INTRODUCTION

In the decade following the fall of Communism, many transition countries have struggled to develop systems of governance that are equal to the
task of supporting and regulating their new market economies. This involves a major reconstruction of their systems of public administration and the creation of various kinds of accountability mechanisms that can bring bureaucracies that once operated with relative impunity under some degree of meaningful public control. Limiting bureaucratic discretion is viewed as having the potential to increase simultaneously the predictability and fairness of regulatory processes. In theory, information asymmetries can be reduced and regulatory transaction costs lowered, strengthening the kind of supportive roles for civil society—emphasizing “voice” and public-private partnerships—that are emblematic of so-called second wave public sector reform.

Initially, much emphasis was placed on increasing government accountability through invigoration of the separation of powers—a fiction during the communist era—so that enhanced institutional checks and balances (so-called “horizontal accountability”) would be afforded by greater legislative oversight, constitutional review by the courts, and increased hierarchical control of ministries by presidential or cabinet administration (and possibly special audit bodies). But there are real limits to state capabilities in societies where state institutions are often significantly discredited, material resources are scarce, and otherwise qualified civil servants have gravitated to the private sector. Even in semi-consolidated transitional democracies—which likely represent a relatively small fraction of the total number of transition countries around the world—plentiful corruption and extensive cli-

1. See THE WORLD BANK, REFORMING PUBLIC INSTITUTIONS AND STRENGTHENING GOVERNANCE: A WORLD BANK STRATEGY 22-27 (2000) (“These include various forms of representative decision making and political oversight; direct involvement by users, nongovernmental organizations and other groups . . . ”).

2. The term “horizontal” accountability was first coined by Guillermo O’Donnell. A thorough discussion of this concept appears in Andreas Schedler, Conceptualizing Accountability, in THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 12-28 (Andreas Schedler et al. eds., 1999).

3. Although the term “democratic consolidation” has come under fire over the past several years due to definitional imprecision, and what one observer calls its “strong teleological flavor,” the term still has a basic explanatory power in relation to a country’s situation on a spectrum of institutionalized accountability. See David Collier & Steven Levitsky, Democracy with Adjectives: Conceptual Innovation in Comparative Research, 49 WORLD POL. 443 (1997) (stating that one set of distinctions relevant here is between mere “electoral democracy” where there are relatively free and fair elections but poorly developed governance institutions, and more evolved forms of “liberal democracy” and “advanced democracy”), available at http://muse.jhu.edu/journals/world_politics/v049/49.3collier.html.

4. See FREEDOM HOUSE, FH COUNTRY RATINGS, available at http://www.freedomhouse.org (last modified May 21, 2001) (publishing an annual assessment of the state of freedom by assigning each country status of “Free,” “Partly Free,” or “Not Free” based on an average of political rights and civil liberties ratings). Latvia, for example, has
entelist arrangements within and between the various branches of government hamper the development of meaningful checks on bureaucratic discretion.

Faced with these formidable challenges, reformers in some transition countries may be increasingly drawn to a number of complementary accountability mechanisms that rely less exclusively on state institutions and more on various forms of direct citizen monitoring and participation (what is often termed "vertical" accountability). 5 Even in countries where civil society was weakened by decades of Communist rule, there are a number of these under-appreciated mechanisms—emphasizing transparency and public participation in executive branch decision making—that are beginning to emerge as a result of international norm-setting (e.g., the attraction of European Union (E.U.) accession) and concerted pressure by nongovernmental organizations (NGOs) and the business community. These mechanisms include government-civil society councils or other consultative arrangements, laws requiring the government to furnish affirmatively certain basic information to the public, laws affording the public access to many other kinds of government information, procedures facilitating public input into the rulemaking process, and administrative procedure systems strengthening citizens' ability to challenge bureaucratic decisions meaningfully within agencies as well as in the courts.

These tools directly or indirectly seek to improve accountability in government decision making by enhancing procedural regularity, proper delegation of authority, reasoned justification, and most critically—transparency and public participation. These are all central concerns of what, in the West, usually falls under the rubric of administrative law (or may be a central feature of what is known in most civil law countries as "public law"). In more advanced Western democracies, such functions take maximum advantage of sophisticated formal institutions for their operation—e.g., the courts and a highly trained community of legal professionals. In many transition countries, such institutions may be at a quite rudimentary stage of development. An important question, however, is whether the key mechanisms comprising an administrative law framework can nevertheless operate relatively successfully in transition countries with certain bright-line rules and a measure of give-and-take between bureaucrats and citizens. Only now might answers begin to be formulated to this question, as certain of the more advanced transition countries—e.g., the so-called Visegrad na-

5. See Schedler, supra note 2.
tions (Poland, Hungary, the Czech Republic, and Slovakia), the Baltics (Latvia, Lithuania, and Estonia), and a few others, such as Slovenia—have adopted some of these mechanisms in the past several years. Still, there is little or no empirical literature on how well and how frequently they are being utilized.

The purpose of this Article is to offer one such country—Latvia—as a case study affording an overview of the chief conceptual and implementation issues attending administrative law reform in transition countries. The authors had the privilege to work in Latvia in 2001 in connection with World Bank-funded initiatives supporting improved legal frameworks for public access to information and administrative procedure. While the engagement focused on improvements to the legal framework and planning for successful implementation of laws on administrative procedure and access to information, it illuminated the conceptual and practical challenges standing in the way of expanded usage of many kinds of public accountability mechanisms. This Article draws on these insights while also seeking to examine why administrative law as a topic has been so absent from general discussions of legal and regulatory reform in transition countries. A clearer understanding of some of these fundamental issues can better frame the questions sought to be answered through subsequent, more rigorous empirical research. It can also provide new perspectives on the broad mixture of formal and informal institutions that may best contribute to overall governmental accountability in these countries.

This Article is organized into four parts: (1) an introduction to the subject of administrative law—broadly defined—in transition countries; (2) an examination of the challenges facing administrative law reform in one transition country—Latvia—in terms of efforts to create and/or improve five key accountability mechanisms; (3) an overview of the kinds of strategies that need to be pursued in Latvia—and potentially other transition countries—in order to implement successfully and institutionalize such mechanisms in the near-to-medium term; and (4) a brief conclusion.

I. THE BROADER CONTEXT OF ADMINISTRATIVE LAW REFORM IN TRANSITION COUNTRIES

The ability of individual citizens and businesses to obtain information about government operations generally, as well as the impact of particular government programs, policies, and decisions, represents a fundamental element of accountable governance. So too does the ability of the public to challenge administrative actions, and to have a say in the development of policies, laws, and regulations. These rights are especially important in engendering trust between the state and civil society and in legitimizing a country's various regulatory systems. This is where the state's fidelity to
the Rule of Law, or lack thereof, is most likely to be experienced by the average citizen or business.

Many of these topics can be subsumed under the rubric of administrative law and procedure. The defining objective of administrative law and procedure in Western democracies is controlling administrative discretion. However, the mechanisms under consideration in this Article seek to curb such discretion primarily through direct civil society oversight rather than through the checks and balances of other state institutions. The challenge of developing appropriate accountability mechanisms looms large in the former communist countries, where the state’s share of the economy was often all-encompassing, the bureaucracy dominated the lives of individual citizens, and civil society was extraordinarily and purposefully enfeebled.

