

Diwan al-Fatwa wa al-Tashri'e

Legislative Drafting Manual

Guidelines for the Preparation of Quality Legislative Drafts

Submitted to

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CHAPTER

1

SCOPE AND PURPOSE OF THIS MANUAL

“Poorly drafted statutes are a burden upon the entire state. Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, the citizen with an earnest desire to conform to the law is confused. Often, lack of artful draftsmanship results in the failure of the statute to achieve its desired result. At times, totally unforeseen results will follow. On other occasions, defects lead directly to litigation. Failure to comply with certain constitutional requisites may produce total invalidity.”

Legislative Bill Drafting, Albert R. Menard, Jr., 26 Rocky Mt. L. Rev. 368 (1954)

Under Law Number 4 of 1995, the Diwan al-Fatwa wa al-Tashri'e (the “Diwan”) is responsible for placing all legislation proposed by the government in proper legal form. This drafting manual explains how the Diwan fulfills this very important responsibility.

Chapter 2 of this manual provides some background for the terms and concepts used in the manual. This chapter is especially useful for new employees of the Diwan and for the legal staffs of the various ministries who, while expert in the subject matter jurisdiction of their ministry, may not be familiar with all of the terms and concepts applicable to legislative drafting.

Chapter 3 of this manual explains the administrative procedures used by the Diwan to prepare and review draft legislation. It is organized sequentially from the submission of a drafting request to the Diwan by a line ministry to the transmission of a final draft to the Palestinian Legislative Council (PLC) for introduction. It explains how the Diwan prepares an initial draft, how it seeks clarification from the requester on unanticipated policy questions that arise during the drafting process and how it prepares a draft for review. The chapter explains the internal procedures used by the Diwan to maintain accurate, complete records of drafting requests and describes the Diwan's quality control system for ensuring that drafts are completed in a professional and timely manner. The chapter also explains the process for receiving comment by the other ministries, as well as the role of

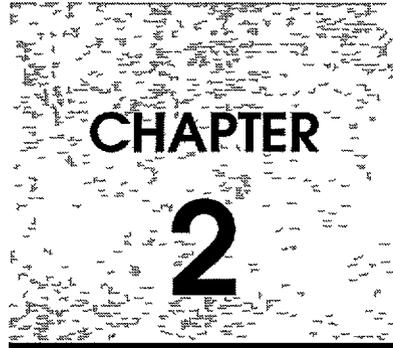
the General Directorate of Plans and Policies (GDPP) in the drafting process. For these reasons, Chapter 3 is of interest not only to the Diwan staff, but to all ministry staff involved directly or indirectly in the legislative drafting process.

Chapter 4 covers the substantive standards used by the Diwan to place legislative drafts in proper legal form and to ensure that these drafts are accurate, legally correct, concise, uniform and effective. This chapter is of primary interest to the Diwan staff, because it is this chapter that describes the substance of their work on legislative drafts. However, in preparing an initial draft to be submitted to the Diwan, a line ministry should try, to the extent possible, to prepare the initial draft in accordance with standards in Chapter 4. Although it is the Diwan's job to review a draft for compliance with the standards in Chapter 4, the Diwan's review will be expedited if fewer changes are needed to conform the draft to the standards articulated in Chapter 4.

Chapter 4 is also relevant to the GDPP. Under Law Number 4 of 1995, the Diwan is solely responsible for placing drafts in proper legal form. The GDPP is legally responsible for policy review and coordination among line ministries. In order to avoid conflicts between these respective roles, it needs to be clear what is included in the concept of "legal review" (the role of the Diwan) and what is included in the concept of "policy coordination" (the role of the GDPP). By describing in detail the standards used by the Diwan in conducting its legal review, it is hoped that Chapter 4 will help reduce the uncertainties regarding the respective roles of the Diwan and the GDPP.

Chapter 5 discusses one element of the Diwan's review, comparative legal analysis, in greater detail. This particular element warrants additional discussion because of its particular importance to Palestine at its current stage of development. Palestine's rich legal history draws on a number of different legal traditions – traditional Islamic law, the common law system, and the civil law system. Although this rich tradition can be a great source of strength for the development of Palestinian law, the hybridized nature of the Palestinian legal system means that it is essential that drafters of new laws consider a variety of legal approaches to determine which approach makes the most sense for Palestine at this particular stage in its development.

Chapter 6 briefly describes one of the most significant legal issues facing the West Bank and the Gaza Strip, namely the harmonization and recodification of laws applicable to the two jurisdictions. During the period when the Gaza Strip was under Egyptian administration and the West Bank was under Jordanian administration, the laws applicable to the two jurisdictions diverged, and this divergence continued during the Israeli occupation. The laws of the two jurisdictions need to be harmonized. In addition, many of the laws in the Gaza Strip and the West Bank date back to Ottoman rule, additional layers have been added over time without any comprehensive, systematic effort to recodify all laws within a particular subject matter. Chapter 6 explains the procedures to be used by the Diwan in working towards the important goals of harmonization and recodification of laws.



CHAPTER 2

BASIC TERMS AND CONCEPTS

This chapter is designed to familiarize the reader with a number of the terms and concepts used in this manual. These terms and concepts are organized in alphabetical order.

