

**GOOD GOVERNANCE
FOR DEVELOPMENT
IN ARAB COUNTRIES
INITIATIVE**

Working Group IV on Public Service Delivery, Public Private Partnerships and Regulatory Reform



**Improving Capacities
for Law-Drafting in
Arab Countries**

Project Proposal

**Special Session of the Working Party
on Regulatory Management and Reform**

20 October 2008

Paris, France



IMPROVING CAPACITIES FOR LAW-DRAFTING IN ARAB COUNTRIES

PROJECT PROPOSAL

October 2008

This project proposal is presented to delegates of the Special Session of the Working Party on Regulatory Management and Reform held on 20 October at the OECD Headquarters, Paris, France.

Delegates are invited to discuss this proposal and provide written comments after the meeting no later than 5 November 2008.

For further information, please contact Pedro Andres-Amo, tel. +33 (0)1 45 24 96 11, or via e-mail: pedro.andresamo@oecd.org

Law drafting and the regulatory reform agenda

Arab delegates in the Working Group on Public Service Delivery, Public Private Partnerships and Regulatory Reform have identified law drafting capacities as a main priority in the field of regulatory reform in the MENA region. This policy area is a determinant for good governance and the investment environment. Laws and decrees are important in the implementation of many other reforms concerning taxation, budgets, public service, public private partnerships, e-government, etc. Techniques and tools to improve law-drafting will affect the quality of substantive legislation, reducing complexity and uncertainty.

Background

The Good Governance for Development in Arab Countries Initiative has contributed during its first phase (GfD I, 2005-07) to assess policy challenges in the MENA region, to develop country action plans for policy reform, and to reinforce capacities through training and regional dialogue. The programme intends in its second phase (GfD II, 2008-10) to deepen regional dialogue and capacity building, to support reform at a national level and to develop tools for monitoring and disseminating the progress of reform.

The project on “Improving capacities for law-drafting in Arab countries” is a contribution of the Working Group on Public Service Delivery, Public Private Partnerships and Regulatory Reform to this end. This Working Group is chaired by Tunisia and co-chaired by Canada, Italy and UK. The project is based in close consultation with Arab stakeholders and the survey on countries’ thematic priorities for regional policy dialogue in 2008-10. The Regional Working Group held in Amman in April 29, 2008 supported the implementation of this proposal. The OECD Secretariat provides administrative and technical support to the activities of the Working Group and will be responsible for the implementation of the project.

The project will be concentrated in a selected number of countries that have expressed their interest. Interest from OECD partners has also been raised, and co-operation modes will be defined. Most OECD countries have specific measures to enhance law drafting, thereby providing a basis for a policy dialogue, capacity to exchange of good practices, and assessment of future needs.

Project Overview

Improving law drafting capacities is one of the elements that contributes to the high quality regulation agenda. In this sense, efforts on capacity building for law drafting should be part of broader well-established and sound policy making processes. This project, while focusing in a specific area of the quality in regulation agenda, can contribute to promote a broader consideration of regulatory reform in Arab countries. The project will focus on the following aspects:

1. **Law drafting mechanisms and institutional capacities.** The attention is centred at the executive government's capacities for law drafting and the supporting available tools enhancing transparency and predictability of the legal system, such as:
 - language clarity,
 - accessibility,
 - compliance enhancement mechanisms, and
 - consultation.

The activities of government agencies issuing legal texts are often **coordinated by an institution at the centre of government**. Some examples of these oversight institutions ensuring coherence in legal drafting are the General Secretariat of the Government in countries such as Morocco and Algeria, or the Legislative and Opinion Bureau of the Jordanian Prime Ministry. The process of drafting legislation must be understood and described in the context of the Arab countries participating in the project. Definition of institutional roles and human responsibilities are essential to support sound law drafting. Good outcomes must be ensured with effective implementation of the mechanisms in place.

Objective: To describe some of the institutional capacities for law drafting in different Arab countries, and their contribution to a better regulatory governance environment. This would facilitate an overview of the areas which are already strong and those in need of improvement and in which new capacities should be developed.

2. **Guidelines and manuals for law drafting.** Guidelines and manuals for law-drafting are an important tool to support the standardisation of law drafting in many countries. The use of guidelines may contribute to enhancing clarity, co-ordination and transparency, while reducing discretion and duplication. Many Arab countries are developing guidelines and manuals for law drafting as a way to support legal drafters in their work.

Objective: To provide an overview on guidelines and manuals for law drafting that are being prepared in the MENA region. This could serve as a basis to identify good practices in different Arab countries and support their promotion.

