

Institute for International Law & Human Rights

Legislative Drafting
Guide for Iraqi
Members of
Parliament

# **Acknowledgments**



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# **Table of Contents**





A	Introduction4,5
B	Purpose of this Guide6
C	Purpose of legislation 7
1 2 3 4 i. ii. iii.	Hierarchy of legislation
iv.	Historical context / development cues 17, 18
D	Designing a legislative plan
1 2 3 4 5 6 7	Understand the objectives or purpose that the legislation will aim to accomplish 20,21  Determine whether legislation is the best tool to meet the identified objectives 22  Verify the constitutionality of the legislation 23  Verify whether there are existing laws that already address the subject 24  Consult with the authorities to be involved in implementing the legislation 25  Consult with experts to understand the subject and assist in collection of information relevant to the subject 26  Consult with the regulated community and other stakeholders 27
(E) (2) (3) (4) (5) (6) (7) (8) (9) (10) (10) (10) (10) (10) (10) (10) (10	Proposed Structure of a Statute

# **Table of Contents**





F	Language considerations when drafting legislation -	41
0	Precision, Simplicity, Clarity	41
2	Understandability / comprehensibility / accessibility	42
3	Every word has meaning	43
4	Same word, same meaning	
5	Different word, different meaning	
6	Behavior-based drafting (regulate behaviors, not rights)	47
7	Short titles / indicators on provisions	48
8	No gaps in legislation	48,49
9	Careful use of "and" and "or"	50
10	Tenses (simple present preferred)	51
•	Use imperative only for commands	52
12	Active vs. passive	52
B	Prefer singular over plural	53
14	Draft using positive language instead of negative language	53
15	Be specific about who is being regulated	54
16	One sentence, one idea	55
G	Human Rights and Legislation	55
0	Women's rights considerations in legislation	56 , 57
2	Drafting against corruption	
i.	Limiting the scope of discretion in the information input process	
ii.	Limiting the scope of discretion in the decision-making process	
3	Drafting considerations for vulnerable groups	
•	Diarting considerations for vulnerable groups	02 , 03

# **Table of Contents**





Institute for International Law & Human Rights

	Conclusion of the legislation	64
•	Cancellation	64
2	Preserving provisions	64
3	Authorities for implementation of legislation	65
4	Delegation of powers	65
0	Additional considerations	66
1	Numbering of provisions	66
2	Time and date considerations	66
3	Incorporation by reference	67
4	Justified reasons	
6	Appendices	
6	Consolidated legislative amendments	69,70
7	Reviews of legislative drafts before introduction to Parliament -	71
8	Assessing the effectiveness of legislation	71
Ar	nnexes	72 - 82



# A Introduction

Some legislators may believe that drafting legislation is as easy as putting ideas into words and placing those words on paper. This is only one small part of the truth. In reality, those who draft legislation are in the unique position in society to create instruments that have the power to be one of the primary drivers of social change in a country.<sup>1</sup>

For this reason, the role of the legislator is of paramount importance in the smooth functioning of a country. Legislation guides virtually every aspect of daily life and provides a basis through which the government is able to govern its citizens in a clear and transparent manner. In order to be a firm basis for developmental change in society, laws are developed as a series of rules that change the behavior of those who fall under the scope of those rules until widespread behavior is reflective of the values desired by a government.

In changing the behaviors of those governed by law, a government can shape a country in a manner reflective of the values and goals of its leadership. However, as well-drafted legislation can be used as the basis for clear development and progress in a country, poorly-drafted legislation can be the cause of a standstill or even regression in terms of development.

There are many risks associated with poorly-drafted legislation. Most notably, legislation that is drafted in an unclear or ambiguous manner will result in less legal certainty throughout the country in relation to what behaviors are permitted and what are prohibited.

When legislation is drafted poorly, it can lead to mistakes in interpretation from judges or other interpreters, resulting in many interpretations of the same words. This can cause unpredictable interpretation that may result in a need for costly and time-consuming litigation to ensure how best to interpret the legislation in a manner that is implementable. Lack of clarity in language may also cause lack of clarity around who is regulated by the legislation, meaning some people could be affected by a law when they were not meant to be included, while others could be left out of the scope of a law. If there is a significant level of uncertainty or unclarity in a law, significant time and resources will need to be expended to undertake further amendments in order to clarify gaps, ambiguities or overlaps in the law.

Ann Seidman and Robert B. Seidman, "Instrumentalism 2.0: Legislative Drafting for Democratic Social Change" (2011) 5:1 Legisprudence 95 at p.98.



Furthermore, poorly-drafted legislation also reflects poorly on the legislator. Laws are the legacy of the legislator and will often exist for years after the legislator has left office. Legislators who take the time to draft well-crafted laws are recognized by their peers for their excellence while those who produce inadequate laws may cause deep problems for their peers and the functioning of the country as a whole.

In Iraq, many Members of Parliament are elected with no prior legal experience. Even those with legal experience may not have drafting experience as indeed most lawyers around the world do not have any serious experience in legislative drafting. Furthermore, although many Members of Parliament may make use of Legislative Legal Advisors, there is no real obligation to accept the advice of these Advisors. Ultimately, the final language of legislation is often left to Members of Parliament to determine, which is why Members of Parliament must be able to understand why legislation is written in the manner it is.

The importance of well-drafted legislation should never be underestimated, and the seriousness and importance of the role of Members of Parliament in this process should be highlighted. Accordingly, this Legislative Drafting Guide is meant to provide a brief, clear, and user-friendly overview of the basics of legislative drafting to Members of Parliament who may be wondering h0w to start learning about the topic. The basic ideas in this Guide can be used as a foundation in the legislator's journey to drive social change in Iraq and can be supplemented by a variety of resources and individuals when the legislator is ready to gain more advanced knowledge about drafting.



# B Purpose and Target Audience of this Guide

Legislative drafting is a notoriously difficult task. For this reason, it is imperative that those who are involved in the legislative drafting process have a firm grasp of the fundamentals before proceeding to advanced aspects of the task. This guide is meant to provide Members of Parliament in Iraq with the basic tools, skills and language necessary to consistently develop legislation that is sufficiently clear to be implementable. The guide should be used as a beginner's reference manual to assist in providing a broad overview of the topics addressed in this guide.

This manual does not address the legislative and parliamentary processes associated with legislative drafting, nor does it address in-depth the theory associated with legislative drafting.

Once a legislator feels comfortable with the topics addressed in this publication, there are additional resources available to assist in gaining a more in-depth understanding of the nuances and technical aspects of legislative drafting. These resources include:

- Members of the State Council.
- The State Council Legislative Drafting Guide (2023).
- The 2023 Legislative Drafting Guide of Dr. Ghazi Al-Jannabi (Office of the President)
- The 2022 Legislative Drafting Guide of the Parliamentary Legislative Drafting Department.
- Members of the Parliamentary Legal Committee.



# Purpose of legislation

Legislation provides a legal basis for rules to follow in society, and its provisions work to meet the objective of the legislation by altering human behavior. Well-written legislation is key to providing coherent instructions to the regulated community and can form the basis for monumental societal change through its implementation. At its core, legislation is a mechanism to induce behavioral change in its addressees. <sup>2</sup>

Legislative drafting has been described as a "highly technical discipline, the most rigorous form of writing outside of mathematics," <sup>3</sup> and "the most difficult thing a lawyer is called upon to do." <sup>4</sup> For this reason, the difficulty of legislative drafting should not be underestimated. Legislators should always approach the task of legislative drafting with a firm plan for how the legislation is to be developed and a solid vision for how it is to be implemented.

The legislator must ensure that, in carrying out the task of drafting, they endeavor to make less work for the reader, not more. If a legislator takes shortcuts to avoid putting significant work into drafting, that work will instead have to be done by the interpreter of the legislation. In this sense, the work to impart meaning on legislation must be done either by the legislator or by every reader of that legislation. To ensure the intention of the legislature is properly conveyed in implementation, it is in the interests of every legislator to ensure his or her legislation is drafted in such a manner as to leave the reader with an unambiguous understanding of its meaning.

If a legislator drafts legislation using unclear language, the courts must be the ones to interpret this lack of clarity in order to impart meaning onto the words. If a legislator "repeals by implication", the reader must then research to find which laws contradict the new legislation. If the legislator does not define terms, the reader must engage in detective work to attempt to determine what a particular term means in the context it was used. All these issues can be mitigated through careful drafting, ensuring that the end result of implementation reflects the intention of the legislator.

This guide sets out steps to follow to ensure that legislation is interpreted to effectively meet its objectives and is implemented in a manner that was originally envisioned and intended by the legislator.

<sup>&</sup>lt;sup>2</sup> Seidman, R.B. Seidman and N. Abeyesekere, Legislative Drafting for Democratic Social Change: A Manual for Drafters, **2014**, Kluwer Law International, p.13.

<sup>&</sup>lt;sup>3</sup> R. Dickerson, Legislative Drafting: A Challenge to the Legal Profession, (1954) Indiana University School of Law, p.1.

<sup>&</sup>lt;sup>4</sup> R. Dickerson, How to Write a Law, (1955) Notre Dame Lawyer, Vol.XXXI, p.15.



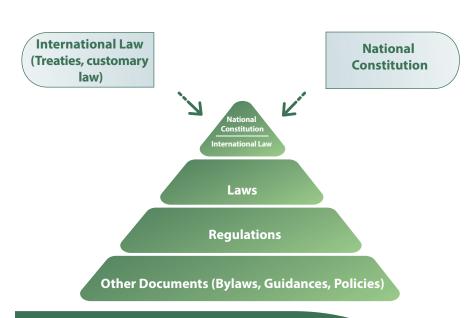
# • Hierarchy of legislation

When drafting or amending laws, the hierarchy of legislation must be considered at the outset of any work. In Iraq, as with any country with a Constitution, the Constitution reigns as the supreme law of the land. All other laws must align with the articles of the Constitution. If a law is developed in a manner that is contrary to the Constitution, it may be amended, struck down or declared unconstitutional in Iraq.

In advance of developing any law, the State Council must be consulted. to solicit an opinion on whether the subject matter of the proposed law would be contrary to the Constitution. Similarly, the expert may also note that, while a law itself is not against the Constitution in principle, certain provisions may be unconstitutional. The legislator should take this advice into account and draft accordingly. Otherwise, the extensive amount of work that went into developing the law may be wasted if a law is stricken down due to its unconstitutionality.

Legislators must respect the hierarchy of legislation. This means that legislation lower in the hierarchy must not conflict with legislation higher in the hierarchy. For example, the Constitution is the supreme law of Iraq. No law can conflict with the Constitution and all laws must be consistent with the Constitution. Similarly, regulations may be developed to implement the provisions of the laws. A regulation cannot conflict with the law that it was developed under. Legislators must ensure that subsidiary legislation they develop does not conflict with the principal legislation in the hierarchy.

# Prior to commencing development of any new law, the State Council must be consulted to guarantee that the law will not be deemed unconstitutional before the judiciary – the experts at the State Council can help give necessary information to assist in successful drafting and help ensure your law will not be dismissed in court.



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## Tip

International conventions ratified by Iraq must be incorporated into national legislation according to the rules and procedures of the international community.

# Interplay with international law

There is no settled approach among countries as to how to ensure international law aligns with the existing body of national law, including a country's Constitution. Some countries take a "monist" approach, in which international law and national law exist concurrently, where international obligations become binding on the country upon ratification, accession or approval of a treaty. Other countries take a "dualist" approach, whereby ratification, acceptance or approval is merely the first step in incorporating international obligations into national obligations. Such countries require international treaty obligations to be incorporated into national law before those treaties become binding on its citizens. The process of translating international treaties into national law is often called "domestication".

In dualist countries, the act of incorporating treaty obligations into national law is a fundamental component of international law. Countries that agree to be bound by a treaty but do not develop legislation implementing the treaty at the national level may be in breach of the international law principle which states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith". <sup>5</sup>As a country that has dualist characteristics, Iraq must ensure that existing international obligations are incorporated into domestic legislation and that new legislation does not put Iraq in violation of its existing international obligations.

United Nations, "Vienna Convention on the Law of Treaties," Treaty Series, vol. 1155, May 1969, p. 331 at Article 26.



International conventions are the major source of international law. When these conventions are ratified by a country, they are binding on that country and must be implemented by a national law and published in the Gazette. The legislator should consider whether, by enacting or amending a law, Iraq will be acting against its international obligations.

As a reference guide, Table 1 provides a list of some of the treaties relevant to human rights that Iraq has ratified, accepted or acceded to. Legislators should consider whether Iraq's existing international obligations will factor into how a national law must be drafted. By neglecting to consider international obligations, legislators may put the government at risk of entering into a state of treaty non-compliance, leading to the potential for loss of economic or trade benefits, diplomatic friction, trade or economic sanctions and other consequences.

Parliamentarians are encouraged to consult the United Nations Treaty Collection (UNTC) website in relation to the regional and international treaty obligations of Iraq. In addition to the UNTC website, the State Council can inform legislators whether any draft legislation may be in breach of Iraq's international obligations.

# Iraq has ratified many international treaties on a wide array of subjects. These treaties may set certain standards that must be included in your law. Make sure you verify whether there are any treaties that may address the subject of your proposed law.