2.01 Administrative Decision

An administrative decision is issued by a ministry or official government body without legislative approval. Unlike an administrative regulation, which is of general application, an administrative decision generally involves a particular case. It may not be issued by a ministry or official government body unless a law has granted the ministry or official government body the authority to issue administrative decisions. In the event of conflicts, laws, executive orders and administrative regulations take precedence over administrative decisions. All administrative decisions are required to be published in the Official Gazette.

2.02 Administrative Regulation

An administrative regulation is issued by a ministry or official government body without legislative approval. Unlike an administrative decision, which generally involves a specific factual case, an administrative regulation is of general application. It may not be issued by a ministry or official government body unless a law has granted the ministry or official government body the authority to issue administrative regulations. In the event of conflicts, laws and executive orders have precedence over administrative regulations. All administrative regulations are required to be published in the Official Gazette.

2.03 Amendment

An amendment may refer either to 1) a proposed change to a draft law that adds, changes or deletes language or 2) a change or proposed change to an existing law that is made in a draft law. Because much of the Diwan's work occurs before a proposal is

submitted to the PLC for review, the Diwan is generally concerned with the second of these two meanings. Generally, amendments to existing laws made by a draft law are placed near the end of the draft law, immediately before any transitional provisions.

2.04 Appropriation

An appropriation is a provision in a law which authorizes money to be expended for a particular purpose. Appropriations are generally made in budget legislation, but may be made in any law.

2.05 Article

An article is the basic organizational unit of a draft law. The articles of a bill are numbered consecutively throughout the draft law. Articles may be grouped into chapters and may be subdivided into paragraphs. Each article should generally have a title indicating the topic of the article.

2.06 Basic Law

The term "Basic Law" refers to the provisional constitution of the Palestinian Authority for the interim period. It has not yet been passed by the PLC nor signed by the President. Until such time as the Basic Law is enacted and signed into law, it does not have legal effect. However, the draft Basic Law may be viewed as an indicator of the likely form of a Palestinian Constitution. As a result, a researcher should be cognizant of the provisions of the draft Basic Law and, if a draft law conflicts with one of these provisions, the requester of the draft law should be informed of the conflict. When adopted, the Basic Law would have precedence over other laws, executive orders, administrative regulations and administrative decisions.

2.07 Bill

A bill is a draft law. The terms are often used interchangeably. A bill becomes a "law" or an "act" after it is passed by the PLC and either 1) signed by the President, 2) not rejected by the President within a specified period, or 3) rejected by the President and readopted by the PLC by a super-majority vote, typically 2/3rds. Provisions governing these issues are contained in the draft Basic Law.

2.08 Chapter

A chapter is a grouping of related articles in a draft law. Unless a law is fairly short (under approximately 15 articles), it is generally advisable for a law to group articles into chapters. Chapters must have titles indicating the subject of the chapter. A typical title for the first chapter of a draft law would be “Definitions and General Provisions”, a typical title for the last chapter of a draft would be “Transitional Provisions”

2.09 Diwan al-Fatwa wa al-Tashri'e

The Diwan al-Fatwa wa al-Tashri'e is the agency within the Ministry of Justice that is responsible for ensuring that all legislative drafts originating with the Palestinian Executive Authority are placed in proper legal form. In addition, the Diwan is responsible for providing legal advice to the Ministry of Justice and to other ministries, for reviewing contracts, agreements and treaties entered into by the government, for recodifying and harmonizing laws, and for preparing the Official Gazette and other related legal publications. In the future, the Diwan may also be responsible for representing the Palestinian Executive Authority in litigation.

2.10 Drafter's Note

A drafter's note is a memorandum, written by a researcher at the Diwan, that accompanies a preliminary draft. It is used to point out significant changes made by the researcher to a draft law, to make suggestions regarding the draft and to describe legal issues and questions raised by the draft.

2.11 Drafting File

A drafting file is a type of file that is maintained by the Diwan containing all of the documents relating to a drafting request. The drafting file includes the request information form for the draft, the original request for the draft, any preliminary drafts or correspondence relating to the request, the copy of the draft law as sent out to the ministries for comment, copies of any comment letters received from the ministries, the final draft submitted to the Cabinet for approval, and any modifications made at the request of the Cabinet.

2.12 Drafting Request

A drafting request is a request received by the Diwan for a piece of draft legislation. All materials relating to a single drafting request should be filed in a drafting file with all of

the other material relating to that drafting request. Each drafting request is assigned a draft reference number.

2.13 Draft Reference Number

The draft reference number is the number assigned to a drafting request by the Diwan. The number is used in filing and tracking all materials related to that drafting request. The first two digits of the draft reference number refer to the year in which the drafting request was made. It is followed by a dash and a number that distinguishes the request from all other drafting requests received during that year. This draft reference number appears on the drafting file for that drafting request. It also appears on all versions of the draft legislation prepared by the Diwan in response to that drafting request. After the draft reference number, the versions of draft legislation will have a “/” followed by a number indicating whether the draft is the first, second, third, etc. draft prepared for the request. If the draft is preliminary, there will be a “P” in between the “/” and the version number.

2.14 Effective Date Provision

An effective date provision is a provision in a law that specifies the date upon which the law becomes binding or effective. Generally, the provision is the last article of a law and is tied to the date of publication in the Official Gazette. Since it is necessary to provide notice to the public of a new law, only in emergency situations should a law take effect before it is officially published. If a law requires a transitional period, the effective date may be delayed until a certain number of days or months after the date of publication.

