportunity for an open decision-making process, its implementation lags behind. According to the Kosovar Civil Society Index, 64% of CSOs declare that they have been involved in policy-making process during the last three years. However, only 29.29% of CSOs have declared that they have been regularly invited for consultations for laws/policies relevant for their work.⁵ While public consultation process is defined as “a process through which public authorities seek the opinion of the public on policies or draft laws which they intend to draft”⁶, these results imply that the initiative for CSO involvement in policy-making process mostly lies with CSOs themselves. Even in cases when government units take the initiative to organize public consultations, they rarely provide adequate information on the content of the proposal, sufficient time for comments or feedback on the results of the consultation. The consultation is usually conducted through written consultations at the final stage of drafting, and other forms of public consultations are almost nonexistent. Last, a specific challenge is related to total lack of information and public consultation on laws which are considered to have a high political or economic interest. To illustrate, two highly contested laws on Amnesty and Microfinance Institutions have been drafted and adopted without any kind of consultation, despite intensive requests by civil society to be included in the drafting process.

More importantly, public consultation is mostly limited to the process of law-making, with other documents produced by the government being rarely consulted with civil society and the public. The Annual Plans of the Ministries and the Government, the Legislative Program, the Program of Strategic Documents of the government and the list of issues which need to develop Concept Documents are not consulted at all. Concept documents are rarely consulted, same as a numerous Administrative Instructions drafted by specific ministries.

⁵ KCSF, Kosovar Civil Society Index, 2014

⁶ Guideline on Public Consultation Process (Nr. 062/2011)

Challenges

In achieving a common practice of public consultation, there are a number of challenges that need to be addressed. The below listed challenges include only those which are directly related to the legal requirements and level of implementation of legal requirements. There are other challenges which directly influence the field of public consultations, but are not addressed in this paper, such as political willingness or capacities to undertake and respond to public consultation initiatives.

Lack of standardized approach by different government units – During the last couple of years, there have been numerous positive cases of public consultation and involvement of civil society in drafting different documents produced by the government. Some of these cases include the process of drafting Government Strategy for cooperation with civil society, the Law on Tobacco Control, the National Strategy for European Integration, the Law on Legislative Initiatives, etc. Nevertheless, the involvement of civil society in each of these processes is an exception rather than a rule. There are numerous laws, concept documents, strategies and secondary legislation which were drafted with little or no involvement of civil society.

Late consultations – In general, the late consultation of civil society remains a common practice. They are rather informed and invited to provide comments only after the first draft is completed and there is little space for any change. In addition, there is no system in place to inform civil society when a certain working group is established. While government Legislative Program or Program of Strategic Documents might be seen as orientation documents for CSOs to identify the documents to be drafted and period of their drafting, these documents are not implemented at their full. To illustrate, the Law on state border control and surveillance was adopted by the Government and submitted to the Assembly although it was not part of the Legislative Program. The late consultation does not enable civil society to contribute to the design of government documents, but limits its contribution to verify or oppose to the already completed content.

Limited methods of public consultations – Although the Regulation on Government Legal Service (Article 10) and the Guideline for Public Consultation require for utilization of different methods and forms of public consultation, the most common method deployed until now is the written consultation after the first draft has been completed. Public presentation of initial idea, experts groups and participation in working groups are not common, and alternative methods of consultation are almost non-existent. In addition to thematic expertise, providing qualitative written comments requires a high degree of capacities in policy and law drafting. In a situation where only a number of well-established CSOs are sufficiently skilled to prepare and provide qualitative written comments, absence of other methods prevents large groups of the public and civil society to contribute to the drafting process. Utilizing different methods would bring to the process different perspectives, thus increase the quality of produced documents: discussing initial idea with those who are directly influenced leads to a proper orientation of the entire process; experts contribution in working groups increases the quality of the documents; wider consultation with general public and CSOs through public hearings and written consultation might produce valuable contributions from many others who have a stake at a specific issue, but are not part of the “usual consultation groups”.