<sup>6</sup> See the United Nations Treaty Collection Website, available at: https://treaties.un.org/pages/UNTSOnline.aspx?id=3&clang=\_en.

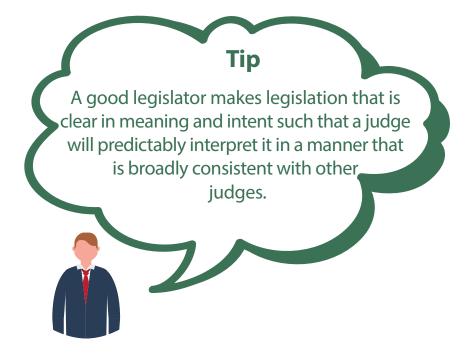


# Courts and legislation

In countries that use the civil law system, such as Iraq, the role of the judiciary is to interpret and apply the law in a manner consistent with what is written in applicable codes and statutes. Generally, a judge seeks to apply the clearest meaning to the law and engages in interpretation when the meaning of a law is unclear, inconsistent or incomplete. If the meaning of a law is clear, the judge applies the relevant facts to the law, asks clarifying questions and reviews evidence, arriving at a ruling that is consistent with what was intended by the legislators. **Good laws are those laws that can be consistently interpreted in the same way by multiple judges and in a manner that is consistent with the intention of the legislator.** 

When drafting legislation, a legislator should always keep in mind how a judge will interpret and apply the law. If a legislator can anticipate the path of reasoning by a judge and understand the techniques a judge will use to examine law, the legislator can ensure certainty of implementation through careful drafting. A legislator should similarly consider past judicial decisions on the topic of the legislation, as well as any advisory opinions issued by various authorities, such as the State Council. Developing laws that contradict the existing body of judicial law may result in the judiciary having an aversion to application of the new law.

Many faults with legislation involve issues of uncertainty, lack of clarity or incompleteness, leading to inconsistent interpretation by judges around the country or even by a judge applying a law to two separate cases.





# Rules of interpretation 7

Before a legislator begins the process of drafting, he or she should know how legislation will eventually be used by the regulated community and by judges.

Legislation should provide a clear guide setting out rights and responsibilities of the regulated community. However, when legislation is unclear, the judiciary may be asked to interpret the legislation to understand the intention of the legislator.

Legislative theory holds that the legislature acts with intention, always saying what it means and meaning what it says. Generally, anything short of a serious error in legislation must be accepted as having been intended by the legislator. Thus, a judge must work within the existing framework of the legislation, using specific interpretive methods and cues to understand and pass judgment on what was intended by the legislator. This is true in both common law and civil law jurisdictions.9

The four methods of statutory interpretation were stated by Friedrich Karl von Savigny in his publication System of the Modern Roman Law [System des heutigen romischen Rechts] (1840). These methods were referred to as the "grammatical, logical, historical and systematic" methods (see p.171-174). Since then, these methods of interpretation have been consistently used by judges and decision-makers in both common and civil law jurisdictions at both the national and international levels. For a source that affirms the use of these techniques at the national and international levels, see O. Amann, Domestic Courts and the Interpretation of International Law, (2019) Developments in International Law, Vol. 72.

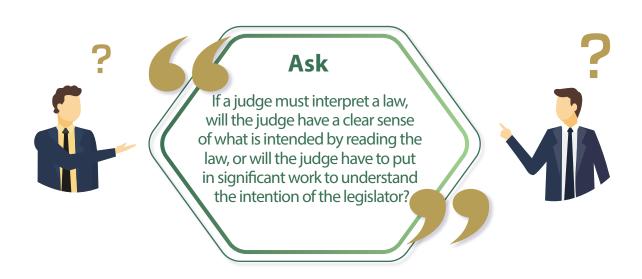
See, for example, Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992).

<sup>&</sup>lt;sup>9</sup> Claire M. Germain, Approaches to Statutory Interpretation and Legislative History in France, Duke Journal of Comparative & International Law, Vol 13:195 at 201-202.



If a legislator understands the techniques that will be used to interpret and implement legislation, they may more effectively design legislation in the clearest possible manner, ensuring that any ambiguities may be interpreted in line with their intention.

The legislator that understands the fundamental rules of interpretation and can draft with a view to interpretation and implementation will undoubtedly have an advantage over those legislators that are not familiar with how the judiciary will use legislation. Further, knowing how these interpretive rules are applied will help legislators in being better suited to critiquing and improving the legislation of fellow colleagues, other legislators and political actors.





# i. Plain Meaning Rule

When reading and interpreting legislation, a judge will always begin with what is called "the Plain Meaning Rule", also referred to as a "Textual Interpretation". This rule involves looking at the plain and ordinary meaning of the words in the statute and applying the words as written. The rule states that, **if the meaning of a provision is clear and unambiguous, there is rarely a need to further interpret the language.** In this sense, the language of a law limits its interpretation.

Similarly, where language of a provision may be ambiguous, the judge will then try to interpret in a way that is consistent with the other clear words used in that provision.

When using this technique, the judge will look at every single word of the law and analyze these words using plain language interpretations to arrive at an understanding of the intention of the legislature.

For this reason, it is against the interests of a legislator to use unclear language, complicated language, or "legalese" if their intention can be conveyed in simple language. The more complicated the language is, the more room there is for interpretation. Thus, the legislator must put considerable effort into ensuring the language of legislation is easily understood by the reader without further need for interpretation.



# Tip

A judge will always apply a plain-language interpretation to a law before doing anything else. If the language of a law plainly states something in a clear manner, the legislator will not be able to later say that they meant something different in implementation.



# ii. Structural Rule (entire context rule)

For many reasons, it may not be possible to convey the intention of a legislator using plain language. This becomes more likely when dealing with increasingly complex and specialized topics. For this reason, judges must often employ other interpretive techniques to assist in understanding the meaning of provisions.

The structural interpretive method looks at each of the parts and assesses how they function together as a whole. Where there is ambiguity in a provision, a judge may also use the surrounding provisions or other existing legislation to provide necessary context. For example, this rule is often used when a provision sets up an exception to a rule that has been established elsewhere in the legislation.

This rule of interpretation is based on the idea that each provision in the law must work in harmony with every other provision. It also relies on the understanding that the legal framework of a country is not a series of laws each working in isolation, but rather that each law forms a part of the whole framework. Accordingly, each law must be looked at in relation to all other laws to determine how that law can be interpreted as part of the whole.

The legislator must ensure not only that each provision makes sense on its own, but that there is internal consistency throughout the legislation such that each part of the legislation acts as a functional part of the whole. The legislator must also ensure that the legislation fits into the broader legislative framework existing in Iraq at the time of drafting, as a judge may look to other similar legislation to inform a structural interpretation of a particular piece of legislation. One risk of not considering the existing legislative framework when developing a law is that a judge may see contradictions between a new law and existing laws and be forced to try to interpret the new law in a manner that reconciles the contradictions. In doing so, the law may be interpreted in a manner that is inconsistent with the intention of the legislator.



When assessing the broader legislative framework, the State Council is an excellent resource to assist legislators in determining whether newly proposed legislation will fit into the existing legislative framework in the country.



### iii. The Mischief Rule

This interpretive technique, also called "Purposive Interpretation" or "Teleological approach", is generally used when other techniques are insufficient at resolving the meaning of a provision, meaning that it is usually reserved for the highest courts. This technique examines the overall objective or purpose of the legislation and interprets a provision or law in a manner that is aligned with this purpose. In other words, the court will look to the "mischief" that the law is seeking to address and resolve any ambiguity so that the mischief is lessened, not worsened. A legislator must ask what effect the law is seeking to achieve and develop the law with this effect in mind.

For legislators, just as they should pay considerable attention to the language used in each provision, the purpose/objective of the legislation should be stated in a clear manner and each provision must be written with a clear view to how it accomplishes this purpose. The legislator must be aware that, where the specific provisions are unclear or need to be interpreted, the provisions will always be interpreted in accordance with the overall purpose of the legislation.

# Ask Is the purpose of your law made clear somewhere within the law? Do all of the provisions in your law work toward fulfilling that purpose?



# iv. Historical context / development cues

Lastly, when resolving ambiguity in legislation, the courts may look to the broader historical circumstances of a law or other cues to determine what was meant at the time of writing. This technique is often considered last as it requires the judge to look outside the scope of what is written in the law. In this form of interpretation, the judge will look to "development cues", such as the legislative history, parliamentary discussions, previous drafts of the law or other information to help inform the judge about the intention of the legislator.

This technique is generally only used when the other three techniques are not sufficient to determine the meaning of legislation or the intention of Parliament.

One instance in which this interpretive technique is helpful might be when interpreting older legislation which may use words whose meanings have changed since writing, or legislation that would have been written differently given the circumstances of the present day.

By looking to parliamentary discussions or other information outside the scope of the law as written, a judge may be given hints about the true nature of the law and why it was developed or written in a certain manner. However, legislators should never rely on a judge's use of non-legislative information to understand the intention of the legislature. Judges will always seek to first interpret the law as it is written using the law itself as well as other laws that may work together with the law being interpreted.



**Tip** 

A legislator should always draft laws in a manner that does not require use of outside sources of information to understand the provisions of the law. The law should be drafted so that a judge can understand the full meaning just by looking at that and other laws.



One example of how this technique may be used could be with a law written in the 1970s directed at regulating modes of communication. Such a law may mention only telephones and fax machines as cell phones and computers did not exist at the time of drafting. In reading this, a judge may interpret this law to also apply to cell phones and computers in some manner as the original drafters of the law could not have conceived the existence of these modern devices at the time of drafting but likely would have addressed them in the law had they existed at the time.

Legislators should not necessarily draft legislation with historical context in mind, although it may be prudent to draft in a manner that takes it into account. In essence, the legislator can 'draft for the future', ensuring that the language used can apply to both the present time and similar future situations. This might be done by using suitably broad language in some key parts or adding certain qualifiers to allow judges to interpret more broadly.

### For example:

Article 1: This law applies to the regulation of telephones and fax machines.

In the above example, the chosen language constrains the interpretation of the scope to only telephones and fax machines, meaning that any future development in communications technology might not be covered by this law.

Article 1: This law applies to all forms of electronic communication, including telephones and fax machines.

In this example, use of the phrase "such as" or "including" allows or encourages the judge to go beyond the two examples, using telephones and fax machines as a point of reference for how "electronic communication" should be interpreted. In this way, future technologies may be accounted for in historical legislation.

Legislators can assist the interpreter in arriving at the intended conclusion by including other interpretive material in the legislation, such as a comprehensive section on "Justified Reasons" (see section I.4 below). The more legislative justification a judge has when interpreting, the more likely the judge will be able to clearly understand the intention of the legislator and therefore interpret ambiguities in the spirit of what the drafters intended.



Ultimately, legislators should focus on ensuring that legislation is drafted to be clear and unambiguous on a plain language interpretive reading with consistent application of the objective or purpose throughout. Beyond the plain language approach, each additional legislative tool employed can change the interpretation beyond what was originally intended by the legislator. Therefore, incorporating the practice of using plain language in the development and drafting of each piece of legislation will ensure that the spirit of the law as intended will prevail.

# Designing a legislative plan

Some scholars have compared legislators to architects, in that the architect is contacted early in the process of design, must understand the background and foundation, will work with the client to refine ideas, and will gather necessary and relevant information well before the drafting begins.<sup>10</sup>

Although it may be tempting for a legislator to take shortcuts, the legislator must ensure that significant work to understand the subject is done before drafting begins. This work is meant to both save the legislator time in the long run and prevent or minimize the need for amendments or repeals of the legislation in the future due to careless drafting errors.

This section of the guide should serve as a blueprint for tasks that should be accomplished prior to drafting. A legislator is advised to carry out each of the below tasks in order to be best situated to draft a solid, effective and long-lasting piece of legislation.

Reed Dickerson, "How to Write a Law" as reprinted in D.J. Owens, A Handbook on Research and Drafting of Legislation, Notre Dame Journal of Legislation (1974) at p.5.



# Understand the objectives or purpose that the legislation will aim to accomplish

At the earliest stages of legislative design, the legislator must fully understand what problem the legislation will address and have an idea of how the legislation will directly address the problem. When working to understand the objective, the legislator should continually ask whether legislation is addressing the cause of a societal problem or merely addressing the symptoms.

As the saying goes, "If you give a man a fish, he will eat for a day. If you teach a man to fish, he eats forever." In the same manner, developing legislation that only addresses a symptom of a societal problem will not necessarily solve the underlying issue.

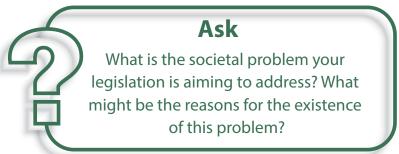
For example, if a legislator seeks to lessen poverty in Iraq and develops legislation to give a one-time payout of money to all citizens living below the poverty line, this may temporarily work to alleviate poverty but may not go far toward meeting the overall objective of ending poverty in Iraq.

Similarly, a legislator may want to develop a law banning driving while intoxicated and mistakenly perceive the objective of the law as reducing the number of drunk drivers on the road. Instead, such a law may have as the overall objective the goal of reducing car accidents or improving road safety overall, with reducing the number of intoxicated drivers merely being one step toward meeting the objective.

When deciding on an objective, it is necessary to **identify the core of the issue in order to more easily legislate with accuracy and clarity**.