2.15 Enrolled Bill

An enrolled bill is a bill, as amended and adopted by the PLC. Typically, a number of amendments are adopted to a bill as it progresses through the legislative process. After the bill and these amendments are passed by the PLC, the bill is redrafted to include the changes made by the adopted amendments, so that the language adopted by the PLC is reflected in a single document. It is the enrolled bill that is presented to the President for signature.

2.16 Executive Order

An executive order is an order issued and signed by the President of the Palestinian Executive Authority without legislative approval. In the event of a conflict, an

executive order takes precedence over administrative regulations and administrative decisions. Executive orders are required to be published in the Official Gazette.

2.17 General Directorate of Plans and Policies

The General Directorate of Plans and Policies, or GDPP, is an office within the Ministry of Planning and International Cooperation that is responsible for coordinating the policies of the Palestinian Executive Authority. Although policy expertise in a given subject matter rests primarily with the responsible ministry, it is necessary to coordinate the policies of the various ministries to ensure consistency. It is in this capacity that the GDPP is involved in the legislative drafting process. A ministry is required to have the GDPP preclear a drafting request for a legislative draft before the ministry submits the drafting request to the Diwan.

2.18 Harmonization of Laws

Harmonization of laws refers to the process of identifying differences in the laws applicable to the Gaza Strip and the West Bank, deciding if a single law should apply to both jurisdictions, deciding what that law should be, and then enacting a new law that applies to both jurisdictions and repeals the old conflicting laws. At the end of the British Mandate in 1948, the laws of the Gaza Strip and the laws of the West Bank diverged. The divergence resulted from the differences in Egyptian administration of the Gaza Strip and Jordanian administration of the West Bank. The divergence continued during the Israeli occupation. Chapter 6 of this manual discusses harmonization of laws in conjunction with a related concept -- recodification of laws.

2.19 Initial Applicability Provision

An initial applicability provision differs slightly from an effective date provision, although they are related concepts. An initial applicability provision should be included whenever a new law regulates a process or a chain of events. For example, criminal prosecutions involve a chain of events – the crime, the arrest, the conviction, etc. If a new law affecting criminal prosecutions is enacted with a delayed effective date of January 1, 1999, it may be necessary to add an initial applicability provision to specify how the law should apply to criminal prosecutions that are pending on that date. One possibility may be to have the law first apply to crimes committed on or after the delayed effective date, another possibility may be to have the law first apply to arrests made on or after the delayed effective date.

2.20 Introducible Draft

A legislative draft is “introducible” once the Diwan has completed placing the draft in proper legal form. An introducible draft is not necessarily final. Even though the Diwan may have completed placing the draft in proper legal form, the Cabinet may decide to make additional policy changes to the draft. Even if the requester of a draft is satisfied with the policy in a particular legislative draft, it may not be introduced until the Diwan has completed its legal review and placed the draft in proper legal form.

2.21 Introduction

The introduction of a bill is the formal presentation of a bill to the PLC for consideration. After a bill is introduced, all changes to it must be made by adopting amendments to it, rather than simply redrafting it.

2.22 Law Number 4 of 1995

Law Number 4 of 1995 is the law concerning procedures for preparing legislation. The law requires that ministries or official bodies submit proposed laws to the Diwan al-Fatwa wa al-Tashri'e to place the law in the proper legal form. It prohibits the Diwan from unilaterally altering the substance or purpose of the proposed draft. It requires the Diwan to submit proposed legislation to the Secretary General of the Cabinet for Cabinet review. After the Cabinet's review, the law requires that the Diwan prepare a final version of the proposed law based on the Cabinet's recommendations. Finally, after the President signs the law, Law Number 4 of 1995 requires the Diwan to publish it in the Official Gazette.

2.23 Legal Department of the PLC

The Legal Department of the PLC is the office in the Secretariat of the PLC that is responsible for providing legal advice and drafting assistance to the PLC. In many ways, the Legal Department fulfills many of the same functions for the PLC that the Diwan fulfills for the Palestinian Executive Authority.

2.24 Legal Review

The term “legal review” is often used in contrast with “policy review”. It is the type of review described in Chapter 4 of this manual and ensures that a draft law is in proper legal form. Under Law Number 4 of 1995, the Diwan is responsible for conducting a legal review of all draft laws proposed by the Palestinian Executive Authority.

2 25 Legislative Compilation

The Ministry of Justice commissioned the Birzeit University Law Center to undertake a project to compile all Palestinian law currently in effect. The project is substantially complete. The compilation contains the following types of laws: Ottoman laws, British Mandate Laws, Egyptian laws (with respect to the Gaza Strip) and Jordanian laws (with respect to the West Bank), Israeli military orders and laws enacted by the Palestinian Authority. The Legislative Compilation is housed in the library of the Diwan al-Fatwa wa al-Tashri'e and at the Law Center. It is expected that a computerized index to the laws will be released later this year and a full-text searchable database will be available within the next several years.

2 26 Official Gazette

The Official Gazette is prepared for publication by the Diwan as the Official Gazette of all legislative and administrative actions of the Palestinian Authority. It contains the text of all laws approved by the PLC, as well as the text of all executive orders, administrative regulations and administrative decisions of the Palestinian Executive Authority.

