GUIDE TO LEGISLATIVE DRAFTING IN THE KURDISTAN REGIONAL GOVERNMENT (KRG)

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Introduction: The development of a regulatory framework which meets international standards is a major concern in the Middle East and North Africa (MENA) region, as it is key not only to fostering economic development but also to ensuring the wellbeing of its citizens. To achieve this goal, it is important to: create a sound institutional structure; employ staff qualified in law drafting; set up efficient procedures for co-ordination and consultation; and ensure that the possible impact of new legal instruments is assessed before adopted.

A Shura Council, similar to the Iraqi State Shura Council in Baghdad, was established in 2008 in the KRG as part of the process of federalization of the Iraqi state. It is an independent regional government body, but falls administratively under the jurisdiction of the KRG Ministry of Justice. The mandate of the KRG Shura Council covers three main topics: 1) resolution of administrative disputes between citizens and the regional government, including complaints within the civil service; 2) review and drafting of legislation and regulations; 3) resolution of complaints within the civil services; and 4) advisory services related to disputes between government agencies.

In the KRG, administrative law plays a very important role in good governance. Through its review mechanism, the KRG Shura Council can help ensure quality legislation, as well as regulations to support implementation. By issuing advisory opinions on disputes between government bodies, it helps ensure that mandates are more clearly defined and implemented. Administrative complaints allow private citizens to hold public institutions accountable. Such complaints can cover a wide range of areas, including denial of social welfare benefits, usage rights of public lands, and violations of commercial contracts by government bodies. Such issues may affect diverse groups, including the poor, the private sector, civil servants and foreign

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investors. Today, the KRG Shura Council has become the main councilor of the KRG.

The very complicated legal environment prevailing in Iraq in general and in the KRG in particular is a result of the history of Iraq, which gave the world the Code of Hammurabi. Over time, it led to unnecessary proliferation of laws and regulations. Successive political systems with multiplicities of legislation have exacerbated the problem.

To enhance and support the role of the KRG Shura Council as advisor to the regional government in charge of reviewing draft laws and legislation, a guide to regulating the legislative function of the Shura Council and the process of drafting laws must be put in place as a priority. Accompanying the reformist regulatory approach of the Shura Council, this guide would be a corner stone in attaining better regulation. It would improve regulatory quality in the KRG and help the Shura Council prepare legislation that could be used as a reference in drafting legal texts. The manual of the National Palestinian Authority (NPA) and the Tunisian Guide to Legislative Drafting serve as examples.

Objectives: The World Bank has been working with the KRG Shura Council on capacity building since 2010, covering issues of strategy development, administrative reform, case management improvement and human resource reform. An October 2011 World Bank scoping mission to assess the institutional capacity and human-resource management practices of the Shura Council revealed that the KRG Shura Council was, among other things, in need of capacity to implement its mandate covering the review of draft legislation and the drafting of laws. The objective is to make the entire corpus of Iraqi law available to judges, lawyers, academics, lawmakers, and interested individuals or institutions. The ILD was published online in September 2008, and makes available 27,433 legal texts, including 7,136 laws, 4,265 ministerial instructions, 3,268 regulations, 5,029 declarations, etc. It includes every Iraqi legal text since 1917.

The Code of Hammurabi is a Babylonian law code of ancient Mesopotamia, dating to about 1754 BC. It is one of the world’s oldest deciphered writings of significant length. As Iraq was part of the Ottoman Empire, the Ottoman Judicial Decisions magazine of 1869, known in Arabic as “Majalat Al-Adliam Al-Aidieh”, was applicable in Iraq and was, in fact, its law. The Ottoman Empire adopted “Al-Majalat”, which was based on Islamic law “Sharia” and the Hanafi Fiqh or jurisprudence. According to scholars, “the Majalat” was very advanced and constituted a rich sample for legal drafting and codification of the Hanafi Fiqh. At that time, the rulings of “the Majalat” governed most of the Arab countries who were under the Ottoman Empire. However, the strong link of Iraqi law to Islamic law “Sharia” and Fiqh through “the Majalat” later influenced the adoption of the new Iraqi civil law based on the Napoleonic Code, after the 1930 independence treaty with England. Accordingly, Iraqi civil law benefited from both the Islamic Fiqh and Western laws in drafting and codification, unlike Egypt, whose independence from the Ottoman Empire prevented application of the “Majalat”.

