



STRATEGY on Good Governance and the Rule of Law 2006-2008

1. Needs assessment

There is no doubt that Albania has made notable progress on the road to democratization. The country has now a modern Constitution, recent elections have largely been considered as fair, media is generally free in imparting information to the public, the bases of the market economy are already laid, the civil society is demonstrating growing vitality and the universal human rights and freedoms are generally respected. However, it is also true that public administration is not performing in accordance with standards consistent with modern and democratic benchmarks and the needs of the citizens are not adequately met. In addition, corruption has molested the entire political system, as a consequence of which the very legitimacy of the Albanian state has come to be at stake.

It is clearly evident that the Albanian political leadership lacks the will to advance democratic reforms and implement the laws passed in these transitions years, as the only way to counter corruption which threatens to reverse the entire progress in governance made in the country. The lack of political will, coupled with lack of capacity on the part of public employees, is mostly evident in the poor quality of drafting and implementing legislation. Many of the public officials are not capable of following systems and procedures that would contribute to the efficient implementation of reforms.

The law making process at the central level, local governance strengthening and administration of the judiciary are three of the areas reflecting the situation described above. These are considered

to be the “hot” spots of institutional reform in Albania. Here, desirable results are very distant from being attained, even though the country’s progress depends solely on the rule of law and on democratic and efficient governance. It is exactly on these grounds that the Network of Open Society for Albania proposes to focus its rule of law and good governance program on these three areas. A survey of the three areas (law making process at central level, decentralization of local governments and administration of the judiciary) revealed as follows:

2. Objectives and activities per area

2.1 Open, participatory and effective policy & law making process

Institutional weakness in Albania, among other things, is attributed to serious shortcomings of the policy and law making process. Some of the underlying factors that negatively affect the policy and law making process are:

- Vested interests and networks of influences, presence of conflict of interest as well as the high risk of state capture with strong distorted impact.
- Weak civic participation especially by weak and/or vulnerable interest groups of the society causing
- Poor quality of policy and law drafting, poor or lacking alternative policy options
- Weak mechanisms to ensure transparency of government actions and weak monitoring and oversight (internal and external) capacities

The interplay of these factors leaves its imprint in the poor quality, lack of ownership and consequently poor implementation of policies and laws.

Goal of the area

Increase implementation of good policies and laws and strengthen democratic governance in Albania through the improvement of the policy and law making process based on i) the increase the constructive participation of interest groups, stakeholders and civil society organizations in the policy process; ii) oversight and monitoring of public institutions in policy and law preparation and implementation as well as iii) improve policy and law making capacities within the public institutions.

Specific objectives of the area

- Make sure that interests of citizens are represented in the policy and law making process
- Improve capacities and process for a better articulation of citizen groups' interests and of general public to decision makers
- Influence policy decisions based on represented interests, free of conflict of interest
- Introduce efficient methods for assessing the impact of proposed policy and legislation and make possible that the policy choices are the most appropriate
- Oversee and monitor the performance of public institutions and policy and law implementation

Activities will focus on:

- Creation of political will and public ownership of policies and laws
- Creation of representation forums (for stakeholders, interest groups, civil society organizations)
- Improving the policy and law making process
- Establishing efficient oversight structures
- Capacity strengthening into civil society and institutions

Achievement of the goal and the specific objective necessitates a careful analyses and evaluation of the various factors and a flexible approach that will consider step-by-step the achievement, problems faced and lessons drawn out in each preceding phase.

Phasing and sequencing of the objectives and activities:

Achievement of the goal and specific objectives will be possible through phasing and sequencing of the activities more or less as following:

1. Preparatory phase: during this phase will be carried on:

- Assessment of policy and law making process in Albania and the best practices in other countries (either developed countries as well as developing countries)
- Assessment of the current capacities and weaknesses of civil society and different groups of interest to participate in various roles in the policy and law making process.
- Assessment of capacities and weakness of key public institutions

Timing: 1st -6th Month

2. Defining the detailed approach to achieve the goals: Based on the findings of the previous phase the activities of this second phase will aim to produce a more realistic approach and timing to achieve the objective and the goal. Some of the activities to be carried on during this phase are:

- Initial dissemination of the key concepts and qualities of a good, democratic and effective policy and law making process and feed back
- Draft detailed approach with objectives, activities and timing, consultation of the approach with key stake-holders and key social groups and feed back. Final detailed approach approved and ready to be implemented.