Limited scope of documents undergoing public consultations – Involvement of civil society in drafting specific documents is very important. However, setting the agenda and determining which problems will be addressed is many times crucial to successful governance. Currently, the agenda-setting is almost a monopoly of government and civil society is rarely involved. Even in cases when CSOs influence government agenda, this is done through non-formal ways and the contribution of

civil society is not recognized. The Annual Plan of the Government and respective Ministries, the Legislative Program, the Program of Strategic Documents and the list of items of Annual Plan which need to draft Concept Documents are some of the main agenda-setting documents which are not consulted with civil society.

Lack of feedback on public consultations results – Despite the requirement to report the results of public consultations to the Government meeting or Ministerial Committee, such a reporting is rare. The same applies with any feedback to those who contribute during the consultation process, which are not informed if any of their comments has been taken into account. In absence of any feedback for the results of the consultation, the trust of CSOs that their contributions are taken into account or even considered may decrease. In addition to lack of transparency of the process, this can also reduce the readiness of their involvement in future consultation processes.

Lack of selection mechanisms for CSO representatives – Within the current system of drafting government documents, most of the working groups are placed within the proposing body, at the initial stage of drafting respective documents. Civil society representatives are not part of many of these groups. In cases when they are involved, their selection is not based in any open selection mechanism. This creates basis for ambiguous interpretation by both sides, as well as does not ensure the most qualitative representation and contribution. Government insists that they cannot invite all CSOs in Kosovo and pretend that any CSO involved in the working group represents the position of the entire sector. At the other side, many times relevant CSOs or civil society groups are not invited, thus do not recognize the CSO representatives invited by the ministries. Civil society is a very diverse sector and there are no mechanisms to present a unified position. Nevertheless, there are different selection mechanisms that could ensure an adequate representation of civil society, based on specific criteria and open selection process. Recently adopted selection process by CiviKos Platform can be a possible solution to be applied in selecting civil society representatives in different bodies of the government.

Often cases of absence of public consultations – As noted above, there are few cases when public consultation process fulfill all preconditions which would ensure a qualitative contribution from civil society. However, the most concerning part is the total absence of information and public consultation on laws which are considered to have a high political or economic interest. To illustrate, two highly contested laws on Amnesty and Microfinance Institutions have been drafted and adopted without any kind of consultation, despite intensive requests by civil society to be included in the drafting process. On both of these laws, civil society was informed on their existence only when they reached the Assembly of Kosovo. Moreover, civil society concerns and requests which were never heard by the Government in the case of microfinance institutions have been confirmed as legitimate and right by the Constitutional Court, which decided in favor of civil society requests on the Law on Banks and Microfinance Institutions⁷.

The low number of Concept Documents (Public Policies) drafted by the Government – The Rules of Procedure of the Government foresee that Concept Documents have to precede new draft laws, change and completion of existing laws, important secondary legislation and other proposals that have substantial social influence, economic or other influences (Article 29). Practically, this includes nearly all normative acts that are drafted by the Government, except those with a closely administrative character or internal governmental acts. One of the important phases of the drafting of concept documents is the public consultation with all proposed alternatives. In this case, external parties would have the opportunity to give their contribution in a very early phase of the development of policies and for some possible alternatives for respective issues. This would evidently make subsequent inclusion easier where alternatives of policies are set and the

⁷ Constitutional Court Judgement http://www.gjk-ks.org/repository/docs/gjkk_ko_97_12_shq_.pdf

recommended means have started to be implemented (i.e draft-laws, strategies, programmes, etc.). However, the number of Concept Documents that are drafted by the Government remain low, and with this the civil society continues to be included mainly after policy alternatives are already determined. An increase in the number of Concept Documents would also directly influence the rising of the scope and quality of public consultation.

Conclusions and Recommendations

There are numerous reasons behind the low level of consultation and lack of qualitative consultation with civil society and general public. In addition to challenges related to the legal framework and its implementation, some of the main reasons for this are lack of political willingness, lack of capacities of civil servants and civil society, inadequate institutional setup for coordinating and monitoring the public consultation process and lack of trust between sectors. Nevertheless, all of the above can be addressed only if both parties have a common understanding of what really public consultation consists of. Civil servants and civil society need to have clear obligations and instructions on the necessary steps to be taken when conducting public consultations.