A legislator should start by asking what the problem is that the legislation will address. For example, there may be high rates of homelessness, or a low rate of youth completing their primary education. At this stage, it may not be clear to the legislator why the problem exists, nor what solutions there might be. However, proper framing of the problem at the outset can guide research into why the problem may exist.



Once the problem has been identified, the legislator should conduct extensive research into examining the problem and identifying a range of reasons for why the problem might exist. It is likely that the legislator will discover a wide number of reasons, some of which can be addressed through legislation and some of which are better solved through other means. This stage provides an opportunity to examine the problem as it exists in Iraq as well as how it may exist in other jurisdictions. However, all identified reasons for the problem should be Iraq-specific.

Finally, after the problem has been stated and possible reasons identified, the legislator must then propose one or more possible solutions that address the reasons for the problem. In this way, legislation is more easily directed at the root cause of a problem and not merely at the symptoms. A legislator should work with and consult experts in the field of legislation in conducting this research in order to ensure that the proposed solutions are reasonable and would be effective.

If the legislator prepares a firm legislative plan prior to drafting, the identified problem as well as the proposed solutions can also contribute to development of the section of legislation detailing the purpose.



# Determine whether legislation is the best tool to meet the identified objectives

Many jurisdictions suffer from an overabundance of legislation. This can result in a confusing landscape when an individual is attempting to determine rights and obligations in relation to a particular subject. With this in mind, a legislator should always consider whether legislation is necessary to address the identified objective, or whether there is some other reason that the existing legislative framework is not sufficient.

For example, a legislator may want to develop legislation to protect a country against yellow fever by mandating that parents must ensure every child is vaccinated against yellow fever before their first birthday. As a first step, the legislator must research the problem to determine what the nation-wide vaccination rate is already, and perhaps which specific regions or demographics have low vaccination rates.

Second, the legislator must then determine possible reasons for a low national or local vaccination rates. For example, some reasons may be:

- There may be low import or production rates of the vaccine resulting in a low availability nationwide.
- If there are sufficient vaccines produced or imported into the country, perhaps many rural areas do not have access to the vaccines as they must be kept cold at all points and there may not be a functional cold chain in many parts of the country.
- Parents may not be able to take time off work to vaccinate their children.
- Parents in many rural areas of Iraq may not be easily able to get to a clinic to vaccinate their children on the timeline set by the law as clinics may not be proximate to all rural populations.
- Parents may not be educated on the importance of vaccinating their children so may not see vaccination as a priority.
- There may be religious or cultural reasons for not obtaining vaccines.



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It is clear that merely developing a law to mandate a behavior may not be sufficient in addressing the root cause of the problem. In this example, there may be existing legislation addressing these identified factors, such as legislation on vaccine availability, establishment of hospitals or clinics in rural areas, or supply chains in general. However, if the legislator were to enact a law mandating vaccination without considering these other reasons for a low vaccination rate, the law would likely be ineffective at accomplishing its objective.



# **3** Verify whether there are existing laws that already address the subject

If there is an existing law on the topic, it is necessary to consider what distinguishes the proposed legislation from the existing legislation and whether the problem you have identified is due to a lack of legislation or a lack of implementation or enforcement of existing legislation. Iraq has many instances in which there may be several laws developed to solve singular issues. For example:

- Law on Compensation of Victims of Terrorist Operations
- Law on Compensation of Victims of Terrorists
- Law on Compensation of Victims of War Operations and Military Mistakes

Although there may be distinct elements in each of the above laws, there is likely to be some overlap which may confuse readers who are trying to determine how to address compensation for victims of terrorism.



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# If there is previous legislation that directly addresses the subject, the legislator must then ask:



- Does the content of the newly proposed legislation regulate something that is already being regulated by another legislative instrument?
- If so, will the older legislation be repealed or amended?

Generally, if a significant portion of a new law is already being addressed under an older law, it may sometimes make more sense to just amend the older law rather than developing an entirely new law. If a new law is to be developed, care must be taken to ensure that its provisions do not conflict with existing laws on the subject.

If an older law is to be repealed, care should be taken to ensure that the older law is specifically repealed through a clear reference, rather than by stating in the new legislation that "All laws in contradiction to this law are hereby repealed."

## **4** Verify the constitutionality of the legislation

Before drafting, the legislator must determine whether the legislation could be contrary to any provisions in Iraq's Constitution of 2005. **If a law is enacted in contravention of the Constitution, it could be challenged in court and subsequently stricken down in whole or in part.** 

For example, a legislator may put considerable effort into a law that is directed at providing a tax break to some citizens of Iraq. Following passage of the law, it appears that this law provides more favorable treatment to those of a particular economic or social class. In response to this, someone could raise a constitutional challenge under Article 14 of the Constitution, which states that all Iraqis are equal before the law without discrimination. Following this, a court could then find that the law is unconstitutional, striking it down in full. In doing so, much of the work of the legislator may have been wasted.

It is often beneficial to consult with a constitutional lawyer, such as the experts at the State Council, prior to development of any legislation to obtain a preliminary opinion on the constitutionality of the law. Although such opinion may not be definitive, it can give the legislator an idea of the broad constitutional issues that could be raised upon enactment of the legislation.



# **6** Consult with the authorities to be involved in implementing the legislation

The legislator must actively consult all authorities proposed to be involved in implementing the legislation. These consultations must begin before drafting commences.

Consulting with authorities involved in implementation can have many benefits. For example:

- The authorities can offer insight into whether there are existing laws on the topic, saving the legislator time in drafting.
- The authorities can help respond to difficult questions being encountered by the legislator.
- The authorities can assist the legislator in understanding whether there will be any issues with implementation of the legislation, such as financial issues or staffing issues.
- The authorities can determine whether there are topics that should be addressed in legislation that the legislator has not yet considered.

Importantly, if a law is to assign responsibilities to some authority, the legislator must verify with that authority that it is capable of carrying out its new duties under the legislation, or whether any new duties would overburden the authority.

### **Example**

If a new law establishes a committee to be staffed by members of the judiciary, the legislator must first consider whether this requirement would impact the already-overburdened judiciary with an additional burden.

By including such a requirement in law, it may have an unintentional effect of reducing the ability of the judiciary to effectively carry out other duties not associated with that law (such as the ability to hear and decide on cases). To avoid this, the legislator must consult with a representative of the judiciary to ensure this law will not conflict with existing duties.



Good legislative drafting cannot be done in isolation and must be done in consultation with those who will be involved in implementing the legislation.



# 6 Consult with experts to understand the subject and assist in collection of information relevant to the subject

In addition to consulting with the authorities to be involved in implementing the legislation, the legislator may also wish to consult with other experts who have knowledge of the subject matter. Such experts might include academics, lawyers or civil society organizations. In doing so, the legislator may save themselves time by learning of areas and issues not yet addressed in any existing legislation on the topic and of any ongoing or past initiatives on the topic. The legislator may also ask experts questions about major issues in the area to be covered by the legislation.



# O Consult with the regulated community and other stakeholders

As a final step prior to drafting, it is always a good idea to consult with representatives of the community that is to be regulated or affected by the legislation. For example, when making a law to regulate the pharmaceutical industry, it may be useful to consult with industry representatives. Similarly, prior to developing a law that is intended to offer support to homeless people, it may be helpful to consult with organizations that work with and advocate for this group. One benefit of these consultations is that they may make the legislator aware of additional issues that have not yet been considered.

# **Example**

A legislator may intend to make a law giving subsidies to farmers for their wheat crops in order to increase national wheat exports. However, after speaking with representatives from the farming community, the legislator is told that the most pressing issue is not a lack of subsidies for wheat crops but rather that the equipment used to grow wheat has become too expensive. As a result, the legislator may wish to reframe legislation to subsidize the purchase of tractors and other farm equipment.



Although each of the consultations can take significant time, they will ultimately save the legislator time in the long run by assisting the legislator in understanding the existing legislative framework, informing the legislator on pressing issues within the regulated community and enlightening the legislator on topics that may need to be addressed (or have already been addressed in other legislation).

# Ask Who will be regulated by the law? Have you had meaningful consultations with those who will be impacted by the law?



# Proposed Structure of a Statute

As has been said before in relation to legislative drafting, "The writing stage is merely the last stage of drafting, and it is sometimes the easiest." 11

If the legislator has properly developed a legislative plan and has a good idea of both the societal issue to be addressed as well as the possible solutions to the identified problem, the drafting can begin.

The next section sets out the typical structure of a law or regulations and can be referenced as a checklist when drafting.

### Short title

The title of a legislative instrument should be the result of careful thought and must reflect the content of the instrument in a sufficiently clear manner. It is preferable to use words and phrases that are settled legal concepts. When developing a title for legislation, one should strive to distil the core objective or content of the instrument into a clear title that will allow the regulated community to easily understand what is contained in the legislation.

### **Definitions**

Considerable effort should be invested in developing definitions for any law or regulation. The **interpretation of the legislation will be constrained by how key words or phrases are defined.** Where there is ambiguity in defining a term, the judiciary may be needed to resolve this ambiguity.

# Make sure every single word in your law is written as intended. After a law is passed, you will not be able to say that, although one word is written, another word was intended.

Reed Dickerson, "How to Write a Law: Address delivered to the Legislation Institute, held at Notre Dame University, March 30, 1955", published in Indiana University - Maurer School of Law Digital Repository, p.15.



A legislative drafter should only define terms that must be defined. In other words, only define words that either have a special meaning, or words that the average reader would not be able to understand without further context. Definitions will be used to limit the scope of interpretation by a judge, so care should be taken to ensure definitions are strategically used to effectively convey the meaning of terms.

When choosing terms to be defined, **consistency is important.** Choose only one term to refer to a thing and make sure to use that term consistently throughout the legislation. Do not define it to mean one thing and then use it in an entirely different manner somewhere in the law. Further, if a term has already been defined in another piece of legislation, it is prudent to keep the same definition in subsequent legislation, unless there is a firm reason for changing this definition.

If a term is used only once, it may be placed at the beginning of the article in which it is used (such as by saying "In this article, X means..."). If a term is used several times throughout the law, it should be placed at the beginning of the law. The reader should always know the definition of a term before encountering that term in the law.

# **Types of definitions**

- Definitions that limit the scope of a word or phrase (e.g., XXX means YYY).
- Definitions that expand the scope of a word or phrase (e.g. XXX includes YYY and may include other terms similar to YYY).
- Exclusions (e.g., XXX includes YYY but excludes ZZZ).

Do not define terms in a manner that deviates from or conflicts with common usage. Always use terms in their normal sense to avoid confusion when later referring to the law. For example, do not say "In this law, military also means police forces and private security contractors" as common usage of the term "military" does not generally include police or private security. Instead, it is preferable to say, "In this law, police forces shall be treated as if they are military."



Take care to not include substantive rules inside of definitions. For example, do not say "In this law, business hours are defined as being between 8am and 5pm, and government offices shall not be open outside of business hours."

Instead, the above provision could be rephrased to say:

Article XA: In this law, "business hours" means the period beginning at 8am and ending at 5pm on days that are not holidays or weekends.

Article XB: Government offices shall only remain open to the public during business hours.

### Ask

Are there terms in your law that may be interpreted in multiple ways? If so, consider defining the terms in a clear manner so they can be interpreted only in a manner that you intend.

# Statement of purpose / scope of application of law (regulated community)

The purpose is a short statement setting out the desired objective of the statute and should respond to the question "What is this law trying to achieve?". The purpose of a statute will guide all interpretation of the statute and give reasons for why a statute was introduced. Where there are ambiguities in the construction or interpretation of a particular article that cannot be resolved by the "plain and ordinary meaning" rule stated above, a judge will interpret the article in a manner that aligns with the overall purpose of the statute (See Section C.4.iii).



The purpose can be a short statement of the desired effect of the law and can be written broadly or narrowly. For example, a broad purpose may look like this:

Article 1: The purpose of this law is to improve public health by ensuring the public is better educated on the topic of infectious diseases.

A narrower version of the same purpose may look like:

Article 1: The purpose of this law is to improve public health by ensuring the public has access to information on infectious diseases through public awareness campaigns, enhanced school curriculums and public engagement on the topic toward reducing the overall percentage of infectious diseases in Iraq by 50% by 2040.

By making a clear purpose or objective, the legislator can set up a situation in which there are clear indicators of success. By making a clear purpose, judges will also be able to more easily interpret provisions to ensure they are meeting their desired purpose.

The purpose of a statute should also be accompanied by a statement on the scope of the statute, including a clear reference to who or what is being regulated by its provisions. For example, in a law on child protection, the scope of the statute could be stated in the following manner:

Article 1A: This law applies to all children. Article 1B: In this law, "child" is defined as:

- (i.) Any individual under the age of 18 residing in Iraq.
- (ii.) Any individual under the age of 18 holding Iraqi citizenship.

Those who are regulated by a statute must know whether they are part of the regulated community. The scope should be clear in who or what is being regulated by the statute and should also state whether there are any exceptions to this scope.



# Significant rules and subordinate provisions

Following the introductory provisions, legislation will then set out the major rules that will be applied in the implementation of the legislation. These rules will contain the rights and obligations that will strive to alter the behavior of the regulated community.

As the significant rules will set out the major aspects of legislation that will contribute to meeting the objectives, there may also be provisions included to modify or narrow the scope of the significant rules.