Timing: 7th-12th Month

3. Implementation through cases: Based on the outcomes of the previous phase, the main objective of this phase is starting to improve the policy and law making process for a few selected relevant issues. This will permit to achieve a double goal i) resolve a concrete policy issue ii) test the instruments, build capacities and create experience. Main activities to be carried on during this phase are:

- Selection of a few relevant policy issues among different relevant issues in compliance with OSFA/NOSA strategic goals¹.
- Design the process of policy and law making relevant and appropriate for the selected policy issues
- Provide capacity building either among the interested group as well as to the relevant public institutions responsible for that policy and for the process
- Assist parties to start the process of policy design, consultations, identification of costs and benefits, select the best option up to the final approval, continuing with the monitoring of the implementation of the policy/law and evaluation of the impact.
- Analyze the experience, draw out lessons, adjust the instruments and techniques and disseminate the results

Timing: 13th – 24th Month

¹ The policy issues will be selected through careful evaluation of the relevance, acceptability, rate of complicity and probability of success combined with consultations of key stakeholders. Thus it is either possible not good to anticipate the outcome of such processes. But juts for a general orientation some potential policy issues may be related to areas of i) basic human or minority rights, ii) social care iii) poverty reduction iv) employment promotion v) environment vi) education and/or health vii) fiscal and administrative instruments especially targeting SMEs, etc.

4. Building a sustainable good and democratic policy and law making process: The targets and activities of this phase will depend by the rate of success of the previous piloting phase. The basic approach can be two i) continue with selected policy issues in a case by-case approach or ii) if appropriate design a comprehensive legal instrument that incorporate the key qualities of the desired policy and law making process, insure adoption and provide capacity building and awareness to large public as well as to specific groups of interest to get benefit to this new opportunity.

Timing: 25th – 36th Month

2.2 Improving the Judiciary - Strengthening fair trial and human rights

Over the last decade Albania has introduced the basic institutions of democratic governance (elections, a representative form of government, independent institutions, a free market based on private property and competition etc). Such institutions are designed to create a free individual, buffered from government action by a catalogue of human rights, as well as a functioning society and economy.

Now that most institutions are in place and running a problem of implementation has emerged. Many are looking at the judiciary as a natural pressure source for the implementation of the rules and processes that are aimed at guaranteeing the proper performance of democratic institutions and, hence, the effective enjoyment of human rights by the Albanian citizenry.

Unfortunately, the judiciary itself has been ridden with problems ranging from insufficient education of magistrates, poor discipline and ethics as well as corruption. The very concept of the judiciary as a bulwark against human rights abuses is being dented. There is only one way for the judiciary to play its pre destined role: awarding the parties to a judicial proceeding a fair trial.

Whereas most elements of what is commonly referred to as fair trial are indeed entrenched in legislation, its rigorous implementation by the courts is at least as important to the fulfillment of the goal. Unfortunately, the Albanian judiciary has failed to substantiate of this important obligation. Indirect data, such as the high incidence of judicial misbehavior and the stubbornly negative perception of the public regarding judicial performance indicate that judicial process in Albania is substantially flawed. A flawed judicial process is a direct menace to fair trial and, with that, a premise for the abridgement of human rights.

Goal of the area

A better implementation of human rights standards by way of promotion of fair trial in judicial proceedings.

Specific Objectives of the Area

- Increase the parties access to justice thereby enhancing the implementation of human rights standards;
- Enhance observation of due process requirements in the judicial proceeding;
- Achieve judicial transparency vis-à-vis the public at large without compromising the impartiality of the judicial process.

Main activities will focus on:

Objective I/Access to justice:

IPLS's understanding of the access to justice notion refers to parties to the proceeding alone. Its ingredients are the arrangement of physical setting at the court house, the parties' access to the judicial files, and their physical presence at the court room. IPLS will first engage in a legal assessment of the legal framework relevant to the access to justice issue. Consequently, we propose to monitor the Albanian judiciary performance in this respect by measuring the perception of the court users.

