

NGO Lev Sapieha Foundation



Information Memo

**ON THE DRAFT LAW OF THE REPUBLIC OF BELARUS
«On Local Government and Self-Government in the Republic of Belarus»**

- **Conceptual Remarks and Proposals**
- **Changes in and Additions to Individual Articles of the Draft Law and Their Justification**
- **Conclusions and Proposals**
- **Annexes**

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Information memo

BELARUS' DRAFT LAW “On Local Government and Self-Government in the Republic of Belarus”

INTRODUCTION

The House of Representatives of the Belarusian National Assembly is now considering **Belarus' Draft Law “On Local Government and Self-Government in the Republic of Belarus”**. The draft has been submitted to the parliament by the President of the Republic of Belarus. This draft passed **the first reading by the House of Representatives of the National Assembly on June 11, 2009**.

The Lev Sapieha Foundation has **prepared an information memo** on this draft law. It contains an analysis of some **conceptual points of the draft and also an analysis of several articles as well as remarks, additions and proposals concerning these conceptual points and articles**. This analysis and our vision of the prospects for the development of local self-government in Belarus form the foundation for our conclusions and proposals.

The principles and norms of the European Charter of Local Self-Government (hereinafter referred to as the Charter) are used as a reference point for the analysis. The legislation and experience of local self-government in Russia and other countries neighboring on Belarus have been also taken into consideration.

This information memo consists of three parts:

Part 1 – Conceptual remarks and proposals

Part 2 – Changes in and additions to individual articles of the Draft Law and their justification:

Chapter 1. GENERAL PROVISIONS

- Article 1. Definition of Local Self-Government and System of Its Organs;
- Article 3. Fundamental Principles of Local Government and Self-Government;
- Article 5. Role of Councils and Executive and Regulatory Organs in Improving the Organization of Work with Citizens and Legal Entities;
- Article 6. Role of Councils and Executive and Regulatory Organs in Social Protection of Citizens;
- Article 7. Associations (Unions) of Councils;

Chapter 2. COUNCILS

- Article 9. Councils;
- Article 11. Council Activities;
- Article 12. Council Session;
- Article 13. Council Decisions;
- Article 14. Formation of Council Organs;
- Article 16. Council's Standing Commissions;

Chapter 3. TERRITORIAL PUBLIC SELF-GOVERNMENT

- Article 25. Territorial Public Self-Government;
- Article 27. Organs of Territorial Public Self-Government;
- Article 27¹ Elder – **to be introduced into the Law**;
- Article 28. Authority of Local Assemblies Called to Establish and Operate Organs of Territorial Public Self-Government;
- Article 28¹ Composition of the Committee of Territorial Public Self-Government – **to be introduced into the Law**;
- Article 28² Supervision over the Activity of the Committee of Territorial Public Self-Government – **to be introduced into the Law**;
- Article 29. Membership in Collegial Organs of Territorial Public Self-Government;
- Article 30. Registration of Collegial Organs of Territorial Public Self-Government;
- Article 31. Operational Procedures for Organs of Territorial Public Self-Government;
- Article 32. Abolition of the Collegial Organ of Territorial Public Self-Government ;

Chapter 4. LOCAL ASSEMBLY, LOCAL REFERENDUM AND OTHER FORMS OF LOCAL SELF-GOVERNMENT

- Article 33. Local Assembly;
- Article 34. Local Referendum;
- Article 35. Citizen Initiative for Council Decisions;
- Article 36. Citizen Participation in Financing and/or Reimbursing Budget Spending for the Purposes Designated by Citizens;
- Article 36¹ Public Hearings – **to be introduced into the Law**;
- Article 36² Polling of Citizens on Local Issues – **to be introduced into the Law**;
- Article 36³ Recourse of Citizens to Organs of Local Government and Self-Government – **to be introduced into the Law**;
- Article 37. Other Forms of Citizen Participation in State and Public Affairs;

Chapter 7. GUARANTEES, SUPERVISION AND RESPONSIBILITY IN THE FIELD OF LOCAL GOVERNMENT AND SELF-GOVERNMENT

- Article 59. Legality;
- Article 64. Responsibility of Local Government and Self-Government Organs.

Part 3 – Conclusions and proposals

PART 1
CONCEPTUAL REMARKS AND PROPOSALS
CONCERNING
BELARUS' DRAFT LAW
“ON LOCAL GOVERNMENT AND SELF-GOVERNMENT IN THE REPUBLIC OF BELARUS”

Since the **European Charter of Local Self-Government (hereinafter referred to as the Charter)** is based on the **concept of dualism**, while the Belarusian legislation on local self-government is based on the **theory of state local self-government**, there is a number of conceptual differences between the two models.

The fundamental conceptual provisions concerning local self-government are enshrined in Section V of the Constitution of the Republic of Belarus “Local Government and Self-Government”.

While writing these conceptual remarks and suggesting respective proposals for Belarus' Draft Law “On Local Government and Self-Government in the Republic of Belarus”, it would not be correct – and it is in fact impossible – to leave without attention certain norms of Section V of the Constitution, since they substantially influence the concept of the Draft Law.

1. Section V of the Constitution of the Republic of Belarus “Local Government and Self-Government”

Even the title of this Section alone tells a lot. Firstly, it reflects a certain stage in the development of the country's statehood and priorities of this stage. Secondly, it shows the understanding of the legislator at the time of the adoption of the Constitution in 1994 about the role of local government as the dominant and the role of local self-government as something subordinate and secondary.

According to Article 117 of the Belarusian Constitution, local government and self-government is exercised by citizens through local councils of deputies, executive and regulatory organs, organs of territorial public self-government, local referendums, local assemblies and other forms of direct participations in state and public affairs.

First of all, it has to be recognized that **the thesis that citizens exercise local government through executive and regulatory organs is not true**. These organs are neither elected nor established by citizens directly or indirectly. Executive and regulatory organs are not accountable to citizens and cannot be in any way controlled by them.

The second point that this article also mentions is **the participation of citizens in state and public affairs**. This type of wording was used in the Soviet times. **Within the framework of local self-government**, when we speak about the non-state segment of public power, **this wording is incorrect and unacceptable**. It is misleading and takes us away from the actual content and specificity of local self-government. **Local affairs are not the affairs of the state** (although the state indeed has interests at the local level). **Issues of local self-government** are, first of all, **issues of real power** and only afterwards they are about the possibilities for the realization of voluntary public initiatives.

Section V of the Constitution also contains some articles (Article 120 and Parts 2 and 3 of Article 122) which contradict the Charter.

Taking into account the importance of local self-government, some provisions should be enshrined in the Constitution, if possible, and particularly the ones given below:

- Local self-government is one of the pillars of the constitutional system;
- Rights of citizens (territorial community of citizens) to local self-government is recognized and guaranteed by the state;
- Organs of local self-government are not part of the system of the organs of state power and are independent within the limits of their authority;

- Communal property along with state and private property is one of recognized ownership forms.

The inclusion of the above-mentioned provisions into Section V of the Belarusian Constitution will create the basis for bringing the Belarusian legislation into line with the norms of the Charter.

The current provisions of Section V of the Constitution impede the evolutionary process of development and improvement of the system of government and do not allow citizens to realize the norm contained in Part 1 of Article 3 of the Constitution.

It can be mentioned here that the introduction of **changes and additions to Section V** of the Constitution “Local Government and Self-Government” **does not require a referendum** as provided for in Article 139 and in Part 3 of Article 140.

2. Main terms and notions

The Draft Law has to have an article describing main terms and notions such as:

- Territorial community of citizens (hramada);
- Local issues (local affairs);
- Public power;
- Organs of local self-government;
- Officials of local self-government;
- Regulatory and other acts (declarations, appeals) of organs of local self-government.

In order to unify terms and notions used in the Draft Law with the European ones, we suggest introducing such notions as municipality, municipal, mayor and so on or to make the existing terms in Belarus equal to these terms and notions.

3. Territorial community of citizens (hramada)

Chapters 3 and 4 of the Draft Law have great importance, since they are a kind of indicator showing how the legislator and the central government understand local self-government.

In general, **Chapters 3 and 4 correspond to the general understanding of local self-government** as a way of the functioning of local territorial communities. Within this approach **the primary subject of local self-government is the territorial community of citizens** who realize their rights directly or through different institutions established within the community.

However, this idea is not properly thought through and virtually disavowed in a number of articles of the Draft Law. For example, the Draft Law does not have a key notion for local self-government, such as **territorial community of citizens** (commune, canton, community or, in Belarus, hramada). In most European countries (Lithuania, Ukraine, Germany, Sweden, France, Switzerland and others) this notion is enshrined in the legislation.

Since the Draft Law does not have this notion, it is impossible to know **who is the subject of local self-government**: territorial community of citizens (hramada), citizens or impersonal administrative-territorial units. Who does, for example, the Minsk District Council of Deputies work for and whom does it represent? The respective administrative-territorial unit or the territorial community of citizens who live in the territory of the respective district? This makes the impression of **no connection between citizens and Councils** which elected by citizens.

Citizens have no possibility to **organize themselves** into territorial communities, since this notion is not in the legislation. Moreover, they do not have the possibility to **reflect through the Charters** of territorial communities of citizens (hramadas) their special features and traditions in the organization of local self-government, since there is **no practice of having Charters** (apart from the City of Minsk).

The Declaration of Principles of Local Self-Government in CIS Countries, which was adopted by the Inter-Parliamentary Assembly of CIS States on October 29, 1994, defines local self-government as a system of the organization of activities of the people (**territorial communities of citizens**) for independent and responsible resolution of local issues in accordance with the national legislation (Article 1). The Declaration emphasizes that **territorial communities of citizens are entitled to managing local affairs** both through their elected organs of local self-government and directly. Moreover, this right is guaranteed by the Constitution and legislation currently in force.

4. Notion of local self-government

Article 1 of the Draft Law gives the following definition of local self-government:

“Local self-government is an organizational and operational form that residents of a particular territory (hereinafter referred to as citizens, if not indicated otherwise) use to independently resolve social, economic and political issues of local significance, either directly or through their elected organs, proceeding in making their decisions from common state interests and interests of citizens and considering relevant features in the development of respective administrative-territorial units, with the use of their own material and financial resources and those raised elsewhere”.

This definition contains essential contradictions with and fundamental differences from the definition of local self-government in the Charter (Part 1 of Article 3):

“Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.”

The main contradictions and fundamental differences are as follows:

- The Charter defines local self-government as “the right and the ability of local authorities”, while the Draft Law defines local self-government as **“an organizational and operational form [for] residents of a particular territory”**;
- Given the authority of Councils described in Articles 17 to 29 of the Draft Law, it is **impossible** both to **“regulate and manage a substantial share of public affairs under their own responsibility”** (Part 1 of Article 3 of the Charter) and to **“resolve social, economic and political issues of local significance”** (Part 1 of Article 1 of the Draft Law);
- According to Part 1 of Article 3 of the Charter, local self-government is exercised **within the limits of the law and under own responsibility and in the interests of citizens**. In Article 1 of the Draft Law the legislator **keeps silence about the legal framework and responsibility of organs of local self-government and suggests that common state interests should be taken as the priority in the activities of local self-government, which is contradictory to the very nature of local self-government**.
- The definition of local self-government in Article 1 of the Draft Law presupposes the availability of **own material and financial resources in Councils**. However, despite the fact that Councils are de-jure legal entities, in reality they lack the necessary attributes of legal entities (**they don’t have bank accounts, they don’t have property on their balance sheets, etc.**). Chapter 6 of the Draft Law does not contain any norms that can secure the formation and possession of material and financial resources by Councils, which contradicts Article 9 of the Charter.

So, **what kind of own material and financial resources of local self-government does Article 1 of the Draft law refer to?** Just to the costs necessary for the functioning of Councils...?

Thus, taking into account what has been mentioned above, local self-government in Belarus:

- Works, first and foremost, in the common state interests and, only after that, in the interests of citizens;
- Is not supported by the authority which would allow it to resolve local issues;
- Does not have its own material and financial resources.

The analysis of the notion of local self-government as defined in Article 1 of the Draft Law clearly shows that it is **conceptually different from the notion of local self-government defined by the Charter**.

5. Organs of state government and organs of local self-government

One of the **key conceptual problems** of the Draft Law is the fact that **local self-government in Belarus is viewed as a component of state government**, which means that **local self-government is actually replaced with state government**.

According to Article 9 of the Draft Law, **Councils are representative state organs**, and according to Part 1 of Article 3, Councils have **to take common state interests as the priority over the interests of individual citizens in their activities**.

Councils also have to **fulfill the decisions of upper-level state organs** (Part 1 of Article 11). Such statement is legally correct with respect to the mandate delegated to Councils by state organs and also in the sense that Councils act within the limits of the law but not more than that.

The above-given provisions are not in line with the principles and norms of the Charter, in particular, Part 1 of Article 3 (local self-government acts in the interests of the local population) as well as Part 2 of Article 4 (local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority).

According to Part 2 of Article 1 of the Draft Law, the **system of organs of local self-government includes Councils and organs of territorial public self-government**.

It is not clear what kind of meaning is carried by the above-given phrase: **what is this system of organs of local self-government if Councils are state organs and organs of territorial public self-government do not have attributes of local authorities (see Point 6 below)? What is the point of talking about this system?**

The effective functioning of the state requires a **balance of state and local interests**, that is, common interests of citizens of every particular city, town or village. **Local self-government should play the role of expressing and protecting local interests. State interests, in turn, are expressed and protected by organs of state government.**

The really working local self-government allows state government to focus on resolving the issues of national and regional level and thus enhance the efficiency of governance.

It has to be pointed out that it is **incorrect**, considering the different nature, formation and purpose of **organs of local self-government and organs of state government (executive committees), to mix in one law** the issues of their organization and operation.

6. Organs of territorial public self-government

It is doubtful whether the existing practice of including **organs of territorial public self-government (TPS)** into the system of organs of local self-government (Part 2 of Article 1 of the Draft Law) and thus giving them equal status is correct.

The Charter says that **organs of local self-government are freely elected by secret ballot on the basis of direct, equal, universal suffrage, and may possess executive organs responsible to them**.

In accordance with Part 1 of Article 25 of the Draft Law, TPS organs are the organizational form for the exercise of territorial public self-government by citizens, and are not organs of local self-government.

TPS as well as its organs (councils and committees of microdistricts, houses, housing complexes, blocks, streets, yards, agrotowns, towns, villages, etc.) are **not organs of public government. TPS organs do not have key attributes of government organs**, such as:

- **Procedures of establishment.** In accordance with Article 28 of the Draft Law, the main points concerning the establishment and operation of TPS are determined by the local assembly, which is one of the forms of direct citizen participation in local self-government. However, local assemblies cannot establish organs of local self-government, that is, organs which have public government authority! TPS is formed on a voluntary basis, which means that their establishment is not mandatory and the procedure of their establishment (as organs of local self-government) is not in line with Part 2 of Article 3 of the Charter.

When a collegial organ is established (Part 2 of Article 29 of the Draft Law) as well as when the work of TPS is organized at the primary level (Paragraph 2 of Part 1 of Article 44), executive committees can interfere with the activities of TPS. And this is despite the fact that executive committees are state organs and are not part of the system of local self-government.

- **Possession of public authority. Organs of local self-government are organs of public government which have public authority.** Para 11 of Article 3 of the Draft Law speaks about the obligation to fulfill decisions of Councils and executive committees when they are taken within the limits of their authority but nothing is said about similar obligation with respect to the decisions of TPS. According to Para 4 of Article 31 of the Draft Law, **decisions of TPS are fulfilled by citizens on a voluntary basis.** According to Article 26 of the Draft Law, TPS has **different goals** – develop and implement citizen initiatives, while their activities (such as to support, assist, study, engage, participate) are **not related to the exercise of public authority.** At the same time, the objectives of TPS are formulated as for something that has subordinate, auxiliary character and they mostly come from those issues which are within the authority of executive committees, that is, state organs!

In addition, according to Part 3 of Article 27 of the Draft Law, in those cases when TPS is a legal entity, it should be a non-profit organization and cannot have public authority.

