

"مراجعة الأطر والأدوات التنظيمية"،

. Regulatory Reform الإصلاح التنظيمي

- مداخل لفهم مدلول الإصلاح :
- المراجعة Review
- الضبط أو التقويم Fixed
- التغيير Change
- الاستغناء عنه dump

الإدارة الرشيدة والإصلاح التنظيمي ودولة القانون

Good Governance - **The rule of law**

سيادة القانون أساس الحكم - (الدستور المصري- الباب الرابع)

المطابقة القانونية (الالتزام الحرفي بالنص التنظيمي)
المشروعية (احترام الإدارة لأحكام القوانين واللوائح)
الملائمة (مراعاة ظروف كل حالة – السلطة التقديرية)

الإدارة الرشيدة

• الأدوات و الأطر التنظيمية – القواعد التنظيمية الفاعلة

قاعدة عدم جواز الاعتذار بالجهل

- Un Etat de droit , Certes, mais un droit dans quel état? Disperse, foisonnant, complexe, et parfois incompréhensible, le principe selon lequel: nul n'est censé ignorer la loi reste en partie lettre morte si la règle de droit est obscure ou difficilement accessible pour les usages.

• سيادة القانون حتماً، ولكن قانون بأي حال؟ نصوص متفرقة، زائدة، ومعقدة، وأحياناً غير مفهومة؟؟؟؟؟.... أن مبدأ عدم جواز الاعتذار بالجهل يصبح في جزء منه حبراً على ورق إذا كان القانون غامضاً أو صعب الفهم من المخاطبين به.

من هنا يبدأ فهم دور الإدارة الرشيدة والإصلاح
التنظيمي

Egyptian Legal System

First level

constitution 1971
(El destour)