2 27 Paragraph

A paragraph is a sub-unit of an article in a bill. Articles are identified using consecutive numbers, paragraphs are identified using letters. For example, Article (1) (b) would refer to the second paragraph of Article (1). Generally, there is no need to subdivide paragraphs into smaller units. If a paragraph is extremely long, rather than subdividing the paragraph, the researcher should restructure the entire article and should perhaps rewrite the article as a series of articles.

2 28 Policy Review

The term "policy review" is often used in contrast with "legal review". It is the type of review that is conducted by the line ministries and coordinated by the GDPP. Law Number 4 of 1995 does not prohibit the Diwan from making suggestions regarding policy. The law does, however, prohibit the Diwan from changing the substance of a drafting request submitted by a ministry, i.e., it prohibits the Diwan from incorporating its suggestions without the approval of the requester.

2.29 Preclearance

Preclearance refers to the process by which a line ministry submits a drafting request to the GDPP for its review and approval before it is given to the Diwan for

drafting. Preclearance will expedite the drafting process, except in cases involving very short, straightforward drafts or in an emergency where, out of necessity, policy and legal review must be done at the same time. It is very difficult for the Diwan to produce a clear, coherent draft law if the policy underlying the drafting request is also not clear and coherent. Moreover, if the policy underlying a draft is constantly changing, it is very difficult for the researcher to be able to produce a well-organized final draft law. For these reasons, preclearance is essential to legislative drafting.

2.30 Preliminary Draft

A preliminary legislative draft is a draft prepared by the Diwan that is not yet introducible. Often, if a draft will require a lot of work, the Diwan will prepare a preliminary draft before it has completed placing the entire draft in proper legal form. For example, the Diwan may wish to have the requester review a preliminary draft that contains bracketed language indicating that the Diwan was unsure of the requester's intent with respect to that language. A preliminary draft contains a "P" after the "/" in the draft reference number.

2.31 Recodification of Laws

Recodification of laws refers to the practice of collecting a series of older laws on the same general subject matter, reorganizing them into an integrated law, enacting the new reorganized law and repealing the old series of laws. There are a number of advantages to recodifying law. Although a law may be well-drafted and well organized when it is originally enacted, new related laws are passed over time. In addition, parts of the original law may be modified and factual circumstances may change. For example, a law governing automobile registration that was enacted 30 or 40 years ago may have been perfectly drafted when written. However, since that time, new laws may have been enacted regarding motorcycle and truck registration and the ministries or entities responsible for administering the law may have been reorganized. A recodified law would repeal all of the old laws on vehicle registration and replace it with a new comprehensive law on the subject, updating the provisions of the laws being replaced where necessary to reflect changed circumstances. Chapter 6 of this manual discusses the process of recodification of law in Palestine in conjunction with a related concept --- harmonization of laws.

2.32 Repeal

A repeal of a law revokes or annuls the law. If a new law is intended to replace or supersede a prior law, the new law should repeal the prior law in a provision near the end of the bill, immediately before the bill's transitional provisions.

2.33 Requester

The requester is the ministry or other official government body that submits a drafting request to the Diwan

2.34 Request Information Form

A request information form is the form used by the Diwan to record basic information about a drafting request. It is also used to track the progress of the drafting request. The request information form is stapled to the inside of the drafting file for the drafting request. A sample form is attached to this manual as Appendix B.

2.35 Resolution

A resolution is a legislative act of the PLC that does not have the force of law. It is used to express the PLC's position on a certain policy issue, to honor a person or group, or to express the PLC's condolences on the death of an important person.

2.36 Savings Provision

A savings provision is a provision in a law which "saves" certain transactions from the effects of the new law. A law is normally construed to have only prospective application and effect. However, it is sometimes unclear how a law is intended to affect existing rights or pending legal proceedings. For example, a law may change the requirements for having a valid contract for the sale of land. A savings provision in the law may provide that the law does not invalidate transactions for the sale of land entered into before the effective date of the bill.

2.37 Standing Orders

Standing orders are the internal rules of the PLC that regulate its organization and actions, including the election of its officers, its decision-making process and its legislative procedures. For example, the standing orders govern the submission of a draft law to the PLC by the Council of Ministers (Article 62), the referral of the draft law to a legislative committee and the process by which a draft law is debated and amended.

2.38 Statement of Purpose

A statement of purpose is a provision at the beginning of a law that outlines the general purpose of the law. It is intended to supplement the specific provisions of the bill.

and to serve as an aid in resolving any ambiguities in the bill. The statement of purpose is not binding, however. If a specific provision in the law is in conflict with the general statement of purpose, the specific provision takes precedence.

2.39 Sunset Provision

A sunset provision is a provision that automatically repeals the bill's provisions at a future date. Since administrative agencies, boards, commissions and programs, once started, have a tendency to continue indefinitely, sunset provisions are often included when a new government entity or program is created. If the new governmental entity or program is not as effective as was hoped, the government entity or program will automatically "sunset" on the date specified in the sunset provision. If the government entity or program is a success, a new law can be enacted to repeal the sunset provision so that the government entity or program becomes permanent or to amend the sunset provision so that the life of the government entity or program is extended.