These modifications may be in the form of exceptions, clarifications or details that facilitate implementation of the significant rules.

In practice, there does not need to be a distinction in legislation between the significant rules and subordinate provisions. The legislator should only consider subordinate provisions when assessing whether the significant rules have sufficient detail or whether they need to be modified, either by subordinate provisions or by further provisions contained in subordinate legislation (i.e., regulations).

Ask

Is your law clear on how all aspects of the law will be carried out? Does the law set up a system and also includes instructive information on how that system should be run?

The legislator should ensure that, for every major concept proposed in legislation, there is some indication in the law (or in some other law or regulations) how that concept will be implemented. For example, if a law states that a committee will be formed that has the power to determine whether a business is eligible for government funding, the law should also provide details on how the committee will be run and what factors the committee should consider when arriving at a decision:



Article 5A: The Committee on Government Funding shall review all cases and determine eligibility of each applicant for funding.

Article 5B: In reviewing cases and arriving at a decision, the Committee shall take into account at least the following factors:

- 1 Financial situation of the applicant, based on the past three years of audited financial statements.
- 2 Number of full-time and part-time employees.
- (3) Expected expenses of the applicant for the next five years.
- 4 A description of the current and anticipated business activities.
- (5) A description of how the government funding will be used.

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Legislation will often include some statement about the authority tasked with carrying out the functions of the legislation. As noted in Section D.5 above, this authority should always be consulted before they are tasked with implementing the legislation to ensure they are not overburdened by any new responsibilities.

Authority may be granted in legislation to an existing entity, such as by stating "The Ministry of Environment shall be the implementing authority of this law."

Alternatively, a law may create a new authority for the sole purpose of implementing the legislation. For example, the Yazidi Survivors Law creates a General Directorate under the Ministry of Labor and Social Affairs to carry out the goals of the law.

If there is more than one authority named in legislation, care should be taken to delineate the responsibilities of each authority and to provide some instruction for how to address possible overlaps in responsibilities.



After designating a authority responsible for implementing the law, the law should also provide specifics about how the that authority will be established and managed. The legislator should consider whether to incorporate specifics about any implementation authority in the law, in an annex or in some subsequent document (such as subsidiary legislation).



When establishing an authority, such as a Committee, to implement a law, consider including the following specifics in the law or regulations:

- Composition of the Committee, including whether each member will be a representative
  of a Ministry, non-governmental organization, civil society, judiciary or other entity.
- Minimum qualifications of each member.
- Gender composition of the Committee, including a minimum percentage of women.
- Roles and responsibilities of the Committee, including limits on powers and topics that the Committee may (or may not) consider.
- Minimum number of meetings per week or month.
- Voting procedures and meeting quorum.
- Rights of appeal for any decision of the Committee.

**Table 3** provides a checklist with points to consider when establishing or appointing an implementing authority under any law.



#### 6 Penalties and enforcement

Legislation will often grant rights or confer responsibilities on the regulated community. Where a member of the regulated community breaches one of its responsibilities, the legislation may impose consequences. Accordingly, legislators may wish to consider whether their legislation needs provisions that determine what happens if someone violates its obligations.

For example, if a law is designed to establish eligibility requirements and terms of compensation for victims of terrorism, it may not need enforcement provisions. However, a law banning the dumping of trash in public spaces would require enforcement provisions to address what happens when someone in Iraq violates this law.

When adding provisions related to penalties and enforcement, the legislator should consider several points:

- Does the legislation designate who will be responsible for enforcing the provisions?
- Does the enforcement authority have capacity and resources to carry out its duties?
- Are the penalties fair (proportionate)?
- Are the penalties going to act as a deterrent or merely discouragement?
- Will the penalties be effective at accomplishing the goals of the legislation?

When deciding on quantum of penalties, legislators should always try to find a balance between <u>fairness</u> (proportionality) and <u>effectiveness</u>. Although a 10 billion IQD fine and 5 years of imprisonment would act as an effective deterrent for a parking violation, it would not be fair to the offender and may be considered disproportionate by the courts. Judges may be very reluctant to issue penalties if they are disproportionate, even if those penalties are permitted by law. For this reason, a legislator must always ensure that any penalties are proportionate to the gravity of the offence.



Conversely, if a large corporation made billions in profits through corruption, it would certainly be fair to the corporation to issue a fine equivalent to 5% of the illicit profits, but this would not act as an effective deterrent to future corruption so it is unlikely that such a penalty would actually result in the law being obeyed.



Legislation, such as the Penal Code and other criminal legislation, may also include sections on aggravating factors or mitigating factors that a judge may consider when sentencing in order to either increase or decrease the penalty based on certain actions.

For example, a law that prescribes a penalty for robbery may include an aggravating factor that increases the penalty if a gun was used during the robbery. Conversely, mitigating factors may include the young age of the offender, whether it was their first offence, or whether they self-reported the offence.



#### **Common mitigating factors:**

- First offence or lack of prior offence record.
- Age of the offender.
- Whether the accused played a minor role in the offence.
- Mental or physical impairment at the time of the offence.
- Showing genuine remorse, such as by self-reporting the offence.

#### **Common aggravating factors:**

- Whether the offence caused harm.
- Having a history of similar offences.
- Whether the accused was motivated to increase profits or decrease
- costs at the expense of safety.
- Whether the act was committed intentionally or recklessly.
- Whether a prior warning was given that was ignored by the accused.



### Alternative enforcement measures

Importantly, the legislator should always consider whether there are any suitable alternatives to monetary fines or imprisonment when developing enforcement provisions. Although there are times when fines or imprisonment may be suitable, imprisonment should only be used on society's worst offenders and as a last resort. Including a range of penalty options in legislation gives discretion to the judiciary or enforcement authority to assess whether a particular case may not have risen to the level of imprisonment, allowing the authority to decide on alternative penalties that can have equally have a deterrent effect. However, care should be taken to not permit complete discretion as a law allowing for significant discretion will more easily lead to corruption. [See section G.2]

For example, a legislator may develop a law to reduce imports of various prohibited chemicals. Following enactment of the law, the legislator notices that there are still many attempts at importing these chemicals, despite fines continually being issued. Upon investigation, it may become apparent that importers were not notified of legislative changes and had been continuing to import as they did before the legislation was developed. In this case, the issue was not one of intentional malice but rather one of misunderstanding. Accordingly, it may have been beneficial to include an option for a judge to order the offender to take an educational course on the topic to ensure the offender is made fully aware of its obligations in the future.

Such alternative enforcement measures may also be an option for those who self-report offences. For example, environmental legislation can include such measures as a punishment for someone who self-reports a chemical spill to the government, while those who have a chemical spill discovered by an officer during an inspection or who try to conceal a spill may be subject to prison or a monetary fine. This incentivizes self-reporting and ensures a more effective implementation of certain types of laws.



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# Alternatives to fines and imprisonment may include, for example:

- Remedial education, such as ordering the offender to attend a class teaching how to obey the law.
- Warning letters (usually given on first offense), which contain no penalty but may state that a penalty will be incurred on the next offence.
- Public notification or publicity (e.g. publishing notice of the offense in media), which may shame the offender.
- Corrective orders (i.e., Ordering the offender to repair damage caused. This may be particularly useful in environmental offenses where the offender has caused damage to the environment and is ordered to repair the damage or return something to its original state.).
- Suspension or cancelation of a license or permit.

By using these alternative enforcement measures, the legislator can recognizes that not all violations of law need to be punished with prison, and that many offences are merely acts of misunderstanding. Using these alternative measures can ultimately help strengthen relations between governments and the regulated community, reduce the burden on the prison system, save government funds and court resources, and ensure that laws are more easily enforced by encouraging self-reporting.



## Oecision-making provisions (including rights of appeal)

In some cases, legislation may establish a decision-making authority that has powers under the law to make decisions related to the subject matter of that law. Such legislation will usually set out the composition of the authority, required expertise of any members, and provisions related to procedures of the authority. There may also be provisions noting that any specifics related to the authority will be set out in subsidiary legislation (i.e., regulations).

The legislation should never grant absolute authority to any entity tasked with implementation and enforcement. If legislation establishes some penalty for violating its provisions or gives authority to some decision-making body to render decisions, it is also a good idea to allow the regulated community the opportunity to appeal decisions that may be unfavorable to them.

In the case of penalties, this may appear as follows:

Article 1A: A driver shall park in designated parking spots only between the hours of 8am and 5pm.

Article 1B: The parking attendant shall issue a ticket to any driver that has parked in a designated parking spot outside of the time in Article 1A.

Article 1C: A driver may appeal a ticket by appearing in person at Municipal Court within 30 days of issuance of a ticket.

Article 1C above allows the driver to contest the decision of being issued a ticket. Such provisions increase accountability and transparency within the law and improve public trust in any decision-making authority by ensuring that no enforcement authority can act without oversight, reducing the likelihood of corruption.

See Table 3 in the Annex for factors that could be considered when establishing an implementing authority under a law.



## Transition provisions

When enacting a law that will require some change in behavior for the regulated community, it is good practice to allow for a "grace period" where possible to allow the regulated community time to adjust to the changes arising from the legislation.

One common situation in which transitional provisions are used is in relation to giving merchants a deadline to adjust their books and records in accordance with statutory reporting obligations. For example:

Article: Merchants should adjust their legal status within ninety (90) days from the entry into force of this law.

This example recognizes that merchants will need some time to come into compliance with the new requirements. To require a change in legal status without a grace period would result in many merchants immediately being non-compliant with the law upon entry into force of that law and may result in an undue administrative burden for enforcement officials.

## © Entry into force

All legislation will contain a provision that states when the law will enter into force. This provision is generally put at the end of a law. Usually, the "entry into force" provision will stipulate that the legislation will enter into force on the day it is published in the Gazette.

However, there may also be provisions that have a delayed entry into force. These stipulations can be noted in the "Entry into force" section of the legislation. Delayed entry into force may take one of two main forms.

The first form may state that certain provisions enter into force after a certain period of time:

1 Article 6 of this Law will enter into force (180) one hundred and eighty days following the publication of the law in the Gazette.

The above example may be used when legislators wish to give the regulated community time to adjust to certain new obligations, or when legislation establishes new institutions that may need time to become functional.

The second form may state that certain provisions may enter into force on fulfilment of certain conditions:

2 Article 8 of this Law will enter into force upon the date of establishment of the Forestry Committee within the Department of Agriculture and Forestry.

The second example is much less common and will rarely be used in legislative drafting as it often results in uncertainty for the reader. In the above example, it is not clear how the casual reader will know when the Forestry Committee has been established, and so the regulated community may not know when its obligations enter into force. Accordingly, it is good practice to be very specific about when a law will enter into force.



## 

## Precision, Simplicity, Clarity

As explained in Section C.4, judges will use established techniques to interpret legislation, always beginning with a plain language interpretation. With this in mind, as a primary rule in drafting legislation, the legislator should always strive to ensure the legislation is precise, clear and as simple as possible while still ensuring the meaning is properly conveyed.

# Tip If there is ambiguity in legislation, a judge may impart a meaning into the legislation that was not entirely intended by the legislative drafter.

#### **Example**

A legislator wants to develop a law to provide a financial allowance to **banks**. The legislator states that the law applies to "all banks in Iraq" as he thinks this is clear and simple. However, such an approach is not <u>precise</u>.

When implementing the law, a **blood bank** comes forward and says they should be included under the law. A judge agrees that a **blood bank** is technically a type of **bank** and includes the blood bank under the law, going far beyond what was intended by the legislator.

To avoid this, the legislator should have been more precise by defining the term "bank" in a clear manner or choosing a more precise term, such as "regulated financial institution" and then defined that term in an early section so the courts would know exactly what was intended.

The legislator must take time to consider what must be conveyed to the reader and what can be removed. If words can be removed without compromising on precision, they should be removed. As indicated in Section C.4.i, a judge will use every word of a law to interpret the meaning of legislation. If superfluous words are used to express a concept, a judge will still impart meaning onto each word in arriving at the overall interpretation.



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## **Understandability / comprehensibility / accessibility**

In order to ensure a law is followed, it must be understandable by all those who are regulated by the law. A legislator may be tempted to use "legalese" (complicated legal language) or specialized terms that do not exist in common language but doing so will complicate understanding and interpretation of the statute.

Keep in mind that your audience should always be the ordinary person who engages in the subject of the legislation, and not lawyers or the judiciary (unless the law is directed at regulating lawyers or the judiciary). For example, a law regulating licensing requirements for automobile mechanics may use terminology that is not easily understandable to the ordinary person on the street, but it should be easily understandable by the ordinary automobile mechanic.



Unfortunately, there will be times where a legislator has to choose between making legislation easily comprehensible and making it precise. In this case, the legislator should always choose legal precision over comprehensibility. If the regulated community cannot easily understand its obligations, a judge can always act as an intermediary between the regulated community and the law, and clarify using interpretive techniques or accompanying documents, such as the Justified Reasons. However, the judge's interpretation will be limited by the words of the legislation, so precise language will lead to a narrower and more accurate interpretation than broad language.

A legislator must also be familiar with all the cases to which the text applies and pay attention to how language may shape the implementation of the law.