Steeped in civil law traditions and having largely adopted parliamentary or quasi-parliamentary systems, most transition countries have tended, over the past decade, to embrace a formal framework for bureaucratic control that favors legislative oversight supplemented by substantive judicial review in individual cases. Among the Central and East European countries seeking E.U. membership, these general preferences have been bolstered by various E.U. directives and general guidance from E.U. administrative law experts.

In reality, the institutional endowments of these countries make excessive near-term reliance on such formal mechanisms somewhat problematic. Parliamentary structures and party organizations may both be immature, leading to less than robust oversight practices. Moreover, the very nature of parliamentary governance may in certain contexts lead to a form of clientelism where dominant political parties are rewarded with leadership of certain ministries and it is widely understood that executive branch agents are to be left to their own devices with minimal or no political supervision.

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7. See Howard Fenton, Administrative Law Reform in the Former Soviet Union, 7 J. E. EUR. L. 47, 75-77 (2000). In most communist countries, “administrative law” came to be primarily associated with an Administrative Violations Code, a broad collection of quasi-criminal infractions whose primary purpose was to regulate a wide range of personal behavior and enforce lower-level norms promulgated by administrative agencies. The emphasis was on enforcing social control of the population through the agency of regulatory inspectors and the police rather than on holding bureaucrats accountable for their actions. Citizens’ procedural protections were limited, and only some appeals could be taken to the courts, whose effectiveness was notably compromised. While the institution of the Procuracy was charged with rooting out some administrative abuses, in fact the exercise of such power was rare and subject to political manipulation by the Communist Party.

Even were such supervision to assume more vigorous forms, disorganized, demoralized, and under-funded civil services systems in most transition countries can complicate or subvert parliamentary intentions. Meanwhile, similarly weak judicial capacity and the significant human and material resources necessary to overcome it, renders meaningful judicial review of administrative action a longer-term prospect in many transition countries.9

For many such countries, other kinds of accountability mechanisms involving greater civil society participation may be called for. Yet even these mechanisms face certain impediments to their usage. From a practical standpoint, civil servants, NGO leaders, and business representatives must further develop their capacity to interact responsibly and intelligently in the regulatory arena. In most cases, NGOs and business associations have farther to travel in this regard: there are numerous organizational and financial obstacles to sustainability, as well as deep public skepticism about such groups’ professionalism and political independence.

Other obstacles are conceptual in nature: despite their importance in establishing certain rules of the game in state-civil society interactions, administrative law and procedure are often viewed as mundane, fragmented, and highly idiosyncratic subjects even to public administration specialists. Meanwhile, procedural mechanisms attending regulatory reform are given short shrift by most technocrats engaged in substantive reform initiatives, whether in the banking, utilities, health, or any number of other sectors.10

As a result of these issues, administrative law as such has not represented an area of emphasis for donor funding agencies.11

9. See, e.g., Paul H. Brietzke, Democratization and . . . Administrative Law, 52 OKLA. L. REV. 1, 24 (1999) (arguing that it has “proved difficult for inexperienced, rather timid judges to apply [administrative law] concepts in very different, Third World cultural contexts.”). Based on the need for high levels of technical expertise and significant expenditure of funds, the judiciary may not be a feasible option as the centerpiece of administrative accountability in transition countries, although in the longer run, its overall importance seems to be unrivaled.

10. This blind spot extends to the bureaucratic politics that drive the design and implementation of reform programs. Among government reformers and donor agencies alike, administrative law does not fit neatly into democracy and governance or economic development stovepipes. Insofar as administrative law and procedure embody crosscutting procedural principles, they also lack natural, concentrated constituencies among a country’s regulators and/or regulated subjects. Finally, each ministry or agency has special procedural norms and its own way of conducting regulatory business that tend to obscure the massive collective impact that such processes have on the daily lives of millions of citizens. Harmonizing or eliminating dozens or hundreds of such special norms to bring them into conformity with common democratic principles involves considerable legal and bureaucratic spadework.

11. Possibly due to the fact that administrative law embraces many disparate conceptual elements and is not a universally recognized term with a uniform meaning among most
Political resistance may also complicate matters due to the impact that various administrative procedural changes may have on regulatory processes if implemented on a national scale; it is not surprising that the opponents of such change may be quite prominent in most transition countries. Subscribing to clearer and more uniform procedural norms that facilitate public participation may involve the surrender of special knowledge and information asymmetries that are especially conducive to rent-seeking opportunities.\(^\text{12}\)

There may be still other costs involved in expanding public participation in the regulatory process. To begin with, it can enlarge the number of players in, and lengthen the process of, policy formulation and decision making. At its most basic, administrative law reform in transition countries usually involves the systematic transfer of some monitoring and control functions away from the executive and legislative branches (which may be closely aligned with one another in parliamentary systems) and over to the judicial branch and/or civil society. One would not expect bureaucrats to cede such power readily; indeed, as one specialist in comparative administrative law notes, only in polities with a significant measure of contested
civil law countries, neither The World Bank nor the Asian Development Bank has recognized that subject as a deserving focus for legal reform and/or governance initiatives. At the same time, the U.S. Agency for International Development (USAID) has similarly bypassed the subject, despite its direct relevance to regulatory reform and USAID’s efforts to integrate economic reform and democracy and governance programming (so-called “EG-DG linkages”). The closest that these donor agencies have come to the subject matter of administrative law are explorations of increased public participation in government policy making (often in the context of decentralization and local government reform efforts), see, e.g., Harry Blair, *Participation and Accountability at the Periphery: Democratic Local Governance in Six Countries*, 28 *World Dev.* 21-39 (2000); Derick Brinkerhoff, U.S. Agency for Int’l Dev., State-Civil Society Partnerships for Advocacy and Implementation in Developing Countries (Implementing Policy Change Project, Working Paper No. 23, 1998), and the general use of “voice” mechanisms to enhance government commitments in regulatory policy, see, e.g., Brian Levy, *Credible Regulatory Policy: Options and Evaluation*, in *The World Bank, Evaluation and Development: The Institutional Dimension* 178, 184-89 (Robert Picciotto & Eduardo Wiesner eds., 1998).


\(^{12}\) See Blanca Heredia & Ben Ross Schneider, *The Political Economy of Administrative Reform in Developing Countries*, in *Reinventing Leviathan: The Politics of Administrative Reform* 38 n.25 (Blanca Heredia & Ben Ross Schneider eds., unpublished, 2000) (stating that bureaucrats will tend to resist and resent such reforms because they provide superiors with alternative sources of information concerning their behavior), available at http://www.northwestern.edu/cics/adminreform/toc.htm.

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government might one expect to find adequate political support for administrative law reform, as competing political parties that imagine finding themselves out of power in the near future seek to alter and strengthen the tools that constrain bureaucratic agents.\footnote{See Tom Ginsburg, \textit{Comparative Administrative Procedure: Evidence from Northeast Asia} 4 (Univ. of Ill. School of Law, Working Paper No. 00-66, 2000) ("Politicians may also be able to influence bureaucratic agents through direct manipulation of incentive structures. . . By advancing loyal agents, . . . politicians provide bureaucrats with an incentive to perform."), available at http://papers.ssrn.com.}

Despite these potential points of resistance, administrative law reform may actually represent a relatively cost-effective legal reform investment for those transition countries that have demonstrated significant progress toward democratization, and do have relatively stable political systems and a modicum of contested government. First, and potentially most important, the introduction or enhancement of certain vertical accountability mechanisms can serve to foster democracy with a "small \textit{d}" by channeling and mediating state-civil society interactions in discrete sectoral contexts where the daily lives of large numbers of citizens may be influenced.\footnote{See, e.g., Stephen Golub, \textit{Participatory Justice in the Philippines}, in \textit{Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World} 197, 208-12 (M. McClymont & S. Golub eds., 2000) (describing the activities of so-called Alternative Law Groups—groups specializing in issue representation or strategic litigation in the social, economic and environmental arenas—in providing policy advice and shaping regulatory reform, particularly in the environmental and agricultural sectors). The phrase "Democracy with a small \textit{d}" comes from Stephen Golub, \textit{Democracy as Development: A Case for Civil Society Assistance in Asia}, in \textit{Funding Virtue: Civil Society Aid and Democracy Promotion} 135-39 (Marina Ottaway & Thomas Carothers eds., 2000).} Administrative law reform can thus advance sectoral regulatory reform efforts that are broadly popular (e.g., telecommunications, energy, or agricultural reform) and therefore, attract significant and diverse sources of support.

