

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

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Abstract

**The Role of Manuals in Enhancing the Legislative Drafting Process
"The Palestinian Experience"**

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Aspects of the Presentation

- Definition of legislative drafting manuals
- Comparative experience
- Practical experience of the Institute of Law (IoL) in developing legislative drafting manuals
- The *Legislative Drafting Manual*
- Manual on the Drafting of Secondary Legislation

Introduction to Legislative Drafting Manuals

- Objectives
- Sections under the Manual
- Achievements

Comparative Experience on Legislative Manuals:

1. In foreign countries
2. In Arab countries
3. Essence of the experience

IoL's Practical Experience in Developing Legislative Drafting Manuals

1. *Legislative Drafting Manual*
2. *Manual on the Drafting of Secondary Legislation*

The Legislative Drafting Manual

- Contributors to the Manual
- Essential issues related to legislation
- General structural units of legislation
- Conclusive recommendations

Preface

Based on the policy aiming to consolidate and upgrade legislation in Palestine and in view of the need to consolidate legislative drafting styles, the Bureau of Legal Counsel and Legislation at the Ministry of Justice (MoJ) and the Institute of Law at Birzeit University reached an agreement to develop a manual that presents clear and specific instructions and guidance on various issues and topics pertaining to legislative drafting.

Such instructions and guidance would be implemented by drafters, thereby creating a unified style of legislative drafting in Palestine.

With reference to the agreement between IoL and Bureau of Legal Counsel and Legislation and the support provided by the United Kingdom Department for International Development (DFID), the Legislative Assistance Department (LAD) was established at the IoL in 1997. LAD has been assigned to carry out several tasks in the field of legislative drafting, including the development of a *Legislative Drafting Manual*. In 1997 and 1998, and in coordination with the Bureau of Legal Counsel and Legislation, LAD started preparation of the *Legislative Drafting Manual*. Research on particular topics related to legislative drafting was disseminated to legal researchers at both the IoL and the Bureau. In addition, workshops were organised so as to further discuss these topics in order to come up with relevant conclusions and present recommendations to be incorporated in the *Legislative Drafting Manual*. The Manual would serve as a methodology to be constantly implemented in legislative drafting.

Early in 1998, staff members of the Legal Department at the Palestinian Legislative Council (PLC) took part in the workshops held to discuss contents of the IoL *Legislative Drafting Manual*. Participants' contributions played a significant role in shaping the topics included on the Manual. Furthermore, PLC Legal Department unreservedly welcomed and encouraged the idea of creating such a Manual, thereby emphasising its importance in consolidating styles of legislative drafting in Palestine.

Following numerous discussions on drafts of the *Legislative Drafting Manual*, which were prepared over 1997 and 1998, an agreement was made as to accredit this version of the Manual for publication and distribution to all local bodies working on legislative drafting.

By virtue of its goal and style of development and compilation, IoL *Legislative Drafting Manual* is indeed a source of pride for Palestine. Practically, it embodies the outcome of positive and fruitful collective activity. Furthermore, it proves that relentless and sincere cooperative effort and work render triumph over challenges, no matter how difficult they are.

2. Manual on the Drafting of Secondary Legislation

- Importance, goals, reasons for developing the Manual
- Basic concepts related to the legislative process
- Definition of secondary legislation
- General structure of secondary legislation
- Mechanism of enacting secondary legislation
- Practical applications

Importance, goals, reasons for developing the Manual

An examination of modern Palestinian experience in the field of legislative drafting reveals problems, defects and immature experience that are characteristic of this process. For several reasons, a consolidated methodology for drafting legislation, in general, and secondary legislation, in particular, is not in place. Predicaments to the legislative drafting activity in Palestine include new field of experience; varying, sometimes inconsistent, legal heritage; and unavailable constitutional or legal controls until recently. In addition, distinct intellectual backgrounds of legislation drafters in the West Bank and Gaza Strip are still in place. In reality, the broad legislative activity, launched by the Palestinian National Authority, as well as serious attempts to consolidate legislative drafting styles (at least in part by IoL's pioneering efforts – the first *Legislative Drafting Manual*) have not succeeded in bridging these gaps. Based on effective collective participation, contributions of both the MoJ Bureau of Legal Counsel and the PLC Legal Department have laid down the necessary foundation to unify the styles of legislative drafting.

A precedent as it is, IoL *Legislative Drafting Manual* remarkably contributes to promoting a Palestinian experience that is grounded on a firm and sound legislative basis. However, it should be noted that the *Drafting Legislation Manual* and the *Manual on the Drafting of Secondary Legislation* are not binding. The former has not been adopted by the PLC and a Palestinian constructive law has not been promulgated in reference thereof. In fact, the problem is not to whether adopt a manual or not. The real problem pertains to the fact that Palestinian drafters do not work in line with a clear and specific methodology in legislative drafting. Drafters may never divert from established legislative principles and basic rules of legislative drafting. Therefore, these principles and rules are often prescribed by constructive laws. However, there will still be a room for discretionary issues. One might perceive why a certain drafter adopts a different drafting methodology. Though, it may not be admissible that the drafter does not consistently adhere to one methodology throughout a single item of legislation. As a result, one can locate many inconsistencies in legislation drafting, as well as multiple bodies involved in this process, absent coordination between these bodies, and lack of clear and binding principles and rules to be adopted by all drafters.

On the other hand, one can easily view inconsistent drafting styles among pieces of legislation, and even within a single piece of legislation. The reason might be that the several distinct bodies, which draft items of legislation, lack a clear mechanism to do so. Moreover, legislative drafters might well think that such inconsistencies are but an issue of formality. In fact, incongruent styles of drafting primary and secondary legislation have adversely affected the structure and consistency of legislation. Somehow, this also negatively impacts the content of the legislation in question as well as users' understanding thereof, not to mention its interpretation by judges and law enforcement officials.

Furthermore, Palestinian legislative drafting bodies often confuse the type and scope of legislation; bodies that develop legislation; bodies that help develop it; authorities that promulgate it; scope of legislation; etc. Sometimes, an item of secondary legislation that is developed and issued by a minister is called "instructions", "decision" or "regulation or bylaw". This selfsame defect well applies to pieces of secondary legislation issued by the Council of Ministers or any other administrative institutions. Different titles of legislation issued by a single body create several predicaments in relation to the legislation hierarchy. This also raises problems in relation to the wisdom of assigning a particular body to develop a piece of secondary legislation. Several other considerations also affect this process.

These, as well as other, reasons have led to the creation of the *Legislative Drafting Manual*. The Manual provides answers to some questions pertaining to the basic concepts of legislation. It also sets forth the legislative mechanisms and procedures necessary to develop secondary legislation. Once adopted, the *Legislative Drafting Manual* will be a prominent reference in this field.

IoL's Planned Activities in the Field of Legislative Manuals

- Updating the *Legislative Drafting Manual*
- Publishing the *Manual on the Drafting of Secondary Legislation*