For example, the National Pension Authority Law may state that any "advisor" is entitled to a pension. However, a strict interpretation of this provision may mean that the Chairman of the State Council and the deputies are not entitled to a pension because their job title differs from "advisor". Further confusion may arise if these individuals were initially appointed to the role of advisor and were subsequently promoted to Chairman or deputy. In cases such as this, the State Council can assist in resolving any lack of clarity in interpretation. When developing legislation, any provisions granting or removing rights should be clear and precise so that their application will not be called into question.

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Legislative theory holds that every word has meaning and was carefully chosen for a specific purpose by the legislator. If there are words that do not change the meaning of a sentence or article, the legislator should remove them as keeping them will only result in the need for additional interpretation. Take care to only include necessary language in legislation.

If a phrase is used in one part of a statute in a certain manner and used later in that statute in a slightly different manner with different language, a judge is free to interpret each phrase differently. For example, if one provision states that something must be done "as soon as possible" and another states "as soon as conceivably possible", a judge will likely conclude that these should be interpreted differently, as it is understood that the legislator must have added the word "conceivably" for a reason.

However, if the legislator means for both provisions to mean the same thing, then the word "conceivably" should be removed from the latter provision.

# Important

It does not matter if a legislator intended a different meaning than what is written in law. A judge will interpret the language as written in the law and will not ask the legislator what they meant when a law is interpreted!





### Same word, same meaning

As stated above, one of the most important rules in interpretation, if not the most important, is the understanding that every word has been carefully chosen by the legislator and the legislation has been drafted exactly as the legislator intended. This rule may be applied both internally (throughout the legislative instrument) and externally (if a word has been defined in another law, it should have a similar definition in this law). When a judge interprets the law, they begin with the assumption that everything written in the law has been written exactly as the legislator intended.

Legislators must attempt to ensure words and phrases have consistent meanings across all laws Following from the primary rule of legislative interpretation that every word in legislation has been carefully chosen, a legislator must not use different words to mean the same thing. In many other forms of writing, repetition is often seen as a negative as it can bore the reader and may be indicative of a lack of imagination. However, the opposite is true in legislation.

If the legislator uses a particular word in one provision to mean something, they should repeat it throughout and not use a different word to describe that same concept later. Otherwise, a judge or other interpreter will be inclined to impart two separate meanings on two separate words.

The usual line of reasoning that a judge will follow when interpreting legislation is "If the legislator had meant the same thing, he would have used the same word. Since he used a different word, he must mean something different."



For example, a provision may be written as follows:

Article 10A: A motor vehicle must travel at or below the posted speed limit at all times.

Article 10B: If an <u>automobile</u> is determined to be traveling above the speed limit, its driver shall be fined.



In this example, a judge will likely look to these two provisions and interpret the subject in Article 10B to be different than that in Article 10A, otherwise the legislator would have written "automobile" in both Articles. The judge may interpret Article 10A as applying to all vehicles with a motor, but more narrowly interpret Article 10B to only apply to passenger cars, and not to large trucks. In this example, it does not matter that the legislator may have intended both articles to apply to the same thing. Since the legislator used different language, the legislator encourages the judge to apply different interpretations to the different words.

Similarly, if one provision refers to "the purpose of the Act" and another refers to "the objective of the Act", a judge may determine that these provisions refer to two separate concepts.

When drafting, the legislator should carefully go through all legislation and harmonize language to ensure that, when a concept is described using specific language in one part of the legislation, that language should be used consistently throughout Legislators should also ensure that, if a term is defined in one law, that definition should be consistent with its use in other laws.

Legislators must pay careful attention to accurately choosing words, phrases and sentences when drafting. Unless defined, they must not use words or phrases that are difficult to understand or have multiple meanings. For this reason, the State Council Law No. (65) of 1979 stipulates the most essential duty of the State Council, which is reviewing and harmonizing draft laws.

Article 5 (third) of Law No. 65 of 1979 states:

The State Council contributes to ensuring the unity of legislation, unifying the foundations of legislative drafting and legal terms and expressions.

In light of this provision, governmental bodies should always send draft laws to the State Council before submitting them to the Council of Ministers or House of Representatives so the State Council may review for form and substance.

Legislators must keep in mind that repetition is not a defect or shortcoming in legislation but is in fact necessary and preferable in most cases. Consistency in language is key when developing legislation.



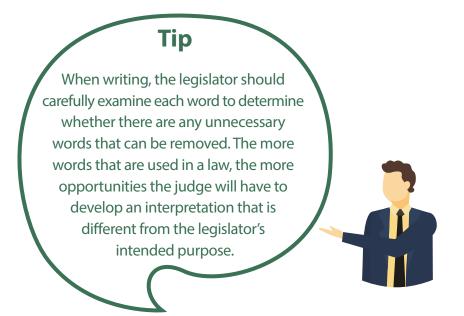
## Different word, different meaning

Building on the previous rule that every word must be carefully chosen, do not include multiple words to mean the same thing. If an idea can be said in fewer words, cut out the unnecessary language. For example, there is no need to say "each and every person" when one could say "every person" with the same effect. A judge will examine every word in legislation and interpret the language such that each unique word has its own meaning. If two separate words are used, the judge will interpret this to mean that two separate meanings were intended.

For example, it is not permissible for a legislator to write that the decision is invalid and then later write that it is null. Likewise, it is not permissible to say that an employee is assigned to retire when he attains the legal age of retirement, and in another place, when the employee reaches the legal age of retirement because the words reach and attain have different meanings. Further, the the legislator should delete any unnecessary words that have the same meaning as another word in a phrase.

Common examples in which many words are used to mean the same thing are:

- Null and void
- Each and every
- Full and complete
- Full force and effect
- Over and above
- Sole and exclusive





## 6 Behavior-based drafting (regulate behaviors, not rights)

As mentioned earlier, legislation carries out its functions by changing human behavior. Legislators will often incorrectly draft in terms of rights as it allows for less precise drafting and permits the legislator to leave the law to courts to interpret.

When drafting in terms of rights, in a situation where the rights and commitments of two individuals are at odds with each other, a judge must spend time and effort to find a suitable way of balancing those rights. When drafting in terms of behaviors and exceptions, it is clearer to the judge or decision-maker which behaviors are permitted by law and which are not.

For example, a rights-based approach might look like:

Article 1: An employee has a right to join a trade union.

Article 2: An employer has a right to dismiss its employees for any reason.

In the above example, a judge may look to this as a balance of rights. One judge may interpret the employee's rights as more important while another may interpret the employer's rights as more important. This would result in two separate but equally valid interpretations for the same law. However, this can be remedied as follows:

Article: An employer shall not dismiss an employee for joining a trade union.

OR

Article 1: An employer may dismiss its employees for any reason.

Article 1B: As an exception to article 1A, an employer shall not dismiss an employee for joining a trade union.

In this sense, it is clear what behavior is permitted and what behavior is prohibited. The behavior of the employer has been regulated, sending a clear signal to the judge about which behaviors are permitted and which are prohibited.

Likewise, a law may state:

Article: Anyone who needs emergency treatment and is transferred to the emergency department of any hospital may receive the necessary treatment.

Redrafting the above to reflect behavior-based language, the law may be changed to state the following:

Article: The hospital must provide emergency treatment to everyone transferred to the emergency department.



## Short titles / indicators on provisions

For the same reason that streets have signs, so too should legislation have sub-headings on articles to allow the reader to know where they are going in the legislation.

This may be as simple as having one or two words before each provision or section, such as "Enforcement and penalties", "Scope of application" and "Entry into force". This will help the reader understand what each provision or section is about and allow the reader to more easily understand their rights and responsibilities under the legislation.

#### 8 No gaps in legislation

When drafting legislation, gaps can lead to lack of understanding for whether an individual is part of the regulated community, resulting confusion on the part of the interpreter.

Generally, there are three forms of gaps:

- Gaps resulting from ambiguity: Where the language of the legislation is unclear, there may be ambiguity as to whether a certain provision applies to a certain demographic or individual. This often is the result of unclear drafting or using language that can have multiple interpretations.
- Gaps resulting from inadequacy: The legislation may be drafted in a manner that identifies the regulated community but has certain gaps that leave out critical details as to how the regulated community is included in the legislation. Alternatively, some vital information related to a situation is included, but the information is not complete.
- Gaps resulting from silence: These gaps result from instances in which the legislator does not anticipate certain scenarios, resulting in these scenarios being left out of legislation. These gaps can only be mitigated through study and keen foresight, as well as through drafting legislation in a manner that it can be interpreted to apply to new, similar scenarios.



When drafting, the legislator must carefully examine the legislation to ensure there are no gaps in regulation. In some cases, it may be appropriate to include provisions known as "residual provisions" that can determine what happens to those members of the regulated community that are not explicitly included in legislation. In other cases, gaps can be mitigated through careful drafting. For example the following provisions leave clear gaps:

Article 2: Those covered by the provisions of Article (1) of this law shall be granted a retirement salary according to the following percentages:

- (30%) of his total monthly salary and allowances if he has an actual service in the state for more than six months and less than one year.
- **(b)** (50%) of his total monthly salary and allowances if he has actual service in the state for more than one year and less than three years.
- (70%) of his total monthly salary and allowances if he has actual service in the state for more than three years and less than five years.
- (80%) of his total salary and monthly allowances if he has actual service in the country for more than five years.

In the above article, it is not clear in each sub-section how someone will be treated if they have exactly one, three or five years of service. Such a gap could be mitigated by slightly changing the language to say:

Article 2: Those covered by the provisions of Article (1) of this law shall be granted a retirement salary according to the following percentages:

- (30%) of his total monthly salary and allowances if he has an actual service in the state for six months or more and less than one year.
- (50%) of his total monthly salary and allowances if he has actual service in the state for one year <u>or more</u> and <u>less than</u> three years.
- (70%) of his total monthly salary and allowances if he has actual service in the state for three years or more and less than five years.
- (80%) of his total salary and monthly allowances if he has actual service in the country for <u>five or more years</u>.



#### O Careful use of "and" and "or"

In simple legislative language, "and" has a disjunctive meaning and "or" has a conjunctive meaning. Generally, the use of each of these terms is clear:

Article: The husband <u>and</u> wife shall apply in writing for registration of marriage.

In this example, it is clear that both the husband and wife must apply. If a legislator wanted to create a provision in which only one of the husband or wife must apply for registration of marriage, it written as follows:

Article: The husband or wife shall apply in writing for registration of marriage.

However, the above example is not clear whether both the husband and wife together may apply. If a legislator would instead prefer to create a situation in which either the husband or wife alone or both the husband and wife jointly may apply, this should also be made clear and could be written as follows:

Article: The husband or wife or both shall apply in writing for registration of marriage.

Many situations in which "or" is used are also clear. For example:

Article: The automobile registration certificate must be displayed on the front windshield or rear windshield of the automobile.

The above example is clear that one may choose to display the certificate either on the front or back of the automobile but it is not necessary not to display the certificate on both.



When using "and" and "or", the legislator must always consider whether there is ambiguity in the language. For example, consider the following:

Article 1: Husbands and fathers must provide reasonable support for their children.

In this example, it is unclear whether this article states that husbands must provide for children and also fathers must provide for children, or that fathers who are also husbands must provide for their children. If the former, then the legislator should clearly state in two clear provisions the requirements of the law:

To remedy the problem with the above example, the Islamic Sharia in the Personal Status Law, 1959 is written in a clear manner to explain how men provide monetary support for others. The law states:

Article 58: Each person shall be provided with maintenance from his own money except for the wife who shall be provided with maintenance by the husband.

Article 59(1): If the child does not have money of his own, his father shall provide for his needs as long as the latter is not poor and incapable of earning money.

Another example in which the use of "or" is clear may be:

Article: The Minister of Youth and Sports will award the winner of the race a motorcycle or one million Iraqi dinars.

In the above example, there is a clear choice between either the motorcycle or the cash prize, but not both.

Legislators must always assess the language of the provision against the desired effect of the law and determine whether a conjunctive or disjunctive situation is preferred and whether there is any overlap in the possible outcomes of the provision as written. If there is overlap, the legislator should clarify what happens in the case of such overlap.

#### Tenses (simple present preferred)

In legislative drafting, simple present tense is generally preferred.

The one major exception to this rule is when the legislation is referring to certain facts that occurred in the past, such as:

Article: An employee that has registered for unemployment insurance before 31 December 2020 is entitled to register under the new system.



## Use imperative only for commands

The role of legislation is to determine what is permitted and what is not permitted by law. By stating something is fact, legislation declares a legal result. Accordingly, there is no need to use imperative when the intention of the legislator is to declare a legal fact unrelated to regulating behavior.

A legislator may be tempted to write "The Act shall enter into force on 1 January 2023." However, this would not be as correct as stating "The Act enters into force on 1 January 2023." If legislation states something will occur, there is no need to phrase a provision in the imperative as if one was commanded to make something occur.

### Active vs. passive

Where possible, legislation should be phrased using an active voice rather than a passive voice. This means that sentences will place the subject first, then the verb, then the object, allowing the reader to understand more easily who is required to do what. Drafting in active voice also facilitates drafting to regulate behaviors rather than rights. In the example below, it is clear that the active voice is both clearer and more concise, allowing the reader to easily understand what is required of applicants.

Passive: A licensing exam shall be passed by an applicant before the license can be issued. Active: An applicant shall pass a licensing exam before the license can be issued.