2.40 Title

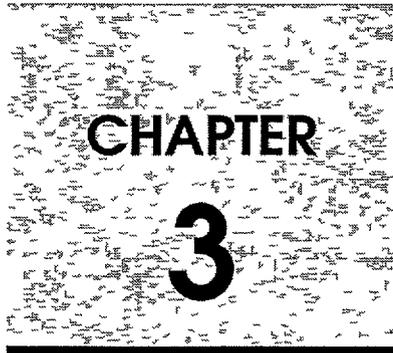
The term "title" generally refers to the title of a law. Each law has a formal title determined by reference to the year in which the law was passed and the number of laws that had been passed so far that year. For example, Law Number 4 of 1995 specifies the role of the Diwan in legislative drafting. Laws are also referred to by their informal title, sometimes called their short title, which is descriptive of the subject matter covered by the law. This title is intended to provide very general notice to the legislators and the public about the subject matter of the bill. For example, the short title of Law Number 4 of 1995 is the "Law Concerning Procedures for Preparing Legislation". Titles can also refer to the title of a chapter or of an article within a law. The use of these titles helps to ensure proper organization and makes it easier for a person using the law to find relevant provisions. Finally, the term "title" can also refer to a grouping of chapters in a law that relate to a common topic. Generally, only exceptionally long, detailed, laws have titles.

2.41 Transitional Provisions

Transitional provisions are provisions, typically placed at the end of a legislative draft, that govern the transition from current law to the law enacted by the draft. Transitional provisions include savings provisions, initial applicability provisions and effective date provisions. They also include other provisions needed to ensure a smooth transition to the new law. For example, if the law creates a new program which is to be governed in part by administrative regulations promulgated by a ministry, there needs to be a delayed effective date to allow time for the ministry to promulgate the necessary regulations. In addition to the delayed effective date, there may be a requirement that the ministry circulate to the other ministries a draft of the administrative regulations for the program no later than a specified date.

2.42 Veto

A veto is the means that a President uses to reject a law passed by the PLC
Under the current draft of the Basic Law, the PLC may override the President's veto with a 2/3rd vote



CHAPTER
3

ADMINISTRATIVE PROCEDURES

This chapter is intended to provide a detailed explanation of the administrative procedures used by the Diwan to prepare and review draft legislation. A flowchart of the drafting process is attached as Appendix E to this manual. It is organized sequentially from the first step in the drafting process (submission of a drafting request to the Diwan) to the final step in the drafting process (submission of a final, approved draft to the PLC for consideration). The length of the drafting process can vary significantly based on a number of factors, including 1) the length and complexity of the draft legislation, 2) whether an initial draft of the drafting request is submitted by the requester or whether the requester simply provides an explanation of the desired policy, 3) the extent to which significant changes are required in order to place the draft in proper legal form, 4) whether the Diwan receives extensive comments from the ministries when the draft legislation is submitted to the ministries for their comment and review, and 5) whether the Cabinet requests additional changes to the draft after it is submitted to the Cabinet. As a result, it is difficult to determine exactly how long it will take to complete a particular draft. However, it is possible to specify a deadline for completing certain steps in the drafting process, in these cases, the deadline is specified in this chapter.

3 01 Submission of a Drafting Request

The first step in the drafting process is the submission of a drafting request to the Diwan. Drafting requests may be submitted only by a ministry or official government body. The drafting request must be approved by the minister or the head of the government body, or by a person to whom the minister or head has delegated this authority (typically, a Deputy Minister, Assistant Deputy Minister or Director General).

Although there are no formal requirements for submitting a request, it will facilitate the drafting process if, when submitting a request, the requester

- 1 Provides a very clear statement of the policy he or she wishes to implement. This statement of policy can be included in the draft as part of the statement of purpose or it can be included in a cover letter submitted with the request. It is essential that a Diwan researcher have a clear understanding of the policy that the requester would like the draft law to implement.

- 2 Has the policy contained in the drafting request been precleared by the GDPP If the drafting request is precleared, the requester should include a letter from the GDPP stating that the GDPP is in agreement with the policy expressed in the request If the draft is not precleared by the GDPP, the Diwan will send a copy of the drafting request to the GDPP and will wait to begin drafting the request until the GDPP approves the policy contained in the drafting request or until it receives revised drafting instructions agreed to by the requester and the GDPP
- 3 Provides a computer diskette that contains the text of the initial draft prepared by the requester This will avoid having to retype the entire draft
- 4 Provides the Diwan with the names and telephone numbers of the persons who should be contacted regarding questions about the drafting request or the text of the initial draft
- 5 Submits an initial draft that, to the extent possible, conforms to the standards specified in Chapter 4 of this manual
- 6 Provides any background material that should be preserved in the drafting file and that would be helpful to the researcher
- 7 Provides an assessment of the draft's priority If there is a need to have the draft prepared by a given date, the requester should indicate this in the cover letter transmitting the request Simply indicating the desired completion date will not ensure that the Diwan will be able to prepare the draft in proper form by that date However, having a sense of the relative priorities of differing requests will assist the Diwan in assigning drafts and distributing workload It will also enable the Diwan to contact the relevant ministry, if it appears that the requester's expectations regarding completion time are unrealistic

3 02 Receipt of a Drafting Request by the Diwan

Upon receipt of a drafting request, the Executive Secretary of the Diwan shall do the following

- 1 Time and date stamp the drafting request and the first page of all accompanying materials
- 2 Assign the drafting request a draft reference number The number shall be the last 2 digits of the year in which the drafting request is submitted, followed by a dash, and a four digit number indicating the number of requests received so far that year For example, the 32nd drafting request

for legislation received in 1998 will have the number 98-0032 (If similar procedures are adopted for reviewing regulations and decisions, the dash will be replaced by the letter "r" for regulations and by the letter "d" for decisions For example, the 21st drafting request for review of an administrative decision received in 1997 will have the number 97d0021)