- **Delegation of authority from Councils to TPS.** In accordance with Subparagraph 1.24 of Article 17 as well as taking into account Paragraph 2 of the same article, Councils can delegate the following authority to TPS organs:

- 1.1. Represent the interests of the respective administrative-territorial unit in its relations with other state organs, other organizations and citizens;
- 1.6. Dispose of natural resources in cases provided for by environmental legislation and legislation in the field of rational use of natural resources;
- 1.12. Coordinate the activities of organs of territorial public self-government;
- 1.13. Contribute to the development of industrial and agricultural production, and services sector, create conditions for the development of small and medium-scale business and personal farming households;
- 1.14. Participate in activities intended to preserve and restore valuable historical and cultural heritage;
- 1.15. Participate in campaigns to prevent and manage emergencies, in civil defense, measures of fire, industrial, nuclear and radiation safety, and management of Chernobyl consequences.

First of all, it is difficult to imagine that Councils would delegate to TPS organs what is indicated in Paragraphs 1.1 and 1.12;

Secondly, why should Councils delegate to TPS organs the authority to follow the remaining Paragraphs 1.6; 1.13; 1.14 and 1.15 if executive committees have the same authority, staff and resources to realize this authority (as per Article 41 of the Draft Law)?

Thirdly, the Draft Law does not contain norms explaining how TPS is going to realize the authority delegated by Councils. Are decisions of TPS going to be binding? What would be sources to fund these activities? And so on.

Taking into account what is mentioned above, the **conclusion is as follows: there is no practical meaning in including into the Draft Law this norm about the delegation of some part of authority by Councils to TPS.**

- **Financing of activities.** The Draft Law **does not indicate sources of financing the activities of TPS.** We can only guess that these sources will comprise voluntary contributions or donations by citizens or charitable assistance or some other sources or maybe sometimes also resources from the government budget.

A detailed analysis of the nature of TPS, its goals and objectives as well as its authority and procedures for its establishment and operation allows us to make the following conclusions:

- **TPS organs cannot be included into the system of organs of local self-government;**
- **Territorial public self-government is a form of citizen participation in the exercise of local self-government.**

It can be mentioned here that the same approach is also taken in the Russian self-government law: Article 27 of the Federal Law #131 dated October 6, 2003 “On General Principles of the Organization of Local Self-Government in the Russian Federation”.

7. Authority of organs of local self-government. Decentralization

The authority of organs of local self-government is impossible to define clearly and to describe what exactly is to be regulated and managed by local self-government organs. Part 1 of Article 3 of the Charter speaks about “a substantial share of public affairs”, while Article 4 of the Charter establishes general principles which form the foundation of their obligations and authority.

The authority of Councils defined in Articles 17-20 of the Draft Law **can hardly be called substantial**. Councils as organs of local self-government clearly lack power for resolving a multitude of questions related to day-to-day activities of citizens, and they also **lack their own and adequate material and financial resources** to support such activities.

The power given to Councils by law **should be full and exclusive** (Part 1 and Part 4 of Article 4 of the Charter). Councils can delegate part of their power to other organs of local self-government established by them but Councils cannot independently, as required by Paragraph 1.24 of Article 17 of the Draft Law, “decide on questions concerning the re-distribution of authority between Councils of different levels, delegation of individual mandates to executive and regulatory organs, their chairs and organs of territorial public self-government.” Otherwise their power is not full and exclusive. **Changes in the power of Councils are only possible through law**.

In accordance with Part 2 and 4 of Article 4 of the Charter, it is inadmissible to create a hierarchy between Councils of different levels or to have any interference of “upper-level” Councils into the affairs of “lower-level” Councils as is the case in some articles of the Draft Law (Part 5 of Article 11; Paragraph 1.26 of Article; Part 2 of Article 18; Part 3 of Article 21; Part 5 of Article 55 and others).

The fact that Councils lack real power undermines their authoritativeness, it deprives this institution of local self-government (including forms of direct participation) of its attractiveness in the eyes of the citizens.

The tasks related to supporting everyday activities of citizens are de-jure and de-facto dealt with by **executive and regulatory organs** (hereinafter referred to as executive committees) which are not organs of local self-government.

Executive committees are state organs which deal with local issues within the limits of their authority and proceeding from common state interests (first of all state interests!) and interests of citizens. Their authority covers almost the same range of issues which is normally under the authority of organs of local self-government in member states of the Council of Europe (except for some former republics of the Soviet Union).

Executive committees, when it comes to their authority, are not controlled by or not accountable to Councils or citizens. Councils have no influence on the decisions taken by executive committees and have no influence on staffing issues (apart from endorsing the candidatures of chairs of regional- and basic-level executive committees).

A conclusion that follows from this analysis is that **the organization of local authority in Belarus is based on full centralization of power in the hands of state organs**.

As historical experience shows, centralized system of government cannot properly handle the main task of government, that is, to make sure that citizens enjoy decent living standards.

In any law-ruled democratic state **one of the basic conditions for the existence of local self-government in the system of government institutions is decentralization of power**. In the most general sense **decentralization means the transfer of certain part of authority from state organs to local elected organs (organs of local self-government) and giving them the necessary rights, obligations and resources**. **Organs of local self-government are not subordinate to state organs but only subject to supervision from their side**. Tough centralization of power, which can be perhaps necessary at a certain stage of development, cannot have the long-term character.

Of course, the state has also its interests at the local level. Therefore, it is understandable to have state organs along with organs of local self-government at the local level, if there are economic or administrative reasons for that. In many European countries we see that very often **state organs delegate part of their authority to organs of local self-government, and not vice versa** as indicated in Subparagraph 1.24 of Article 17 of the Draft Law.

Decentralization of state power is one of key issues to be addressed in carrying out government reforms at the local level. The issue is to find the right balance between decentralization of state power and independence of local self-government, the balance which would be adequate to the actual conditions and social development level.

8. Formation of Council organs

Article 14 of the Draft Law says that **Councils form their organs independently**, determine their structure and terms of reference, and set spending for their work and in accordance with the Law and other legislative acts. With respect to Council organs, this article is in line with the requirements of Part 1 of Article 6 of the Charter. At the same time, in accordance with Part 3 of Article 11 of the Draft Law, **Article 14 refers to the Presidium only as well as to standing and temporary commissions**. However, in accordance with the Draft Law, **elections of the Council Chair** (Paragraph 3 and Paragraph 4 of Article 21), **formation of Council secretariat** (Article 11), and **formation of its executive and regulatory organs** (Article 38) **are not the prerogative of the Councils, which contradicts Part 1 of Article 6 of the Charter**.

9. Forms of direct citizen participation in local self-government

Both the current legislation and the proposed Draft Law defines **local self-government as citizens' own resolution of local issues either directly or through their elected organs**.

Article 117 of the Belarusian Constitution indicates such forms of direct exercise of local self-government as **local referendums and local assemblies**. Moreover, it also mentions (but never specifies) other forms of direct citizen participation in the resolution of local issues.

It is a well-known fact that there has been **no precedent of local referendums in Belarus**. As for **local assemblies or law-making initiatives of citizens**, even if there are some cases of the realization of these forms of direct democracy, they have been very few.

The legislator should analyze the reasons of such state of affairs and statistics of the practical use of such forms of direct democracy (if such statistics exist) and take them into consideration while working on the Draft Law. In our opinion, the **reasons of citizen passivity** in exercising direct forms of participation in local self-government are in **the imperfections in the instruments of direct democracy, in the lack of conditions necessary for their practical use, in the excessive complexity of the suggested legal mechanisms**, and so on.

If the legislator does not react properly to the situation related to the realization of direct forms of democracy, this means that despite the provisions of Part 1 of Article 3 of the Belarusian Constitution, they are satisfied with the situation and they are not interested in anything more than simply simulation of democracy.

Local self-government, as one component of democracy, requires a mandatory set of political institutions, including **electability of officials, guarantees for the freedom and transparency of election procedures, freedom of expression, alternative sources of information, autonomy of associations and respect of general civil rights**.

The **quality of legislation regulating the forms of direct democracy** plays an important role in making sure that citizens are involved in the process of the exercise of public power. Laws can excessively complicate the democratic process, implicating also substantial financial spending, and fail to provide the necessary guarantees for the respect of citizen rights in the implementation of such laws.

As an example of what is said in the previous paragraph, we explain the procedures for the organization and exercise of direct forms of democracy such as local referendum and local assembly.

Local referendum

A referendum is an opportunity for citizens to compel Councils or executive committees to take into account their will. However, **the law gives the right to call referendums to Councils and not to citizens** when they want to resolve one issue or another.

The value of local referendums is in the possibility of their use by citizens when they want it, that is, without the authorization of the Council. It is this possibility, and not its indirect form through the Council, can be considered as a form of direct democracy. The referendum's mechanism of decision-making can be called for specifically as an alternative to indirect, representative forms of democracy. This can happen, for example, when the Council or executive committee does not take the necessary decisions or when the taken decision does not correspond with the opinion of most citizens (as this was the case when the Minsk city authorities decided to abolish small retail kiosks from the streets of the city).

When the possibility of initiating referendums (without any intermediaries) is taken from the citizens, one cannot speak about direct democracy!

The assessment of the importance of one issue or another suggested for a referendum looks too subjective as indicated in Part 1 of Article 34 of the Draft Law – **if all the procedures concerning the collection of signatures are fulfilled, and if there is a sufficient amount of them, this means that the respective question is important for citizens and the respective referendum has to take place**. It is citizens and not the Ministry of Justice as required by Part 3 of Article 126 of the Election Code should have the right to decide whether the issue is important for them or not.

Moreover, **in case the referendum is initiated by citizens, all costs related to the fulfilment of the necessary procedures have to be borne by the initiators, that is, by citizens**.

Thus, it is clear now why the **attractiveness of local referendums as a form of direct democracy is so low for citizens**. As a result, there are no precedents of local referendums.

Local assembly

With respect to local assemblies, there are also norms and procedures stipulated by the law which create **serious obstacles for the realization of citizen initiative for holding local assemblies**. First of all, there is a high ceiling for the necessary number of citizen signatures (at least 10 percent of citizens who reside in the respective territory). Moreover, there is also a requirement that the initiators themselves have to finance the costs related to the organization of local assemblies.

The initiators are required to solve a number of organizational issues, such as finding a venue for the local assembly, which is impossible to do in the Belarusian conditions without the approval of the executive committee (local administration).

So it turns out in the final analysis that **in reality all initiatives of citizens are strictly controlled and regulated to every detail and as a result citizens cannot do anything without the prior approval of the state authorities. As long as this situation persists, neither local referendums nor local assemblies (nor any other forms of direct participation for that matter) will be used in reality**.

In addition, there are too many laws regulating the forms of direct democracy, which is why they often regulate the same things. But at the same time, there are also a lot of legal gaps. Many notions are not specified, while their content remains ambiguous.

Local officials often consider citizen initiatives as a threat to their authority, and this is also one of the obstacles for the development of citizen activities and their independence.

All these factors affect the implementation of the legislation regulating both direct and indirect forms of democracy.

It has to be pointed out also that neither Article 117 of the Constitution nor the Draft Law mention **local elections** as one of the forms of direct citizen participation in local self-government. **This has to be changed in the Draft Law and this gap should be filled**.

10. Economic basis of local self-government

Councils have certain authority which allows them de-jure to influence local finances to a certain extent: through the endorsement of local budgets and reports about their execution; through the disposal of communal property (apart from land, natural resources, water and forest resources); through the establishment of local taxes and duties and through setting the rates of some charges.

However, as has been mentioned earlier, **Chapter 6 of the Draft does not contain any norms which would make sure that Councils have their own material and financial resources, which is contradictory to Article 9 of the Charter.**

Local budgets only have resources intended to support the operation of Councils (sessions, secretariat, office expenses, etc.). And Councils give their approval for the estimation of costs for these purposes. But these resources cannot be considered as the economic basis of local self-government!

It is a common practice that the norms related to economic and financial foundations of local self-government are included into laws on local self-government. The fact that such norms are included into Budget, Tax and Civil Codes in Belarus **makes it impossible for local self-government to fully realize its rights and authority**, since Codes are based on the priority of state interests (state budget, state property) and cannot adequately reflect the specificity of financial and economic interests of territorial communities of citizens.

PART 2
CHANGES IN AND ADDITIONS TO INDIVIDUAL ARTICLES AND THEIR JUSTIFICATION
For Belarus' Draft Law "On Local Government and Self-Government in the Republic of Belarus"
(the draft passed the first reading on June 6, 2009)

Norms of the Draft Law (first reading)	Changes and additions suggested by Lev Sapiuha Foundation	Justification for the changes and additions suggested by Lev Sapiuha Foundation
<p>Article 1. Definition of Local Self-Government and System of Its Organs</p> <p>1 Local self-government is an organizational and operational form that residents of a particular territory (hereinafter referred to as citizens, if not indicated otherwise) use to independently resolve social, economic and political issues of local significance, either directly or through their elected organs, proceeding in making their decisions from common state interests and interests of citizens and considering relevant features in the development of respective administrative-territorial units, with the use of their own material and financial resources and those raised elsewhere.</p> <p>Local self-government shall be exercised through local Councils of Deputies (hereinafter referred to as Councils), organs of territorial public self-government, local assemblies, local referenda, citizen initiatives to advocate Council decisions, citizen participation in funding and/or reimbursement of budget spending for particular goals defined by citizens or through any other forms of citizen participation in state and public affairs.</p> <p>2. The system of local self-government organs shall include Councils and organs of territorial public self-government.</p>	<p>Article 1. Definition of Local Self-Government and System of Its Organs</p> <p>1. Local self-government is the right and the ability of territorial communities of citizens, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of citizens.</p> <p>2. Territorial community of citizens (hramada) denotes citizens who live in the territory of the respective administrative-territorial unit and who are linked together by common public needs and interests.</p> <p>3. Organs of local self-government are elected directly by citizens on the basis of direct, free, equal and universal suffrage by secret ballot and/or organs established by the representative organ (Council) and given the mandate to manage local affairs.</p> <p>4. Local affairs are issues under the authority of Councils and executive committees of all levels as well as issues which do not fall under the authority of other governmental organs.</p> <p>The part "... and organs of territorial public self-government" should be excluded from Part 2 of Article 1 of the Draft Law. The remaining</p>	<p>The suggested definition of local self-government corresponds with the notion of local self-government in Article 3 of the European Charter.</p> <p>For justification see Paragraph 4 of Part 1 of this Information Memo.</p> <p>Our suggestion is to include a new notion into the text of the Draft Law: territorial community of citizens (hramada). Territorial community of citizens would be the subject of local self-government.</p> <p>Our suggestion is to include the notion organs of local self-government into the text of the Draft Law.</p> <p>Our suggestion is to include the notion local affairs into the text of the Draft Law.</p> <p>The Draft Law often refers to local issues or issues of local significance.</p> <p>First of all, it would be more correct to speak about managing affairs and not managing issues.</p> <p>Secondly, the legislator does not define local issues.</p> <p>Organs of territorial public self-government cannot be included into organs of local self-government.</p>