One exception to the general preference for the active voice is when there is an unclear subject, or the subject is not relevant to the resulting action. For example: Passive: A federal election shall be held on the first day of November every fifth year. Active: The Ministry of Elections shall hold an election on the first day of November every fifth year.

In the above example, the subject (the person or entity who holds the election) is less relevant to the reader than the object (when the election is being held). The relevant information relates instead to the timing of elections. Further, an elections law would also likely designate the elections authority somewhere else in the law.

The legislator should consider whether the reader of legislation needs to identify the person or entity performing the legal action. If so, the active voice should generally be used.



## Prefer singular over plural

As a presumption, legislation should be directed at individuals rather than groups, unless groups are the target of the legislation because the singular includes the plural. For example:

**Do not say**: An employer shall not dismiss employees for taking part in any political activity.

**Instead, say**: An employer shall not dismiss an employee for taking part in any political activity.

In the first example above, the provision is not clear on the object of the sentence. As written, one interpretation could be that it is permissible for an employer to dismiss one employee, but is prohibited from dismissing groups of employees for taking part in political activities.

In the second example above, it is clear that an employer may not dismiss a singular employee nor a group of employees for taking part in any political activity.

## Oraft using positive language instead of negative language

Provisions are generally **easier to understand when written using positive language** compared to negative language. Where a provision can be written either positively or negatively, the legislator should always choose to write positively.

For example, do not say:

Article: This law does not apply to individuals 18 or older.

Instead, say:

Article: This law only applies to individuals under the age of 18.



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## **©** Be specific about who is being regulated

Every member of the regulated community must understand the extent to which they are bound by the legislation. There should be no ambiguity around who is being regulated. Otherwise, a judge may interpret legislation as including individuals who were not meant to be included, or, alternatively, may interpret legislation more restrictively than intended, excluding those who were meant to be included.

It is important to use specific and clear language to address all intended members of the regulated community, including through providing clear definitions and using gender-neutral language as much as possible. For example, the following may create confusion:

Article: Any man at or above the age of 18 may vote.

In the above example, a judge may interpret this to mean "Any person at or above the age of 18 may vote," as that is likely what was intended by the legislator. In that sense, although the law says "man", the interpretation may be applied to "all people".

However, another law may state:

Article: Every <u>man</u> must engage in mandatory military service upon reaching the age of 18.

In this example, an argument could be made that the word "man" only includes males. However, another argument could be made that, because the word "man" has been used in other laws to mean "all people", then it should mean "all people" here as well. For this reason, unless a law specifically requires distinguishing based on gender, a gender-neutral approach is preferred.

#### Tip

In its legislative drafting manual, the New Zealand Law Commission suggests several ways of avoiding unnecessarily gendered in language, using the sentence "A member of the Tribunal may resign his office" as an example: 1

- Omit the pronoun: A member of the Tribunal may resign office.
- Use both masculine and feminine pronouns: A member of the Tribunal may resign her or his office.
- Repeat the noun: A member of the Tribunal may resign the office of the member.
- Use the plural: Members of the Tribunal may resign their offices.

<sup>1</sup>New Zealand Law Commission, Report 35, Legislation Manual:

Style and Structure (May 1996).



#### **16** One sentence, one idea

In order to keep the language of legislation as simple as possible, **it is good practice to ensure that each sentence and provision has only one idea.** If a legislator wishes to include several ideas or topics in a provision, it is best to break the provision down into sections and sub-sections.

#### Do not say:

Article 1: It is required for anyone appointed to a government position to be an Iraqi person by birth, be a resident of the governorate where the position is located, hold at least a bachelor's degree, and to be at least twenty-five (25) years old.

#### Instead, say:

Article 1: In order to be appointed to a government position, the individual must:

- a Be an Iraqi person by birth;
- (b) Hold at least a bachelor's degree in law;
- © Be at least 25 years of age; AND
- (d) Be a resident of the governorate where the position is located.

## **6** Human Rights and Legislation

All human rights organizations and civilized countries adopted new principles of human rights during the 21st century, and most countries in the region joined many international agreements and treaties concerned with the rights of women, youth, childhood, and non-discrimination on gender basis. Therefore, it is mandatory that national legislation must keep up with this trend. Ratifying an international agreement means that Iraq is committed to its provisions, and failure to incorporate those provisions into Iraqi legislation may lead to the consequences at the national or international level for not complying with the provisions of that agreement.

While noting that legislative drafting principles in relation to laws governing human rights are generally similar to laws governing other subject areas, legislators may be able to use legislation to incorporate additional human rights considerations into a law that may otherwise be passed without regard to human rights.

The following section explores some opportunities for legislators to consider whether certain elements may be added or changed in a draft in order to maximize the likelihood that the legislation will positively contribute to social change.



## Women's rights considerations in legislation

Earlier in this publication, the point was made that gender-neutral language should be used as a default, while the use of gendered language should be restricted to when it is necessary to refer to a specific gender. This approach helps avoid confusion and misinterpretation in legislative text and ensures the reader has a clear understanding of who is being regulated. This approach also has the effect of strengthening language around gender inclusivity toward strengthening women's rights.

In addition to the previously noted considerations related to using neutral language to ensure the regulated community is aware of its obligations, legislators should also use the legislative development process as an opportunity to evaluate how gender considerations can more broadly be incorporated into law.

In particular, through careful use of language, legislators may have an opportunity to strengthen women's rights as an additional effect of other legislation that may not be directly related to women's rights issues.

For example, a law to improve education access for children in Iraq may initially take a gender-neutral approach, referring to "children" or "people" more broadly. In normal practice, a gender-neutral approach in legislative drafting is highly encouraged. However, in the case of such a law on education, the law may be improved if the legislator considers whether there are unique challenges faced by women and girls (or any other disadvantaged demographic) and decide to include specific gender-related provisions or language in the law.

Similarly, recognizing that young girls are at a particular disadvantage when accessing education in Iraq, a legislator may decide to have additional provisions in legislation directed at girls, with a view to ensuring existing disadvantages are not perpetuated as a result of using gender-neutral language.

Legislators should always consider as part of the legislative planning process whether there are certain barriers faced by women or girls that could be addressed as a separate component of legislation, in addition to any broader rights or responsibilities to be included in the law.

See section F (13).

<sup>13</sup> https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/GirlsRightEducation\_EN.pdf



For example, the following law addresses women in a manner that is unclear and could be interpreted as disadvantaging women as it places women in a position of consideration after men.

Article (9) of Law No. (4) of 2023, the Third Amendment Law to the Elections Law of the Council of Representatives, Governorate Councils, and Districts stipulated that:

Third- b: When submitting the open list, the women quota must be considered, with one woman after every three men.

The aforementioned text distinguishes men from women and ensures that women will be considered only after men are considered. From a drafting perspective, it would have been more appropriate for the text to be as follows:

Third- b: When submitting the open list, at least one woman must be included among every three men.



The Iraq Yazidi Survivors' Law (No. 8 of 2021) includes several special considerations to account for women in the law. As this law was developed to address women and children subjected to crimes of Da'esh, there are several mentions of how women should be considered under the law.

Article 10 (Fifth) mandates that the Committee formed under the law is composed of at least 30% women.

Article 3 (First) states that the General Directorate has a right to open offices in areas where female survivors are present.

These provisions recognize that women can valuably contribute to the implementation of the law, ensuring that its provisions are carried out in accordance with the objectives of the law.



## O Drafting against corruption

By developing strong legislation, the legislator works toward strengthening the rule of law and good governance at the national level. Good governance means that those who write, enforce and implement legislation must follow the rules in the same manner as other stakeholders who are bound by legislation.

When those who are responsible for implementing legislation are able to act in an arbitrary or discretionary manner with no accountability or oversight, corruption is a likely consequence.

Corruption can appear in many forms, but the most common of these forms are:

- Bribery: When an official receives something of value in exchange for exercising discretion in the payer's favor.
- Embezzlement: When an official takes money or resources from funds that are entrusted to them.
- Speculation: When an official uses their official powers to buy goods or services cheaply, then sells them at a higher rate for profit.
- Patronage and nepotism: When an official uses their power to provide employment or other opportunities to friends and family.
- Conflict of interest: When an official uses their power or discretion to make a decision motivated by their own personal interest rather than the public good. Conflict of interest can be conscious or unconscious as well as real or perceived.



Corruption is much more complex than merely being the result of weak legislation. It arises due to personal circumstances and pressure, social norms, country practices and a multitude of other factors. Accordingly, there is no single piece of legislation that could entirely eliminate corruption. However, by addressing some of the root causes of corruption, the legislator can make corruption harder to engage in and easier to identify or punish.

To minimize corruption through legislation, several tools exist to ensure that laws are properly developed in order to create strong legal institutions and officials that act in a transparent manner and are accountable for their actions and decisions.

For example, some countries recognize that corruption is very difficult to identify and catch. Recognizing this difficulty, **criminal laws may be enacted which account for the severity of the violation and the likelihood that the violation will be detected,** leading to very high criminal penalties for corruption. Other jurisdictions may engage in a criminal "burden shift" to facilitate the role of criminal prosecutors. In such jurisdictions, **if a prosecutor can show that an official lives with a standard of luxury beyond what would be expected of someone with the official's salary, the burden of proof then shifts to the official to show that their money came from legitimate sources.** 

Many jurisdictions have also implemented strong whistleblower laws and protections, such that any individual who reports corruption may receive a reward and is protected against any forms of retaliation for their report.

## i. Limiting the scope of discretion in the information input process

One way of legislating against corruption is by limiting or specifying the types of issues that fall within the jurisdiction of an authority and adjusting the factors that an authority may consider in order to arrive at a decision.

One way of doing this is by carefully **limiting the specific topics an authority may engage with.** For example, a law may state that "The Agricultural Authority may issue rules and decisions in relation to industrial and commercial agriculture." In such a situation, the authority would then be prohibited from issuing any decisions that, for example, relate to small-scale farming for personal use.



A second way of limiting the scope of discretion in the input process relates to **limiting who may provide information** that leads to a decision by the authority. For example, a law may state that, when making decisions in relation to children's rights, public hearings must be held and no decision may be made without consulting with children's rights advocacy groups. By regulating where information comes from, the transparency of the decision-making process is increased.

A third way of limiting the scope of discretion in the input process is by **regulating the types of information that may be admitted.** For example, a law on designation of endangered species may state that, in a hearing on whether to list a species of animal as an endangered species, no evidence on the economic importance of the species will be admissible.

# ii. Limiting the scope of discretion in the decision-making process

In addition to regulating what information is presented to an authority, a legislator may also choose to regulate the factors in the decision-making process, including the range of solutions available to the authority. This further reduces discretion and increases transparency and accountability of the decision-making process and can lead to increased trust in the authority.

A legislator may improve the transparency of any authority by **requiring** that, when a decision is given, it must be given with **written justification showing the facts and reasoning that led to the decision.** Similarly, legislation may also state that authorities are bound by previous decisions as precedent, ensuring that similar situations with similar facts experience similar results.

A second way a legislator may limit the scope of discretion in the decision-making process is by clearly stating what factors an authority may take into account when arriving at a decision.

For example, the Council of Ministers in Iraq must justify its decisions regarding the exclusion of any department contracting with the State from the government contracting system contained in the Instructions for Implementing Government Contracts, and the written justification must be clear and obvious, and mention the benefits of the contract. Any exclusion must be limited to the subject of this contract. The Council of Ministers may not exclude any department from following the steps stipulated in the instructions for implementing the government contracts, except to a lesser extent to ensure transparency, preserve public money, and prevent corruption. This authorization is not granted to other parties.



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#### **Example**

A law may state that, when considering whether to designate a species as endangered, the authority may only include in its final decision:

- The population of the species in Iraq and globally, as well as the rate of decline of the species;
- The remaining habitat of the species and condition of this habitat.
- The rate of decline of the species.
- The probability of extinction of the species within the next 20 years.

The law may further state that the authority may not consider in its decision:

- Any information related to the economics of designating the species as endangered.
- Any information about whether designating the species as endangered would cause hardship for businesses.

If the authority then decides to include in its decision evidence that declaring a certain species as endangered would have a harmful impact on the economy, the authority has gone outside of the scope of factors it may consider and the decision could be overturned by a court.

By anticipating the possibility of corruption in the implementation stage of a law, the legislator may proactively include certain provisions in either the law to limit the scope of discretion and work to increase transparency around any decisions issued by an authority.

As an initial set of considerations, legislators should take into account:

- The need to ensure transparency in contracts.
- Accuracy in implementation of legislation.
- Careful selection of security personnel and staff.
- Accountability mechanisms and rapid remediation of corruption.
- Regular rotation of State positions, such as mandatory rotation every five years.
- Removing discretion in making financial decisions.
- Obliging all senior positions to justify financial decisions.

Table 4 of this publication provides a checklist for additional measures to combat corruption that a legislator may consider when drafting a law. The points in Table 4 could be used as an initial tool to encourage legislators to consider a multitude of factors to address the very complex issue of corruption.



## Orafting considerations for vulnerable groups

Legislators should always be open to tailoring legislation to account for historically disadvantaged or underrepresented demographic groups or components, particularly where maintaining a status quo in legislation may further disadvantage those groups.