Enacted through an
establishing assembly
appointed by the president

Invitation by the
president

Suggestion by a special
majority by parliament

Proposed to a public
referendum for approval

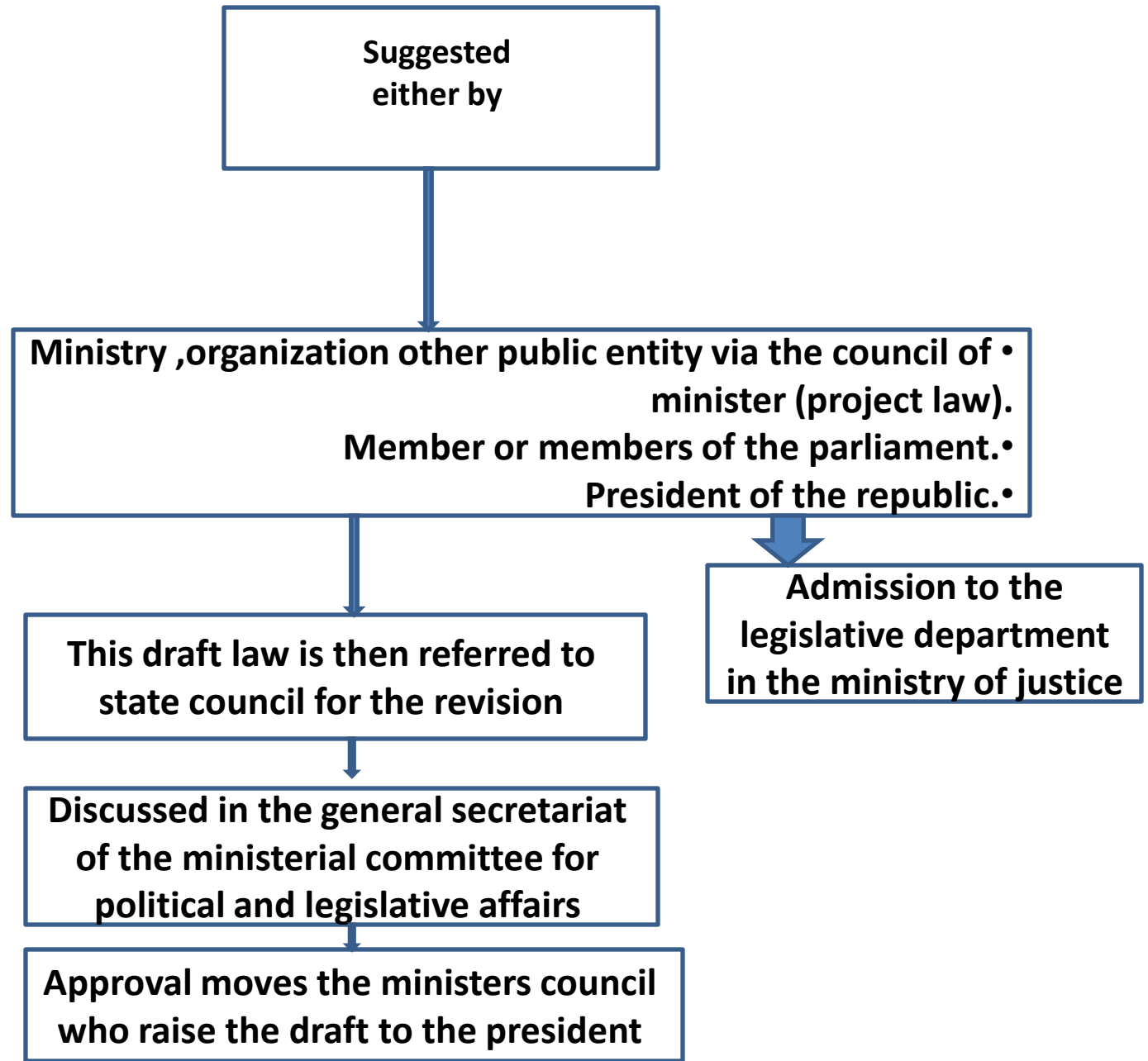
Second level

Law (elkanoun)

Third level

Executive regulations

Issued as prime
ministerial
,ministerial, governor
decrees as
implementation of
laws



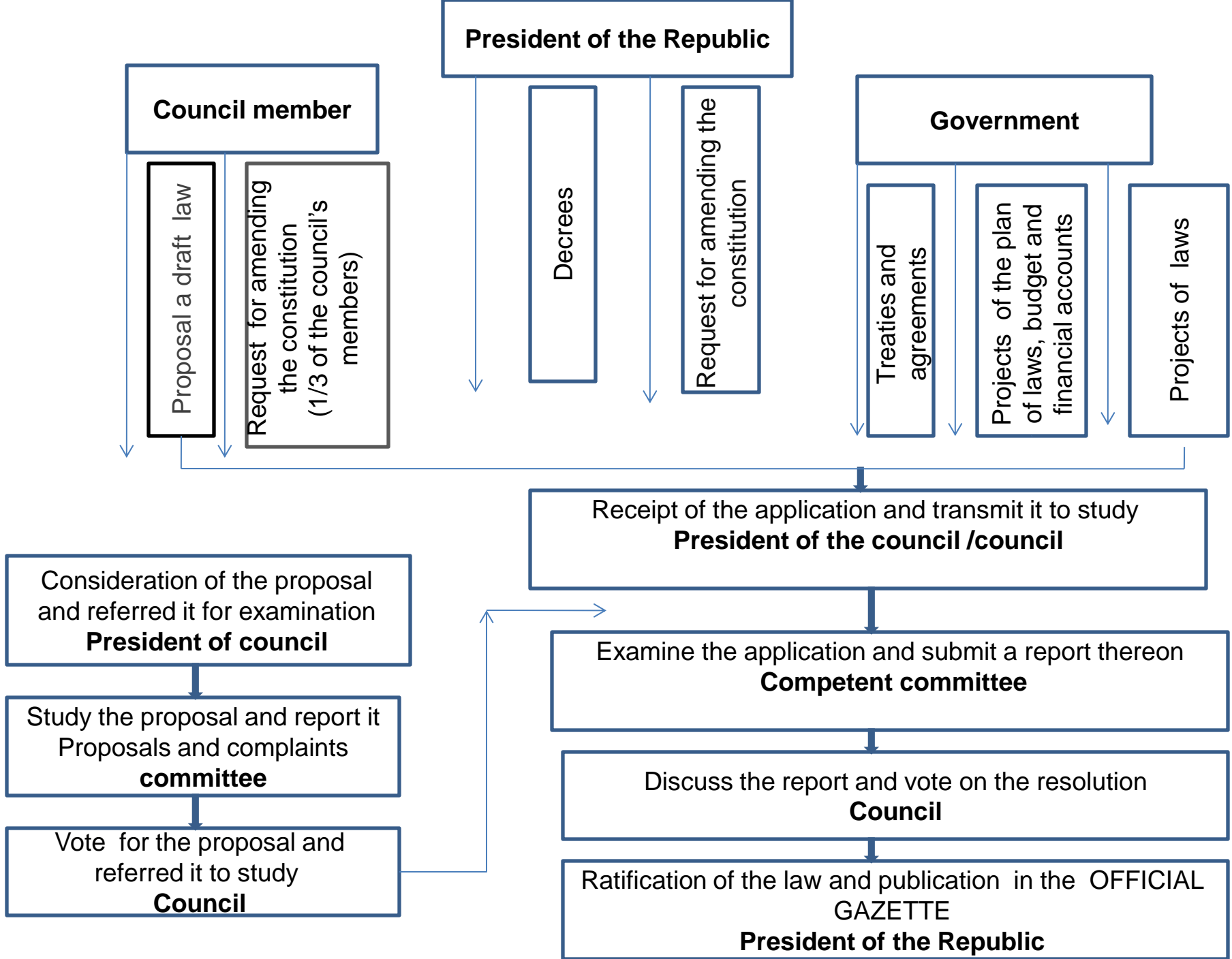
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graph TD; A[President issues a decision with the project that is sent to the shura council] --> B[Discussed by the competent committee in the council and when it is approved is sent to the people's assembly]; B --> C[People's assembly votes to pass and approve as a law]; C --> D[President for signature];
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President issues a decision with the project that is sent to the shura council