Objective II/Due process requirements in the judicial proceeding:

IPLS's understanding of the due process during the judicial proceeding consists of two main components: *proceedings at the trial stage* and the *final judicial verdict*. IPLS undertakes to monitor the observation of the fair trial under the first component (trial stage) by looking at issues such as the reasonable length of judicial proceedings, the performance of the parties to the proceedings as well as the safety of the parties to the proceeding and that of the witnesses.

IPLS's undertakes to monitor the observation of the fair trial under the second component (judicial verdicts) by looking at the degree of legal reasoning used by the judges and the proportionality of sanctions.

Objective III/Judicial transparency:

IPLS's understanding of the judicial transparency entails public relations systems of the judiciary, its relations with the media and the degree of implementation by the judiciary of the Freedom of Information Act. IPLS shall engage in an assessment of the systems and policies in place related to transparency through direct observation and through an evaluation of such systems and policies in the light of western standards. A commonly shared standard in judicial transparency is one that seeks a degree of court transparency without prejudicing the judicial process.

In order to achieve the aforementioned objectives IPLS/NOSA will resort to a combined repertoire of activities/tools:

- legal and policy framework assessments;
- court performance monitoring through perception surveys and direct observations;
- analysis and recommendations;
- advocacy and pressure for change through cooperation with NOSA partners and other civil society groups;
- strategic cooperation with the media on selected issues.

Phasing of activities

There will be a preparatory phase when an assessment of the situation will take place at three levels: 1) legal and policy framework assessment and 2) assessment of real life implementation of laws and policies, 3) study/assessment of international best practice. The preparatory phase will be followed by direct observation of what happens inside the courts. Policy papers/recommendations/laws/by-laws will be drafted. Following the first two stages, advocacy and lobbying strategies will be designed.

Certain activities in the IPLS proposal are to be repeated every year. We still have to decide whether we should repeat the exercise at the same five pilot courts dealt with during the first year (arguably this approach would enable IPLS to measure improvement or deterioration in the work of courts) or, on the other hand, deal with five different courts each year. We reserve this tactical decision for further consultation with NOSA partners.

2.3 Decentralization and participatory processes in local governance

At the present stage of the country's development it is important to advance the decentralization process through the completion of the legal framework to the maximum extent possible. Exploration of interactions/inter-communal reorganizations to the end of reaping the full benefits of the decentralization reform, with the ultimate aim of consolidating local government units and ensuring effective fiscal decentralization is a secure path to efficient decentralization reforms with feasible positive impacts on the life of citizens. Although the law provides for uniform powers and competences for first level of local government, in reality the communes and municipalities openly display very asymmetrical developments. Furthermore, within the municipalities and communes themselves there are asymmetrical situations due to human capacities, fiscal and natural resources available to each and every one of the local government units. Adding to the situation are the ambiguities that surround the powers and competences of the region as the second-tire of local governance. This unclear division of duties and responsibilities makes inter-communal cooperation difficult and raises obstacles to redistribution of resources, including monetary, and coordination of action within the region.

Due to unbalanced regional developments, massive demographic movements towards the big urban centers have upset social and economic equilibriums. While the decentralization reform is driving powers and responsibilities down to the local level, a growing number of localities have already lost or are constantly losing their population. Therefore, in the last years the opinion is making headway that alongside the deepening of the decentralization reform, Albania needs to contemplate a deep territorial and administrative reform to the end of improving governance and approaching the standards and formats of European territorial organization.

In Albania there is little public participation in governance decision making. On the one hand, public officials misunderstand the importance of letting the public participate in governance and are not creating the conditions for participation; on the other hand the public itself does not understand its role and responsibilities in the process of governance in the meaning of forcing the government to respond to the needs and interests of the communities. Furthermore, there is lack of public supervision to increase the accountability of government by means of mechanisms for the public to monitor the actions taken and the results achieved by local governments in their work to deliver social services to their communities. The need for participation of interest groups as actors in formulating reforms and policies and, gradually, in monitoring their implementation, is becoming more and more evident.