Second, because administrative law and procedure can be pursued on a sectorial or agency-by-agency basis (even after a national framework law is passed), favorable political economies can produce individual "islands of reform" that have important local or demonstration effects relative to national reform efforts.

Third, such mechanisms can provide a fresh approach to legal reform by concentrating on processes that cultivate structured interaction and development of trust between government officials and their NGO counterparts.\footnote{See Larry Diamond, \textit{Developing Democracy: Toward Consolidation} 243 (1999) (focusing on concrete mechanisms that increase state-civil society dialogue to realize the potential of civil society to "serve democracy by structuring multiple channels, beyond the political party, for articulating, aggregating, and representing interests.".).} Finally, many of the administrative law mechanisms under consideration
are relatively inexpensive to implement and do not necessarily require a well-developed legal system or a high degree of sophistication in the legal community in order to function passably. Indeed, many administrative law processes may simply consolidate and formalize institutional patterns or rules of the game that have already emerged on a voluntary, quasi-self-enforcing basis (e.g., various consultative processes). Placing these mechanisms on a more durable legal footing—through adoption of simple, practical, bright-line rules—may reinforce nascent respect for procedural regularity on the part of government and civil society.

II. MECHANISMS FACILITATING ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN EXECUTIVE BRANCH DECISION MAKING IN LATVIA

Latvia exemplifies a transition country finding itself in fairly favorable circumstances for developing meaningful public participation and access to information mechanisms. The country also has an extensive "usable past," whereby its prewar independence, well-developed civil society, and relative legal sophistication all provide an important foundation for consolidating democratic governance generally. The country has a vigorous multiparty system, relatively free and competent press, and strong traditions of parliamentary rule. It has enjoyed steady economic growth over the past decade. The country's aspirations for E.U. accession and the seriousness with which it has embraced the accession process also reflect a relatively strong political will for governance reform. Meanwhile, the country's strong ties to Germany and the Nordic countries have also pro-

16. In the area of administrative law, Latvia was in the forefront of European countries pioneering a unified administrative procedure code. In May 1940, shortly before it was occupied by the Soviet Union, the Latvian Ministry of Justice circulated a draft administrative procedure code. Latvia was only the second European country to attempt to pass such a law, following Austria, which had earlier adopted such a statute. See Rasnacs Dzintars, Draft Administrative Process Law: Summary (unpublished paper, on file with authors) (explaining the need for a new Latvian administrative procedure law that accompanied the draft law as submitted to Parliament). Latvia had previously passed a law on special administrative courts in 1921. See Ilmars Bisers, The Current Problems of Latvian Administrative Procedure, 2 LATVIAN HUM. RTS. Q. 7, 8 (1997) (stating the independent republic of Latvia adopted a law on administrative courts that remained in effect until annexation of Latvia by Soviet Union in 1940).


18. See generally Adam Przeworski et al., What Makes Democracies Endure?, in THE GLOBAL DIVERGENCE OF DEMOCRACIES 167-84 (Larry Diamond & Marc Plattner eds., 2001) (noting a study of 135 countries over several decades concluded among the most critical factors necessary for apparent achievement of stable democracies were significant economic growth and enduring parliamentary institutions).
vided reformers with some of the world's best expertise and reform models in the areas of public administration. Government reformers have embarked on an ambitious multi-faceted, anti-corruption program and adopted significant legislation on access to information and administrative procedure. The government is also moving to allow greater public input into the drafting of regulations and is increasingly committed to improving the public relations function in each ministry and agency. Finally, civil society in Latvia shows increasing vibrancy in terms of its willingness to monitor and participate in policy making (particularly in the welfare and environmental sectors), and some organizations have demonstrated a particular interest in matters of governmental transparency and public consultation.

Despite these advantages, Latvia also suffers from many of the governance problems endemic to transition countries. Corruption is still a major problem, the country's public administration framework is disorganized, and there is high turnover among civil servants. The capacity of many NGOs and business associations is weak insofar as they tend to lack a tradition of professionalism, and have a limited appreciation of how to promote internal democracy and appeal to broader constituent concerns. Similarly, most civil servants, especially at the municipal level, lack an understanding of what it means to be responsive to the public. Except for a handful of upper-level judges, the judiciary lacks the material and human resources necessary to force greater legality on the part of government agencies or command general public respect commensurate with this mission.

This Latvian environment is important from an illustrative point of view, in that the challenges faced by administrative law reformers in that country are likely to be replicated in many other transition states and, indeed, are likely to prove even more formidable in the majority of such countries, particularly those in the former Soviet Union. Latvia's experience may,

20. See infra pp. 476-78.
21. For example, the NGO Delna—the local branch of Transparency International—has undertaken inquiries into the functioning of both access to information processes and consultative mechanisms in Latvia. It has also played a significant role in monitoring the privatization of large enterprises, the government's anti-corruption program, and the drafting of the state and municipal procurement law. See DELNA, ANNUAL REPORT 1999-2000, at http://www.delna.lv/english/ar2000.htm (last visited Jan. 31, 2002) [hereinafter DELNA ANNUAL REPORT]; Interview with Inese Voika, Executive Director, Delna (Mar. 19, 2001).
therefore, serve as a kind of benchmark, indicating that reforms facing trouble in that nation may not be suitable in the near-term for many other transition countries with ostensibly less favorable institutional endowments.

Based on the existing legal framework, this Article examines five discrete types of vertical accountability mechanisms based on the Latvian experience: (1) advisory councils and other consultative mechanisms; (2) affirmative provision of information; (3) public participation in ministerial rulemaking and legislative drafting; (4) responsive provision of information upon request; and (5) a system of administrative appeals. The foregoing sequence represents an ascending order that roughly reflects the increasing time, resources, and legal formality (and often, legal sophistication) that may be necessary to institutionalize their effective use.\(^2\)

Each of these types of mechanisms can influence and restrain executive branch decision making at distinct stages of an agency’s regulatory process. Advisory councils and consultative mechanisms constitute channels of communication whereby stable, knowledgeable interest groups provide input into the development and execution of policy by the agency. Affirmative provision of information represents an ongoing effort by ministries and agencies to provide the public with basic information about these entities and the regulatory process. Public participation in the legislative drafting process affords an opportunity to provide comment on draft legislation or regulations and represents an opportunity to influence government decision making at junctures where policies are being translated into legal norms. Responsive provision of information permits the public to obtain even more detailed and targeted information about an agency’s execution of policy. And a clear administrative procedure framework permits affected parties to challenge concrete regulatory decisions in specific cases. The themes of transparency and participation run through each of these mechanisms, which can supplement efforts to ensure accountability in other ways.