Discussed by the competent committee in the council and when it is approved is sent to the people's assembly

People's assembly votes to pass and approve as a law

President for signature



The Egyptian legal system and quality of regulations

- It should be regarded that according to the Egyptian legal system, there are **three levels** of formal legislative instruments:
 - The constitution,
 - The law
 - The executive regulations.
- Other legislative instruments are present such as general, decrees promulgated by Ministers and Governors, circulars, general instructions, made by the head of a public institution, the competent authority.
- However these instruments must be in compliance with the higher legislations otherwise nullified and annulated by the administrative judiciary .(the hierarchic of norms principle).

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law

- The law (elkanoun) by the parliament through its houses (people's assembly, *shura* council).
- a draft law is suggested either by:
- The President of the Republic ,The concerned institution (Ministry, Organization, Other public entity via the council of ministers, also for same reasons, like subject importance, it may be a national comity, or joint groups), project-law .
- *member or members of the Parliament proposition-law,*
- approved the law project is send to the Peoples Assembly associated by a report.

Executive regulations

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- As for **Executive regulations**, such type of legislation is usually held by the legislative branch within the framework of checks and balances between the state powers.
- The laws generally grants the representatives of the executive branch the authority to enact such regulations since these regulations deal with specific issues and details that could be better considered by the executives.
- These regulations are issued as Prime Ministerial, Ministerial, Governor Decrees as implementation of law.
- The president of the State
 - The prime minister,
 - The minister
 - The governor
 - The competent authority
-

Quality control

This draft law is then referred to:

The legislative section of **the State Council for the revision** of its legal drafting and to examine its constitutionality, however this referral is not obligatory. Another route may be by its admission to the **legislative department** in the Ministry of Justice.

Finally, the draft law may be also discussed in the **general secretariat** of the Ministerial Committee for Political and Legislative affairs.

Afterwards the draft law is submitted to **the Ministerial Committee for Political and Legislative affairs** where the draft law is revised from all its aspects and upon approval moves to **the Ministers Council** who raise the draft to the President.

The President after receiving the draft law issues a decision with the project of the law (Bill) that is send to the **Shura Council**.

The project of the law is then discussed by the **competent committee** in the council and when it is

Political level of control

In the Peoples Assembly and after introducing the bill and conducting further discussions the bill is subjected to vote in order to pass as a law.

Within the Parliament (People's assembly, Shura council) the bill could be amended *re*-drafted, further explanations and hearings relevant to the bill can be held. In case of the absence of the Parliament the President of the Republic could enact laws that would be later subjected to the ratification of the Parliament on its first appearance. Finally, and after the bill is approved as a law by the Parliament it is send to the President for signature and it is issued as a law.

Mean while, *member or members of the Parliament proposition-law*, passé directly to the propositions and compliances committee, to examine its constitutionality and legality, then discussed by the **competent committee** in the council and when it is approved the law project is send to the Peoples Assembly associated by a report.

ملاحظات علي منظومة التنظيم

- اكتمال وكفاءة حلقات رقابة الجودة التنظيمية في مراحل المراجعة التشريعية وإعداد القوانين.
- تزايد الاتجاه نحو المشاركة المجتمعية، والتشاور، التقويم.
- عم وجود آليات واضحة – بالمقارنة- في مستوي اعداد الأطر والأدوات التنظيمية الاقل لوائح ، قرارات، منشورات، كتب دورية، تعليمات، أوامر إدارية، هي أركان البيئة القانونية للعمل الحكومي،
 1. عدم كفاية الموارد البشرية المؤهلة
 2. غياب الآلية المؤسسية علي مستوي الأجهزة الادارية
 3. - تجهيل دورات العمل في اعداد الأطر والأدوات التنظيمية
 4. - الافتقار الي الأدلة الإجرائية والتنظيمية
 5. - عدم شيوع ثقافة تقييم اثر التنظيمات و مراجعتها

ماذا بعد؟

- مشروع إصلاح مناخ الأعمال
- بناء القدرات وتعزيز المؤسسة
- الأدلة الإجرائية
- إعادة بناء منظومة التنظيمات.