Main goal of the area

Strengthening good governance and the rule of law through ensuring balanced regional development and building local government capacity, transparency and civic participation.

Specific objectives

- Identification and assessment of the various existing practices in inter-communal relations.
- Clear definition of the powers of the region at the function of improving coordination of social and economic development and re-distributing resources (fiscal, human and natural) to benefit developments within the region.
- Building awareness on the problems and issues posed by the present territorial and administrative division.
- Designing various regionalization options of the country in response to European regionalization policies.
- Building the awareness of key actors on the need to re-conceptualize the country's territorial/administrative division.
- Improving transparency and increasing citizen's access to government information will remain a priority in 2006-2008. The program will give technical assistance to municipalities to develop their communications and public relations capacities as a component part of one stop shop initiatives.
- Developing the institutional capacities of local governments to better perform their decentralized functions is another direction of NOSA strategic approach over 2006-2008. In this context, OSFA and LGI will work closely together to design a joint approach.

Nature of activities:

- Survey the existing practices of inter-communal cooperation in order to better understand the factors that stimulate or obstruct local government units to supply services jointly or even to move towards merger between/among them.
- Conduct comparative analysis with the countries of the region.
- Analyze the region's present role in the coordination of social and economic developments while contemplating the necessary conceptual and legal changes.
- Explore various alternatives for Albania's regionalization in response to the European regionalization policies.
- Pilot models of communal interactions/reorganizations by looking at possible legal implications.

- Launch a consulting and participatory process on the need for territorial and administrative reform while weighing the legal and financial effects of such an initiative.
- Strengthen participatory processes at policy and decision making especially in areas directly affecting people’s lives (education, health, social assistance programs, communal infrastructure works, etc.)
- Improve local government capacity towards upgrading service delivery
- Establish effective mechanisms to make local government units responsive and accountable to citizens.

Phasing of activities

| Activity cluster | Timeline | Key Implementer |
|---|------------------|-------------------------------|
| 1. Analysis of country’s regionalization, including exchanges/input/feedback/review of findings and conclusions | Months 0-18 | Co-PLAN |
| 2. Assessment and piloting of inter-communal cooperation practices, including the study of roles and duties of the region | Months – 18 - 30 | Co-PLAN |
| 3. Launching the process of the administrative/territorial reform | Months 30-36 | Co-PLAN |
| 4. Encouraging civil participation in governance | Months 0-36 | OSFA + CO-PLAN + NOSA members |
| 5. Establishing mechanisms for transparency and accountability | Months 0-36 | OSFA + CO-PLAN + NOSA members |
| 6. Building capacity of local government units | Months 0-36 | OSFA + CO-PLAN + NOSA members |

3. Implementation capacity

Besides OSFA, the program of Rule of Law and Good Governance will be implemented by three non-profit, independent organizations with a think tank profile. Each of these three organizations has specific qualifications and capacities required to implement respectively each of the three orientations within the program as described above. A summary of the implementation capacities of each of the implementing organizations per program orientation is given below:

The law making process at central government level – implemented by Institute for Contemporary Studies (ICS)

- *ICS has successfully contributed to the preparation of policies and legislation in several fields of governance.*
- *ICS has recently embarked on a project funded by the Democracy Program of the US Embassy aimed at the creation of initial premises for the introduction of the Regulatory Impact Assessment.*
- *ICS has managed the technical and lobbying work of the Albanian Anti Corruption Coalition for the preparation and approval of the law “Concerning the prevention of conflict of interest”*
- *ICS has made its contribution to the design of a number of policy options and the formulation of new legislation in connection with market mechanisms and public institutions. These policies and laws are effective in both the fiscal and regulatory spheres such as the tax and tariff policies, property rights, fair competition and antimonopoly laws, the reduction of administrative barriers to business activity, etc. (these projects have been implemented with various sources of funding).*
- *ICS is experienced in the facilitation and promotion of cooperation and exchanges between/among actors in the legislation process.*

Intercommunal cooperation at local government level and territorial/administrative re-organization of the country –Implemented by Co-PLAN

- *Co-PLAN has implemented important projects in a number of municipalities such as Kamza, Tirana, Elbasani, Durrresi, Korca, Lushnja, Peshkopia, Kruja, Rresheni, and Ballshi. These projects were mainly to do with provision of technical assistance and capacity building in the field of urban planning, strategic planning, integration of informal areas,*

and design of development plans for city/town quarters, civic participation and mobilization of communities and vulnerable groups.