<p>3. The system of Councils in the Republic of Belarus shall consist of three territorial levels – regional, basic, and primary – and comprise regional, city, district, town and village Councils.</p> <p>The regional territorial level shall comprise regional Councils and Minsk City Council (all hereinafter referred to as regional-level Councils, if not indicated otherwise).</p> <p>The basic territorial level shall comprise city Councils (for cities of regional subordination) and district Councils (all hereinafter referred to as basic-level Councils, if not indicated otherwise).</p> <p>The primary territorial level shall comprise village Councils, town Councils, and city Councils (for cities of district subordination) (all hereinafter referred to as primary-level Councils, if not indicated otherwise).</p> <p>Minsk City Council shall also enjoy the rights of a basic-level Council.</p>	<p>part of this paragraph can be reflected in Paragraph 3 of the same article.</p> <p>3. The system of organs of local self-government in the Republic of Belarus shall consist of Councils of three territorial levels – <i>and then following the text of the Draft Law</i>.</p>	<p>Territorial public self-government is a form of direct exercise of local self-government by citizens.</p> <p>For justification see Paragraph 6 of Part of this Information Memo.</p> <p>This is a new wording for the beginning of Part 3 of Article 1 of the Draft Law.</p>
<p>Article 3. Fundamental Principles of Local Government and Self-Government</p> <p>Local government and self-government in the Republic of Belarus shall be exercised in accordance with the following fundamental principles:</p> <ul style="list-style-type: none"> ➤ Legality; ➤ Social justice; ➤ Protection of rights and legitimate interests of citizens; ➤ Combination of common state interests and local interests, participation of local government and self-government in the resolution of issues affecting the rights and legitimate interests of citizens; ➤ Unity and cohesiveness of the system of local government and self-government; ➤ Cooperation of local government and local self-government; ➤ Division of authority between local government and local self-government; ➤ Electability of local self-government and its accountability to citizens; ➤ Transparency and appreciation of public opinion, constant provision of information to citizens about taken decisions on most significant issues of local significance; ➤ Responsibility of local government and self-government for the legality and relevance of their decisions; ➤ Obligation to fulfill the decisions of Councils and executive and regulatory organs if they are taken within their respective authority; 	<p>Article 3. Fundamental Principles of Local Government and Self-Government</p> <p>Local self-government shall be exercised in accordance with the following fundamental principles:</p> <ol style="list-style-type: none"> 1) Grass-roots democracy and multitude of organizational forms for the exercise of local self-government by citizens; 2) Legality, soundness of decisions, social justice, humanism, respect, observation and protection of human and civil rights and freedoms; 3) Division of authority between state and local government on the basis of the subsidiarity principle; 4) Independence and autonomy of organs of local self-government in managing local affairs; 5) Electability of organs of local self-government and their accountability to citizens; 6) Openness and transparency in the activities of organs of local self-government and their officials, regularly informing citizens about decisions and actions taken, and giving to citizens the possibility to get familiar with the documents and materials which refer to the activities of organs of local self-government and/or affect their interests; 7) Financial and economic security and independence; 8) Guaranteed rights of local self-government; 9) Responsibility of organs of local self-government and their officials for the legality and soundness of their decisions. 	<p>Principles of local self-government should contain a clear and unambiguous indication of the link between organs of local self-government and citizens, of the independence and autonomy of organs of local self-government (within their authority) from the state in managing local affairs, and of the division of authority in managing local affairs between state organs and organs of local self-government on the basis of the principle of subsidiarity.</p> <p>To be able to fulfill their tasks, organs of local self-government should have sufficient financial and economic resources and administrative independence.</p> <p>The activities of organs of local self-government should be open and transparent. Councils should inform citizens about their activities and be responsible for their decisions.</p>

<p>➤ Autonomy and independence of local self-government in resolving local issues within their authority, prohibition of limitations on the authority of local government and self-government, except for the cases provided for by this Law and other legislative acts.</p>		
<p>Article 5. Role of Councils and Executive and Regulatory Organs in Improving the Organization of Work with Citizens and Legal Entities</p> <p>1. Councils shall be engaged in activities aimed at improving the organization of work with citizens and legal entities, including activities to introduce the principle of “one stop shop” into the operation of state organs and other state organizations; they shall also participate in exercising control over such activities in their respective territories.</p> <p>2. In order to improve the organization of work with citizens and legal entities, Councils and executive and regulatory organs, within their authority and in accordance with procedures established by law, shall be entitled to as follows:</p> <p>2.1. Review appeals of citizens, including sole proprietors, and legal entities (hereinafter referred to as appeals of citizens and legal entities), including trips to the places in question, and keep a record book of complaints and proposals;</p> <p>2.2. Take necessary measures to ensure full, objective, all-sided and timely review of appeals of citizens and legal entities in the respective territory, including participation in exercising control over the timely and quality resolution of issues raised in appeals of citizens and legal entities by state organs and other state organizations;</p> <p>2.3. Hold personal reception hours for citizens, including sole proprietors, and representatives of legal entities (hereinafter referred to as personal reception of citizens and representatives of legal entities);</p> <p>2.4. Conduct administrative procedures, get engaged in regular activities aimed at their simplification, including through reducing the number of documents required for such procedures, shortening the duration of such procedures and by sending respective proposals to the relevant state organs and other organizations.</p>	<p>We suggest excluding Article 5 from the Draft Law.</p>	<p>This article duplicates the provisions which are already contained in other legislative acts where these provisions are set out in greater detail: Belarus’ Law “On Appeals of Citizens” (from July 8, 2008), Presidential Decree #2 “On Improving the Work with the Population” (from January 14, 2005), Presidential Edict #512 “On the Endorsement of the List of Administrative Procedures Conducted by State Organs or State Organization Following Citizen Appeals” (from March 16, 2006 and with changes from September 6, 2007, January 8, 2001 and September 14, 2006), and others.</p> <p>Since Article 65 of Chapter 7 of the Draft Law does not invalidate the above-mentioned documents, it is suggested that Article 5 should be excluded.</p>
<p>Article 6. Role of Councils and Executive and Regulatory Organs in Social Protection of Citizens</p> <p>Councils and executive and regulatory organs, within their authority and in accordance with procedures established by law, shall take measures to ensure social protection of citizens in the respective territory, including through the provision of tax and duties (charges)</p>	<p>We suggest excluding Article 6 from the Draft Law.</p>	<p>This article duplicates the provisions which are already contained in other legislative acts where these provisions are set out in greater detail: Belarus’ Law “On State Social Benefits, Rights and Guarantees for Certain Categories of Citizens” (from June 14, 2007),</p>

<p>concessions, through award and payment of retirement pensions, social benefits, targeted state social support and other types of social payments.</p>		<p>Presidential Edict #638 “On Some Measures of Social Protection of the Population” (from December 14, 2007) and others. Since Article 65 of Chapter 7 of the Draft Law does not invalidate the above-mentioned documents, it is suggested that Article 6 should be excluded.</p>
<p>Article 7. Associations (Unions) of Councils In order to exercise their authority effectively, protect common interests and provide mutual assistance in resolving local issues, Councils shall be entitled to establishing their associations (unions) which are subject to registration in accordance with procedures applied to non-profit organizations. The decision to enter such an association (union) shall be taken at a session of the respective Council.</p>	<p>Article 7. Associations (Unions) of Local Councils of Deputies 1. Councils shall be entitled to associate into associations (unions) on the basis of the common aspiration to manage common political, economic and socio-cultural affairs.</p> <p>2. Membership in the Association shall be voluntary. The decision to join the Association shall be taken at a Council session.</p> <p>3. To represent and protect the common interests of Councils in their relations with the National Assembly, Council of Ministers, Presidential Administration and other governmental organs as well as with international organizations, a Belarusian Association of Councils (BAC) can be established. BAC will be considered legally qualifying if it includes at least two thirds of all Councils.</p> <p>4. The legal basis for the establishment and operation of associations (unions) of Councils shall be established by law and Charters of respective associations (unions).</p> <p>5. Associations (unions) cannot interfere with the activities of Councils or limit them in any way.</p>	<p>1. The legislatively enshrined right for Councils to form associations (unions) gives them the possibility to form and represent their common position on issues which affect their interests.</p> <p>2. The decision to join associations (unions) should be taken independently and be within their exclusive authority, and this should be reflected in Article 17 of the Draft Law “Authority of Councils”.</p> <p>3. Councils can form associations (unions) both territorially and on the basis of common interests and tasks in different fields of activities. At the same time, there are issues which are important local self-government as an institution (legislation, finances, personnel training, interaction with state organs, international activities, etc.) where all organs of local self-government of Belarus have to be represented. For this purpose we suggest establishing an all-Belarusian association of councils.</p> <p>4. Due to a lack of experience in establishing and operating associations of councils in Belarus, it is suggested that a special law should be adopted to include both general provisions and more detailed procedures for the establishment and operation of associations as well as their legal status, authority, funding, cooperation with state organs, etc. This law would be based on analysis of the respective situation in other countries.</p> <p>5. Associations (unions) do not exercise the functions of organs of local self-government and cannot interfere with the authority of Councils. Councils cannot delegate to associations (unions) its tasks which are within the limits of their authority.</p>
<p>CHAPTER 2. COUNCILS</p>	<p>CHAPTER 2. LOCAL COUNCILS OF DEPUTIES</p>	<p>We suggest using the full name of the organs of local self-government in the title of this chapter (Local Councils of Deputies). First of all, the title of the chapter should be different from one of its articles (Article 9); Secondly, the law should clearly distinguish between local councils of deputies as organs of local self-government from other</p>

		organizations which do not have the function of public authority but have the word council in their names (for example, Council of Veterans, Council for Cooperation, etc.).
<p>Article 9. Councils</p> <p>1. Councils shall be representative state organs established in accordance with procedures defined by law in the territory of the respective administrative-territorial units and shall be the main element of the local self-government system..</p> <p>2. Councils shall exercise their authority in accordance with the Constitution of the Republic of Belarus, this Law and other legislative acts.</p> <p>3. Councils shall be independent within the limits of their authority. In their activities Councils shall be accountable to citizens, responsible before them and liable to check by upper-level Councils.</p> <p>4. Councils shall be legal entities.</p>	<p>Article 9. Councils as Representative Organs of Local Self-Government</p> <p>1. Councils shall be representative organs of local self-government which are established in accordance with procedures defined by law in the territory of the respective administrative-territorial units.</p> <p>2. Councils shall exercise their authority in accordance with the Constitution of the Republic of Belarus, this Law, Charters of territorial communities of citizens (hramadas), rules of procedure and other legislative acts.</p> <p>3. Councils shall be independent and autonomous in their activities within the limits of their authority. Councils shall be accountable to citizens and responsible before them.</p> <p>4. Councils shall be legal entities which have their seals, bank accounts, their own property and finances (communal property) as well as their own symbols in the form of coat-of-arms, flags and other symbols.</p>	<p>1. According to the principles and norms of the European Charter, Councils are elected organs of local self-government. Thus, Councils cannot be part of the system of state organs. Organs of local self-government like state organs are independent forms of public government. The authority of organs of local self-government and state organ is defined by law and they are independent within the limits of their authority.</p> <p>2. Along with the Constitution and this Law, Charters of territorial communities of citizens (hramadas) are also important legal acts which should be observed in the territory of the respective Council. These Charters contain basic norms regulating the organization and operation of both territorial communities of citizens and organs of local self-government. In addition, rules of procedure adopted by Councils are also important internal documents, since they establish basic rules and procedures for the Council, its organs and its staff. Therefore, it is important to mention in this paragraph these charters and rules.</p> <p>3. According to the European Charter, organs of local self-government are not state organs but independent organs of public authority. Therefore, the relationships between different levels of Councils should not be based on subordination but be based on the principle of the division of authority provided for in the law.</p> <p>4. We suggest enumerating the main attributes of legal entities. Councils as legal entities should have their own seals, bank accounts, property and finances (communal property). The genuine possession of these attributes will allow Councils to improve their status and will be useful in the realization of their authority. Councils as representative organs of territorial communities of citizens (hramadas) should have their symbols such as coat-of-arms, flag, etc., which reflect historical and cultural traditions of citizens residing in the respective territory.</p>
<p>Article 11. Council Activities</p> <p>1. In its activities aimed at resolving local issues, Councils shall proceed from common state interests and interests of citizens, participate in the discussion of nationally significant issues which</p>	<p>Article 11. Council Activities</p> <p>1. In its activities aimed at managing local affairs, Councils shall proceed from the interests of citizens, participate in the discussion of nationally significant issues which affect the interests of the</p>	<p>1. Interests of citizens and state interests do not always coincide. Local self-government is intended to play the role of the one who expresses and defends the interests of citizens. Therefore, it</p>

affect the interests of the respective territories, submit their proposals on such issues to the relevant state organs and other organizations, and fulfill the decisions of upper-level state organs..

2. Councils shall carry out their activities through sessions and Council organs as well as through deputies who fulfill their authorities, including by establishing and operating groups of deputies and other associations of deputies.
3. Council organs shall consist of the Presidium and Standing and Temporary Commissions which shall be established within two months from the day of convening the first session.

4. Councils shall organize their activities on the basis of rules of procedure which are approved by the Council and which define the procedures of preparing, submitting and considering issues for Council sessions and meetings of its organs, procedures for voting on proposed decisions, procedures for establishing and operating Council commissions, procedures for hearing their reports, procedures for considering inquiries of deputies and for resolving other issues related to the work of the Council and its organs; the Rules of Procedure shall also provide for responsibility that Council deputies have to take for failing to participate in the work of the Council without good reasons.

5. Upper-level Councils shall exercise coordination of the activities

respective territorial community of citizens, submit their proposals on such issues to the relevant state organs and organizations.

2. Without changes

3. Council organs shall consist of Council Chair, Presidium, Standing and Temporary Commissions, groups of deputies and other associations of deputies.
Council Chair shall be elected at a Council session by secret ballot within two months after the call of the first session. Within the same period, Councils shall form Presidiums and Standing Commissions.

4. Charters of territorial communities of citizens (hramadas) shall be the main legal act of external power in the territory which is covered by the respective Council.
Charters of territorial communities of citizens (hramadas) shall contain the basic norms regulating the organization and operation of both territorial communities of citizens and organs of local self-government.
Charters of territorial communities of citizens (hramadas) shall have the highest legal power in comparison with other legal acts which are adopted by organs of local self-government in the respective administrative-territorial unit.
Charters of territorial communities of citizens (hramadas) shall be included into the National Register of Legal Acts of the Republic of Belarus in accordance with procedures established by law.
Rules of Council Procedure shall be the main internal legal act which sets out the main rules and procedures for the work of the Council, its organs, its deputies and staff.
Rules of Procedure shall define the procedure for hearing activity reports of Council deputies, define responsibility of deputies and Council staff for failing to fulfill their duties determined by the Constitution, laws and Charters of territorial communities of citizens (hramadas).

5. **It is suggested to exclude this Paragraph 5.**

should proceed from the interests of citizens in the first place in its activities.

Local self-government which has as its first priority common state interests is not local self-government, it is rather state government. State interests are expressed and protected by state organs.

3. It is suggested that **Council Chair should explicitly have the status of a Council organ.**

The Draft Law (Article 22) provides that the Council Chair should be given an authority which does not belong to other Council organs. At the same time, Council Chair is not regarded as an independent Council organ. In accordance with Article 22, Council Chair can issue orders and bear personal responsibility for them within the limits of his authority.

In case this amendment into the Draft Law is accepted, even the Council Chair who is not elected by citizens will have some features of a mayor who is directly elected.

4. Councils are independent organs of public power directly elected by territorial communities of citizens (hramadas). **Councils work on behalf of citizens and in their interests.** Councils as independent subjects of legal relations should have a legal basis for relations with each other and with state organs. **Charters of territorial communities of citizens (hramadas)** are such legal acts of external power which are valid in the territory of the respective Council. In addition, Charters of territorial communities of citizens (hramadas) should contain the main norms regulating both the organization and activity of both territorial communities of citizens and Councils in the exercise of local self-government.