\textit{A. Consultative Mechanisms}

In the interest of improving the technical quality of policy making and rulemaking, and adding some degree of stakeholder participation, government officials often turn to formal or semi-formal consultative mechanisms (CMs) to gather information and elicit opinions from knowledgeable and interested individuals or organizations. Because they can, at their very

\footnote{23. For example, consultative processes can function quite effectively in the absence of formal procedures or abundant funding. By contrast, even a modestly functional responsive information access system or administrative procedure regime requires large outlays of money, large numbers of trained individuals, and a significant level of legal sophistication.}
simplest, involve a handful of representatives functioning as an advisory body with little institutional infrastructure or budget, CMs may be one of the least costly accountability investments that a government (or individual ministry) can make as it seeks to obtain additional expertise and/or political legitimacy. On the other hand, empowering CMs to serve as more truly representative forums for diverse sectoral or social interests can involve a greater expenditure of time and resources, not to mention political risk.

CMs describe a very broad range of public-private bodies. They extend from formal councils established by statute to address specific policies and draft legislation at regularly scheduled meetings, to informally chartered groups that are convened from time to time to discuss general topics like the climate of government-business relations. The potential benefits of such consultation include improved information for public and private decision making; greater consensus about the ownership and credibility of policy reforms; and reduced costs of business-government transactions through habitual interaction and the generation of social capital.

Risks also attend the operation of such bodies, however, including possible reinforcement of the power of existing elites and insiders; the use of such entities as vehicles for rent-seeking; and their circumvention of broader and possibly more transparent forums for policy dialogue. CMs around the world have been organized on a national basis (e.g., South Africa's National Economic Development and Labour Council (NEDLAC)),

24. Depending on their formality and the extent of their use, CMs may reflect an underlying "corporatist" model of state-society relations quite common in many parts of the world, including much of Western and Eastern Europe. Under this model, the government selects or gives a privileged place to certain interlocutors for policy dialogue from the array of key interest groups in society (most notably labor unions and employers' associations, but also in many cases groups with various other social agendas). This corporatist model is generally distinguishable from an American interest group pluralism model. In the former case, one of the benefits of CMs from a government perspective is that they help to lower the costs of citizen participation and make it more manageable. In the latter case, depending on the extent of participation permitted, public participation can actually cause delay and the accrual of additional costs in decision making, thereby leading to administrative "ossification."

25. Such concerns were among the reasons for the enactment, in 1972, of the U.S. Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. app. 2 §§ 1-15 (1994)). See Steven P. Croley & William F. Funk, The Federal Advisory Committee Act and Good Government, 14 Yale J. on Reg. 451, 453 (1997) (stating Act "was designed to formalize and routinize what was already an age-old institution, in part out of concern that some interests had come to enjoy unchecked and perhaps illicit access to federal executive decisionmakers.").

sectoral basis (e.g., Ghana’s Private Sector Roundtable), or industry or functional basis (e.g., Latvia’s Road Traffic Safety Council). Successful CMs seem to share five important characteristics:

- They have a specific and well-defined set of objectives;
- They have transparent internal procedures and strong public participation;
- They have an effective secretariat or similar unit that streamlines the organization’s work;
- Membership is drawn from broad sectoral or functional constituencies rather than industries whose narrow interests may skew the work of such bodies; and
- They feature follow-up and monitoring procedures that enable CM participants to know what happens following any formal or informal agreements produced during CM discussions.

Latvia has a wide range of CMs, from those with well-defined objectives and significant policymaking duties (e.g., the Tripartite Coordinating Commission that takes up most matters of social welfare policy and legislation) to those whose agendas are looser and government commitment possibly weaker (e.g., the National Economic Council, which provides high-level business community and other advice on the economy, but which is reportedly not very influential). In general, however, many segments of civil society and the private sector—e.g., individual trade unions and small businesses—are underrepresented on councils in Latvia. Most participatory economic policymaking forums, including, in addition to NEDLAC, the Ugandan National Forum (Uganda), the National Economic Forum (Ghana), and the Tripartite Negotiating Forum and National Economic Consultative Forum (Zimbabwe), available at http://www.usaid.gov/democracy/pdfs/pnacm002.pdf.


29. Interview with Henriks Danusevicz, head of the Latvian Merchants Association.
CMs in Latvia also lack well-staffed or well-funded secretariats. Among the most important ways to strengthen CMs in Latvia may be the following:

- Create greater public awareness of the work of CMs generally, as well as pressure for greater accountability;
- Develop a greater appreciation by NGOs and the business community of the need for stronger technical expertise and professionalism in working with CMs;
- Encourage the government to adopt a concerted CM improvement strategy and possibly, uniform basic guidelines for CMs; and
- Encourage greater CM reliance on substantive working groups and subcommittees.

An important consideration in improving the functioning of CMs in transition countries is the need to avoid usurping the powers and legitimacy of official decisionmaking and policymaking organs. CMs should complement, not substitute for, such formal bodies. Particularly in a transition environment where formal authority may not be well institutionalized, certain CMs may easily become too powerful or too unrepresentative and serve as a means of circumventing formally elected or delegated agencies. Some degree of transparency may also be lost. The quest to achieve consensus in CMs that are imperfectly constituted and to produce more streamlined policy making could retard the development of democratic accountability in certain contexts. Ultimately, both government ministries and civil society representatives in transition countries must seek to find the right “fit” between CMs and more traditional and formal channels of policy making.

B. Affirmative Provision of Government Information

Government accountability depends critically on access to information. Indeed, general information about executive branch organization, processes, and substantive policies represents the basic currency of government accountability. Such transparency enhances control of administration, helps create more efficient public sector program delivery, and contributes

(Mar. 21, 2001).

to more vibrant and informed political life. The absence of such information may increase opportunities for abuse of authority, corruption, and poorly informed decision making.

Access to government information may be largely informal, haphazard, and dependent on the preferences of current officeholders—as it is in most countries around the world—or it can be formalized in law and institutionalized in practice. In recent years, international law has recognized the importance of freedom of information.31

In discussions about democracy and individual rights, the responsive provision of information upon request invariably garners the most attention. Yet establishment and maintenance of such a system of information access requires considerable time and resources, as well as legal expertise. By contrast, the affirmative provision of information by the government can be prioritized and routinized along more predictable budget and human resource parameters by making available certain classes of official information regarded as the most vital to the economy and political discourse.32 Requiring certain kinds of government information to be made available in easy-to-access locations and formats can have a critical impact on citizens' and businesses' efforts to understand how their national, regional, and local governments are structured, financed, and operated, and how key government regulatory functions affect them. Affirmative disclosure of basic government information, is thus, not only a logical precedent to a system of responsive information provision—insofar as it provides an informational "road map" necessary for making particular government information requests—but it provides a view of government operations that is often critical for individual planning and risk calculation.

Several countries have laws on access to information that include affirmative provision requirements, including the United States,33 Ireland,34

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31. See, e.g., The Universal Declaration of Human Rights, art. 19, reprinted in BARRY E. CARTER & PHILIP R. TRIMBLE, INTERNATIONAL LAW: SELECTED DOCUMENTS 383 (3d ed. 2001-2002); The International Covenant on Civil and Political Rights, art. 19, id. at 393; and The European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10, id. at 466.