- *Co-PLAN* has participated actively and has provided concrete assistance to the central institutions with the implementation of the decentralization strategy. *Co-PLAN* has launched a bottom-up process on possible solutions to the problem of illegal buildings. It has recently developed a platform on territorial administration and good governance which has been submitted to all of the political parties in Albania.
- *Co-PLAN* has been very active in the internalization of most pressing urban issues in Albania. Besides numerous meetings and regional round tables, in May 2003, *Co-PLAN* held an international conference of the European Network for Research in the field of habitat and urban development (*ENHR*).
- *Co-PLAN* is presently focusing on the building of models/instruments for good governance. In this context, *Co-PLAN* is assisting the municipalities of Fier and Elbasan to develop city development strategies along the lines of implementable plans for territorial administration and promotion of economic development.

Participatory processes in local governance – Implemented by OSFA

Since its creation in the year 1992, OSFA focused on the strengthening of participatory processes as part of the efforts to create and strengthen democratic values in Albania, including democratic governance. In the early years of OSFA existence, its operations focused on grant making for civil society organizations to the end of strengthening their representation and advocacy capacity, but also local government capacity to supply services to the benefit of communities and establish a two way communication between communities and local governments.

In the period 1999-2004, OSFA was engaged intensively in establishing and strengthening autonomous public institutions in Albania including local government units. Simultaneously, over this period OSFA developed new capacities internally to respond to the newly created situation. From what was mainly a grant making organization, OSFA represents today an entity capable of conceiving, implementing, monitoring, evaluating and updating projects to see them through to successful completion.

In its multidimensional efforts to transform itself into an operational organization OSFA has lately carried out a number of training events for local government units while at the same time taking the leadership of many of the civic actions in Albania. As a result of its intensive efforts OSFA has

established and maintains effective working relations with almost every local government unit in Albania and with most of civil society organizations in the country.

Reform of the judiciary– Implemented by the Institute for Policy and Legal Studies (IPLS)

- *IPLS* incorporates two main long term programs, organically linked with one-another as two sides of the same coin:
 - (i) *The Legal Program* - provides legal assistance, coupled whenever necessary with training programs, for governmental entities, non-governmental organizations and international bodies represented in Albania;
 - (ii) *The Program of Public Policies* – provides objective analysis and recommendations in relation to contemporary concepts and processes as an input to the formulation and implementation of laws and the strengthening of their impact in the Albanian reality.
- In its strive to carry out its mission work, *IPLS* has implemented a relatively large number of projects of which a good part fall under the law and legal sphere. Mention can particularly be made of experience in such projects as those involving the High Justice Council, the Magistrate School, the Law Faculty, the Judiciary Inspection, the Courts, etc.
- *IPLS* has gained strong lobbying credentials with the structures of the Albanian government, thus increasingly consolidating the profile of a think-tank organization.

4. Building partnerships outside the NOSA network

The successful implementation of the NOSA strategy in the field of Good Governance requires the building of partnership not just within the three institutions involved with the implementation of this present strategy, nor even of the seven NOSA member organizations. It requires the building of effective partnerships with organizations and entities outside NOSA. For the purpose of attaining the above objectives, partnerships outside NOSA will be built through the following cooperation strategies:

- Subcontracting and involving free-lance experts or individuals employed by key institutions with focus on the field,

- Involvement and subcontracting of think-tanks with reputation in the field of good governance,
- Involvement and/or subcontracting of foreign experts/institutions with tested expertise in the field (in ways consistent with the potential of generating additional funds or attracting other donors' resources)

In the meantime, activities of the type of consulting, training and/or awareness building will be carried out in partnership with key relevant public institutions and with organizations of the business community and/or the civil society sector with an interest to cooperate based on their specialization and focus.