- 3 Create a file for the request The Executive Secretary shall write the draft reference number on the outside of the file A list of the subjects used by the Diwan in categorizing drafts, which is identical to the system used in the Legislative Compilation, is attached to this manual as Appendix A
- 4 Complete the top portion of the request information form and staple this form to the inside cover of the folder A blank request information form is attached to this manual as Appendix B
- 5 Unless the drafting request has been precleared by the GDPP, the Executive Secretary of the Diwan shall transmit, no later than the end of the next business day, a copy of the drafting request and all accompanying materials to the GDPP No further actions will be performed by the Diwan on requests lacking GDPP preclearance until notified by the GDPP in writing that it agrees with the policy contained in the drafting request or that it agrees with specified revisions (If there is a dispute between the GDPP and the line ministry about a drafting request, it would be resolved in the manner described under section 3 08)
- 6 Present the drafting request to the Director of Legislative Drafting for assignment to a Diwan staff member All requests that have been precleared by the GDPP shall be assigned to a Diwan staff member within 5 days of receipt

3 03 Preparation of an Initial Draft

After assignment to a Diwan staff member, the staff member shall place the draft in proper form, using the substantive standards described in Chapter 4 Appendix C to this manual contains a checklist of the issues that the researcher must consider in ensuring that the draft is placed in proper legal form

The drafting process requires communication between the requester and the Diwan First, it is important that the Diwan and the requester communicate regarding deadlines Second, the researcher will usually discover ambiguities in the draft that will require policy input to resolve Third, the researcher may wish to make suggestions regarding the policy contained in the draft, based on a comparative review of similar laws in other countries Under Law Number 4 of 1995, the researcher is prohibited from changing the substantive policy of a draft This can be done only with the consent of the

requester. It is therefore essential that the researcher communicate with the requester regarding any issues that arise during the drafting process that relate to policy, so that the requester can make the necessary policy decisions. Because the draft may not be distributed to the ministries for comment until the GDPP has also approved the draft, it is appropriate to communicate major policy issues to the GDPP, as well as the requester.

The researcher has a number of alternatives for communicating with the requester and should use his or her judgment to determine which form of communication is the most appropriate in a given situation. Generally, the following methods of communication are used:

1. If the policy question raised is relatively minor, the researcher may wish to telephone the appropriate contact persons on the request information form to discuss and receive the necessary policy information from the contact person. If policy changes are agreed to over the telephone, the researcher should prepare a short memorandum for the drafting file indicating the nature of the conversation, the person with whom the researcher spoke and the date and time of the conversation.
2. If there are a number of minor policy issues to be resolved, the researcher may suggest a meeting with the appropriate persons from the requesting ministry or official government body. The Diwan will extend an invitation to the GDPP for this meeting. Because the GDPP will have an opportunity to approve the draft before it is sent to the ministries for comment, the GDPP may not believe it is necessary to attend the meeting, however, the GDPP will always be given the opportunity to attend. After the meeting, the researcher should prepare a memorandum to be placed in the drafting file indicating the persons in attendance at the meeting, the date and time of the meeting, the issues discussed, and the resolution agreed upon by the parties.
3. If there is a major policy issue that needs to be resolved before beginning to prepare a preliminary draft, the researcher may wish to prepare a written memorandum explaining the issue. Although the researcher may present the requester with options for resolving the issue (based on the researcher's comparative analysis of other laws), the requester is free to reject these options and resolve the issue in a different way. A copy of the memorandum must be sent to the GDPP at the same time a copy is sent to the requester, and must be placed in the drafting file.
4. A final method of written communication with the requester is the drafter's note. A researcher's note is attached to a preliminary draft of the legislation and may contain a number of separate issues to be considered by the requester. Often, it facilitates discussion to have the requester review a preliminary draft of the legislation that includes the language suggested by the Diwan. If the researcher includes any changes in a draft that affect

policy and that have not already been approved by the requester, the preliminary draft containing the changes MUST be accompanied by a researcher's note explaining the changes, asking the requester to review the suggested changes and to let the Diwan know if the changes are in any way inconsistent with the requester's intent

The researcher must remember, at all times, that Law 4 of 1995 prohibits the researcher from unilaterally changing the substantive policy of a draft. If the requester wishes to reject suggestions made by the Diwan that relate to policy, it is entirely within the requester's prerogative to do so. The Diwan has final call only over the legal form of the document, not the policy embedded in it.

Once the researcher has prepared an initial draft and is ready to send the draft to the requester and the GDPP, the researcher shall initial and date the request tracking portion of the request information form in the drafting file to indicate that a first preliminary draft has been prepared. The researcher shall then provide the draft, together with any researcher's note, to the Arabic language specialist for his or her review.

After this review, the Arabic language specialist shall initial and date the request tracking portion of the request information form, indicating that the draft has been edited for proper use of Arabic. The draft, together with any researcher's note, is then submitted to the Director of Legislative Drafting for his or her review. After any necessary changes are made to reflect the Director's comments, it is given to the Executive Secretary of the Diwan.