In addition to using language to recognize differences in gender (as indicated in section G.1 above), legislators should include as part of their legislative planning process an investigation into the ability of all members of the regulated community to take part in the rights and responsibilities set out in the legislation.

When a law confers certain rights on Iraqis, a legislator must take care to not deprive some individuals of these rights due being part of a disadvantaged demographic.

## **Example**

In developing a law that establishes voting rights and procedures in Iraq, a legislator would likely include provisions related to locations of polling stations, voting periods and timelines, and systems by which each eligible voter could take part in an election.

However, by mandating only the locations of polling stations, the legislator may fail to consider whether **eligible voters who have disabilities** are able to attend at the voting stations in the same manner as the able-bodied. To remedy this, a legislator may include a provision to ensure that all voting stations are wheelchair-accessible or may include provisions to allow housebound voters to cast their votes through use of a door-to-door elections official.

Similarly, if an election happens to occur on a day that is a holiday for a **religious or social minority** in Iraq, that demographic may not be able to devote time to voting. To remedy this, a legislator may include a provision ensuring that no elections shall occur on holidays of any religious or ethnic components in Iraq or may include a provision allowing for a longer voting period for those who are not able to vote on election day.



In relation to ensuring disadvantaged groups are not further disadvantaged in relation to obligations under legislation, a legislator should consider whether the ability of the majority of society should be considered the standard in obeying the law or whether some allowance can be made for some minority members of the regulated community based on individual circumstances. The legislator should also include as part of the legislative planning process an investigation into whether all individuals are equally able to obey the law or whether some will encounter hardship, despite best intentions in attempting to obey the law.

For example, a legislator may draft a law that regulates road safety procedures, including a provision stating that pedestrians must not walk on roads and instead must walk only on sidewalks or on designated crossing zones.

However, without also including provisions mandating maintenance of sidewalks to ensure they are kept in safe condition, wheelchair users may be forced to traverse on the road to move from one location to another when sidewalks fall into disrepair. Thus, **not accounting for all demographics in the law may result in circumstances in which some members of the regulated community are forced to break the law** through poor legislative design.

#### Remember

Human rights legislation should be designed to protect vulnerable people in society! Legislators should always consider who the most vulnerable people are and whether there are vulnerable groups that can be protected or accounted for in their laws.



## Conclusion of the legislation

## Cancellation

There may be instances in which a new law is meant to take the place of an older law, rather than merely amending an older law. If this is the case, the older law should be repealed so that there are not two or more instruments regulating the same subject. The legislator should consider each of the following:

Only engage in explicit cancellation, which clearly sets out which laws are being canceled and generally takes the form of:

Article: On entry into force of this law, Law No.83 of 2017 (Law on Irrigation) is repealed.

Never engage in implicit cancellation or "blind cancellation", in which you leave the work to the reader to determine which laws are being repealed. This is a vague approach on the part of the legislator and will result in a situation in which every reader must go through all existing laws to determine which older laws may contradict the new legislation. As part of the preliminary steps in developing new legislation, the legislator should always know which existing laws regulate the subject matter and tell the reader which legislation is being canceled. Blind cancelation, which should never be done, often looks like this:

Article: On entry into force of this law, all other laws that contradict this law are repealed.

Consideration should be given to the effect of repealing a law on those who are already being regulated by that law or its subordinate legislation. If a law is repealed while there are still people regulated by subsidiary legislation, it is good practice to maintain the effect of these regulations through a directive to ensure there is no interruption in workflow or gap in regulation.

#### Preserving provisions

If there is no plan for how to maintain continuity and not hinder the workflow when repealing a particular law, it may be best to keep subsidiary legislation, such as regulations, in force until new regulations can be developed. **The legislator must ensure that, by repealing a law, there is no gap in regulation created whereby something what was once regulated is now no longer regulated** (unless this is the intention of the legislator).

There may also be other provisions to ensure continuity of existing rights or duties under legislation that is being repealed. One notable use of such preserving provisions is to provide for continued validity of permits or licenses issued under the old law. For example:

Article: The permits and licenses granted under the repealed Municipal Administration Law No.65 of 1969 remain valid until their expiry.



## Authorities for implementation of legislation

Legislation will generally have an article containing a short description of the competent authorities tasked with implementing the legislation. For example:

Article: The National Retirement Authority shall calculate the retirement rights of those covered by the provisions of Order (9) of 2005.

Or

Article: The Minister of Justice shall implement this Decree.

As indicated in section D.5 of this publication, any authority designated under legislation must be consulted prior to its inclusion in the legislation.

Legislators are encouraged to consult Table 3 of this publication when establishing or appointing an implementing authority under legislation.

### Delegation of powers

When developing legislation, one or more authorities will be designated to carry out the goals and objectives in its provisions.

In some cases, there may be a reason to allow for delegation of authority regarding some smaller portions of the overall legislation. This may be to ensure that some specialized expert body has a role in implementing the provisions or may be to ensure that the main authority under the legislation is not overburdened by the obligations of the legislation.

It is important to include in legislation a reference to the possibility that some power may be delegated. For example, this may take the form of:

Article 1A: The Ministry of the Environment shall establish a Committee on Water Resources to operate under the Ministry.

Article 1B: The Committee on Water Resources shall have the power to make rules, regulations or orders under this law.

If some sub-authority has been delegated the power to make subsidiary legislation, this sub-authority is generally not automatically permitted to further delegate authority.

When developing provisions on delegation of power, it is important to be clear in accurately identifying the issues to be regulated in any subsidiary legislation, such as by indicating that any subsidiary legislation must facilitate implementation of the law. One such example could be:

Article 1C: Rules, regulations or orders developed by the Committee shall relate only to allocation of water resources, grants for development of water resources, use of water resources and other matters necessary for effective implementation of this law.



## Additional considerations

## • Numbering of provisions

Legislation should contain provisions that are numbered in the same manner as the Iraqi Constitution, with articles that are divided into clauses, which are divided into items, which are divided into sub-items. The format for this is:

```
Article 1, 2, 3...

First, Second, Third...

A, B, C...

1, 2, 3...
```

An example from the Iraqi Constitution is Article 61, sixth clause, item B, sub-item 2.

#### 2 Time and date considerations

Be clear about references to time and date, including the system by which time is measured. Generally, time and date should be noted according to the Gregorian calendar, unless there is a clear and explained reason to use an alternate calendar.

One notable exception to this rule is that, when issuing and signing the legislation, the place of issuance is accompanied by the date of issuance written in both the Hijri and Gregorian calendars, along with the signature of the person authorized to issue.

When referring to time limits in a statute, it is also prudent to be clear on how time is measured. For example, if a statute says, "The form must be submitted no later than 10 days after the goods are imported," it is not clear whether this refers to 10 calendar days or 10 business days. In this case, it is preferable to either say, "...no later than 10 calendar days..." or to provide a definition somewhere in the statute to the effect of "In this statute, day means calendar day according to the Gregorian calendar."

### Tip

When referring to "days" in legislation, be clear about whether you mean "business days" or "calendar days".



## Incorporation by reference

Incorporation by reference is a tool that is sometimes used by legislators to avoid drafting parts of legislation anew by taking necessary parts from other legislation or documents and incorporating it into the new legislation. By doing so, **the incorporated text legally becomes part of the new legislation as well.** This tool is most often used in relation to lists or appendices from other legislation, particularly where the lists or appendices may be complex. This avoids having to duplicate such information unnecessarily each time a new instrument needs to refer to the information.

Importantly, significant care should always be taken when incorporating by reference as it can often cause more problems than it solves.

Incorporation by reference can take one of two forms:

- Static incorporation, in which information can be incorporated into new legislation as the information existed at a certain point in time. This will require referencing a certain document and noting which version is being referenced, such as by saying "This article includes all chemicals listed in the Regulation 4/11 List on Prohibited Hazardous Chemicals, 26 May 1998" or "Guidelines for operation are set out in the Standards of Modern Farm Machinery, Vol. IV".
- Open incorporation (also called dynamic incorporation), in which information is automatically incorporated from other legislation "as it is amended from time to time". For example, this may be used when a legislator wishes to incorporate a list of hazardous chemicals from another regulation into a new law. If the original list of chemicals is frequently updated, a dynamic incorporation will ensure that the incorporated list accurately reflects the content of the original regulation as no additional work needs to be done to update it in the new law.
  - One notable risk of using dynamic incorporation is that the legislator has no control over what happens to the original source material. If a new law relies on a list found in some older regulation, and that older regulation is repealed, the reference in the new law would become void.

Occasionally, legislation will incorporate by reference entire provisions or even definitions from other sources without providing any information on the original source of information, such as by saying "In this Act, 'automobile' has the same meaning as defined in the Act on Regulation of Motor Vehicles". Such incorporation by reference results in a situation whereby the reader will have to choose to either use effort to look up the original law or proceed with an incomplete understanding of the reference.

For this reason, to ensure a clear understanding of any law, **legislators should generally avoid incorporating by reference and simply include the entire definition or referred provision in the new law.** However, if a legislator chooses to incorporate by reference when drafting, they should carefully consider whether a static or dynamic reference is most suitable.



#### 4 Justified reasons

The justified reasons for legislation are typically located at the end of the document. This section includes matters that may relate to clarification and interpretation of important articles and sections of the legislation. It may also contain an explanatory note describing the reasons for the legislation. This section will also include financial information related to the law.

A large part of the justified reasons should be dedicated to explaining and detailing the articles and necessities that called for the issuance of the legislation, as well as the relationship of this legislation to other existing legislation. This could also include deterrent factors, reminders, duties and obligations imposed by the new legislation, or rights granted to the regulated community under the legislation.

Unfortunately, legislation is occasionally developed to include hidden motives and vague phrases that do not align with the stated purpose of the legislation. The section on justified reasons is meant to mitigate this by noting all matters related to the legislation, stating them clearly to inform the reader of the precise intention and content of the legislation. During implementation of the legislation, the interpreter will often look to the justified reasons to ensure that any implementation is in accordance with the overall reasons for the legislation.

### 6 Appendices

Appendices or annexes are used to attach additional information to legislation that may be too cumbersome or detailed to contain in the body of the legislation itself. For example, legislators may place template forms, lists of controlled substances and items, or fee schedules. Some examples include:

- Schedule of flat fees in the Stamp Duty Law.
- Schedule of fees in the Notary Law.
- Schedule of salary scale for the Law on Salary of State and Public Sector Employees.
- Schedule of names of plants and their diseases in the Law on Agricultural Quarantine.
- Copies of passports in the Passport Regulation No.2 of 2011.

When added to legislation, annexes and appendices become a legal part of the legislation. As many annexes contain information that may frequently change (such as the names of plants and their diseases, as more diseases are discovered), legislators may wish to include mechanisms in the legislation to be able to amend the annexes more easily than the body of the legislation.

Where appendices are used, the legislator should ensure to mention the number of the article that referred to the appendix in the title of the appendix (e.g., "Appendix 4: List of names of plants and diseases – Article 5(a)).



## 6 Consolidated legislative amendments

When preparing an amendment to an existing law, there are several approaches. The first approach involves preparing a piecemeal document which only includes the parts of provisions that are being changed without giving context to the entire law that is being amended. This approach can be confusing and is sometimes used when the legislator does not want to put serious effort into drafting or when a legislator may be trying to confuse readers of the amendment.

For example, an amendment introduced in Parliament using this approach may look like the following fictional example:

## Law 25/2023 Amending Law 21/2009 on Provincial Elections

- 1 Article 4 of the Law on Provincial Elections is amended to replace the word "candidate" with "official representative".
- ② Article 18 of the Law on Provincial Elections is amended to remove the phrase "unless otherwise stipulated by law".

This approach requires the reader to take the amendment document and compare it to the original law to see how the original law will look with the changes. This approach takes up unnecessary time and relies on the understanding that many Members of Parliament will not look to the original law to see the effect of the changes.



Another approach that is used provides slightly more context to the reader and allows the reader to more fully understand the ramifications of the amendment. It may look like the following:

#### Law 25/2023 Amending Law 21/2009 on Provincial Elections

- Article 4 of the Law on Provincial Elections is replaced with the following:
  - 4. The official representative may make a petition to the government for a recount of all ballots within 48 hours of the results being announced.
- Article 18 of the Law on Provincial Elections is replaced with the following:
   18. Only registered and qualified individuals may be involved in the process of counting ballots.

A variation on this approach provides even more context to the reader by showing the reader exactly what was removed or added using underline for additions and strikethrough for deletions. Some jurisdictions may use different methods of indicating additions or deletions.

#### Law 25/2023 Amending Law 21/2009 on Provincial Elections

Article 4 of the Law on Provincial Elections is amended as follows:

- 4. The candidate official representative may make a petition to the government for a recount of all ballots within 48 hours of the results being announced.
  - Article 18 of the Law on Provincial Elections is amended as follows:
    - 18. Only registered and qualified individuals may be involved in the process of counting ballots unless otherwise stipulated by law.

Finally, the most comprehensive way to introduce amendments is by introducing the entire original law that will be amended with the specific additions or deletions in the law indicated. This means that the legislator will even include provisions that are not being amended. This approach shows the changes in their entire context to any reader of the amendment and helps the reader understand how the changes fit into the broader law. This approach is more difficult when the law that is being amended is very long, but it is a practical choice for short laws that are being amended.