32. The terms "active" and "passive" are sometimes used instead of "affirmative" and "responsive." See, e.g., REG'L ENVTL. CTR., DOORS TO DEMOCRACY: CURRENT TRENDS AND PRACTICES IN PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING IN WESTERN EUROPE 16-21 (1998) [hereinafter DOORS TO DEMOCRACY: WESTERN EUROPE]. We believe the latter terms are more appropriate, because "passive" understates the effort involved in responding to requests for information.


Australia, Canada, Hong Kong, Hungary, and South Africa. These laws mandate that information about government agencies, including policies, decisions, interpretations, and staff manuals and/or instructions be made public. Other countries may have a custom of making these basic kinds of information accessible, or may have specialized requirements associated with particular institutions.

Latvia's Law on Information Access (LIA), adopted in 1998, does not have an affirmative information access requirement, although several individual laws (e.g., Law on State Statistics, Law on the Bank of Latvia) require specific kinds of disclosure. The only significant nationwide affirmative publication requirement comes from the Cabinet of Ministers' Instruction on the Procedure for Preparing Annual Public Statements. The requirement mandates that national agencies annually disclose information about their mission, activities, budgets, personnel, research, and key ac-


43. See The Cabinet Ministers of the Republic of Latvia, Instruction on the Procedure for Preparation of Annual Public Statements, Instruction No. 3 (Dec. 22, 1998) (on file with authors). This instruction was passed pursuant to Article 15.1 of the Law on Organization of the Cabinet of Ministers.
complishments. The quality of the reports vary widely, but they are eagerly read by many businesses and NGOs. While availability of hard copies of these publications is a problem, many ministries are increasingly putting their entire reports, or excerpts thereof, on Web sites. Other types of information disclosure, meanwhile, may occur through the initiative of individual agencies. For example, the State Enterprise Registry, which has published many brochures about its work, maintains a listserv by which it can disseminate commercial law information.

As the phenomenon of voluntary information disclosure grows, the Latvian government should consider adoption of more expansive and uniform principles for affirmative information provisions, including a more encompassing list of the types of documents that must be provided in hard copy and electronically, minimum requirements for agency Web sites, and general policies on the commercial re-use of public sector data.

In general, these recommendations are consistent with those that could be made for most transition countries, and are a useful foundation for more extensive anti-corruption efforts. There is no significant impediment to requiring government ministries to make available to the public at least some minimum quantity of basic information about executive branch agencies. As availability requirements are becoming increasingly common in Western and East European legislation, useful models are available to transition country drafters. Insofar as the primary means of information distribution can be electronic via Web sites, the cost of providing information can be kept relatively low. Secondary distribution in hard copy form to interested members of the public can be carried out by various NGOs and business associations as they see fit. Implementation of modest affirmative information provision norms can serve as a useful indication of a country's commitment to government transparency. Those transition countries that resist such legal innovations outright are likely to be resistant to a variety of other reforms designed to promote genuine public participation and democratization.

44. Interview with Inese Voika, Executive Director, Delna (Mar. 19, 2001); Interview with Normunds Belskis, Director of the Press and Public Relations Department, Ministry of the Interior of Latvia (Mar. 16, 2001).

45. At the same time, the Soros Foundation has reportedly reached agreement with a number of government ministries and other bodies to place a number of reports, studies, and other documents on a special Web site in the interest of fostering greater public policy dialogue. Interview with Vita Terauda, Executive Director, Soros Foundation-Latvia (June 25, 2001).

46. Interview with Maija Celmina, Director of Public Affairs, State Enterprise Registry (Mar. 16, 2001).
C. Public Participation in Government Rulemaking and Law Drafting

In most countries around the world, the drafting of rules and legislation represents a relatively closed affair, carried out by small working groups composed of a few agency personnel and a very small number of outside (usually academic) experts. In many cases, their work product may contain impractical provisions, conflict with other normative acts, or fail to address the actual needs of intended beneficiaries. The result are legal acts that fail to be implemented as envisioned and that often require extensive revision and attendant political embarrassment. To remedy these problems, some countries have sought to open up their regulatory and legislative drafting processes at the agency level by permitting or requiring some degree of public comment. Among the transition countries, only Hungary has a comprehensive law requiring such public input. Other countries in Central and Eastern Europe, however, have informal arrangements for inviting knowledgeable and interested NGOs to participate in consultations or provide comments on draft regulations and/or legislation. Even in Western Europe, truly open procedures for regulatory drafting are quite rare; Norway, for example, is one of the few countries that requires ministers to send all legislative and regulatory proposals out for public comment to all interested institutions and interest groups, which in turn have ninety days to provide written opinions thereon.

Latvia has generally treated the issue of public participation in ministry rulemaking and legislative drafting on an ad hoc, ministry-by-ministry basis. In the past year, however, the government has moved to adopt two related formal mechanisms that seek to elicit public comments on all regulations and legislation passing through the Cabinet of Ministers. One requires ministries proposing new rules or legislation to document the extent to which they have consulted with NGOs or foreign experts on their proposals (a so-called “annotation process”). The other requires proposed

47. See Galligan & Smilov, supra note 8, pt. 2.3 (discussing Act XI of 1987).
48. For example, governments in Albania, the Czech Republic, Poland, Slovakia, and Slovenia reportedly regularly invite NGOs to comment on draft legislation and participate in drafting committees, although these practices are not formalized and the circle of NGOs invited often varies. See Reg'L Env'tl. Ctr., Doors to Democracy: Current Trends and Practices in Public Participation in Environmental Decisionmaking in Central and Eastern Europe 40-41 (1998).
49. See Doors to Democracy: Western Europe, supra note 32, at 25. In the United States, of course, the APA requires agencies publish in the Federal Register a notice of proposed rulemaking stating: (1) the time, place, and nature of any public rulemaking proceedings; (2) the legal authority under which the agency proposes the rule; (3) the language of the proposed rule or a summary thereof; and (4) an invitation to interested persons to submit comments within a certain time frame. See 5 U.S.C. § 553 (1994 & Supp. V 1999).
50. See Regulations on Internal Procedures and Activities of the Cabinet of Ministers,
rules and legislation to be posted on the Cabinet of Ministers Web site for comment shortly before the Cabinet takes action on them.\textsuperscript{51}

Despite their potential to promote greater public participation in law making and rulemaking, both of these mechanisms fall short of their promise. The annotation process not only provides little guidance as to how the consultations are to be conducted (posing the danger that the process will be treated as a mere formality), but also does not even by its terms require that consultations be held (although they are obviously expected). Further, the Web site posting requirement, though laudable, is hostage to the country's low Internet connectivity and occurs at a relatively late stage in the drafting process, when regulations are essentially ready for final comment and approval by the Cabinet of Ministers.

In moving toward a more participatory drafting regime, the government should consider reforms that would encourage or require ministries and administrative bodies to devote substantial time to public consultation and solicitation of comments closer to the beginning of the legislative or regulatory drafting process. This could involve more precise guidance as to the time and manner by which consultations or public comments would be invited, and as to the use of diverse channels to disseminate such information (e.g., Web site posting, e-mail or mail distribution to interested parties, etc.).\textsuperscript{52}

Relatively few transition countries may be willing or prepared to entertain such requirements at this time. Without a recent history of contested government or respectful state-civil society relations, it is difficult to imagine certain transition regimes voluntarily inviting a range of outside parties to participate in the regulatory drafting process. For most such regimes, such practices must emerge on an informal, agency-by-agency basis as the government seeks outside sectoral expertise (and perhaps legitimacy) as a matter of necessity on discrete subjects. Only as individual ministries

\textsuperscript{51} See Cabinet of Ministers of the Republic of Latvia (providing general announcements of the Cabinet of Ministers), at \url{http://www.mk.gov.lv} (last visited Feb. 6, 2002).

