

**Regional Capacity Building Seminar on “Drafting Legislation and Oversight
Bodies for Regulatory Quality”**

Jordan – Amman - 29-30 April 2008

Abstract

The Role of Legislative Drafting Institutions in the Legal Reform Process

Mahmoud Alawneh

Institute of Law – Birzeit University

March 2008

Introduction

Legal and legislative drafting is the most important component of the legal reform process. It also plays a major role in the process of social and democratic reform on the national level. Good legislative drafting techniques produce viable and applicable laws and regulations. Otherwise, items of legislation would be unenforceable. In this context, legislative drafting bodies must contribute to the legal reform process. They have to draft good legislation as well as any governmental actions, which might generate legal effects. These bodies normally employ well-informed experiences, mechanisms and plans in drafting and amending pieces of legislation. Currently, several items of legislation are defective since relevant bodies have not defined the aim and scope of the legislation in question in advance.

Legislative drafting should be based on established academic rules, legislative theory, problem-solving approaches, as well as principles of good drafting. Furthermore, legislative drafting should be in line with clear procedures relying on sound academic research, research papers and reports, assessment of the regulatory impacts of enacted laws, along with a view of the legal status to be established by these laws and their associated costs. As such, this sound process well contributes to processes of legal reform and social change, which legislators intend to create, by legislative interventions.

In this context, legislative drafting bodies in Palestine have been playing a significant part in the legal reform process. Acknowledged as such by several other institutions, the Institute of Law (IoL) at Birzeit University is at the forefront to have worked on legislative drafting. IoL has drafted and amended many items of legislation as well as conducted various theoretical studies on the legislative process in Palestine, thereby effectively contributing to promoting the legal and regulatory reform process.

This paper sheds light on IoL's role in the legislative drafting process as well as underlines the drafting mechanisms and procedures which it operates to produce efficient legislation. In addition, the paper determines whether such mechanisms and procedures are arbitrary or congruent with principles of the legislative theory and rules of good legislative drafting. The latter have, of course, been applicable in relevant governmental institutions and in the private sector. The paper also reviews IoL's achievements in the field of legislative drafting, including the laws that it amended or drafted in cooperation with other institutions and ministries. Finally, this paper presents IoL's studies related to legislative process, the latest of which was "The Government's Role in the Legislative Process", which was adopted by the current Palestinian government in the *Palestinian Legislative Plan of 2008*.

Below are the major aspects of this paper:

(i) Introduction to IoL

(ii) IoL's contributions to the theoretical legislative framework

IoL has assumed a significant role in supporting the Palestinian legal community with a number of studies on the theoretical aspect of the legislative process, including

1. *Legislative Drafting Manual*;
2. *Predicaments of Legislative Harmony in Palestine: An Initial Survey*;
3. *The Legislative Process: Theory and Practice*;
4. *The Legal and Regulatory Framework of the Government's Management of the Legislative Process: The Palestinian Context*; and
5. *Manual on the Drafting of Secondary Legislation*.

(iii) IoL's contributions to legislative drafting: A practical framework

1. Drafting of laws:

IoL has drafted several amendments to laws as well as drafted a number of other laws, including the *Child Law* and *Draft Land Law*. Currently, IoL is in the process of drafting the *Draft Audio-Visual Law* and is contributing to the drafting of the *Palestinian Company Law*.

2. Drafting of secondary legislation, including:

- a) Regulations and bylaws relating to the *Labour Law*; and
- b) Review of other draft laws.

Furthermore, IoL has examined and reviewed many pieces of legislation, which are now in force in Palestine, as well as drafted laws upon request by relevant organisations.

(iv) Mechanisms (procedures) of drafting primary and secondary legislation:

A) Phases of drafting laws:

1. Examination of the respective legal framework.
2. Examination of the practical framework; "research report".
3. Comparative experience (a visit to Jordan) as well as a view of foreign experiences.
4. Meeting minutes of the Committee on the Development of Legislative Policy; "Memorandum on the Legislative Policy".
5. Writing of the first version of the draft law.
6. Discussion of the initial version with parties affected by the law; "workshops".

7. Writing of the final version of the draft law.
8. Lessons learnt from this endeavour.

B) Phases of drafting secondary legislation:

1. Committee on the Development of the Legislative Policy.
2. A Report on the legal and practical framework; "research report".
3. Writing of the draft of the secondary piece of legislation.
4. Experience as well as discussion of the version; "workshop".
5. Final draft.

(v) **IoL's future vision**

1. Develop the program and curriculum of the Diploma Programme in Legislative Drafting.
2. Launch the Diploma Programme in Legislative Drafting at the IoL.
3. Draft laws and secondary legislation.