The objectives of the World Bank’s technical assistance to the KRG Shura Council are firstly to improve the legislative drafting skills of Shura Council members. This seems particularly relevant in the KRG due to the aforementioned factors also present elsewhere, the unnecessary proliferation of laws and regulations and the multiplicity of historical layers of regulation. Both constitute burdens that cannot be left to persist in a modern economy. Legislation also needs to be made consistent with the new federal nature of Iraq. Indeed, improved legislative drafting, in its general meaning covering regulation, can contribute a lot to alleviating and progressively eradicating their negative influence.

The second objective of the Bank’s technical assistance is to assist Shura Council members in preparing their own guide to legislative drafting based on international best practices. Clearly, good laws are a key element of the rule of law. Not only does legislative drafting bring rules and regulations into existence, but the very success of these depends on the quality of the drafting and the use of the appropriate type of legal instrument. For this reason, care must be given to ensure accuracy in drafting rules by choosing the appropriate technical expressions and the clearest and most concise legal instrument. A comprehensive guide to legislative drafting will assist the legislative drafters in their work. It will subject the legislative drafting process in the KRG to a clear and defined methodology to
produce simple and concise laws and legislation promoting the rule of law and good governance. In its absence, poorly drafted law reduces legal certainty and citizens’ trust in government.

**Preparation of the KRG guide:** To acquaint KRG Shura Council members with international best practices in legislative drafting and taking into account its extensive experience in regulatory reform, in 2012-13 the Bank developed a training program with five workshops for the KRG Shura Council. These covered all aspects of legislative drafting and review. Three workshops were held in Erbil, Iraq, and one in Granada, Spain, for knowledge-sharing with Spanish officials at the governorate level. Another was held at the OECD in Paris, France. Twelve judges from the KRG Shura Council participated. Topics included: alternatives to legislation; new mechanisms to guarantee the quality of legislation; consultation; regulatory impact assessment; style and design of legislation; and common law and civil law approaches to drafting legislation. In 2014 two more international seminars for capacity building of Shura Council members were held.

1) The first was in Ankara in May 2014, dealing with legislative review and deregulation. The goal was to address legislative inflation and teach techniques to manage the stock of legislation. Included was a study visit to the Turkish Council of State.

2) The second was in Paris in August–September 2014 to review the first draft of the Guide to Legislative Drafting prepared by the KRG Shura Council with a visit to the French Conseil d’Etat (Council of State).

Following these seminars and before the Paris seminar in August–September 2014, members of the Shura Council were able to use their experience and knowledge to produce their first draft of the guide to legislative drafting. According to the President of the KRG Shura Council: “The search for excellence in legislative drafting coincides with the legislative revolution taking place in the KRG which aims to review and update laws in various sectors to meet the new needs and requirements of society and the economy, and bring it into line with international standards”. The guide offers a clear methodology to prepare and draft legislative acts submitted to the KRG Shura Council, in order to improve their quality and make sure that they are consistent with the current legislative order and the relevant public policies. The guide is to be a compendium of sound drafting techniques and recommendations to meet current challenges legislative drafters may be facing. The guide will also contribute to consolidating legal provisions, avoiding differences and contradictions in interpreting legal texts as well as devising provisions to simplify the task of those dealing with these. Further, “The guide will also offer a vehicle for continuous improvement of legislative drafting techniques by consolidating in a single text all future improvements to the initial version now published”.

**Using the KRG guide:** The guide to legislative drafting is addressed to all legal drafters in the KRG, as well as parliamentarians, government advisors and legal departments in ministries and departments in the KRG. The guide is addressed in particular to Councilors of the KRG Shura Council who are in charge of legislative drafting. It is intended to assist them in reviewing draft laws prepared by the Council of Ministers, as well as to ministerial and other entities, as they are not only responsible for the form of the draft law but also for its content as stated in Article 7 of the Shura Council Law No. 14 of 2008: “The Council shall review draft laws prepared by the Council of Ministers, ministries, non-ministerial entities, in terms of both form and content”.