5. Each Council acts within the limits of its authority, which means

<p>of lower-level Councils and their organs and provide organizational and methodological assistance to them.</p> <p>6. Organizational, technical and other support for the work of the Council and its organs shall be provided by the Council's secretariat and by the executive committee at the cost of the respective local budget. The numerical composition of the Council's secretariat shall be established by the President of the Republic of Belarus.</p> <p>7. Issues that affect the interest of adjacent territories shall be resolved by the respective Councils together.</p>	<p>6. Organizational, technical and other support for the activities of Councils and their organs shall be provided by the Council secretariat at the cost of the budget of the respective Council. The number of staff for the secretariat shall be determined at a Council session.</p> <p>7. Without changes</p>	<p>that the upper-level Councils cannot exercise coordination of the activities of lower-level Councils.</p> <p>6. To support their independence, organs of local self-government should have their own organizational and technical mechanism which would make sure they operate properly. The number of staff for the secretariat should be determined on the basis of several criteria such as good governance, qualification, competence, costs, etc.</p>
<p>Article 12. Council Session</p> <p>1. Sessions shall be the main form of the Council's work. They shall be convened as often as necessary but at least once in three months. The first session of the newly elected Council shall be convened by the respective territorial election commission on the condition that more than one half of deputies of their total number for the respective Council are elected and not later than 30 days after the elections. Council sessions shall be conducted in the form of general meetings in accordance with procedures established by the Council's rules of procedure.</p> <p>2. Before the chair of the Council is elected, the first session of the newly elected Council shall be presided by the chair of the respective territorial election commission, or in the event that the chair is absent, by the member of the above-mentioned commission who has been appointed to act as the chair.</p> <p>3. Council sessions shall be convened and conducted in accordance with the Council's rules of procedure by the chair of the Council, or in the event that the chair is absent, by the vice chair designated by the chair. Council sessions can be convened by the Council's presidium or by the Council's chair: At the initiative of at least one third of all deputies, at the initiative of the chair of the respective executive committee or at the initiative of at least 10 percent of eligible voters residing in the respective territory; Upon the demand of the President of the Republic of Belarus or an upper-level Council if the local Council in question violates the rights and legitimate interests of citizens or in any other way violates the law.</p>	<p>Article 12. Council Session</p> <p>1. Without changes</p> <p>2. Without changes.</p> <p>3. Regular Council sessions shall be called the Council Chair or by the vice chair in the event the Chair is absent or has chosen to instruct the vice chair to call the session. Extraordinary Council sessions shall be called on the basis of a Presidium decision or a standing commission decision or at the written request of at least two groups of deputies or at least one third of all deputies or at the request of at least two percent of citizens who should be no less than 50 of eligible voters residing in the respective territory. Council sessions shall be held in the form of meetings in accordance with the procedures defined by this Law and Council Rules of Procedure. Issues suggested for discussion at the session by the Presidium, standing commission, group of deputies of at least five people, organs of territorial self-government, local assemblies or citizens of the number of no less than 50 people residing in the respective territory shall be included into the agenda of the Council session. Issues suggested for discussion at the session by the head of the executive committee (head of local administration) or executive committee (local administration) shall be included into the agenda of the session if it is supported by at least one fifth of the deputies who</p>	<p>3. All Council organs and citizens residing in the respective territory should have the right to call Council sessions. The existing level of 10 percent for citizens to be able to call a session is too high. We are talking here about calling a session, not a referendum. On the other hand, this level should not be too low. We think that two percent of citizens is the optimal number of citizens who should have the right to call a Council session. Since with respect to Council session at the primary level, the level of two percent can still be very small, there is also another clarification that the number of citizens should be at least 50. Issues suggested for the inclusion into the Council agenda should be indeed included into the agenda. This is important, because what is done at present is that those issues which are not convenient for the Council are simply taken out at the stage of agenda formation, without proper discussion. If most deputies are against the inclusion of certain issues into the agenda, they should provide arguments for their position at a plenary session. This would give more transparency and publicity to the Council activities.</p>

<p>4. Council sessions shall be conducted in an open and transparent way, except for the cases when the Council makes the decision to hold a closed session. A session shall be legally qualified if at least two thirds of elected deputies take part in it.</p> <p>5. Proposals for consideration at Council sessions can be submitted by the Council’s chair, presidium and other Council organs, Council deputies, executive committee chair (head of local administration), executive committee (local administration), organs of territorial public self-government, local assemblies, and, in accordance with Article 35 of this Law, citizens.</p>	<p>are present at the respective session. The time and place of the Council session as well as issues suggested for discussion at the session shall be communicated in the written form by the Presidium to every deputy along with the necessary materials. The public shall be informed through the media about the calling of the session at least ten days before it starts.</p> <p>4. Council sessions shall be open and transparent. Council sessions can be attended by the members of the House of Representatives of the Republic of Belarus, members of the Council of the Republic, members of other local councils, journalists, union representatives, representatives of political parties, religious organizations and non-governmental organizations, and also citizens who have collected at least 10 signatures of the voters residing in the respective territory. Other citizens of the Republic of Belarus can attend Council sessions at the invitation of the Council. The person presiding over the session shall inform the deputies of the Council about the composition and number of people attending the respective session. No permission is needed for audio recording at the session. No permission is needed for video and photo recording at the session, unless otherwise decided by the majority of the all elected deputies. People invited for the session shall be entitled to giving to the deputies information materials. They cannot interfere with the course of the session, and in case they violate the established order, they shall be deprived of the right to take part in the work of the respective session. In case the session considers issues which contain state secrets or affect the personal life of citizens, the Council can decided to have a closed session. Closed sessions cannot be held in any other cases. Deputies shall have the right to get familiar with the minutes of Council sessions and sessions of its organs as well as with the documents in the Council archives, and to receive copies of minutes and decisions, texts of reports, which are not permitted for wide publication.</p> <p>We suggesting excluding Paragraph 5 of this article.</p>	<p>4. The new wording of Paragraph 4 is intended to realize the principle of openness and transparency in the activities of organs of local self-government and their staff.</p> <p>This paragraph should be excluded because its content is already reflected in the proposals for Paragraph 3 of this article.</p>
<p>Article 13. Council Decisions 1. Councils shall take decisions on issues considered at their sessions.</p>	<p>Article 13. Council Decisions 1. With respect issues considered at Council sessions, the Council shall take decisions and adopt statements and declarations.</p>	<p>This article is intended to strengthen the feedback between Councils and citizens who elected them and to strengthen the principle of</p>

<p>2. Council decisions shall be taken at Council sessions by a simple majority of all elected deputies by secret or open ballot, including roll call vote. The decision of the voluntary dissolution of the Council shall be taken by at least two thirds of elected deputies. The form of voting shall be determined in accordance with the procedure established the Council's rules of procedure.</p>	<p>Council decisions of the regulatory nature shall be published in the media and posted on information stands in the building of the Council within ten days after they enter into force. In case there is a written request from a citizen of the Republic of Belarus, he shall be given a copy of the decision taken by the Council within two days and free of charge; this does not apply to information containing state secrets or related to the personal life of citizens. Draft Council decisions affecting political, financial, economic, social or cultural interests of citizens shall be subject to mandatory publication in the media, posting on the website or made available in any other officially approved way at least 15 days before they are discussed at the session of the respective Council.</p> <p>2. Without changes</p>	<p>openness and transparency in the activities of organs of local self-government.</p>
<p>Article 14. Formation of Council Organs Councils shall form their organs, determine their structure and authority, and set spending for their work independently and in accordance with this Law and other legislative acts.</p>	<p>Article 14. Formation of Council Organs Councils shall form their organs independently as well as determine their structure and mandate, set costs for their operation in accordance with the Constitution of the Republic of Belarus, this Law, Charters of territorial communities of citizens (hramadas), Rules of Procedure and other legislative acts of the Republic of Belarus.</p>	<p>It is suggested that this Article 14 of the Draft Law should also mention other legal acts such as Charters of territorial communities of citizens (hramadas) and Rules of Procedure since they also regulate the organization and operation of both territorial communities of citizens and Councils.</p>
<p>Article 16. Council's Standing Commissions</p> <p>1. To give preliminary consideration and preparation to the issues falling within the Council's terms of reference as well as to organize the implementation and supervision of the decisions of the Council and upper-level state organs, standing commissions shall be elected at Council sessions out of Council deputies. Primary-level Councils may not form standing commissions, except for a credentials commission.</p> <p>2. Standing commissions shall make decisions falling within their terms of reference in accordance with procedures established by the Council's rules of procedure.</p> <p>3. Standing commissions shall be led by chairs of standing commissions.</p> <p>4. A standing commission meeting can be attended with the right of deliberative voice by deputies elected into other standing</p>	<p>Article 16. Standing Commissions, Groups (Associations) of Deputies</p> <p>1. To give preliminary consideration and preparation to the issues falling with the Council's terms of reference, standing commissions shall be elected at Council sessions out of Council deputies. Primary-level Councils may not form standing commissions, except for a finance and budget commission and a credentials commission.</p> <p>Para 2-5 without changes</p>	<p>We suggest a new wording for the title of this article - Standing Commissions, Groups (Associations) of Deputies</p> <p>1. Since organs of local self-government are not part of the system of state organs, supervision over the implementation of the decision by upper-level state organs should be done by the respective state organs. Primary-level councils should have also a finance and budget commission along with a credentials commission.</p>

commissions of the same Council, experts and other specialists invited by the chair of the commission as well as deputies of other Councils if taken decisions can affect the interests of citizens residing in the territory of the respective administrative-territorial unit.

5. Recommendations contained in the decisions of standing commissions shall be subject to consideration by the respective state organs and other organizations. Reports on the results of such consideration and measures taken thereupon shall be submitted to standing commissions within one month.

After Paragraph 5, Article 16 should be complemented on Paragraphs 6 to 9 with the following content:

6. In order to exercise their authority, including through collective discussion of issues falling within the authority of the Council, and to realize their campaign programs, Council deputies shall be entitled to forming voluntary groups (associations) of deputies.

7. Deputy groups or associations can be established if they have at least three Council deputies in their composition. Deputy groups or associations are formed on the basis of self-enrollment and their composition can change.

8. Council deputies who form a group or association shall inform Council Chair about its formation in writing. The establishment of deputy groups or associations as well as changes in their composition, title, leadership and termination of their activities shall be noted in the minutes of the Council session.

9. Deputy groups or associations shall take decisions which are recommendations. Their recommendations shall be considered by state and public organs and organizations. Deputy groups or associations shall be informed about the results of the consideration within the period of time established by law.

We suggest adding Paragraphs 6 to 9 to Article 16.

Paragraph 2 of Article 11 mentions among Council organs **deputy groups or associations**. The Draft Law has provisions regulating the establishment and operation of most Council organs but it does not have provisions for deputy groups or associations. Therefore, we suggest including such provisions here and changing the title of the article.

CHAPTER 3. TERRITORIAL PUBLIC SELF-GOVERNMENT
Article 25. Territorial Public Self-Government

1. Territorial public self-government refers to voluntary activities of citizens in the area of their residence which is part of the territory of an administrative-territorial unit (urban neighborhoods, housing areas, blocks of buildings, streets, yards, agricultural towns, settlements, villages, etc.) to resolve issues of local significance directly or through organs of territorial public self-government.

Organs of territorial public self-government are the organizational form for the exercise of territorial public self-government by citizens.

2. One part of an administrative-territorial unit can have only one organ of territorial public self-government.

Article 26. Goals and Objectives of Territorial Public Self-

CHAPTER 3. TERRITORIAL PUBLIC SELF-GOVERNMENT
Article 25. Territorial Public Self-Government

1. Territorial public self-government (TPS) is a form of the self-organization of citizens at the place of their residence on a particular part of an administrative-territorial unit (block of buildings, street, city microdistrict, small town, village, etc.) to assist the Council, executive committee (local administration) in managing local affairs. Territorial public self-government shall be exercised by citizens through organs of territorial public self-government.

Paragraph 2. Without changes

Article 26. Goals and Objectives of Territorial Public Self-

We suggest a new wording for Article 25 of the Draft Law.

Territorial public self-government (TPS) is defined here by us as a form of self-organization that citizens residing in a particular part of an administrative-territorial unit choose to assist Councils and executive committees in managing local affairs.

TPS is a form of citizen participation in the exercise of local government and self-government.

TPS organs do not possess public power to manage local affairs and not organs of local self-government.

<p>Government</p> <p>1. The main goal of territorial public self-government shall be the development and implementation of citizen initiatives on local issues in the respective part of the administrative-territorial unit.</p> <p>2. The main objectives of territorial public self-government shall be as follows:</p> <p>2.1. Support to the realization of rights, freedoms and legitimate interests of citizens;</p> <p>2.2. Assistance to executive and regulatory organs and Councils in their work with citizens;</p> <p>2.3. Study, analyze and consider opinions of citizens on issues of economic and social development, environmental protection and rational use of natural resources;</p> <p>2.4. Engage citizens in activities to improve the condition, maintenance and repair of residential houses and adjacent territories;</p> <p>2.5. Participate in activities to provide social support to families and different categories of citizens who need such support (children, young people, elderly people, disabled people and other categories of citizens);</p> <p>2.6. Assist in organizing activities for spare time of citizens;</p> <p>2.7. Participate in organizing activities involving dysfunctional families;</p> <p>2.8. Support charitable activities;</p> <p>2.9. Support the revival and preservation of cultural valuables, national customs and traditions, and development of artistic and technical creativity;</p> <p>2.10. Support the relevant authorities in activities related to crime prevention;</p> <p>2.11. Support the exercise of legislative initiative by citizens regarding issues of local significance;</p> <p>2.12. Provide assistance in resolving other issues of local significance</p>	<p>Government</p> <p>1. The main goal of TPS shall be the involvement of citizens residing in the respective part of the administrative-territorial unit into the process of preparing and adopting decisions at the local level and provision of assistance to organs of local government and self-government as well as to citizen initiatives in managing local affairs.</p> <p>Paragraph 2. Without changes</p>	<p>We have changed Part 1 of Article 26 of the Draft on the basis of our proposals for Article 25 of the Draft Law. When defining the goals for the establishment and operation of TPS, the main emphasis is placed on the involvement of citizens into the activities of organs of local self-government.</p>
<p>Article 27. Organs of Territorial Public Self-Government</p> <p>1. An organ of territorial public self-government can be a collegial organ or a sole organ.</p> <p>2. A collegial organ of territorial public self-government can be established as a legal entity or without the formation of a legal entity.</p> <p>3. A collegial organ of territorial public self-government established as a legal entity shall be a non-profit organization.</p> <p>Procedures for the establishment, operation and termination of activities of a collegial organ of territorial public self-government set up as a legal entity shall be regulated by the legislation in force for the relevant legal entities but also taking into account the provisions</p>	<p>Article 27. Organs of Territorial Public Self-Government</p> <p>1. Territorial public self-government can be a collegial organ or a sole organ.</p> <p>2. A collegial organ of TPS can be established by citizens as a Committee of TPS (CTPS) and shall be a legal entity.</p> <p>3. CTPS shall be a non-profit organization (NPO).</p>	<p>We suggest a new wording for Article 27. We suggest referring to two types of TPS organs:</p> <p>1) Collegial organ of TPS with the status of a legal entity;</p> <p>2) Sole organ of TPS without the status of a legal entity.</p> <p>This approach to the classification of TPS corresponds with law-enforcement practices in Belarus which have been the case since 1989 when this organizational and legal form of local self-government was first established.</p> <p>We suggest unifying the name of TPS organs, and more specifically,</p>

of Article 26 of this Law.

4. A collegial organ of territorial public self-government set up without the formation of a legal entity shall be established and operated in accordance with this Law and regulations on the organ of territorial public self-government which are endorsed by the local assembly on the basis of a template approved by the respective regional-level Council with due regard to the provisions of this Law.

4. The procedure for the establishment, registration and cooperation with Councils and executive committees (local administrations) for CTPS shall be defined by the Civil Code, this Law, Charter of territorial community of citizens (hramada) and Council Rules of Procedure.

We suggest excluding Paragraph 4 from this article of the Draft Law.

using one term “committee of territorial public self-government” for all collegial organs (this approach is also reflected in the model Charter for CTPS for the city of Minsk) and using the term “elder” for all sole organs of TPS.

The establishment of TPS collegial organs without the status of legal entity is suggested to be excluded from the article.

The legal construction of the TPS collegial organ without the status of legal entity (as suggested in Paragraph 4 of Article 27 of the Draft Law) has a number of drawbacks:

- 1) According to Article 44 of the Civil Code, an organization which is not a legal entity cannot own or manage property, cannot buy or exercise property or non-property rights, cannot have obligations and cannot have an independent balance or budget;
- 2) Such an organization cannot be independently responsible, cannot be represented in court as a defendant or as a plaintiff;
- 3) Councils cannot delegate their authority to such organizations;
- 4) There is no possibility for funding this type of organizations from local budgets;
- 5) It is also difficult for such organizations to receive donations and contributions from citizens and other organizations;
- 6) The activities of such organizations is legally equal as an unregistered non-governmental organization;
- 7) The establishment of a TPS collegial organ in a particular part of the administrative-territorial unit not as a legal entity blocks the initiative of citizens to set up a collegial organ as a legal entity.