3. **Training needs for law drafting in the MENA region.** Continuous training is essential to improve human capacities for law-drafting. Some OECD countries have developed specific training courses inside the administration. In other cases, training is offered in accordance with universities and specific legal institutions. For example, the Dutch Government has established the

Academy of Legislation to support training on legal drafters in the administration. The Legal Department of the Ministry of Justice of Switzerland works in collaboration with some Swiss Universities to support the training of legal drafters. Some Arab countries have realised the importance to include training as part of their efforts to improve the quality of law proposals. In the MENA region, there are efforts to increase capacities for legal drafters by training. Some universities support governments in these efforts, for example the Tunisian El Manar University train jurilinguists in cooperation with the government of Tunisia. There is, indeed, a growing need to increase training inside the administration to cope with the challenges of producing laws and regulations of better quality.

Objective: To review and document trends in participating Arab countries concerning the development of training courses and methodologies for training. This could help to identify gaps in this area. This project could help Arab countries to take advantage from and adapt what other neighbour countries are doing and to learn from experiences in OECD countries.

Project planning¹

In order to obtain the outcomes described above, the envisaged activities are:

1. **Desk work**, supported by replies from Arab countries to **questionnaires** prepared by the OECD Secretariat. The goal is to a) determine the facts as regards the drafting processes in each of the specified countries, b) identify what manuals and other materials are published and made available, c) identify what training is done.
2. Hold a **preliminary meeting** to ensure the desk research is accurate.
3. **Fact finding missions** to selected countries to obtain further information, interview officials and observe on the ground practices and tendencies.
4. **Draft the final working paper** to disseminate the findings of the exercise, identify good practices and guidance.
5. **Peer learning activities** that could consist in peer visits to OECD or MENA countries to exchange good practices. These activities will be defined by participants during the project.
6. Organise a **regional seminar** to 1) explain how drafting is undertaken across OECD countries and in the region; and 2) evaluate the extent to which a) a week long training course can be developed for the region along the lines of the course at Tulane University², b) more specific training could be developed in a second phase

Expected outcomes

- (1) a description of the capacities for law drafting in Arab countries participating in the project based on questionnaire and fact finding missions.
- (2) capacity-building exchanges between OECD and Arab countries, based on field missions, peer learning activities and at least a regional event to exchange policy options and experiences

¹ The project will seek co-operation with SIGMA.

² www.law.tulane.edu/tlscenters/PublicLawCenter/DraftingInstitute

(3) a final working document to disseminate the findings of this exercise

(4) a training plan to be developed as a follow up of the project

The final working document will describe law drafting capacities in selected Arab countries, identify good practices and set policy recommendations and guidance. This document could be a stand-alone product, or be integrated in the Arab Public Management Review expected for 2009. This would constitute a significant part of REG's contribution to this publication. This project makes up part of the GfD general goal of producing a frame of good governance indicators and analysis in the Arab region.

ANNEX: IMPROVING CAPACITIES FOR LAW-DRAFTING IN ARAB COUNTRIES

DRAFT QUESTIONNAIRE FOR DATA COLLECTION

October 2008

Introduction

Arab delegates participating in the Working Group on Public Service Delivery, Public Private Partnerships and Regulatory Reform have identified law drafting capacities as a main priority in the field of regulatory reform in the MENA region. Improving law drafting capacities is one of the elements that contributes to high quality regulation. In this sense, efforts on capacity building for law drafting should be part of broader well-established and sound policy making processes in the long term. The project on “Improving capacities for law-drafting in Arab countries” aims at contributing a better understanding and to promote law drafting capacities in Arab countries. This project is based on three main axes:

1. Law drafting mechanisms and institutional capacities.
2. Guidelines and manuals for law drafting.
3. Training needs for law drafting in the MENA region.³

This questionnaire aims at collecting data from Arab countries and contributing to the assessment of the executive power’s law drafting systems and the capacity building efforts in place to support them.

This questionnaire is presented at the Fourth Special Session of the Working Party for Regulatory Management and Reform held at the OECD Headquarters on 20 October. The objective is to obtain comments and launch discussion about its scope and appropriateness:

- Are the topics selected appropriated? Is there anything missing?
- Are these the right questions? Are we missing any questions?

Comments to improve the questionnaire should be sent in written form no later than 5 November 2008 to pedro.andresamo@oecd.org. Answers to the questionnaire **will only be requested after the Working Party meeting**.

³ For more information please see the project proposal.

1. Institutional mechanisms and capacities for law drafting

- Are there established administrative procedures for drafting new regulations?
The purpose of this question is to ask you:
 - To describe any standardised administrative procedures required by law, government decree, internal rules, or other broadly applicable policy, for drafting new regulations.
 - To identify the objectives of the procedures.
- When drafting regulations, what questions do policy makers ask? For example, are the regulations needed and what is the appropriate level for drafting regulations?
- How are regulations drafted?
The purpose of this question is to ask you to describe any arrangements to ensure the legal/technical quality of regulations, including review of legal basis and consistency with higher regulation
- Does your government have a programme to simplify the regulatory drafting process?
 - If yes, please describe it.