\textsuperscript{52} The feasibility of such a process is demonstrated by the effectiveness of the manner in which the country’s new Commercial Code was drafted. In that case, the country’s State Enterprise Registry invited several waves of comments on various drafts of the law using a listserv containing the names of over 1,500 interested parties. Reportedly, at least fifty to sixty very high quality responses were received from interested parties and were given replies by the Registry. Interview with Maija Celmina, Director of Public Affairs, State Enterprise Registry (Mar. 16, 2001).
and agencies develop a greater sense of security in opening up the drafting process to trusted NGOs and the business community can more uniform, formal solutions be considered.

Despite this expected caution or resistance on the part of many transition country governments, reformers and donors should be aggressive in identifying and supporting appropriate opportunities for more open drafting processes. Too often, these parties operate on the assumption that state-civil society relations are insufficiently developed in many transition countries to permit productive collaboration in the drafting of important regulations cannot be held hostage to the delays or discord that might attend a more inclusive deliberative process. Instead, reformers and donors should look for creative ways to bring state officials, NGOs, and business representatives together (e.g., workshops and informal consultative meetings) to forge the kinds of relationships and trust that will allow more sustained drafting experiments to be conducted and eventually, more systematically open drafting processes to emerge.53

D. Responsive Provision of Government Information

Unlike laws solely providing for the affirmative provision of information, in which the government actively makes available certain fundamental information in circumscribed areas, freedom of information laws may additionally or alternatively provide for the provision of a wide variety of other information upon demand by the citizenry. In recent years, a number of transition countries have enacted access to information laws, including Hungary,54 Lithuania,55 Slovakia,56 Bulgaria,57 and Georgia.58 Typically,

53. One well-documented effort of this kind is Bulgaria's effort to bring together key representatives from the business community, government, and civil society together to develop new policies for small and medium enterprise (SME) development, including the drafting of a new SME law. See DERICK BRINKERHOFF ET AL., SME POLICY REFORM IN BULGARIA, CASE STUDY NO. 7, USAID IMPLEMENTING POLICY CHANGE PROJECT 7-8 (2000).


such legislation can or should contain a presumption of public access, with only a few limited subject areas (e.g., state security, confidential commercial information) deemed subject to possible withholding, based on legislatively determined criteria and reflective of specific, identifiable harms. An independent adjudicator should also exist to resolve disputes over access. This could include an information commissioner or ombuds, as well as ultimate recourse to the courts.

Latvia’s LIA became effective in 1999 after adoption the previous year. However, it suffers from several textual and conceptual deficiencies, including these:

- The law may not apply to all state administrative bodies;
- Many definitions are unclear;
- The law does not clearly take precedence over other laws concerning the disposition of government information and its access by the public;
- There is no presumption of public access, qualified only by a limited number of legislatively defined exemptions;
- There is no public interest or other balancing test governing disclosure of otherwise restricted information; and
- The right to appeal a refusal of access to the courts may be artificially limited.

Many of these impediments have been documented in a study conducted in 1999-2000 by Delna, a leading nongovernmental organization. The Delna study depicted government officials as poorly informed about citizens’ rights under the law and hostile to information requests.\(^{59}\)


59. The Delna study is described in that organization’s Annual Report for 1999-2000. See DELNA ANNUAL REPORT, supra note 21.
The law's shortcomings on paper and in practice necessitate not only amendments to the LIA, but the designation of a state organization to serve as a central source of expertise and enforcement authority on the law. Plans are now underway, it turns out, to grant such powers to the existing State Data Protection Inspectorate within the Ministry of Justice, whose mandate is to ensure the protection of confidential personal and business information. Similar functions have been combined with data protection responsibilities in the office of the Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information. The new Inspectorate could have the following kinds of duties:

- Commenting on draft legislation and regulations affecting access to information across the government;
- Serving as a source of expertise on interpretation and application of the law through formal guidance to executive branch agencies and provision of public information;
- Investigating public complaints about information access; and
- Serving as a first or second instance decision maker, able to issue non-binding yet authoritative and appealable decisions on disputed access matters.

It is not surprising that many other transition countries struggling with democratic reforms would resist the adoption of legislation mandating a system of responsive information provision. Fewer still would go so far as to invest in the establishment of a central information access agency, as Hungary and Latvia have done. Not only do such actions go wholly against the grain of government secrecy that was the currency of communist regimes for decades (and that still characterizes many authoritarian or quasi-authoritarian post-communist governments), but the costs of supporting a working freedom of information regime may be substantial.

60. The tasks and functions of this office are extensively described at the Commissioner's Web site. See PARLIAMENTARY COMM'RS OFFICE OF HUNGARY, at http://www.obh.hu (last visited Feb. 6, 2002).

61. One exception is the Republic of Georgia, which became the most recent transition country to pass a freedom of information law, despite its sometimes shaky hold on democracy. See generally DELNA ANNUAL REPORT, supra note 21.

62. For example, in 1966 the annual costs of administering FOIA requests in the United States were projected at $50,000 a year; by 1981, the Office of Management and Budget estimated the government's costs at $250 million. See Patricia M. Wald, The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating in the United States.
Regulations governing access procedures must be drafted, civil servants must be trained in the nuances of the responsive information provision statute, and physical and electronic records must be carefully organized and catalogued. Faced with these significant challenges, some countries adopting such access regimes have contemplated a phased implementation approach. Under these circumstances, it is no wonder that in the short term, most reformers view the affirmative provision of key government information as by far the more fundamental and cost-effective investment in government transparency.

E. Administrative Procedure and Judicial Review of Agency Decisions

All non-totalitarian societies need a mechanism to resolve disputes that arise between the government and its citizens. In theory, there are multiple ways to address the claims of persons who claim to have been adversely affected by erroneous, abusive, or illegal government action. One option is to allow the chief executive’s administration to handle such claims. However, limited staff and the dislike of becoming embroiled in potentially controversial matters usually leads such offices to maintain an arm’s length approach toward such disputes. While the legislature is often more willing to listen to citizens’ complaints as a matter of constituent representation, it too has a limited interest in handling a large volume of such claims. Ultimately, resource constraints, the need for decentralized expertise, and political calculations make such options problematic.

These shortcomings lead to two common sense alternatives to direct involvement by elected officials: (1) an ombuds system, and/or (2) an ad-


63. The contrast between implementation of Freedom of Information laws in Hungary and Bulgaria is instructive. In Hungary, the Parliament created a Commissioner for Data Protection and Freedom of Information in 1995 as an overall education, monitoring, investigative, and limited enforcement body with a significant budget and staff (now totaling twenty full-time employees). The Commissioner’s office has undertaken a significant public education effort while simultaneously creating a wide range of regulatory precedent through its case investigations. See generally PARLIAMENTARY COMM’R FOR DATA PROT. & FREEDOM OF INFO., PARLIAMENTARY COMM’RS OFFICE OF HUNGARY, THE FIRST THREE YEARS OF THE PARLIAMENTARY COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION, at http://www.obh.hu/adatved/indexek/besz/index.htm (last visited Feb. 6, 2002). Bulgaria, by contrast, which passed its Access to Information Act in 2000, has yet to contemplate the creation of a similar body or to issue any implementing guidance on the law. It has been left up to an NGO, the Access to Information Programme, to furnish information and guidance to the public on ways to use the new legislation. See ACCESS TO INFO. PROGRAMME FOUND., at http://www.aip-bg.org (last visited Feb. 6, 2002).
ministrative appeals system backed up by recourse to the courts. National and programmatic ombudsmen flourish in many countries as a means of obtaining independent and impartial review of citizen complaints and resolving many of them with simple intercession or clarification. Yet many issues are either too technically complex or intractable to turn over to ombudsmen exclusively.