Building on the general principles embedded in the existing legal framework, KCSF proposes a joint definition of the practical implications of general principles. This would contribute to a more structured planning, conducting and reporting of public consultation process at the level of government.

A set of minimum standards for public consultations should define responsibilities of government units in involving external stakeholders in the process of drafting public policies. Building on the existing legal framework and requirements, this set of standards would complete the chain of public consultation process.

The main principles of Minimum Standards on Public Consultation process should be:

- 1. CSOs and the public shall be informed in a timely manner about the plans of each governmental unit on policy and legislative initiatives;**
- 2. The proposing authority shall consult with the public and CSOs the document or the main elements of the intended document since the earliest phase of its drafting;**
- 3. CSOs should be enabled to contribute in the drafting process since the earliest phases of the process;**
- 4. The public and CSOs shall be able to comment the initial draft of the proposal;**
- 5. The annual programs of the policies, strategies and legislation shall be consulted with CSOs and public;**

The proposed Minimum Standards on Public Consultations should be translated into a legal act and adopted by the Government, in order to become a horizontal requirement for government units in the policy and law drafting process.

While drafting the legal act, the Government should carefully analyse the capacities of its staff to fulfil such standards. It is not in the interest of any of the parties to adopt any document which will not be implemented at its full. Aiming to achieve a full implementation of such standards at the soonest possible time, a transitional period may be considered for preparing the necessary capacities of specific government units in charge. If applied, the transitional period should not last more than 12 months, and a comprehensive capacity building program should be designed and delivered for all civil servants in charge of drafting policies, laws, strategies and other documents

which require public consultation. Last, the set of Minimum Standards should be accompanied by a well-structured mechanism of monitoring and reporting, which should both ensure its proper implementation and identify the deficiencies faced during the process.

By drafting and implementing this legal act, the Government of Kosovo would fully execute its obligations that derive from the Constitution of Kosovo, Rules of Procedure of the Government, other acts that regulate the work of the Government, and it would also directly meet Action 1.2.2. of Measure 1.2 of the governmental Strategy for Cooperation with the Civil Society.

Annex I

Main elements for the minimum standards for public consultations

- The Minimum Standards will be applicable for documents produced by the Government
- The legal basis for adopting a set of Minimum Standards is the Rules of Procedures of the Government 09/2011⁸, as well as Regulation Nr.13/2013 on Governmental Legal Service, Administrative Instruction Nr.02/2012 for procedures, criteria and methodology of the preparation and approval of strategic documents and the plans for their implementation and the governmental Strategy for Cooperation with the Civil Society
- The Minimum Standards shall apply for all documents which drafting process requires public consultations
- The Minimum Standards will be encouraged to be applied for all other documents produced by the government
- The Minimum Standards will be encouraged to be adapted also for the public consultation process at local level

Drafting of the following documents are to be consulted according to the Minimum Standards:

- Annual work plans of Ministries
- List of items of the Annual Government Work Plan which need to develop Concept Documents
- Program of Strategic Documents of the government
- Legislative Program of the government
- Public policies (Concept Documents)
- Laws
- Strategies
- Administrative Instructions
- All other decisions that are required to be accompanied by an Explanatory Memorandum

⁸ All references of specific articles are made for the Rules of Procedures of the Government 09/2011, in exception when otherwise is stated

Standard 1:

The annual programs of the policies, strategies and legislation shall be consulted with CSOs and public

Detailed sub-standards:

- a. Each government unit, during the preparation of its annual work plan, shall consult CSOs and interest groups on the issues to be included in the work plan of the following year;
- b. The consultation shall consist of at least one consultative meeting, with participation of all interested CSOs and interest groups. The proposing authority will present all policies, strategies and legal acts which are intended to be included in the annual work plan, together with the reasons behind, and participants will be invited to provide their opinions on the proposals or new proposals to be considered by the government unit;
- c. Invitations for the meeting should be sent at least 5 working days in advance, and accompanying materials should include the list of documents which are intended to be included in the annual work plan;
- d. Regardless the list of invited CSOs and interest groups, the consultative meeting shall be open for all other interested parties too. Due to logistical reasons, prior confirmation of participation may be required. Nevertheless, availability of physical space shall not be a reason to exclude any interested party from the consultation process;
- e. The invitation shall be delivered to all CSOs that have expressed their prior interest as well as to CSO platforms and networks for further distribution;
- f. In addition to the consultative meeting, following the approval of the Annual Government Work Plan, the Office of Prime Minister shall conduct written consultation for the instruction which lists the issues which need to develop Concept Documents. (As per Article 29.3 and 48.7) The possibility to provide with written comments shall be opened at least 15 working days;
- g. In addition to the consultative meeting, during the process of preparation of the Annual Plan of the Strategic Documents, the Strategic Planning Office of the Prime Minister Office shall conduct written consultation for the lists of Strategic Documents which are planned to be developed during the following year. (As per Article 49, and Article 5 of the Administrative Instruction 02/2012 on the procedures, criteria and methodology of preparation and adoption of the Strategic Documents and their implementation plans) The possibility to provide with written comments shall be opened at least 15 working days;
- h. In addition to the consultative meeting, during the process of preparation of the Legislative Program, the Legal Office of the Prime Minister Office shall conduct written consultation for the lists of laws which are planned to be developed during the following year. (As per Article 47.3 and 48) The possibility to provide with written comments shall be opened at least 15 working days;
- i. The written consultation process for the annual programs of the policies, strategies and legislation shall adhere to all principles and standards of written consultation process, as defined in this document.

Standard 2:

CSOs and the public shall be informed in a timely manner about the plans of each government unit on

policy and legislative initiatives
Detailed sub-standards:
<p>a. In the beginning of each year, each government unit (including the units of the Office of the Prime Minister) shall publish its plan of the policy and legislative initiatives. For any change of this plan, each government unit shall inform the CSOs and the public immediately;</p> <p>b. The plan for policy and legislative initiatives shall be accessible to the general public. However, special attention shall be put in informing the relevant CSOs and interest groups which express their interest on the field of work of the respective government unit;</p> <p>c. The government and its units shall establish a special mechanism which would enable all CSOs and interest groups to express their interest on the policy and legislative initiatives of respective government unit in general, or particular policy or legislative initiative. This mechanism should enable CSOs and interest groups to express their interest on yearly basis, or more frequently when the policy and legislative plan of the respective government unit have been changed;</p> <p>d. In principle, no criteria for using this mechanism should exist. If necessary, the criteria for using this mechanism should be easy to be fulfilled and no bureaucratic procedures shall disable any CSOs or interest group from using this mechanism. Only basic information on the CSOs or interest group can be required, and CSOs and interest groups cannot be excluded from this mechanism based on the provided information.</p>
Standard 3:
The proposing authority shall consult with the public and CSOs the document or the main elements of the intended document since the earliest phase of its drafting.
Detailed sub-standards:
<p>a. During the phase of drafting the initial proposal (Article 40), the proposing authority shall organize at least one initial consultation, in order to consult the public with the scope of the initial proposal, main elements which are intended to be included in the document and key issues/alternatives which shall be further consulted;</p> <p>b. The initial consultation shall be organized in the form of consultative meeting with all interested CSOs and interest groups. The proposing authority will present the main elements which are intended to be included in the document together with the reason behind, and participants will be invited to provide their initial opinions on the proposal;</p> <p>c. Invitations for the meeting should be sent at least 5 working days in advance, and accompanying materials should include information on the intended scope of the document and main elements which are intended to be included in the document. If the issue to be addressed is highly important and complex, the invitations and all other materials shall be sent at least 10 working days in advance;</p> <p>d. Regardless the list of invited CSOs and interest groups, the consultative meeting shall be open for all other interested parties too. Due to logistical reasons, prior confirmation of participation may be required. Nevertheless, availability of physical space shall not be a reason to exclude any interested party from the consultation process;</p>

- e. The invitation shall be delivered at least to all CSOs that have expressed their prior interest;
- f. In addition to the consultative meeting, the respective government unit is encouraged to use other means of initial consultation, including web-based consultation.