The Executive Secretary of the Diwan shall make 2 copies of the draft to send out, one to the requester and one to the GDPP. Any drafter's note shall be stapled to the top of each of these copies, and any supplementary materials shall be attached to the copies. The Executive Secretary shall initial and date the bill tracking portion of the request information form indicating the date that the bill was sent out.

3.04 Redraft Instructions and Preparation of Redrafts

Based on the difficulty of the draft and the number of unanticipated policy issues discovered by the Diwan in the course of preparing the draft in proper legal form, the proposal may need to be redrafted a number of times before it is ready to circulate to all of the ministries. This is a normal part of the legislative drafting process and reflects the fact that often, in reviewing a draft for legal correctness, the researcher uncovers ambiguities in the language that require policy choices to resolve. By reviewing similar laws in other jurisdictions, the researcher may discover "holes" in the proposed legislation, i.e., issues that are typically covered by similar laws but that were omitted from the draft submitted to the Diwan for its review.

For these reasons, it is likely that the requester and the GDPP will have comments on the initial draft. If comments are submitted in writing, a copy of the written comments

should be included in the drafting file. If the scope of the comments are minor, redraft instructions may be given in the form of a telephone conversation. If the comments are given by telephone or if a meeting is held, the researcher should prepare a short memorandum to be placed in the drafting file indicating the date and time of the telephone conversation or meeting, the name of the person who participated in the telephone conversation or meeting, the issues discussed and the resolution agreed upon by the parties.

Generally, by this point in the process, the fundamental policy issues covered by the draft should have been resolved. Therefore the involvement of the GDPP may be limited. The Diwan and the requester are required, however, to keep the GDPP fully involved in the process. The Diwan is required to submit to the GDPP a copy of each preliminary draft that is sent to the requester and a copy of all redraft instructions received from the requester.

3.05 Circulation of an Introducible Draft for Ministry Comment

After the draft is in a form that is acceptable to the Diwan, the requester and the GDPP, the draft shall be circulated to all of the ministries or official government bodies for comment. (If there are problems in reaching agreement on a draft that is acceptable to all parties, please refer to section 3.08.) The Diwan is responsible for ensuring that the requester and the GDPP have approved the introducible draft before it is sent out to other ministries and official government bodies for comment. When the requester and the GDPP approve the draft, the person at the Diwan receiving the approval shall indicate the date of the approval in the bill tracking information portion of the request information form. Once all necessary approvals have been received, the Diwan shall send a copy of the draft to each ministry and official government body. The list of ministries and official government bodies is attached to the document as Appendix D.

The draft shall be accompanied by a cover letter that specifies the due date for receiving comments. Generally, the comment period should be 30 days from the date it is sent out to the ministries. In the case of a particularly complex draft, the Diwan, the GDPP and the requester may agree to allow a longer period for comment. The cover letter should also include instructions regarding the submission of comment letters. The cover letter will encourage the ministries to review the draft for any unintended or objectionable policy effects that the proposed draft has on matters within the ministry's specific jurisdiction. Because the GDPP is responsible for coordinating interministerial policy and ensuring that the draft legislation is consistent with the government's policy as a whole, ministries should generally focus on those matters within their particular subject matter expertise. Other comments will be reviewed, but this is generally not the purpose of the comment period.

3.06 Submission and Receipt of Comment Letters

If a ministry wishes to comment on a draft, the ministry shall prepare a memorandum addressed to the Diwan regarding the comments. If a ministry has a comment regarding language in the draft, the comment letter should indicate the page and line number where the language is contained. If the ministry has suggested language for a particular revision, the ministry may include this in the comment letter. It is essential that the ministry adhere to the deadlines for comments specified in the cover letter. If the ministry has extensive comments and will be unable to provide detailed comments by the date specified in the cover letter, the ministry shall provide as detailed comments as possible within the time allotted. If no response is received within the time allotted, the Diwan, will assume that no comments will be forthcoming from that ministry.

As comment letters are received by the Diwan, the Executive Secretary of the Diwan shall log in the receipt of the comment letter on the bill tracking portion of the request information form. The Diwan shall provide copies of each comment letter that it receives to the GDPP and the requester no later than the end of the next business day after receipt. The date and time that these copies are sent out must be recorded on the request information form. The Executive Secretary shall ensure that the originals of all comment letters received for a drafting request are placed in the drafting file for that request and that the researcher who prepared the draft is alerted to the receipt of the comment letter.

3.07 Incorporation of Comments and Conflict Resolution

If the comments received from the ministries are very minor, the Diwan may wish to redraft the proposal to incorporate the comments received for review by the requester and the GDPP. If the comments are more involved, or if conflicting comments are received from different ministries, the Diwan will convene a meeting to determine how the comments should be incorporated. The meeting should include the Diwan staff member who drafted the request, representatives from the requester, the GDPP and the ministries who submitted the comments that are to be discussed.

At the meeting, the Diwan is responsible for determining the validity of comments that raise legal issues or that concern the issue of whether the draft is in proper legal form, i.e., that the draft meets the standards set forth in Chapter 4 of this manual. The GDPP and the requester are responsible for determining the validity of the comments that concern policy matters embodied in the draft.