Courts offer another independent and impartial decision maker. Yet courts are not necessarily the best forums in which to address disputes over the administration of highly specialized government programs. Even when permitted to review the substantive, as opposed to procedural, basis for an agency decision, courts have limited time, resources, and expertise. Large numbers of cases must also be winnowed before they reach the courts.

As a result, there is no practical escape from first-instance reliance on administrative review within the bureaucracy, supplemented by judicial review, and possibly ombuds review, in particular kinds of cases where requested. Additional modifications of a system of administrative review may include requirements for multiple levels of administrative appeal, exhaustion of administrative remedies before appealing to the courts and/or ombudsmen, and multiple levels of judicial review. Other important considerations may concern what kind of "hearing," if any, is to be offered to an appellant at the administrative level, what kinds of elements an administrative decision should include, who may bring appeals and/or intervene as third parties in administrative or judicial appeals, and what kinds of relief may be provided to prevailing parties in court.

These basic characteristics of administrative review may assume significantly different forms and levels of complexity in various countries, depending on their history, legal culture, political system, depth of democratization, openness, and the level of public participation. Common law countries, with less faith in bureaucrats’ technocratic expertise and capacity for fairness, have tended to ensure that appeals of agency decisions within the bureaucracy are bolstered by formal adjudicative procedures and presided over by independent, often quasi-judicial, hearing officers. Civil law systems, less steeped in adversarial procedure and more deferential to administrative authority, have neither the legal tradition nor the political inclination to judicialize agency appeals procedures. Moreover, most civil law systems (with key exceptions like Germany and Austria) feature appeals processes that may vary widely from agency to agency.

Latvia’s draft Administrative Procedure Law (APL), recently adopted on October 25, 2001, is patterned on a relatively unified German model. Like the Verwaltungsverfahrensgesetz, the German Administrative Procedure Act
of 1976, the Latvian law is designed to provide a uniform framework of
general principles and guidelines by which agency decision making must
be conducted. It does not, however, prescribe an actual uniform procedure,
since each agency is free to adopt specific procedures consistent with the
main law. Under this German approach, judicial review tends to focus less
on whether the correct procedures were followed, and more on the appro-
priateness of substantive outcomes.

Significantly, the new Latvian APL effects a number of changes over
current practice, many of which are emblematic of the kind of reforms that
are required in transition countries (whether or not such countries have ear-
lier embarked on any administrative procedural reforms). These include
the following:

- The specific, democratic principles of law to be applied by adminis-
  trative bodies and the courts are enumerated (e.g., new concepts
  such as equality, proportionality, legality, etc.). Most transition
countries do not have any overarching democratic, Rule of Law
principles with which to guide bureaucratic decision making;

- There is an explicit requirement that the petitioner have an opportu-
nity to be heard at the agency level. In many cases, existing legisla-
tion acknowledges such an opportunity, but there is no uniform re-
quirement that it be available as a civil right in any administrative
proceeding;

- The form and elements of an administrative decision are explained
  in detail, along with the right to demand a decision according to
  these requirements. The hodgepodge of existing legislation gov-
  erning administrative procedure in most transition countries does not
  provide uniform, explicit guidance about how administrative acts
  should be presented, making it more difficult for citizens to invoke

64. See Edward J. Eberle, The West German Administrative Procedure Act: A Study in
Administrative Decision Making, 3 DICK. J. INT'L L. 67, 67 n.1 (1984); see also Peter L.
Lindseth, Comparing Administrative States: Susan Rose-Ackerman and the Limits of Public
Law in Germany and the United States, 2 COLUM. J. EUR. L. 589, 589 n.3 (1996) (article
review) (discussing generally administrative procedures in Germany); Rose-Ackerman, su-
pra note 30, at 1279 n.6.

65. Some countries, like Latvia, may have earlier adopted partial solutions, such as a
Cabinet-level regulation prescribing certain procedural requirements. See The Cabinet
Ministers of the Republic of Latvia, Cabinet of Ministers Regulation No. 154 (1995) (on file
with authors). But, this regulation fails to address issues of judicial review and does not in-
corporate the key principles of administrative procedure necessary to meet some require-
ments for accession to the E.U.
their rights and press them on appeal;

- The principle of allowing damages for harms suffered as a result of an administrative act, omission, or decision, is clarified. In most transition countries, errors or wrongdoing by the government at most results in efforts to undo the mistake or wrong; rarely are monetary damages permitted that usually have a more noticeable impact on curbing systemic bureaucratic injustice; and

- The state’s burden of proof under judicial review is made explicit. Many transition countries that permit judicial review of administrative decisions utilize a regular civil procedure or similar variant to guide court process, failing to place the evidentiary burden on the state as a matter of principle, consistent with the state’s greater information and litigation advantages.

Even when solid achievements, like the Latvian APL, are acknowledged, significant legal shortcomings may persist. For example, the Latvian APL is still ambiguous about whether and when an oral “hearing” may be obtained in administrative agencies. The law also may end up overburdening the courts by failing to insist that citizens exhaust administrative remedies before bringing judicial appeals—a tempting option based on the lack of confidence in the bureaucracy, but one that may arouse similar disillusionment in the judicial system if courts are unable to meet the public’s demand for justice.

Because it involves significant institutional change within both the bureaucracy and the courts, it is understandable that creating or reconstructing a system of administrative procedure review is often viewed as among the most ambitious kinds of administrative law reform, appropriate only for some of the most progressive transition countries. For political parties to be sufficiently concerned about restraining bureaucratic discretion across multiple ministries and agencies, it is likely that some tradition of contested government needs to exist as an incentive for serious administrative procedure reform. On the other hand, even if such contested government is just taking shape, it may be possible to introduce a revamped system of administrative procedure on a phased or pilot basis, starting with a small number of agencies that have progressive leadership and that have several constituencies interested in reform (e.g., new business entrants and consumers in certain sectors). Meanwhile, even if a country’s judiciary is otherwise weak or lacks technical expertise, special administrative tribunals or chambers within the existing court system can be established to handle new administrative appeals from the pilot agencies on a transitional basis. In this
way, initial efforts at administrative procedure reform may be feasible even in countries whose political economies and/or institutional endowments might otherwise deter such initiatives.

III. IMPLEMENTATION OF ADMINISTRATIVE LAW REFORMS

As has been noted repeatedly over the past decade, even the best designed law reform effort, built around the most sensible, easy-to-administer legislation, will founder if plans for implementation are not well thought out and executed. Of course, the first important consideration may be whether to table certain reforms unless particular background conditions are met. However, even if administrative law reforms are undertaken in generally congenial environments with respectable institutional endowments and an adequate resource base, reformers still need to map out detailed and thoughtful implementation plans. Among other things, these plans must acknowledge the multidimensionality of the reform process and the importance of cultivating a wide range of constituencies for reform.