Standard 4:

CSOs should be enabled to participate in the drafting process since the earliest phases of the process

Detailed sub-standards:

- a. The proposing authority should include in the team which prepares the initial proposal at least two representatives from CSOs;
- b. The representatives from CSOs should be chosen based on an open selection procedure, as required by a special act issued by the Government;
- c. The representatives of CSOs shall have equal access to all information, materials and data which are available to all other members of the team;
- d. The representatives of CSOs shall be free and is encouraged to inform other CSOs on the work of the team and their contribution to this work, with the only exception in cases when confidential information is part of the discussions, following a clear request by the leader of the team on the confidential information, according to the applicable legislation on classified information;
- e. The representatives of CSOs are enabled to freely present and defend their positions, as well as present all other comments/suggestions which may be raised from the public or other CSOs;
- f. Participation in the team which prepares the initial proposal should not prevent CSOs from using alternative ways of advocacy or promoting alternative stand-points which are not in line with the position of the team.

Standard 5:

The public and CSOs shall be able to comment different drafts of the proposal

Detailed sub-standards:

- a. Following the completion of the initial proposal (Article 40) and after completion of the Prior Consultation with other bodies of state administration (Article 7), the initial proposal shall be opened for public consultation in order to comment on the content of the initial proposal;
- b. The public consultation shall consist at least of a written consultations process with public and all CSOs. The possibility to provide with written comments shall be opened at least 15 working days. For documents which are considered highly important and complex, this period shall be extended;
- c. The proposing authority shall prepare the consultation package which, in addition to the draft of the proposal, shall include at least a short description of the content of the document, a short description of the problem which the document addresses, the aim of the consultation process, the policy alternatives (if applicable) or the issues which are not open for consultation (if applicable), as well as list of key issues which are part of the document. In addition, the consultation document shall provide with clear information on the exact address where contributions should be sent, the deadline for submission of contributions and the contact person

for any additional question from interested CSOs and the public; (As per the Annex of the Manual on Public Consultation Process of the government);

- d. In addition to the written consultation, the respective government unit is encouraged to use other means of public consultation, including public hearings and web-based consultation;
- e. A final meeting of the team which prepares the initial proposal shall be convened in order to discuss the contributions from CSOs and the public and decide on their approval or refusal;
- f. A list of main contributions and the result of the consultation process (approval, partial approval or refusal of contributions) shall be included in the Concept Document or Explanatory Memorandum of the document. This shall also be made publicly available through the official internet page of the proposing authority, e-mailed to all those who have responded to the public consultation invitation, as well as be part of the final draft which is submitted to the Assembly.

Annex II

List of interviewees	
Agron Demi	Institute for Advanced Studies GAP
Arben Lila	Kosovar Advocacy and Development Center
Burim Seferi	Kosovo Red Cross
Behxhet Binaku	HANDIKOS
Driton Selmanaj	Kosovo Democratic Institute (KDI)
Faik Hoti	Ministry of Health(MH)
Muhamet Arifi	Balkan Sunflowers
Rexhep Bllaca	Ministry of Trade and Industry (MTI)
Sibel Halimi	Kosovar Gender Studies Center (KGSC)
Shqipe Pantina	Center for Policies and Advocacy (CPA)
Zef Morina	Mother Teresa

Annex III

List of participants in the consultative meeting on Minimum Standards	
Arben Krasniqi	Government Coordination Secretariat – GCS/OPM
Besim Kajtazi	Legal Office – LO/OPM
Driton Selmanaj	Kosovo Democratic Institute (KDI)
Evin Thana	Ministry of European Integration (MEI)
Fatos Mustafa	Ministry of Public Administration (MPA)
Fisnik Korenica	Group for Legal and Political Studies (GLPS)
Hajrulla Çeku	EC Ma Ndryshe
Hilmi Jashari	Civil Rights Program Kosovo (CRP-K)
Kushtrim Kaloshi	Advocacy Training and Resource Center (ATRC)
Leon Malazogu	Democracy for Development (D4D)
Lorik Bajrami	ÇOHU!
Petrit Zogaj	FOL Movement
Rexhep Bllaca	Ministry of Trade and Industry (MTI)
Taulant Hoxha	Kosovar Civil Society Foundation (KCSF)
Valdete Idrizi	CiviKos Platform
Venera Hajrullahu	Kosovar Civil Society Foundation (KCSF)