When the legislator wants to have the legal construction for CTPS which is not a legal entity, he simplifies the procedure for the establishment of such organs but at the same time he also emasculates the very idea of such organs.

An adequate replacement for TPS organs without the status of legal entity could be the possibility for establishing commissions under executive committees and involving citizens in the work of these commissions. Such form of citizen involvement in the process of local decision-making is enshrined in Article 9 of the current Law “On Local Government and Local Self-Government in the Republic of Belarus” and indeed implemented in reality. Organizationally, this is significantly easier and also more effective for the implementation of tasks than what is suggested in the Draft Law (a TPS collegial

<p>5. A sole organ of territorial public self-government (elder, headman, etc.) shall act in accordance with this Law and respective regulations endorsed by the respective Council on the basis of a template approved by the respective regional-level Council with due regard to the provisions of this Law.</p> <p>6. Organs of territorial public self-government shall be accountable to local assemblies and Councils for their activities. Supervision over the activities of organs of territorial public self-government shall be exercised by the respective Council</p>	<p>5. The sole organ of TPS in the person of a village elder shall be elected by citizens residing in the territory of the respective village at a local assembly of citizens and acts in accordance with this Law, Charter of territorial community of citizens (hramada) and Council Rules of Procedure.</p> <p>6. CTPS and elder shall be accountable to the local assembly of citizens who took the decision about their establishment and to the respective Council.</p> <p>7. General meeting or conference of authorized representatives shall be the highest governance body of CTPS. In the periods between the meetings the activity of CTPS shall be managed by the Board. The structure of CTPS organs shall include the Board and the Audit Commission. The composition of the Board and the Audit Commission and the procedures for their work shall be established by the Charter of the CTPS.</p>	<p>organ without the status of legal entity).</p>
<p>MISSING</p>	<p>Article 27¹. Elder</p> <p>1. Village elder is a sole form of the organization and operation of TPS.</p> <p>2. The activity of elders shall be exercised in accordance with this Law, Charter of territorial community of citizens (hramada) and Council Rules of Procedures.</p> <p>3. Elders shall be elected at a local assembly by citizens (general meeting or meeting of authorized representatives) residing in the territory of the respective village out of their number for the period of Council tenure.</p> <p>The decision about the election of the elder shall be registered by the executive committee. The mandate of the elder shall be confirmed by a certificate issued by the respective executive committee.</p> <p>4. The elder shall be entitled to the following:</p> <ul style="list-style-type: none"> ▪ Call local assemblies of citizens; ▪ Attend sessions of the respective Council and executive committee; ▪ Submit proposals to the respective local Council and executive committees; ▪ Organize citizen discussions of draft decisions of Councils and executive committees; 	<p>We suggest including this article on elders in Chapter 3 of the Draft Law. This article defines the main elements of the status of the elder in villages. The present legislation in the field of local self-government as well as this Draft Law do not contain such norms, which leads to the situation where local Councils and executive committees in different parts of the country have different approaches to regulating this institution.</p>

	<ul style="list-style-type: none"> ▪ Assist in the implementation of Belarusian legislation and decisions of the respective Councils and executive committees; ▪ Provide assistance to deputies of all levels in exercising their authority; ▪ Provide assistance to the respective Councils and executive committees in organizing public events as well as cultural and economic activities; ▪ Study public opinion and conduct polls among citizens; ▪ Exercise public supervision over the provision of social services, observance of fire safety regulations, sanitary rule, land use regulations and improvement of publicly owned areas. <p>5. The activities of the elder shall apply in the territory of the village where he is elected.</p> <p>The elder shall deliver reports about his activities to an assembly of citizens residing in the respective village at least twice a year.</p> <p>The elder can be dismissed from his position earlier in the following cases:</p> <ul style="list-style-type: none"> ▪ At his own request; ▪ At the initiative of the primary-level Council deputies; ▪ At the initiative of the citizens of the respective village. <p>6. The elder shall exercise his authority on a pro bono basis. Organizational and technical support for his work shall be provided by the primary-level Council of the respective territory.</p> <p>Elders can be provided with moral and material incentives for the excellent fulfillment of their work.</p>	
<p>Article 28. Authority of Local Assemblies Called to Establish and Operate Organs of Territorial Public Self-Government</p> <p>1. With respect to collegial organs of territorial public self-government, local assemblies shall be entitled to do the following: Make decisions to set up and terminate organs of territorial public self-government;</p> <p>Endorse regulations governing the respective organ of territorial public self-government and amend them as necessary;</p> <p>Elect members (with their consent) of organs of territorial public self-government out of members of local assemblies and make decisions concerning the termination of membership in organs of territorial public self-government. Procedures for electing members of organs of territorial public self-government by local assemblies shall be determined by the respective Council with due regard to the provisions of the Law of the Republic of Belarus, dated July 12, 2000, "On National and Local Assemblies" (Ref: National Register of Legal Acts of the Republic of Belarus, 2000, №67, 2/186);</p> <p>Determine the organizational structure of organs of territorial public self-government;</p> <p>Consider issues related to the authority of organs of territorial public</p>	<p>Article 28. Procedures for Establishing Collegial Organs of Territorial Public Self-Government</p> <p>1. An initiative of citizens or an organizing committee can be established at the initiative of citizens to set up a collegial organ of TPS in the form of a committee (CTPS).</p> <p>2. The initiative group (organizing committee) shall inform the respective Council and executive committee (local administration) in writing about the intention to set a CTPS, receive approval for the territory to be covered by the CTPS, list of issues that can be delegated to the CTPS by the Council and possibilities for financial and economic support for the CTPS at the initial phase of its operation.</p> <p>3. The initiative group (organizing committee) shall inform citizens, independently or with the help of the respective Council, about the intention to call a local assembly (general meeting or conference of authorized representatives) for the establishment of the CTPS.</p> <p>4. After the relevant issues related to the establishment of the CTPS are coordinated with the Council and executive committee (local administration), the initiative group shall call a local assembly. The local assembly for the establishment of the CTPS can be legally</p>	<p>Article 28 of the Draft Law has the following fundamental drawbacks, which are the reason why we suggest a new wording for this article:</p> <p>1) Article 28 of the Draft Law says that the only form of the establishment of the collective organ of the TPS is a local assembly. However, this form can be seen as a kind of legal fiction, because there is no way to assemble a huge number of residents, or voters to be more precise, in one room for the establishment of the collective organ. Committees of territorial public self-government are usually established in microdistricts of cities, and the population of such a microdistrict can amount to 4,000 to 10,000 voters. Even if we consider that the assembly is legally qualifying with the turnout of at least 20 percent, it is very unlikely that 1,000 or 2,500 voters, respectively, can come at the same time to participate in such an event;</p> <p>2) The Council cannot establish the procedure for electing the members of the TPS, because it is not provided for by the law (either by the current law or by the proposed Draft Law, see</p>

<p>self-government and put forward proposals on them.</p> <p>2. Decisions of local assemblies taken within their mandates shall be obligatory for organs of territorial public self-government.</p> <p>3. Decisions of local assemblies as well as other information about the activities of organs of territorial public self-government discussed by local assemblies shall be communicated to members of local assemblies, members of organs of territorial public self-government and other stakeholders within ten days after the respective local assembly by way of sending them the relevant materials.</p>	<p>qualifying, if it is attended by at least 25 percent of citizens who are older than 18 and permanently residing in the respective territory or at least two thirds of authorized representatives.</p> <p>The norms of representation and procedures for the election of authorized representatives shall be established by the initiator of the assembly.</p> <p>5. The local assembly for the establishment of the CTPS shall decide on the following issues:</p> <ol style="list-style-type: none"> 1) Decision to establish the CTPS; 2) Adoption of the Charter of the CTPS; 3) Election of the chair, deputy chair and members of the Board of the CTPS; 4) Election of the Audit Commission; 5) Delegation of the right to represent the organization with the registration authority or the court to three members of the Board, in case if the organization is refused registration. 	<p>Articles 17-20 of the Draft Law);</p> <ol style="list-style-type: none"> 3) There is no legal regulation of the necessary steps in the procedure of the establishment of the collegial organ of TPS; 4) Neither Article 28 of the Draft Law nor the other articles of Chapter 3 of the Draft Law contain clear indications of organizational structures required for NPOs, that is, Board and Audit Commission. <p>Taking into account what has been said above and proceeding from the law enforcement practices in Belarus, we suggest clearly reflecting in this article the following stages for the establishment of the CTPS:</p> <ol style="list-style-type: none"> 1) Creation of an initiative group of citizens to establish a CTPS; 2) Getting the necessary approvals from the Council and executive committee concerning the establishment of the CTPS; 3) Notification of citizens about the local assembly to establish the CTPS; 4) Nomination of representatives for the assembly of authorized representatives, if it is the case; 5) Holding the local assembly; 6) Completion of the necessary documents and their submission to the registration authority (See Article 30 in the new wording)
<p>MISSING</p>	<p>Article 28¹. Board of the Committee of Territorial Public Self-Government</p> <ol style="list-style-type: none"> 1. The Board of the CTPS shall be elected for the period of the tenure of the respective Council. 2. The Board of the CTPS shall consist of the chair, deputy chair and other members of the Board; 3. The leadership of the CTPS Board shall be exercised by the chair of the Board or his deputy at the time when the chair is absent; 4. The chair of the CTPS Board shall be accountable to the Board, CTPS, local assembly of citizens, respective Council and executive committee and shall be responsible for the activities of the CTPS; 5. The composition of the CTPS Board shall include persons who are at least 18 and permanently reside in the territory of CTPS activities; 6. Members of the CTPS Board shall be obliged to fulfill the requirements of the Charter, decisions of the local assembly and other organs of the CTPS; 7. The mandate of a member of the CTPS Board shall be terminated in the following cases: <ul style="list-style-type: none"> ▪ At the decision of the local assembly of citizens, if the member of the CTPS Board does not fulfill his obligations on a regular basis and without good reasons; ▪ At his own request on the basis of his written resignation letter ; ▪ In case his tenure as a member of the organ of territorial public self-government expires; 	<p>We suggest adding this Article 28¹ to specify the composition of the committee of territorial public self-government. This article is needed to regulate the structure and composition of the CTPS Board, authority of its members and requirements that have to be fulfilled by the people elected to the CTPS Board.</p>

	<ul style="list-style-type: none"> ▪ In case a member of the organ of territorial public self-government moves for residence to a different place which is beyond the borders of the part of the administrative-territorial unit where the respective organ of territorial public self-government was established; ▪ In case a member of the organ of territorial public self-government is declared disabled in accordance with the established procedures; ▪ In case of the death of a member of the organ of territorial public self-government or if he is declared missing or dead. 	
<p>MISSING</p>	<p>Article 28². Supervision over the Activities of the Committee of Territorial Public Self-Government</p> <ol style="list-style-type: none"> 1. Supervision over the activities of the CTPS shall be exercised by the CTPS Audit Commission and registration authority; 2. The Audit Commission of the CTPS shall be elected for the period of the tenure of the respective Council; 3. The Chair of the Audit Commission shall be elected at the first session of the commission; 4. The decisions of the Audit Commission shall be taken by the simple majority of its members; 5. The Audit Commission of the CTPS shall <ul style="list-style-type: none"> - exercise supervision over the fulfillment of the activities of the CTPS, decisions of the respective Council and executive and regulatory organs dealing with financial and economic issues; - conduct audits of the financial activities of the CTPS at the instruction of the local assembly of citizens or at its own initiative at least once a year. 6. The Audit Commission shall report to the local assembly of citizens. 	<p>We suggest adding this Article 28² to stipulate provisions concerning the supervision over the activities of the committee of territorial public self-government.</p> <p>This article fills the gap in Chapter 3 of the Draft Law concerning internal control of the CTPS activities. In non-profit organizations such as the CTPS such control should be exercised by an audit commission.</p> <p>The Charter of the CTPS should have a chapter specifying the composition, terms of reference and operational procedures of the audit commission.</p>
<p>Article 29. Membership in Collegial Organs of Territorial Public Self-Government</p> <ol style="list-style-type: none"> 1. Members of collegial organs of territorial public self-government can be citizens who reached at least 18 years of age and have registered residence in the part of the territory of the administrative-territorial unit where the collegial organ of territorial public self-government is established. 2. Candidates for members of collegial organs of territorial public self-government can be nominated by citizens as well as Councils and executive and regulatory organs of the respective administrative-territorial unit. 3. Members of collegial organs of territorial public self-government shall be elected by open voting or secret ballot by local assemblies. The exact type of voting shall be determined by local assemblies. 4. The composition of collegial organs of territorial public self- 	<p>We suggest excluding Article 29 from the Draft Law</p>	<p>We suggest excluding Article 29 from the Draft Law for the following reasons:</p> <p>First of all, the election of CTPS members is made possible only at a local assembly of citizens, which creates great and often insurmountable organizational difficulties (for example, how can one assemble 5,000 citizens in one big district?);</p> <p>Secondly, it is not clear who should be regarded as members of the CTPS:</p> <ol style="list-style-type: none"> 1) All citizens residing in the territory which is to be covered by the CTPS; 2) Only the representatives delegated by the citizens to the meeting of authorized representatives; 3) Only the members of the CTPS Board elected at the local

government shall include a chair, a vice chair and other members.

5. The management of collegial organs of territorial public self-government shall be exercised by the chair of the respective organ of territorial public self-government or by the vice chair when the chair is absent. The chair and vice chair shall be elected and relieved from their duties at a session of the respective collegial organ of territorial public self-government out of its members and with approval from the respective Council.

6. The chair of the collegial organ of territorial public self-government shall be accountable on all his activities to the respective organ of territorial public self-government, local assembly and respective Council.

7. The chair of the collegial organ of territorial public self-government shall exercise leadership of the respective organ of territorial public self-government, make sure that the organ of territorial public self-government fulfills the decisions of the local assembly and bear responsibility for the activities of the respective organ of territorial public self-government.

8. The mandates of the chair and vice chair shall be terminated in the following cases:
By a decision of the respective organ of territorial public self-government taken at the request of the respective Council, members of the respective organ of territorial public self-government, local assembly or citizens registered at the place of residence in the respective part of the administrative-territorial unit where the organ of territorial public self-government is established – in case they fail to fulfill their duties properly;
At their own request – on the basis of their written resignation note;
In case they lose membership in the respective organ of territorial public self-government.

9. Members of collegial organs of territorial public self-government shall be entitled to the following:
Participate in the management of affairs of the respective organ of territorial public self-government in accordance with procedures established by law and regulations on the respective organ of territorial public self-government;
Obtain information about the activities of the respective organ of territorial public self-government.

10. Members of collegial organs of territorial public self-government shall comply with the requirements of the regulations on the respective organ of territorial public self-government and decisions of local assemblies.

11. Membership in collegial organs of territorial public self-government shall be terminated in the following cases:
By a decision of the respective local assembly, if a member of the

assembly.
Thirdly, the article under question, apart from the issue of membership in the collegial organ of the CTPS, also stipulates the issues related to the management of this organ but it is not clear what should be done by the other members of the collegial organ (Board). Moreover, there are no norms concerning the audit commission. Articles 28 and 28¹ are suggested to replace Article 29.