As the USAID-sponsored Implementing Policy Change (IPC) project has shown, successful policy reform demands that reformers play close attention—in advance—to each of the elements of the policy cycle, which encompasses the following:

- **Policy Legitimization** (identifying who can champion reform, what the level of support is, and whether a task force or advisory group is necessary to broaden the reform leadership);

- **Constituency-Building** (employing appropriate coordination mechanisms, workshops, and public education);

- **Resource Accumulation** (including taking advantage of civil society partnerships);

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67. For a good introduction to the topic of strategic management of the policy implementation process, see generally DERICK W. BRINKERHOFF, U.S. AGENCY FOR INT’L DEV., IPC MONOGRAPH No. 1, ENHANCING CAPACITY FOR STRATEGIC MANAGEMENT OF POLICY IMPLEMENTATION IN DEVELOPING COUNTRIES (1996) (discussing the Implementing Policy Change Project).
Organizational Design (matching the organizational structure of reforms to environmental needs, e.g., establishment of a special implementation unit in certain institutions);

Resource Mobilization (developing special incentives and training programs for targeted personnel, as well as inter-agency coordination mechanisms); and

Impact Monitoring (developing empirical bases for measuring reform progress, often through cooperation with civil society groups).

A well-conceived implementation plan focused on sustainable institutional reform takes special note not only of key supply-side tasks, such as the creation of practical regulations and internal procedures memorialized in written guidelines and manuals, but also of the importance of testing and improving such procedures through demand-side support for the users of such systems. The plan should thus employ different kinds of workshops, training programs, and public education initiatives to help with information dissemination, explore the parameters of possible partnerships, test the strength of particular constituencies, and promote practical problem-solving.

At the request of the Latvian Ministry of Justice, the authors applied these principles in drafting an implementation plan for two of the five administrative law mechanisms discussed in this Article: the new APL; and the existing, but underutilized Law on Information Access. Due to relatively low public and government consciousness about the two laws, the team believed a special government-wide championing of implementation was required—mandated by the Cabinet of Ministers, and with overall program coordination carried out by the Ministry of Justice. Reflecting the breadth and multidimensionality of the reforms, other significant responsibilities were to be carried out by the Secretariat of the Special Ministry for Public Sector Reforms (guidance and training for civil servants by the Secretariat, the State Civil Service Administration, and the School of Public Administration), the Special Ministry for Local Government Affairs and the Union of Municipalities (guidance and training for local government officials), the Legal Department of the State Chancellery (oversight over harmonization of other relevant laws, regulations, and other normative acts with the APL and LIA), the Ministry of Finance (creation of a feasible compensation scheme), and the Supreme Court and Latvian Judicial Training Center (guidance and training for judges). Representatives of these institutions should sit on a program-wide central task force structure (or "steering committee") to be created at the outset of the initiative to
function as a kind of board of directors of the program, providing high-level guidance to the Ministry of Justice.

Although the details of this proposed implementation plan are beyond the scope of this Article, several key elements are worth mentioning in connection with the two laws:

- **Creation and/or harmonization of legal frameworks.** All legislation intersecting with the APL and LIA (e.g., in the case of the LIA, laws on secrecy and on privacy protection), and the patchwork of Soviet era and post-Soviet agency norms potentially affected by the APL and LIA, should be inventoried and then harmonized to conform to the new law's procedural requirements;

- **Implementation of new/modified administrative appeals and LIA procedures.** Through problem-solving workshops, internal instructions, and special manuals, the plan ensures that agencies will oversee and report back to the Cabinet of Ministers on implementation of new and modified procedures consistent with the APL and LIA;

- **A particularized approach to training activities.** The basic approach to training relies on a core group of experienced trainers steeped in the nuances of the APL and/or LIA, who can help develop a broader cadre of instructors through a training-of-trainers mechanism. However, the proposed implementation program also features separate training and education modules aimed at agency lawyers and managers, municipal officials, judges, practicing lawyers, law students, procurators, businesses, the media, and NGOs. In the case of procurators, who have significant influence over how older generations view the bureaucracy and their own civil rights, there should be special training in how to provide citizens with proper guidance or referrals to other organizations when consulted about administrative appeals or the need to access government information;

- **Treatment of municipalities under the program.** Because municipalities are among the agencies least attuned to procedural regularity in their decision making, they are targeted for special attention from the program on a geographically dispersed pilot or demonstration basis;

- **Development of a compensation mechanism.** The Ministries of Justice and Finance should develop a workable compensation mechanism to fund appropriate monetary awards under the APL. Because
this is a particularly ambitious and costly endeavor for a transition
country to undertake—even one with a reasonably strong economy
and state sector, such as Latvia—the authors strongly recommended
that a system of monetary awards be phased in over time;

- **Public education.** Public education (of individual citizens and busi-
nesses) should occur through a combination of targeted press cover-
age, public education campaigns (with leaflets and brochures), spe-
cial research and polling, test litigation, and government publication
of official brochures and wall posters that will be placed in govern-
ment offices according to official instructions. NGOs and busi-
nesses should be specifically enlisted to help monitor and test the
quality of the government’s implementation effort;

- **Research on compliance and development of legal reform proposals.**
The Ministry of Justice should commission and/or encourage re-
search on APL and LIA compliance as a basis for developing reform
proposals to eliminate ambiguities and loopholes in the two laws as
well as to locate implementation obstacles.

**CONCLUSION**

Few kinds of legislation and regulations are so modest in their apparent
import, yet have the potential to play such an important role in the lives of
ordinary citizens and in the development of a favorable business environ-
ment, as those forming a nation’s administrative law framework. The sig-
nificance of this framework looms even larger in transition countries with a
tradition of totally unaccountable bureaucracies. Administrative law re-
form offers a number of unique opportunities for economic growth and
democracy and governance reform strategies to be united at several key
interfaces between governments and civil society, and to promote the kind
of reciprocal trust-building relationships that are so lacking in most transi-
tional societies.

While it may be that key administrative law-type mechanisms have little
chance of being taken seriously in other than democratic regimes with a
reasonably well-established pattern of contested government, even in
countries that possess these attributes, there have been relatively few re-
formers or donor agencies willing to make the adoption of such mecha-
nisms a priority. This unwillingness may stem from true ignorance of such
mechanisms, or a preoccupation with existing categories of reform that do
not easily embrace such cross-cutting procedural subjects. Or, it may re-
fect thoughtful skepticism about whether societies where ruling elites and
a tradition of patronage dominate can yield genuine opportunities for cer-
tain kinds of new entrants (e.g., small businesses and various NGOs and grassroots organizations) to engage in genuine consultative dialogue with government officials. Certainly the Latvian experience with strengthening public participation and transparency in government decision making thus far—and it is still in its early stages—demonstrates how much work is to be done, even in a relatively advanced and favorably situated transition country. Only time will tell whether the country can marshal the necessary political will, public administration ingenuity, and resources necessary to begin to operationalize successfully its various administrative law mechanisms. But Latvia offers a potentially useful conceptual and legal framework for how transition countries that are serious about such reform efforts can approach such an undertaking.

Even in somewhat less favorable national environments, adoption of such administrative law-type mechanisms and their implementation on a sectoral or agency basis has the potential to generate "islands of reform" based on an alignment of particular reform constituencies (and the popularity of many kinds of regulatory reforms) with procedural mechanisms giving voice to these interests. Infrastructure and utilities reform efforts over the past decade or so provide some illustration of this phenomenon, while local government reform initiatives (especially revolving around budgetary processes) generally offer another window on the extent to which such mechanisms can take hold in particular political and institutional environments. For these reasons, administrative law reform merits much more scholarly and empirical research, and a significantly more prominent place in contemporary discussions about the promotion of democratization and efforts to establish the Rule of Law in transitional societies.