5. Mobilization of third party resources

In the design of NOSA Strategy on the Rule of Law and Good Governance, special care has been taken to create synergy with the plans and programs of other actors in the field. As such, in the process of strategy implementation opportunities are likely to arise towards resource mobilization through:

- Sharing the costs of certain program activities
- The increase of the volume of activities programmed by NOSA through the mobilization of additional funds and contributions made by partners willing to cooperate
- The birth of parallel and independent activities from those envisaged by NOSA in the field of good governance. Although separate, these initiatives may be harmonious and contributive to the attainment of the same goal.

The first two options are directly connected with resource mobilization towards achieving the objective of matching dollar for dollar. The third option although helpful and useful is not directly related to NOSA financial goals.

In addition to financial and non financial contributions that may derive from the partnerships built (see section 'building partnerships outside NOSA'), there may be potential donors offering to fund the initiative.

The launching of activities and the gaining of concrete results by NOSA would substantially facilitate fund raising efforts to cover the costs of implementing this present strategy.

For this purpose, at every stage of activity, detailed reports will be submitted to actors involved in the field who may become potential donors for NOSA activities under the Rule of Law and Good Governance Program. Together with interested partners and stakeholders (such as government entities, business organizations, civil society actors, etc.) or with their support, project proposals will be submitted to various funding sources for large or small scale projects with connected objectives.

6. Monitoring the results of the strategy

To monitor the extent of the implementation of activities and the attainment of results under the strategy, a specific mechanism will be set up in accordance with intermediate and final results envisaged for every stage of strategy implementation.

The activity of the three implementing partners under the Rule of Law and Good Governance Program will be subjected to the evaluation of NOSA oversight structures. It will also be subject to external evaluation. Evaluation will be based on:

- Review of pertinent documentation evidencing the coverage of activities as indicated on paper
- Interviews with beneficiaries
- Media coverage of the activity and success stories told by the media with regard to activities under this Program conducted by these three implementers.

The above data will, in any case, be collected by the implementers of the Program. However, external evaluators may choose to collect and analyze data independently, as may be directed by OSFA.

Monitoring and evaluation and subsequent reporting will be conducted:

- Following every important activity
- At the end of every phase

7. Sustainability Plan

The products to be developed by this strategy are by their very nature sustainable. Following their formal adoption by the relevant authorities they will be incorporated into the system as part of the legislation, program and policy papers, or will lead to the establishment of implementation structures and entities. Likewise, the intermediate products, such as assessment reports may be kept for a long time as reference documents by the concerned structures to be used for policy/decision or other deliberation purposes. The dissemination of knowledge and capacity building beyond governmental structures into the ranks of stakeholders and interest groups is another sustainability factor and another of the indicators of success towards the attainment of NOSA objectives in the field of Good Governance and Rule of Law.

In addition, NOSA may become a dominant supplier of consulting services on the implementation and monitoring of the activity package proposed under the Good Governance and Rule of Law Program, what would represent a very good opportunity for resource generation and the long term sustainability of this network.

8. Exchange of information between/among members of the consortium, partner organizations in the field and NOSA members

Exchange of information will be conducted in the best possible ways, among which:

- Constant exchange of information, documents and opinions via e-mail;
- Periodical informational meetings of the consortia members (3-4 times a year);
- The building of a dedicated website on the Rule of Law and Good Governance program featuring data, experiences, conducted activities, status of progress and results achieved. The website may gradually evolve into a data source on the Rule of Law and Good Governance in Albania.
- Distribution of monitoring and evaluation reports.

9. Budget

To cover the activities planned for 2006-2008 a budget of 750,000 USD will be allocated by OSFA (annually 250,000 USD). Over the three years, the implementers will raise at least another 750,000 USD by third party sources.

10. Justification of requested budget

Given the multitude and intensity of challenges for improving Good Governance and the Rule of Law in Albania, the OSFA allocation, notwithstanding doubling the amount from third party funding, remains modest by comparison with the needs for interventions. However, as NOSA implementing partners we will make every effort possible to maximize the value of available resources through employing strategies such as building models, creating synergy, establishing inter and intra-cooperation in various networking partnerships, etc.