1.A. Institutions

- Is there a rule identifying the departments within ministries which are in charge of legal drafting?
 - If yes, which departments in ministries are responsible for (initiating) legal drafting?
- Is there an official body dealing with the consolidation and revision of regulations (oversight body)?
 - If yes, please describe its functions and mandate
- Is there any unit (legal unit inside the regulators) coordinating regulatory process within the ministries before they are submitted to the oversight body?
 - If yes, please describe the coordination process
- Is there any co-ordination mechanism between government and parliament?
 - If yes, please describe these mechanisms (e.g. type of information to be consulted, time limits for consultation, etc.)
- Is there a body at the centre of government responsible for enforcing regulation?
 - If yes, what is its mandate over other public agencies?
- Does this enforcement/oversight include only legal conformity and quality or broader regulatory quality criteria?

1.B. Managing existing regulation

- Do you have a programme being implemented on reviewing and updating stock of regulations?
- Are public bodies implementing a given regulation required to undertake statute law revision⁴ or an agency at the centre?
- Are there mechanisms by which the public can make recommendations to modify specific regulations?
 - If yes, please specify: Electronic mailboxes, Ombudsman, other (please specify)
- When legislation is amended, is it consolidated into the main text and republished?

⁴ "Statute law revision" means the systematic process of reviewing the whole body of legislation and regulation in the state to weed out or repeal laws that are no longer used

- What is, if any, the required frequency to re-visit the existing regulations for consolidation?

Quality Assurance

- Once regulations are drafted, are they subjected to a quality review process?

The purpose of this question is to ask you to describe:

- The quality review process, if any, used in your country,
- The criteria used to determine the quality of regulation
- The conformity of the regulations with the original policy decision.

2. Quality law drafting tools

2.A. Manuals and guidelines for law drafting

- Do you have any government-wide standardised administrative procedures (manuals/guidelines) for drafting new regulations?
 - If yes, is it regulated by law, government decree, internal rules, or other broadly applicable policy?
 - State the outline of the guideline and explain the rationale for each of the parts.
 - Please attach any existing and available guidance documents
 - Explain briefly the history of these documents and how they have been used
- What are the mechanisms and tools available to support and better enforce law drafting manuals/guidelines across government?
- Are there any mechanisms to monitor and supervise the use of the manuals?
- Is there a plan to review the manual or guidelines in light of its effectiveness?

2.B. Training in place for law drafting

- Are there any higher education programmes on regulatory management in your country?
 - If yes, please attach information or reference to them
- Are there any courses specifically focused on law drafting?
 - If yes, please attach information or reference to them
- Are there any institutions providing training to officials working on law drafting?
 - If yes, please describe this training and the institution providing it (specify if it is public or private)
 - If yes, are there different institutions cooperating to provide this training?
- Who is eligible for the training? What supporting written and online resources are available to trainees?
- Indicate the number of individuals who receive training annually
- Which resources are in place for trainers? How much money in average is spent on each student?
- Does the training programme have a specific focus area (using alternatives to regulation, consultation etc.)?

2.C. Other Tools

- Are transparency and predictability principles mandatory for law drafting?
 - If yes, please attached any official document backing these principles

Forward planning

- Does the government periodically publish a list of regulations to be prepared, modified, reformed or repealed in the next six months or more?
 - If yes, is it available to the public? (i.e. via the Internet)

Clarity and simplification

- Is there any programme in place to promote plain language and simplicity of regulation?
 - If yes, please describe it
- Is there any manual of style on the use of language?

Accessibility

- How is information on regulations disseminated?
 - Electronically
 - In paper form
 - Are both versions free of charge or is there a use fee?
 - Do courts have online access to legislation?
- Are regulatory requirements communicated systematically to affected parties?
- Have any surveys been done in your country concerning the accessibility and coherence of legislation?

Consultation

- Are affected parties consulted systematically when regulations are being drafted?
- In which phase of the drafting process does consultation take place?
- What forms of public consultation are routinely used:
 - Informal consultation with selected groups? (eg Tripartite discussions)
 - Broad circulation of proposals for comment?
 - Public notice and calling for comment?
 - Public meeting?
 - Simply posting proposals on the internet?
 - Advisory group?
 - Preparatory public commission/committee?
 - Other
- Do you give feedback to consulted parties and public regarding their proposals?
- Are there training programmes on consultation methods?