<p>organ of territorial public self-government does not fulfill his duties systematically without good reasons; At the own request of the member – on the basis of his written resignation note; In case of the expiry of the mandate as a member of the organ of territorial public self-government; In case of the movement of the member of the organ of territorial public self-government to a different location outside the borders of the part of the administrative-territorial unit where the organ of territorial public self-government is established; In case if in accordance with the relevant procedures, the organ of territorial public self-government is declared incapable of fulfilling its duties; In case of the death of the member of the organ of territorial public self-government, or if he is declared dead, or if he is declared missing.</p>		
<p>MISSING</p>	<p>Article 29¹. Charter of the Committee of Territorial Public Self-Government The Charter of the Committee of Territorial Public Self-Government shall contain the following information:</p> <ul style="list-style-type: none"> ▪ Name, goals and objectives of the CTPS, and legal address; ▪ Territory covered by the activities of the CTPS; ▪ Procedures for the formation of the CTPS and its structure, and the composition of the CTPS; ▪ Sources of funding and procedure for the formation of CTPS property; ▪ Governance of the CTPS and supervision over its activities; ▪ Mandate of the meeting of authorized representatives as the supreme organ of the CTPS; ▪ Mandate of the Audit Commission; ▪ Procedures for the suspension, re-registration of termination of the activities of the CTPS. 	<p>Our suggestion is to include another article (29¹) to Chapter 3 of the Draft Law on the Charter of the Committee of Territorial Public Self-Government, since it is the basic document for the establishment and registration of the committee of territorial public self-government.</p>
<p>Article 30. Registration of Collegial Organs of Territorial Public Self-Government 1. For a collegial organ of territorial public self-government to be registered, the following documents shall be submitted to the respective executive and regulatory organs within one month after its establishment: An application made in the form approved by the regional-level Council; Regulations on the collegial organ of territorial public self-government; Minutes of the local assembly providing information about the establishment of the organ of territorial public self-government, endorsement of the regulations on it and election of its members;</p>	<p>Article 30. Registration of the Committee of Territorial Public Self-Government 1. CTPS shall be registered by the respective executive committee (local administration) within ten days after the submission of the documents indicated in Paragraph 2 of this Article. Registration denial can be taken to court.</p>	<p>We suggest a new wording for Article 30 “Registration of the Committee of Territorial Public Self-Government”. The fundamental difference from the old version of this article is that we suggest that the registration of the CTPS should be done on the basis of its Charter and other supporting documents, which is also the case with the current legislation in the field of local self-government. There are already practices based on such procedures. For example, there is a model regulation on territorial public self-government in the city of Minsk, and the registration of the committees is done on the basis of their charters.</p>

<p>A list of local assembly participants with their first names, patronymics, last names, years of birth, citizenship and place of residence;</p> <p>A list of members of the organ of territorial public self-government with the indication of their first names, patronymics, last names, dates of birth, citizenship, place of residence, home (mobile) telephone number, place of work (study), office telephone number and position in the organ of territorial public self-government.</p> <p>2. The registration of the collegial organ of territorial public self-government shall be done by the respective executive and regulatory organs within ten days after the submission of the documents indicated in Paragraph 1 of this Article.</p> <p>Within five days after the registration of the collegial organ of territorial public self-government executive and regulatory organs shall inform the chair of the organ of territorial public self-government about it in the written form and issue a certificate on the registration of the collegial organ of territorial public self-government.</p> <p>3. The application for registration of the collegial organ of territorial public self-government shall be rejected in the following cases: When there is a contradiction between the submitted regulations on the organ of territorial public self-government and the relevant legislation or template of the regulations on the collegial organ of territorial public self-government approved by the regional-level Council; When there is a discrepancy between the goals and objectives of the organ of territorial public self-government as laid out in the regulations on this organ and the goals and objectives of the activities of organs of territorial public self-government as defined by Article 26 of this Law; When there is a violation of the established procedures for citizen nomination of representatives for local assemblies and norms of representation as well as procedures of citizen participation in such assemblies and election of members of the organ of territorial public self-government by local assemblies.</p> <p>4. The collegial organ of territorial public self-government shall be regarded as established at the moment of its registration.</p>	<p>2. For the registration of the CTPS, the following documents shall be submitted to the registration authority within one month after the CTPS establishment:</p> <ul style="list-style-type: none"> ▪ A standard application; ▪ Charter of the CTPS; ▪ Minutes from the respective local assembly of citizens; ▪ List of participants in the local assembly of citizens; ▪ List of members of the Board of the CTPS; ▪ List of members of the Audit Commission; ▪ Documents confirming the availability of a legal address; ▪ Other supporting documents required by the legislation. <p>3. The respective executive committee (local administration) shall issue to the CTPS chair a certificate of registration, a copy of the Charter and a certificate of the chair within five days after the registration.</p>	<p>Civil Code (Part 1 of Article 48) allows for the registration of non-profit organizations on the basis of their regulations in some cases, but in our case this norm is not relevant, because it is only applicable to individual non-profit organizations, while the establishment of CTPSs in the territory of one administrative-territorial unit can become a widespread phenomenon.</p>
<p>Article 31. Operational Procedures for Organs of Territorial Public Self-Government</p> <p>1. Sessions of the collegial organ of territorial public self-government shall be held as often as necessary but at least once in six months.</p> <p>2. Sessions of the collegial organ of territorial public self-government shall be legally qualified if they are attended by at least two thirds of its members.</p>	<p>We suggest excluding Article 31 from the Draft Law</p>	<p>We suggesting excluding Article 31, since its provisions are covered by the norms in the new articles suggested by the Lev Sapiuha Foundation (Articles 28¹, 28² and 29¹). Procedures for the operation of organs of territorial public self-government are also reflected in the Charter of the CTPS.</p>

Citizens shall be entitled to have free access to sessions of the collegial organ of territorial public self-government as well as to participating in its work in a consultative capacity without the right to vote.

3. Decisions of the collegial organ of territorial public self-government shall be taken in an open vote by a simple majority of the members present at the respective session.

4. Decisions of the territorial public self-government organ shall apply to citizens who are registered for residence in the respective part of the administrative-territorial unit where the territorial public self-government organ is established and shall be fulfilled by citizens on a voluntary basis.

MISSING

Article 31¹. Mandate of the Committee of Territorial Public Self-Government

The CTPS shall realize its mandate in accordance with procedures established by the Charter of territorial community of citizens (hramada) and Council Rules of Procedure.

To achieve its goals and objectives, the CTPS shall be entitled to the following:

- Submit proposals concerning ways of managing local affairs to Council sessions and Council organs;
- Attend Council sessions and meetings of its organs as well as executive committee (local administration) meetings;
- Call local assemblies, conduct public hearings and opinion polls, and assist in the implementation of law-making initiative of citizens;
- Use the money received by the CTPS account in accordance with the requirements of Part 1 of Article 31²;
- Accept (including free of charge) from the Council, executive committee and other organizations property objects and public areas such as playgrounds and sports grounds for its possession and management;
- Study the opinion of citizens concerning the issues of socioeconomic development;
- Assist citizen initiatives in managing local affairs;
- Organize social services for families and different categories of citizens who need social support;
- Contribute to the revival and preservation of traditions and cultural values;
- Organize recreational activities for citizens;
- Assist in maintaining public order.

We suggest adding this new Article 31¹ to specify the mandate of the committee of territorial public self-government.

The suggested article further develops Article 26 of the Draft Law “Goals and Objectives of Territorial Public Self-Government” and describes the mandate of the organs of territorial public self-government.

In our opinion, it is **not sufficient to enumerate the goals and objectives of territorial public self-government** in Article 26, since it is very often the case that territorial public self-government, non-governmental organizations and citizen initiatives have similar goals and objectives but the legal and organizational capabilities of achieving them are different.

The Draft Law (Paragraph 1.7 of Article 22; Paragraph 2.17 of Article 47; Paragraph 2.16 of Article 52) does not provide for the right of representatives of territorial public self-government to attend Council or executive committee (local administration) sessions without the invitation of the Council or executive committee chair (head of local administration). Similarly, the same applies to the possibility to submit proposals concerning local affairs to Council or executive committee (local administration) sessions.

It should be noted here that the current Law “On Local Government and Self-Government in the Republic of Belarus” does provide for the right of organs of territorial public self-government to submit proposals on local affairs to Council or executive committee (local administration) sessions (Paragraph 1 of Part 11 of Article 29).

We suggest keeping this norm from the current law and also entitle representatives of territorial public self-government to attend Council or executive committee (local administration) sessions.

<p>OTCYTCTBYET</p>	<p>Article 31². Financial and Economic Basis of the Committee of Territorial Public Self-Government</p> <p>1. The financial basis for the activities of the Committee of Territorial Public Self-Government shall be composed as follows:</p> <ul style="list-style-type: none"> ▪ Voluntary contributions and donations from citizens and organizations; ▪ Proceeds from its events and activities carried out under its Charter; ▪ Financial resources transferred from the local budget for the realization of the mandate delegated by the Council to the CTPS; ▪ Other incomes which are not forbidden by law, including from foreign citizens and organizations. <p>The CTPS can use the financial resources at its disposal for the activities provided for in its Charter, including for the operation of its organs.</p> <p>2. The material basis for the activities of the CTPS is communal property (objects of improvement, buildings, internal premises, playgrounds, sports grounds and other objects) which has been transferred to the CTPS by the Council.</p>	<p>The Draft Law does not have an article specifying the financial and economic basis for the activities of the committee of territorial public self-government. This is a step back in comparison with the current law on local self-government (Article 46).</p> <p>The possession of own financial resources (even if they are limited) is critical for further development of this form of citizen self-organization. The movement of establishing such committees can hardly become widespread and effective, if there is uncertainty about adequate financial resources for carrying out activities under the charter. Without the contributions and donations from citizens who establish the committee, it is impossible for the committee even to exist, let alone work effectively.</p> <p>One should proceed from the assumption that the CTPS as a form of citizen participation in local self-government can lay a claim on a part of local budget resources. Such an approach is taken in the Ukrainian Law “On Organs of Self-Organization of Population” from July 11, 2001. In particular, if the Council gives its approval for the establishment of an organ of self-organization of citizens and if this organ is indeed established and registered, the Council has an obligation to finance the activities of this organ from its budget.</p> <p>It can be mentioned here that in the initial period of establishing organs of territorial public self-government in Belarus (1989-1995) local Councils did the registration of CTPSs and allocated certain funding for their operation. Moreover, they also gave them the right to manage some parts of communal property.</p>
<p>Article 32. Abolition of the Collegial Organ of Territorial Public Self-Government</p> <p>The collegial organ of territorial public self-government can be abolished by the decision of the respective – Local assembly or Council in case of its systematic or flagrant violations of the legislation.</p>	<p>Article 32. Extension, Suspension and Termination of the Activities of the Committee of Territorial Public Self-Government</p> <p>1. Within three months after the election of the new Council the Board and the Audit Commission of the Committee of Territorial Public Self-Government shall be re-elected.</p> <p>2. The activities of the CTPS shall be suspended by the respective executive committee (local administration) in the following cases:</p> <ul style="list-style-type: none"> ▪ Violations of state registration procedures; ▪ Regular violations of the legislation. <p>3. The CTPS can be terminated at the decision of –</p> <ul style="list-style-type: none"> ▪ Local assembly of citizens; ▪ The Council, in case of regular and serious violation of the law; 	<p>We suggest replacing Article 32 of the Draft Law “Abolition of the Collegial Organ of Territorial Public Self-Government” with an article entitled, “Extension, Suspension and Termination of the Activities of the Committee of Territorial Public Self-Government.”</p> <p>We suggest re-electing the Board and the Audit Commission of the CTPS after the election of the new Council.</p> <p>The termination of the activities of non-profit organizations is usually done by the founders if the goals of the organization are achieved and the mission is completed or by a court decision if there are violations of the law.</p>

	<ul style="list-style-type: none"> ▪ The court, in cases provided for in the law. <p>4. The termination of the CTPS shall be done by a termination commission which is set up by the authority who takes the decision about its termination. In case of termination, the property of the CTPS shall become communal property.</p>	
<p>CHAPTER 4. LOCAL ASSEMBLY, LOCAL REFERENDUM AND OTHER FORMS OF LOCAL SELF-GOVERNMENT</p> <p>Article 33. Local Assembly</p> <p>1. Local assembly is the common presence of a group of citizens who convene to discuss issues of state and public life of national or local significance and the main form of direct citizen participation in the management of the affairs of the society and of the state.</p> <p>2. Procedures for initiating, convening and holding local assemblies as well as their authority shall be determined by the Law of the Republic of Belarus “On National and Local Assemblies” and by this Law.</p>	<p>CHAPTER 4. FORMS OF DIRECT EXERCISE OF LOCAL SELF-GOVERNMENT BY CITIZENS AND DIRECT PARTICIPATION OF CITIZENS IN LOCAL SELF-GOVERNMENT</p> <p>Article 33. Local Assembly</p> <p>1. Local assembly is the common presence of a group of citizens who convene to discuss issues of local significance, receive information about the activities of the Council and executive committee (local administration) and adoption of decisions concerning the establishment and abolition of organs of territorial public self-government.</p> <p>2. Local assemblies can be convened by the Council Chair, Presidium of the Council, Standing Commission of the Council, organs of territorial public self-government, executive committee chair, head of local administration and at the initiative of citizens who are at least two percent (but no less than 10 people) of those who reside in the respective territory.</p> <p>A specific number of citizen signatures necessary to support the initiative of holding a local assembly shall be established by every Council independently in the Charter of territorial community of citizens (hramada) or Council Rules of Procedure.</p> <p>The norms of representation and procedures for the election of authorized representatives for the participation in the local assembly shall be established by the initiator of the assembly.</p>	<p>Our suggested wording for the title of this chapter is fuller and more precise with the respect to the idea and content of the articles in this chapter.</p> <p>Local self-government can be exercised through two forms: representative (Councils) and direct (local elections, local referendums, local assemblies, etc.).</p> <p>Therefore, it is not correct to say that local elections, local referendum, local assemblies and so on are forms of local self-government. They are forms of direct exercise of local self-government by citizens and direct participation of citizens in local self-government.</p> <p>We suggest a new wording for Part 1 of Article 33 of the Draft Law.</p> <p>1. The original Part 1 of Article 33 of the Draft Law defines local assemblies as “the main form of direct citizen participation”. In our opinion, no form should be distinguished as the main form, because the choice of the form depends on specific goals, objectives and ways to attain them.</p> <p>Even if the text of Article 33 refers to the frequency of using one form or another, it is also the prerogative of choice for citizens to take because it is difficult to predict which form will be used more often and which one less often.</p> <p>Part 2 of Article 1 of the Draft Law also mentions local assemblies as one of the forms (not the main one!) for citizens to exercise local self-government.</p> <p>2. We suggest making the following changes in Article 33 of the Draft Law:</p> <ul style="list-style-type: none"> ▪ Expand the circle of subjects who have the right of initiative in calling local assemblies, adding also the Council chair, presidium and standing commissions; ▪ Reduce from 10 to 2 percent the number of citizens who can realize their initiative for calling local assemblies. The right to determine a specific number of citizens should be given to Councils; ▪ Make the respective amendments in the Law of the Republic of