### Reviews of legislative drafts before introduction to Parliament

After a legislator finalizes the legislative drafting plan and uses that plan to craft a well-drafted piece of legislation, it always benefits the legislator to have other entities review the draft version before it is presented to the Council of Representatives. A well-drafted law will be easier to pass through Parliament as fellow legislators will have to spend less time debating over the nuances of language, correcting areas of uncertainty, and ensuring the legislation is clear.

One important resource that legislators should always use is the State Council. The State Council's critical role in reviewing legislation should not be overlooked. The Council's legal experts are well-situated to provide critical analysis of draft legislation that will help the legislator to strengthen a draft, and these experts may alert the legislator to certain issues, such as unconstitutionality or conflict with existing laws.

Legislators may worry that, by having other entities review a draft, the legislator will have to relinquish control. However, when the State Council reviews a draft, this review generally only relates to the form, style, and subject matter. Reviewers at the State Council take an impartial approach and will usually only suggest changes to the content when language of a draft will result in inconsistency, uncertainty or contradiction. Such a review will always improve any draft prior to its introduction to the Council of Representatives.

Further, any law that involves a financial component (such as a budgetary allocation) must be reviewed by the Ministry of Finance to ensure that there are enough funds available for implementation of the law. By ignoring this step, a legislator runs the risk of having a law stricken down by a judge.

#### Assessing the effectiveness of legislation

During and following development and passage of legislation, **legislators** should consider undertaking efforts to evaluate the effectiveness of the current and new regulatory framework. This ensures that new laws are developed in a manner that benefits the country and existing laws are implemented in the most effective manner possible.

This can contribute to a strengthened ability of governments to ensure further effective legislative implementation. Legislators are encouraged to find and utilize ways of evaluating the effectiveness of legislation throughout the process of legislative development and implementation.

The State Council can assist legislators in understanding the impacts of their legislation and evaluating the status of implementation of laws.



#### **Annexes**

Table 1. Selected human rights treaties to which Iraq is bound.

Title	Status of Iraq
Convention on the Protection and Use of Transboundary Watercourses and International Lakes	
Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III)	Accession – 24/09/2014
Convention on the Elimination of All Forms of Discrimination against Women	Accession with reservation (13/08/1986), partial reservation withdrawal – 18/02/2014 14
International Convention Against the Taking of Hostages	Ratification – 26/08/2013
International Convention for the Suppression of Terrorist Bombings	Accession – 20/07/2013
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime	Accession – 23/05/2013
Convention on Cluster Munitions	Ratification -14/05/2013
International Convention for the Suppression of Acts of Nuclear Terrorism	Accession – 13/05/2013
Convention on the Rights of Persons with Disabilities	Accession – 20/03/2013
International Convention for the Suppression of the Financing of Terrorism	Accession – 16/11/2012
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Accession – 07/07/2011
United Nations Convention against Corruption	Accession and Notification – 14/06/2011

<sup>14</sup> Note: On 18 February 2014, the Government of the Republic of Iraq notified the Secretary-General that it decided to withdraw its reservation to article 9 of the Convention made upon accession which read as follows:

2. This approval in no way implies recognition of or entry into any relations with Israel.

72

<sup>1.</sup> Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic Shariah according women rights equivalent to the rights of their spouses so as to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1, of this Convention with regard to the principle of international arbitration in connection with the interpretation or application of this Convention.



### Table 1. Selected human rights treaties to which Iraq is bound.

Title	Status of Iraq
International Convention for the Protection of All Persons from Enforced Disappearance	Accession – 23/11/2010
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction	Accession – 13/01/2009
United Nations Convention against Transnational Organized Crime	Accession – 17/03/2008
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction	Accession – 15/08/2007
Convention on the Rights of the Child	Accession – 15/06/1994
International Convention on the Suppression and Punishment of the Crime of Apartheid	Ratification – 09/07/1975
International Covenant on Economic, Social and Cultural Rights	Ratification – 25/01/1971
International Covenant on Civil and Political Rights	Ratification – 25/01/1971
International Convention on the Elimination of All Forms of Racial Discrimination	Ratification 13/02/1970

<sup>15</sup> Iraq has also acceded to the Optional Protocol on the involvement of children in armed conflict (24/06/2008) and the Optional Protocol on the sale of children, child prostitution and child pornography (24/06/2008).



**Table 2. Designing a legislative plan** 

Topic	Consideration	Notes
Understanding the legislative objectives	Have you identified the problem the legislation will address? State the problem.	
	How will the identified topic address a societal problem rather than merely addressing only symptoms of a broader problem?	
	What research has been conducted to understand why the problem might exist?	
	Was the research specific to Iraq?	
	What solutions have you identified that may address the problem? State 2-3 different solutions.	
Identifying legislation as the	How can the identified problem be alleviated by using legislation?	
most appropriate solution	Is legislation the only way to solve the problem?	
	Is legislation the best way to solve the problem? If so, how and why?	
Constitutionality of legislation	Have you consulted with a lawyer or other expert in determining whether the legislation may be unconstitutional prima facie (at first glance)?	
	If the legislation is constitutional on its surface, has the lawyer or constitutional expert indicated that certain topics or provisions should be avoided during development of the legislation as these specific provisions may be unconstitutional? If so, which provisions and why may they be unconstitutional?	



## **Table 2. Designing a legislative plan**

Topic	Consideration	Notes
Existing legislation	What already legislation exists in Iraq that addresses the topic of your legislation?	
	Can you distinguish the existing legislation from your proposed legislation?	
	If there is existing legislation on the topic, will you repeal the existing legislation?	
	If you are repealing existing legislation, have you indicated in your new legislation the specific title of the legislation to be repealed?	
	If you are repealing legislation, who are the individuals or groups that had existing rights under the previous legislation?	
	If the rights of individuals or groups will be affected by a legislative repeal, how will the new legislation address this? How will to these individuals or groups be protected to ensure any negative effect is minimized?	
	If you are keeping existing legislation and also developing new legislation, where will these statutes overlap?	
	If you have multiple statutes addressing the same topic, how will you ensure that defined terms in existing legislation align with defined terms in the new legislation?	
Implementing authorities under the legislation	Which authorities have you identified to be involved in implementing your legislation and what role will they play in implementation of the new legislation	
	Have you notified these authorities that the legislation will be developed?	



**Table 2. Designing a legislative plan** 

Tonic Consideration Notes		
Topic	Consideration	Notes
Implementing authorities under the legislation	Have you informed the authorities of their expected role in implementing the legislation before the legislation is developed?	
	Will the implementing authorities have capacity to take on new roles under the legislation?	
	Will the implementing authorities have the resources necessary to implement the legislation (e.g., staff and finances)?	
	Have you consulted with the authorities regarding development of the law to ensure you have considered all important aspects of the subject?	
	How will you maintain communication with the authorities throughout development of the legislation to ensure they are not surprised when the legislation passes?	
Subject matter experts	Have you identified subject matter experts that are familiar with the topic of the proposed legislation as it relates to Iraq?	
	Have you consulted with the subject matter experts on the nature of the identified problem and proposed solutions under the legislation?	
	Have the subject matter experts proposed any additional or alternate solutions to the identified problem?	
Regulated community and	Who is the community to be regulated under the proposed legislation?	
stakeholders	Have you consulted with representatives of the community that is to be regulated under the proposed legislation?	
	Has the regulated community identified any additional considerations for development of the proposed legislation?	
	Are there any members of the regulated community that will be affected differently than other members such that they should be	
	accounted for differently under the law (e.g., people with disabilities, women, children, historically disadvantaged groups)?	



Table 3. Establishing or appointing an implementing authority under a law <sup>10</sup>

Topic	Consideration	Notes
Designating an implementing authority	If using an existing agency (such as a ministry or other authority), which agency or agencies will implement the law?	
	If using an existing agency, has that agency been notified of its responsibility under the new law and is the agency capable of handling new responsibility?	
	If the law will create a new agency, what will be the title of this agency and where will it be situated in the existing bureaucratic structure? (For example, will it be an agency within an existing ministry, or will it be a standalone agency?)	
Membership of the implementing	How many members will the implementing authority have?	
authority	How are the members appointed?	
	Who will be in charge of appointing the members?	
	What will be the length of the term in office for the members?	
	How will the members be removed from office? (e.g., end of term; resignation; removal for cause; retirement age)	
	What will be the qualifications for appointment to the implementing authority?	
Duties and powers of the implementing authority	What responsibilities will the implementing authority have?	
	How will these responsibilities contribute to altering or eliminating behaviors that necessitate the law?	
	Will the authority have the capacity to effectively carry out its duties?	
	Will the authority have the power to impose penalties?	

<sup>16</sup> Adapted from A. Seidman, R.B. Seidman and N. Abeyesekere, Legislative Drafting for Democratic Social Change: A Manual for Drafters, 2014, Kluwer Law International, pp. 147-149.



Table 3. Establishing or appointing an implementing authority under a law

Topic	Consideration	Notes
Input functions of the implementing	By what procedures and from who does the authority determine what issues it decides?	
authority	Whom do agency officials consult about how to implement the law's details?	
	What procedures will the authority use to learn about viewpoints of different interest groups on how to implement the law?	
	How does the agency recruit and train personnel?	
Feedback functions of the	By what procedures does the agency learn about whether the law is being obeyed?	
implementing authority	Does the authority wait until people come forward with complaints?	
	If so, who has standing to make complaints?	
	What procedures must someone follow to make complaints?	
	Does the authority have a responsibility to send out agents to assess whether the law is being obeyed?	
	If so, how will the authority manage the agents? (Will the agents be sent into the field? Will the agents solicit responses from those affected by the law?)	
	How will the authority obtain facts about whether the law is being obeyed?	
	Will there be investigations by agency employees?	
	Will there be public hearings?	
	If there are hearings, will there be written charges or findings issued after the hearing?	
	Will there be reports from a research agency on the effectiveness of the law?	



### Table 3. Establishing or appointing an implementing authority under a law

Topic	Consideration	Notes
Procedures to put together inputs and	Will the authority have a decision-making body empowered to make implementation decisions?	
feedback to arrive at a decision	If so, who appoints members of the body? What will be the qualifications of members and what is the term of these members?	
	When voting, what proportion of the members must vote in favor of a proposition?	
	Will decisions be group decisions, or will each member of the body write their own decision?	
Appeals and dispute s ettlement	Will there be an appeals process for any decision-making body under the implementation authority?	
	What will the appeals process entail? Will there be a timeline for appeals?	



# Table 4. Possible provisions for addressing corruption through legislation and policy

Topic	Consideration	Notes
Reducing the opportunity for agency officials to engage in corrupt decision-making processes	Design provisions to reduce the agents' discretion.	
	Clearly define objectives, rules and procedures of the implementing authority to ensure minimal opportunity for corruption in the input and feedback processes.	
	Have agents work in teams and ensure regular hierarchical review.	
	Where possible, divide large decisions into smaller tasks to avoid discretion or decision-making falling onto one person.	
	Rotate agents in terms of job duties and geography.	
Ensure decision- making processes	Eliminate provisions that provide secrecy for decision-makers.	
are open to public scrutiny	Require public hearings and provide other opportunities for stakeholders to offer input and feedback.	
	Require decision-makers to always provide written decisions along with reasons justifying the decisions.	
Organize client groups and stakeholders	Where appropriate, require open, competitive behaviors among private or government clients.	
	Create an anti-corruption lobby.	



# Table 4. Possible provisions for addressing corruption through legislation and policy

Topic	Consideration	Notes
Reduce agents' capacity to behave corruptly	In selection processes, screen agents for qualities such as "honesty" and "capability".	
	Use past indicators to screen out agents who may behave dishonestly. This may include looking at past performance or behavior records, personality tests, or other predictors of honesty.	
	Look to other external measures of honesty, such as by using networks of referred agents that display traits of honesty.	
Improve auditing and management information	·	
systems	Increase the numbers of specialized staff responsible for screening against corruption (including auditors, investigators, surveillance and internal security).	
	Create a climate where officials and stakeholders are empowered to report	
	improper activities and protected from adverse consequences of reporting (whistle-blower protections).	
	Create new units empowered to investigate corruption (e.g., ombudsman, special audit committees, anti-corruption agencies).	
	Use information provided by third parties to investigate allegations of corruption (e.g., information from banks, media)	
	Use information provided by the public and clients to investigate allegations of corruption.	



# Table 4. Possible provisions for addressing corruption through legislation and policy

Topic	Consideration	Notes
Change rewards and penalties that may be creating a culture of corruption.	Increase salaries to reduce the need for corrupt income.	
	Reward specific actions and agents that work to control corruption (e.g., rewards for reporting corruption).	
	Strictly penalize corrupt behaviors.	
	Raise the general level of penalties.	
	Increase the ability of the courts or administrative authorities to punish those found to engage in corruption.	
	Consider using penalties that scale to the corrupt behavior to ensure the penalties have a deterrent effect (i.e., receiving a very large bribe should result in a larger penalty than receiving a considerably smaller bribe). Penalties should scale to the profit of the crime.	
	Use alternative enforcement measures (transfers, negative publicity, loss of professional standing or qualifications, blacklisting).	
Change broader ideology about corruption	Use training and educational programs to inform agents and the public about corruption.	
	Promulgate a code of ethics both at the organizational level and at the broader civil service level.	
	Work to change the cultural perception of corruption.	



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