The Arabic first version of the draft runs to 100 pages and is composed of five chapters as follows:

**Chapter 1:** Fundamental rules of legislation, dealing with the meaning of the legislative function and the legislative policy.

**Chapter 2:** Legislative impact assessment, dealing with the need for a legislative impact assessment, legislative review, legislative stock management policies, and fundamental principles for legislative policy in the KRG.

**Chapter 3:** Draft legislation action plan, dealing with the preliminary phase and commencement of the preparation and drafting process.

**Chapter 4:** Legislative structure units, dealing with introductory units, units of legislative body, the conclusion unit and justifying reasons unit.

**Style and language of legislation,** dealing with the structure and language of legislation, legislative drafting flaws, and methods to avoid legislative drafting flaws.

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Whereas the Palestinian National Authority (PNA) has two manuals dealing with legislative drafting, the first revised version of the KRG guide to legislative drafting adopts a unitary approach and was published in November 2014. Both the PNA and the KRG manuals have examples of good and bad drafting, adding to their practical value. A unique feature of the KRG guide is that it was prepared by Shura Council members. The body with the mandate to review and prepare draft laws in the KRG is in charge of developing its own guide, one that is rich in legal analysis from Iraqi and KRG laws.

**Key recommendations**: In preparing the second draft the following points should be considered:

**A.** The guide needs to focus on practical issues facing the drafter. It can address wider issues, such as regulatory reform and impact assessment, but only as background and context useful for the drafter.

**B.** The guide need not be issued as a regulation, but should be seen as a compendium of good practice drawing its authority from quality advice. The guide’s practical purpose should be clear, including its goal to raise the quality of draft legislation and facilitate review of existing legislation.

**C.** Examples of draft are helpful, but good and bad drafts should be differentiated. In the EU guide, good examples are in blue, the rest in black.

**D.** The final version of the guide should give basic information about the status of its guidance, the body that issues it, and a contact address for comments, suggestions and questions about content.

**E.** It would be useful to explain that the guide is useful for drawing up texts of a normative or prescriptive nature, including "secondary legislation", regulations and formal individual administrative decisions.

**F.** Rule of law principle: The guide should refer to the commitment to the rule of law in the Preamble to the Constitution and to relevant articles of the Iraqi Constitution, such as Article 5 and Article 13.

**G.** Legislative review: Responsibility for the policy should stay with the policy-maker and not be transferred to the drafter, no matter how much research is done. Challenging policy is not the same as taking ownership of the policy. The policy-maker has to defend or change in response to challenges.

**H.** It is advisable to include references to internationally recognized instruments, such as OECD’s Reference Checklist for Regulatory Decision-Making. Decision-Making. 11

**The way forward**: The prime objective of the World Bank in supporting the KRG Shura Council remains an improved guide consistent with international standards that can be used by all relevant parties in charge of drafting all types of legislation in the KRG. In keeping with better regulation principles, the authority and impact of the guide are to be achieved more by the relevance of its contents and the quality of its practical advice than by the strength of the legal instrument that seeks to enforce it. This will help to maximize the benefits of the guide in the KRG. In this context, the official use of the Guide to Legislative Drafting should become mandatory. This could be achieved either through making the guide an integral part of a new law on legislative drafting to be passed by the parliament in the KRG under penalty of nullity of any draft law that violates this rule. Alternatively, and to avoid cumbersome parliamentary procedure, the cabinet could issue a circular ordering all state lawyers and state agencies to take the KRG Guide to Legislative Drafting into consideration when preparing new legislation.

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10 The first was published in 2000 and is concerned with the drafting of primary legislation. The second, published in 2004, deals with policy development and the drafting of secondary legislation.

11 Also refer to: OECD (1997) “Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe” SIGMA Papers, No 15, OECD Publishing; OECD “Simple, Effective, Transparent Regulation: Best practices in OECD Countries” by Cesar Cordova Novion (Regulatory Reform Programme); and “Regulatory Impact Assessment: Developing its Potential for Use in Developing Countries” (2003) by Colin Kirkpatrick (University of Manchester, United Kingdom [UK]) and David Parker (Aston University, Birmingham, UK).

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