	<p>The assembly is legally qualifying if it is attended by at least 25 percent of citizens who are older than 18 and permanently reside in the respective territory or at least two thirds of their authorized representatives.</p> <p>3. Representatives of state organs, enterprises, organizations and insitutions can participate in the assembly with a deliberative voice. The participation of representatives of the respective Council and executive committee (local administration) in local assemblies shall be mandatory.</p> <p>4. The secretary of the assembly and its counting commission shall be elected by the respective local assembly. The assembly shall take minutes.</p> <p>5. Local assemblies shall be financed by the local budget.</p> <p>6. The decision of the local assembly shall be considered adopted when more than one half of participants vote for it.</p> <p>7. Decisions adopted at the local assembly which contain proposals and recommendations on local issues shall be considered at Council or executive committee (local administration) sessions. The results of the consideration and the respective decisions shall be communicated to citizens.</p> <p>8. The procedure for initiating, convening and holding local assemblies as well as the authority of local assemblies shall be regulated by the Law of the Republic of Belarus “On National and Local Assemblies”, this Law, Charter of territorial community of citizens (hramada) and Council Rules of Procedure.</p>	<p>Belarus “On National and Local Assemblies”.</p> <p>3. The issues which are discussed at local assemblies require the presence of representatives of the respective Council and executive committee.</p> <p>4. This suggested norm is in line with Article 12 of the Law of the Republic of Belarus “On National and Local Assemblies”.</p> <p>5. We suggest that local assemblies should be financed from local budgets, including those local assemblies which are organized at the initiative of citizens;</p> <p>6. Decisions are taken by a simple majority.</p> <p>7. The suggestion here is to officially recognize the legal status of decisions taken at local assemblies (in particular, that they have to be considered at Council or executive committee sessions, that they should be taken into account when Council, executive committee or local administration takes related decisions, that citizens should be informed about the decisions taken by Councils, executive committees or local administration following local assemblies, etc.)</p> <p>8. We suggest that local Councils should have their own right to determine the procedures for initiative, convening and holding local assemblies and their authority. They would take the respective decisions on the basis of their specific conditions and this right would be reflected in the Charters of territorial communities of citizens (hramadas) and Council Rules of Procedure.</p>
<p>Article 34. Local Referendum</p> <p>1. Local referenda can be held to resolve issues which are of utmost importance for the population of the respective administrative-territorial units and which fall within the authority of the respective Councils and executive and regulatory organs.</p>	<p>Article34. Local Referendum</p> <p>1. Local referendums can be held to resolve local issues which fall within the authority of the respective Councils, executive committees and local administration.</p>	<p>1. We suggest excluding from Part 1 of Article 34 the following phrase: “which are of utmost importance for the population of the respective administrative-territorial units”, since a) it is not clear which issues are of utmost importance and which criteria should be used to find out; and b) Article 126 of the Election Code allows the regional and Minsk City justice authorities to conclude that any issue placed on the referendum is of no “utmost importance” and reject the application for the referendum. Thus, it turns out that it is justice authorities (and not citizens!) decide which issues are of “utmost</p>

<p>2. Procedures for holding local referenda as well as a list of issues which cannot be put on a local referendum shall be determined by law.</p>	<p>2. The initiative of citizens on local referendums shall be expressed in a proposal submitted by at least five percent of eligible voters residing in the respective territory.</p> <p>3. Referendum decisions can be mandatory or consultative. The list of issues on which decisions have to be mandatory shall be established in the Charter of territorial community of citizens (hramada) or Council Rules of Procedure.</p> <p>4. The referendum decision if it is of mandatory nature shall be fulfilled in the territory of the respective administrative-territorial unit and shall not be subject to approval by any other state organs, organs of local government or self-government or by their officials.</p> <p>5. The Council shall call the date of the local referendum within 30 days after the required documents are submitted by the initiative group of citizens who call for a local referendum. In case the local referendum is not called by the Council within the specified period of time, the referendum shall be called by a court decision on the basis of a complaint filed with the court by the initiative group of citizens.</p> <p>6. The procedures for holding local referendums as well as the list of issues that cannot be placed on the local referendum shall be determined by law.</p>	<p>importance”.</p> <p>This emasculates the very idea of the local referendum as the right of citizens to take decisions on local issues.</p> <p>Therefore, if an initiative group of citizens observes all the necessary norms and procedures as required by law, the referendum should be held on any issue! (except for the issues listed in Parts 3 and 4 of Article 112 of the Election Code).</p> <p>Citizens (and not justice authorities!) can themselves decide whether one particular issue is of “utmost importance” for them or not.</p> <p>2. We suggest reducing from 10 to 5 percent the number of signatures necessary for the realization of the initiative of citizens for a local referendum. This will simplify this form of direct participation and will make more real and accessible.</p> <p>3-4. Article 127 of the Election Code gives Councils the right to independently decide on the legal force of the local referendum. It is suggested that Charters of territorial Communities of Citizens (Hramdas) or Council Rules of Procedure should have a list of issues on which decisions taken at referendums are mandatory.</p> <p>5. The Election Code as well as Article 34 of the Draft Law does not envisage a situation in which the Council refuses to call a local referendum, despite the fact that all the necessary procedures have been fulfilled. Therefore, we suggest including this Part 5 which would regulate the above-described situation.</p> <p>Part 2 of Article 34 of the Draft Law remains without changes.</p>
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Article 35. Citizen Initiative for Council Decisions

1. Citizens shall be entitled to submit to the Council draft decisions on local issues in accordance with established procedures as well as

Article 35. Law-Making Initiative of Citizens and Non-Governmental Organizations Concerning Local Affairs

1. With respect to the issues which fall within the authority of Councils, executive committees or local administration, citizens and

1. The original Part 1 of Article 35 **does not indicate who determines the procedures for the realization of law-making**

to submit justified proposals on the need to adopt, change, amend, interpret, suspend, invalidate or abolish Council decisions or their individual provisions in accordance with legal procedures for such cases.

non-governmental organizations shall be entitled to submit, in accordance with procedures established by the Charter of territorial community of citizens (hramada) or Council and executive committee Rules of Procedure, to the Council, executive committee and local administration draft decisions or motivated proposals concerning the need to adopt, amend, interpret, suspend, invalidate or abolish decisions of the Council or executive and regulatory organs as a whole or in parts.

2. The law-making initiative of citizens and non-governmental organizations concerning local affairs shall be supported by -

- 500 people, for the discussion of draft regulatory acts of regional-level Councils and executive committees (including in the city of Minsk);
- 250 people at the basic level and for local administrations in city districts;
- 50 people at the primary level.

3. Draft decisions submitted by citizens and non-governmental organizations to Councils, executive committees or local administrations as part of their law-making initiative shall be subject to mandatory consideration at an **open session** of the Council, executive committee or local administration with the participation of representatives of citizens and non-governmental organizations; the results of the consideration shall be published in the media.

initiative of citizens and non-governmental organizations and in which regulatory acts they are described. We suggest filling this gap by introducing the respective amendments into this part of Article 35. **We suggest that non-governmental organizations should be given the right of law-making initiative.**

In accordance with Article 1 of the Law of the Republic of Belarus “On Non-Governmental Organizations”, non-governmental organizations are voluntary associations of citizens who are associated in accordance with procedures established by law on the basis of common interests for the common realization of civil, social, cultural and other rights. In essence, law-making initiatives of NGOs are the same initiative of citizens. As a rule, these citizens are socially active, competent in their fields of activity and organized, which implies their active participation in the management of local affairs, including through law-making initiatives.

We suggest that the right to law-making initiative of citizens should be expanded in Article 35 of the Draft by extending it also over the issues which fall within the authority of executive and regulatory organs and local administrations in city districts.

The original Article 35 only stipulates that the right of citizens to law-making initiative refers only to issues which fall within the authority of Councils. Such an approach **restricts this right to a very narrow and often irrelevant circle of issues**, bringing the effectiveness of this instrument to a very low level. Most issues which concern the everyday life of citizens are covered by the authority of executive and regulatory organs as well as local administrations in city districts.

2. The actual absence of law-making initiative from citizens is largely a result of the need to collect a large number of signatures to support the law-making initiative.

In order to involve citizens in the participation in local affairs, we suggest reducing the required number of signatures, making this condition more realistic and the respective procedure – easier and more understandable.

3. Paragraph 2 of Article 35 suggests making it more explicit that draft decisions submitted by citizens as part of their law-making initiative should be considered at an **open session**. The same approach is taken in Article 31 of the current local self-government law, which is **in line with the principle of openness and transparency**.

<p>2. Draft decisions on local issues which are submitted by citizens to the Council shall be subject to mandatory consideration at a Council session attended by representatives of the citizens and the results of such consideration shall be published in the local media.</p>	<p>4. The refusal of the Council, executive committee or local administration to consider draft decisions or motivated proposals submitted to them as part of law-making initiative of citizens and non-governmental organizations can be appealed in court.</p>	<p>4. Citizens should have the right to appeal against the refusal to consider draft decisions submitted by citizens as part of their law-making initiative.</p>
<p>Article 36. Citizen Participation in Financing and/or Reimbursing Budget Spending for the Purposes Designated by Citizens</p> <p>1. When decided by the local assembly or by the territorial public self-government organ, collection of resources for financing and/or reimbursing the spending of the respective local budget for the purposes designated by the local assembly or territorial public self-government organ (hereinafter referred to as self-finance fund) can be organized in the territory of villages, towns or cities of district subordination.</p> <p>2. Self-finance fund shall be included into the respective local budget and spent exclusively for the purposes designated by the local assembly or territorial public self-government organ.</p> <p>3. Local assemblies or territorial public self-government organs shall set the size of contributions to the self-finance fund, determine the terms of their payment with due regard to Paragraph 4 of this Article, identify categories of citizens who will pay the contributions, and examine and approve the report of the executive committee on the use of self-finance resources.</p> <p>4. The payment of contributions to the self-finance fund shall be voluntary and shall be conducted within the term determined by the local assembly or territorial public self-government organ but before the first of December of the current year at the latest. The payments shall be collected by the respective primary-level executive committee.</p> <p>5. The primary-level executive committee shall make sure that the self-finance fund is spent for the execution of activities designated by the local assembly or territorial public self-government organ as well as shall report to the local assembly or territorial public self-government organ on the use of these resources.</p>	<p>Article 36. Citizen Participation in Financing Expenditures to Achieve Goals Designated by Citizens</p> <p>1. If decided at a local referendum or local assembly in the territory of villages, towns or cities of district subordination, money can be collected on the basis of self-taxation to finance expenditures to achieve goals designated by citizens.</p> <p>2. Resources collected on the basis of self-taxation are one-time payments of citizens made to contribute to the resolution of local issues. These resources are outside local budgets and not included into them.</p> <p>3. Self-taxation shall be voluntary and shall be done by citizens within the period of time specified by the respective local referendum or local assembly. The collection, storage in bank accounts and use of the payments shall be done by responsible persons appointed or elected by the local referendum or local assembly.</p> <p>4. Local referendum or local assembly shall set the size of payments under self-taxation, determine the period of payment and categories of citizens who make the payments, consider and endorse reports of special persons responsible for the formation and use of resources collected on the basis of self-taxation.</p> <p>5. Supervision over the intended use of resources collected on the basis of self-taxation shall be done by the respective primary-level Council.</p>	<p>The wording of Article 36 suggested by the Lev Sapieha Foundation reflect the following fundamental principles: voluntary self-taxation; use of resources collected from self-taxation outside local budgets; properly managed process of self-taxation; and responsibility for the use of resources collected on the basis of self-taxation.</p> <p>The need to make self-taxation voluntary comes from the fact that people have different levels of income and have different capacities to pay. Therefore, there should be differentiation in payments and the assumption that the richer will pay more, while the poor will pay less. This is also in line with the principle of justice.</p> <p>The extra-budgetary nature of self-taxation can prevent possible attempts of local authorities to use these resources as an additional source of budget revenues and use them to cover the budget deficit. Therefore, it is necessary to isolate self-taxation from local budgets.</p> <p>Proper management of the process of self-taxation will be ensured by the election of a special person at the local assembly who will be responsible for the collection, storage and intended use of these resources.</p> <p>Supervision over the proper use of the resources will be ensured by giving this function to an external actor, that it, the respective Council at the primary level.</p>

<p>6. The part of the self-finance fund which is not used in the current financial year shall remain on the account of the respective local budget and shall be spent the following financial year for the same or other purposes designated by the local assembly or territorial public self-government organ.</p> <p>7. Supervision over the allocation and intended use of resources from the self-finance fund shall be exercised by basic-level executive committees.</p>		
<p>MISSING</p>	<p>Article 36¹. Public Hearings</p> <p>1. Public hearings are conducted for the discussion of draft regulatory acts concerning local affairs which fall within the authority of the Council, executive committee or local administration.</p> <p>2. Public hearings are conducted at the initiative of the Council, Council Presidium, Standing Commissions, deputy groups and associations, executive committee, executive committee chair, head of local administration, and at the initiative of citizens and non-governmental organizations.</p> <p>The initiators shall take part in the public hearings along with representatives of the Council and executive committee (local administration).</p> <p>3. The initiative of citizens or non-governmental organizations concerning the conduct of public hearings shall be supported by –</p> <ul style="list-style-type: none"> ▪ 500 people, for the discussion of draft regulatory acts of regional-level Councils and executive committees (including in the city of Minsk); ▪ 250 people at the basic level and for local administrations in city districts; ▪ 50 people at the primary level. <p>4. Public hearings which are conducted at the initiative of citizens and non-governmental organizations shall be called by the head of the organ which is responsible for the consideration and adoption of the respective regulatory acts.</p> <p>5. The following documents and issues shall be placed on public hearings in any case:</p> <p>5.1. Draft Charter of territorial community of citizens (hramada) and Council Rules of Procedure as well as draft regulatory acts intended to amend the above-mentioned Charter or the Rules;</p> <p>5.2. Draft local budget and its execution report;</p> <p>5.3. Draft programs of socioeconomic development, territorial programs and concepts (or draft activity plans at the primary level) which are indicated in Article 17 (Paragraphs 1.2 and 1.4) and Article 41 (Parts 1 and 2).</p> <p>5.4. Issues concerning the changes of borders of administrative-</p>	<p>We suggest adding this article 36¹ on public hearings to Chapter 4 of the Draft Law.</p> <p>Public hearings are one form of direct exercise of local self-government by citizens.</p> <p>The special feature of public hearings as a form of direct exercise of local self-government by citizens is that citizens participate in the discussion of draft regulatory acts on local issues which are prepared by both organs of local government and self-government and citizens as part of their law-making initiative.</p> <p>Public hearings are also conducted to realize the principle of openness and transparency in the work of Councils and executive committees (local administrations).</p> <p>Experts can be invited by the initiators of public hearings to take part in the discussions.</p>

	<p>territorial units, formation or abolition of administrative-territorial units, movement of administrative centers and changes in the names of places.</p> <p>The list of issues which are mandatory for public hearings can be expanded by a Council decision.</p> <p>6. Public hearings shall be conducted in an open and transparent manner.</p> <p>The initiators of public hearings shall inform citizens about their time and place at least 15 days in advance and shall provide the possibility to study the draft regulatory act in question as well as take other measures to facilitate citizen participation in the public hearings.</p> <p>The results of public hearings shall be made public.</p> <p>7. The results of public hearings shall be taken down in the written form and shall be considered by Councils and executive committees (local administrations) while making related decisions.</p> <p>8. Procedures for the organization and holding of public hearings shall be determined by the Charter of territorial community of citizens (hramada) or Council Rules of Procedure.</p>	
<p>MISSING</p>	<p>Article 36². Polling Citizens on Local Issues</p> <p>1. Polling of citizens, including through the Internet, shall be conducted to study public opinion and take it into account while taking decisions of Councils, executive committees, local administrations or their officials. Polls can be conducted in the entire territory of the administrative-territorial unit or in one part of it.</p> <p>2. The right of initiative for polling shall belong to Council Presidium, Council Chair, Standing Commissions, deputy groups or associations, executive committee chair, head of local administration and organs of territorial public self-government.</p> <p>3. The decision to conduct polls of citizens shall be taken by the Council Presidium or, at the primary level, by the Council Chair. The decision shall contain the following information:</p> <ul style="list-style-type: none"> ▪ Date and period of the poll; ▪ Formulation of questions included into the poll; ▪ Polling methodology; ▪ Questionnaire. <p>4. Citizens shall be informed about the poll at least 15 days in advance.</p> <p>5. Financing of activities related to the conduct of the poll shall be done from the local budget.</p> <p>6. Poll results shall be of consultative nature.</p> <p>7. Procedures for conducting polls shall be determined by the Charter of territorial community of citizens (hramada) of Council Rules of Procedure.</p>	<p>We suggest adding this article 36² on public opinion polls to Chapter 4 of the Draft Law.</p> <p>Polls of citizens on local issues are one of the progressive forms of direct democracy. The current Belarusian legislation does not provide for this form of direct democracy.</p> <p>Similar polls but narrower in terms of their topics (mostly related to the general social and political situation in the country) are regulated by some resolution of the Council of Ministers of the Republic of Belarus (№707 from 31.05.2002; №1174 from 29.08.2002; №1240 from 08.11.2005).</p> <p>The inclusion of provisions on polls as one of the forms of direct democracy into the local self-government law is very relevant and has practical interest for medium and large cities. Such cities are developing quickly, with a lot of construction, traffic growth, with problems related to communications and infrastructure, land use, territorial planning, trade, etc. Therefore, consulting citizens on those issues can be useful and effective in terms of the quality of decision-making.</p> <p>We believe that polls could also provide support for the Councils and executive committees in managing issues of local significance.</p> <p>Polls of citizens as a form of direct democracy are actively used in other countries. In Russia, for example, polls are formalized in the legislation.</p>
<p>MISSING</p>	<p>Article 36³. Citizen Appeals to Organs of Local Government and Self-Government</p>	

	<ol style="list-style-type: none"> 1. Citizens shall have the right of individual and collective appeals to organs of local government and self-government. 2. An appeal is an individual or collective proposal, statement or complaint of a citizen or citizens to organs of local government and self-government, done orally or in written. 3. Officials of organs of local government and self-government are obliged to provide a written reply on the matter of the appeal within one month after it is received. 4. Procedures and periods of examination for citizen appeals to organs of local government and self-government shall be determined by the Law of the Republic of Belarus “On Citizen Appeals”. 5. Officials of organs of local government and self-government shall bear responsibility for the failure to comply with the legislation of the Republic of Belarus on citizen appeals. 	<p>We suggest adding this article 36³ on citizen appeals to organs of local government and self-government to Chapter 4 of the Draft Law. Issues related to citizen appeals are regulated by the Law of the Republic of Belarus “On Citizen Appeals”.</p> <p>Nevertheless (similarly to Article 33 on local assemblies and Article 34 of local referendums, whose provisions are also duplicated in Belarus’ Law “On National and Local Assemblies” and in the country’s Election Code), we suggest adding this Article 36³ on citizen appeals to Chapter 4 of the Draft Law.</p> <p>This will help to emphasize the right of citizens to appeal to local authorities as a form of direct exercise of local self-government by citizens.</p>
<p>Article 37. Other Forms of Citizen Participation in State and Public Affairs</p> <p>In addition to the forms of direct citizen participation in state and public affairs as provided for in this Law, local self-government can be also exercised in other forms which do not contradict the legislation.</p>	<p>Article 37. Other Forms of Direct Exercise of Local Self-Government by Citizens</p> <p>Along with the forms of direct exercise of local self-government by citizens which are stipulated by this Law, citizens can exercise local self-government in other forms provided for by the legislation of the Republic of Belarus (local elections, recall of deputies, mass events) and which do not contradict the legislation of the Republic of Belarus.</p>	<p>We suggest making explicit other forms of direct exercise of local self-government by citizens in the text of Article 37.</p> <p>The norms regulating local elections, recall of deputies, organization and conduct of mass events are formalized in other laws of the Republic of Belarus and often are not perceived as forms of direct exercise of local self-government by citizens.</p>
<p>Article 59. Legality</p> <ol style="list-style-type: none"> 1. Decisions of Councils and executive and regulatory organs, orders of their heads as well as decisions of organs of territorial public self-government, local referenda and local assemblies shall be in accordance with the legislation. 2. Regulatory acts which are drafted or adopted by Councils and executive and regulatory organs shall be subject to mandatory legal examination in accordance with the procedures established by law. 3. Decisions of Councils which are not in accordance with the law shall be cancelled by upper-level Councils, the Council of the Republic of the National Assembly of the Republic of Belarus as well as suspended by the President of the Republic of Belarus. In case of the suspension of such a Council decision, the President of the Republic of Belarus shall submit a request to cancel the decision to the Council at the upper-level with regard to the one that made the decision or to the Council of the Republic of the National Assembly of the Republic of Belarus. 	<p>Article 59. Legality</p> <p>Paragraph 1 without changes</p> <p>Paragraph 2 without changes</p> <ol style="list-style-type: none"> 3. Council decisions which are not in line with legislations shall be cancelled by upper-level Councils, Council of the Republic of the National Assembly <u>on the basis of a court decision (ruling)</u> and can be suspended by the President of the Republic of Belarus. <p>In case of the suspension of such a Council decision, the President of the Republic of Belarus shall submit a request to cancel the decision <u>on the basis of a court decision (ruling)</u> to the Council at the upper-level with regard to the one that made the decision or to the Council of the Republic of the National Assembly of the Republic of Belarus.</p>	<p>We suggest adding one more procedure into the process of cancelling decisions of local authorities and their heads in Paragraphs 3-6 of Article 59 of the Draft Law, in particular, obtaining a court decision before cancelling decisions of local authorities. The court would rule on the legality of Council or executive committee acts and acts of their heads.</p> <p>This will create additional guarantees for the activities of local authorities and their heads, and this does not contradict the Constitution or other legislative acts of the Republic of Belarus.</p> <p>This procedure is similar to the one requiring a court decision to determine the legality of the activities of the House of Representatives (Article 116 of the Constitution) or local council of deputies (Presidential Decree #14 from 26.06.2008).</p>

Orders of Council chairs which are not in accordance with the law shall be cancelled by the same or upper-level Councils as well as suspended by the President of the Republic of Belarus. In case of the suspension of such a Council chair decision, the President of the Republic of Belarus shall submit a request to cancel the decision to the same Council or to the Council at the upper-level with regard to the one whose chair made the decision in question.

4. Decisions of executive committees which are not in accordance with the law shall be cancelled by the respective Councils, upper-level executive committees or the President of the Republic of Belarus.

Decisions of local administrations which are not in accordance with the law shall be cancelled by upper-level executive committees or the President of the Republic of Belarus.

Decisions of executive committee chairs which are not in accordance with the law shall be cancelled by the respective Councils, upper-level executive committees, chairs of upper-level executive committees or the President of the Republic of Belarus.

Decisions of heads of local administrations which are not in accordance with the law shall be cancelled by upper-level executive committees, chairs of upper-level executive committees or the President of the Republic of Belarus.

5. Decisions of organs of territorial public self-government which are not in accordance with the law or the charters of these organs of

Orders of Council chairs which are not in accordance with the law shall be cancelled by the same independently or by upper-level Councils on the basis of a court decision (ruling) as well as suspended by the President of the Republic of Belarus. In case of the suspension of such a Council chair decision, the President of the Republic of Belarus shall submit a request to cancel the decision to the same Council or, on the basis of a court decision (ruling), to the Council at the upper-level with regard to the one whose chair made the decision in question.

Paragraph 1 without changes

Part 2 Paragraph 4 without changes

Decisions of executive committee chairs which are not in accordance with the law shall be cancelled by the respective Councils within the limits of their authority or in other cases on the basis of a court decision (ruling) by upper-level executive committees, chairs of upper-level executive committees or the President of the Republic of Belarus.

Part 4 Paragraph 4 without changes

5. Decisions of organs of territorial public self-government which are not in accordance with the law or the charters of these organs of

For Part 1 of Paragraph 3 we suggest including the norm allowing for the possibility to cancel Council decisions by other organs of national or local government only on the basis of a court decision or ruling. Depending on the nature (regulatory or individual) of the legal act of the Council, rulings are issued by the Constitutional Court or by a court of general jurisdiction.

This is an additional guarantee for the independence of Councils who represent the interests of citizens who elected them.

We suggest making more specific the norm of Part 2 of Paragraph 3 concerning the cancellation of orders by Council chairs. Since the chair is an organ and an official of the Council, the Council should have the right to cancel or change his orders independently. At the same time, Councils of other territorial levels and the President of the Republic of Belarus should take the decisions concerning the orders of Council chairs **only on the basis of a court decision (ruling)**.

For Parts 1 and 3 of Paragraph 4 we suggest including the norm regulating the procedure of cancelling decisions of executive committees. Since Councils and executive committees are organizationally located in different systems of local authorities and have legally different authority, Councils should have the right to cancel only those decisions of executive committees which have been taken at the instruction of the Council. In other cases the Council should act only **on the basis of a respective court decision (ruling)**.

For Paragraph 5 we suggest including the norm about the possibility for the Council to cancel decisions of organs of territorial public self-

<p>territorial public self-government, or the decisions of local assemblies shall be cancelled by the local assembly or respective Council.</p> <p>6. Decisions of Councils and executive and regulatory organs which restrict or violate the rights, freedoms or legitimate interests of citizens as well as in other cases which are stipulated by the legislation can be appealed in court in accordance with the civil and economic procedures law.</p>	<p>territorial public self-government, or the decisions of local assemblies shall be cancelled by the local assembly or respective Council <u>on the basis of a court decision (ruling).</u></p> <p>6. Decisions of Councils and executive and regulatory organs (both regulatory and individual) and orders of their heads which restrict or violate the rights, freedoms or legitimate interests of citizens as well as in other cases which are stipulated by the legislation can be appealed in the <u>respective court depending on the legal content of the legal act or nature of the issue in question.</u></p>	<p>government only on the basis of a respective court decision (ruling). This is needed because organs of territorial public self-government are not organs of the Council but independent non-profit organizations.</p> <p>For Paragraph 6 we suggest including the norm which allows citizens to use the right to court protection with regard to Council and executive committee decisions in a full measure, if such decisions violate their rights or freedoms.</p> <p>At present, despite the constitutional right to go to court with complaints against Council and executive committee decisions (Part 3 of Article 122 of the Constitution), courts are guided in their actions by resolutions of Plenary Sessions of Supreme Court and Supreme Economic Court from December 2002 and refuse to consider complaints against 1) decisions of local Councils (regardless of the legal content of the respective decision); and 2) regulatory decisions of executive committees and local administrations. This is a violation of the constitutional principle of court protection for citizens (Article 60 of the Constitution).</p>
<p>Article 64. Responsibility of Local Government and Self-Government Organs</p> <p>1. Organs of local government and self-government shall bear responsibility for the legality of their decisions.</p> <p>2. The damage inflicted on organizations or citizens as a result of unlawful decisions, action or inaction of local government and self-government organs or their officials shall be reimbursed by them in accordance with civil legislation.</p>	<p>Article 64. Responsibility of Local Government and Self-Government Organs</p> <p>Organs of local government and self-government shall bear responsibility for the legality of their decisions.</p> <p>1.1. Responsibility before citizens who elected deputies of the local Council in case of loss of confidence shall be expressed in recalling the deputy or deputies of the local Council and in not electing specific persons for the following tenure of the Council.</p> <p>1.2. Responsibility before the state for the violation of legislation shall be in the right of the Council of the Republic of the National Assembly to terminate the mandate of the Council early on the basis of a ruling by the Constitutional Court about serious and systematic violations in the activities of the Council in question;</p> <p>2. The damage inflicted on organizations or citizens as a result of unlawful decisions, action or inaction of local government and self-government organs or their officials shall be reimbursed and <u>the violated rights of organizations and citizens shall be restored</u> by them in accordance with civil legislation.</p>	<p>For Part 1 we suggest giving a more detailed definition of the responsibility of local authorities for the legality of their decisions by describing different types of responsibility.</p> <p>In Paragraph 1.1. we suggest describing responsibility of the Council before citizens for the loss of confidence. This can be a reason for early termination of deputy mandate by initiating the procedure of recalling deputies or not voting for them any more in the next elections.</p> <p>In Paragraph 1.2. we suggest describing responsibility of the Council before the state for the serious and regular violations of the law. This can be a reason for the early termination of Council mandate (Council dissolution) by the Council of the Republic of the National Assembly.</p> <p>For Part 2 we suggest adding the norm which would also provide for the restoration of violated non-property rights of organizations and citizens in addition to the reimbursement of material damage caused by unlawful decisions of local authorities or their action or inaction.</p>

PART 3

CONCLUSIONS AND PROPOSALS

Conclusions

1. During the presentation of this Draft Law in the House of Representatives of the Belarusian National Assembly, its initiators told the lawmakers that the main goals of the law were the following ones:

- Simplification and systematization of legislation in the field of local self-government;
- Comprehensive regulation of relations in this field in one legislative act.

Thus, **the initiators of the Draft Law did not ask the developers of the draft to approximate its norms and concepts to the principles and norms of the European Charter of Local Self-Government (the Charter)**. Such position calls into question the seriousness of Belarus' intention to join the Council of Europe, as is repeatedly announced by the country's leadership.

In case this Draft Law is accepted, it will have substantial conceptual and practical contradictions with the principles and norms of the Charter. Moreover, in comparison with the law on local self-government currently in force in Belarus, some articles of the suggested new law can strengthen the role of the state and centralization of government as well as centralization of decision-making processes at the local level, which can be a source of additional contradictions with the Charter.

For example, in accordance with Article 2 of the current Belarusian Law "On Local Government and Self-Government in the Republic of Belarus", local self-government in its activities proceeds from the interests of citizens. Part 1 of Article 1 of **the Draft Law suggests that the first place should be given to the state interests and only afterwards should it refer to the interests of citizens.**

Paragraph 8 of Article 5 of the current law declares the principle of transparency as one of key principles, according to which, for example, every citizen can be given the possibility to familiarize himself or herself with the documents and materials that can affect his or her rights and legitimate interests. The Draft Law (Paragraph 9 of Article 3) takes away this possibility from citizens, which puts **substantial restrictions on the rights of citizens and impedes the realization of the principle of transparency.**

2. Despite the great importance of this Draft Law for every citizen, there has been **no wide public discussion of this document**, not even among members of local councils, not to mention the general public.

3. **One of the positive things in the new Draft Law is that it now includes an article about associations of councils (Article 7), which can only be welcomed and supported.** The process of developing and implementing this article (adoption of relevant regulations, establishment of an association, formulations of its goals and objectives, etc) in accordance with the principles and norms of the Charter will contribute to the development of genuine and effective local self-government in Belarus.

4. **Another positive thing** suggested in the Draft Law (Articles 42-44 of Chapter 5) is the **division of authority of executive committees depending on the level of government.** This approach is in line with Paragraph 3 of Article 4 of the Charter.

5. On the whole, the Draft Law is not aimed at the development of genuine local self-government in Belarus. **Councils as well as organs of territorial public self-government and other forms of direct democracy are given a merely formal role in order to create only the appearance of democratic elements.**

Proposals

Taking into account the prospect of Belarus' accession to the Council of Europe and, as a result, the need for signing and ratifying the Charter on the part of Belarus, we recommend the following steps to be taken:

1. Make an official approach to the Congress of Local and Regional Authorities of the Council of Europe and ask its experts **to make an assessment of the Belarusian legislation in the field of local self-government and conclude whether it is in line with the principles and norms of the Charter** and produce a respective report on the matter;
2. In order to improve the institutional mechanisms of government, the second proposal is to **develop a uniform systemic approach to the evolutionary development of local self-government**. The absence of such an approach negatively affects the development of respective legislation as well as the practical implementation of some national and regional programs and the improvement of the country's administrative-territorial arrangement.

In particular, the implementation of the national program of rural development resulted in a situation where about one-third of agrotowns are now located in places which are not administrative centers of village councils. There has been already reform of administrative-territorial division in some regions (Vitebsk region) and similar reforms are planned in other regions (Mogilyov region), but at the same time, there is no uniform and officially endorsed approach to this issue. In some cases towns and their respective surrounding districts are merged and in some situations the respective Councils are abolished while executive committees are still operational (Borisov, Zaslavl).

One uniform, general approach to the development of genuine and effective local self-government in Belarus will help avoid such mistakes, improve regulatory environment, **define the long-term vision for the role of state institutions and civil society institutions (including territorial communities of citizens) in the organization of public life at the local level**.

3. In accordance with Paragraph 3 of the Resolution of Belarusian Congress of Local Council Members, dated December 29, 2000, the third proposal is **develop and adopt a concept of reform of local government and self-government in the Republic of Belarus**, making sure that it is based on a model which is in line with the principles and norms of the Charter;

4. **To implement this concept, develop and officially endorse a list of necessary activities**, including the development of the respective regulatory framework (including a draft law on local self-government in a new wording) and the creation of an economic basis for local self-government, **make a timetable for their implementation and designate those responsible for their implementation**.