In the event that a conflict arises between the requester and the GDPP regarding the desired policy to be expressed in the legislation, and the conflict can not be resolved through meetings and discussions, both the requester and the GDPP shall ensure that their respective ministers are aware of the conflict. If the two ministers cannot agree on the issue, they should raise it with the Cabinet for discussion and decision. In the event that a disagreement arises between the Diwan and the requester or the GDPP on whether a particular issue is a legal issue or a policy issue, the Diwan, the requester or the GDPP

shall ensure that their respective ministers are aware of the problem. If the ministers are unable to reach agreement, they should bring it to the Cabinet for discussion and decision.

3 08 Submission of a Draft for Cabinet Review

A draft may not be submitted to the Cabinet for approval until the Diwan, the requester and the GDPP have approved the version to be submitted. As the Diwan receives approvals of the draft from the requester or the GDPP, the person at the Diwan who received the approval shall initial and date the appropriate portion of the bill tracking portion of the request information form.

Once a final draft has been agreed upon, the final draft shall be submitted to the Secretary General for consideration by the Cabinet. The Diwan shall submit the final draft to the Secretary General with a cover letter, signed by the Head of the Diwan and representatives of the GDPP and the requester, stating that the Diwan, the GDPP and the requester are satisfied with the text of the final draft. The Diwan shall also attach a memorandum of explanation prepared by the researcher. The memorandum of explanation contains two main parts: 1) a plain language explanation of the legal effect of the draft, and 2) a brief explanation of the drafting history of the proposal. The plain language explanation is intended to assist Cabinet members in understanding the effect of the draft law. The drafting history portion of the memorandum of explanation is intended to highlight some of the major issues that were raised in the drafting process and in the comments received from the ministries. It is essential that this memorandum of explanation be drafted in a factual manner and that it refrain from arguing the merits of either the legal choices or the policies that are embodied in the final draft. The request information form is a useful reference document used by the researcher in preparing the memorandum of explanation. The Executive Secretary of the Diwan shall indicate the date that the draft was sent to the Secretary General on the bill tracking portion of the request information form.

3 09 Incorporation of Cabinet Changes and Submission to the PLC

If the Cabinet recommends that the draft be changed, the Diwan is solely responsible for redrafting the draft in accordance with the Cabinet's instructions. The Executive Secretary of the Diwan shall note, on the bill tracking portion of the request information form, whether the Cabinet approved the request or recommended changes, and the date that this action was taken. The Diwan shall confine its redraft to responding to the instructions from the Cabinet. If there is a lack of clarity on the Cabinet's instructions, the Diwan should seek clarification from the Secretary General, who will raise the issue with the Cabinet if necessary. The Diwan shall seek to incorporate the Cabinet's comments in as expeditious a manner as possible. Once the redrafting is completed, the Diwan shall resubmit the draft to the Cabinet for approval and shall indicate, on the bill tracking form, the date the revised draft was sent to the Cabinet. After

Cabinet approval, the Secretary General of the Cabinet sends the draft on to the PLC for consideration

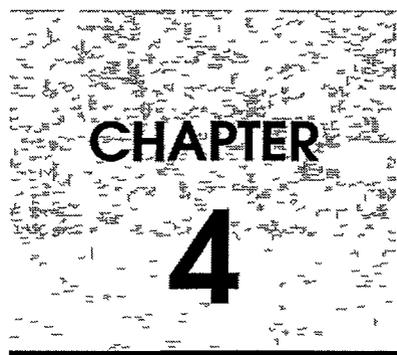
3 10 Version Control and File Maintenance

Throughout the drafting process, it is essential that the Diwan maintain clear, accurate records. Any time a legal document is going to be redrafted a number of times, it is important to establish a system (often referred to as “version control”) for keeping track of what version of the document you are reviewing at any given time. Version control helps a user of the drafting file see how the bill changed throughout the drafting process. Each draft prepared by the Diwan shall have the draft reference number in the upper left hand corner of the draft. The draft reference number shall be followed by a “/” and a version number. If draft is a preliminary draft, the version number shall commence with a “P” for “preliminary” and shall be followed by a number indicating whether it is the first preliminary draft, the second preliminary draft, etc. For example, the 3rd preliminary draft of 97-0032 would have “97-0032/P3” in the upper left hand corner of the document. Once a draft is introducible, the “P” is dropped. The version submitted for comment to the ministries should always be introducible and, as the first introducible draft would generally be the version submitted for comment, the draft reference number for this draft would typically end in a “/1”. If the draft is redrafted to reflect ministry comments or changes recommended by the Cabinet, each subsequent draft would have a number following the “/” that is one higher than the previous version.

File maintenance is also important. The researcher must have all the information relating to a drafting request in one place, and for archival purposes there must be a complete drafting history for all drafts enacted into law. All material received by the Diwan in connection with a drafting request should be date- and time-stamped. All of the following should be included in the drafting file, organized chronologically:

- 1 A request information form stapled to the inside front cover of the file
- 2 A copy of the original drafting request, together with any supplementary materials provided by the requester. If the draft is precleared by the GDPP, the letter indicating the GDPP’s approval of the drafting request should be included. If the draft was not precleared, the subsequent letter providing the GDPP’s approval or modification of the drafting request shall be included.
- 3 A copy of the first preliminary draft and copies of any drafter’s notes or of any memoranda that were prepared for the benefit of the requester.
- 4 A copy of any written redraft instructions provided by the requester or the GDPP.
- 5 A copy of any subsequent preliminary drafts.

- 6 A copy of the introducible draft that is sent out to the ministries for comment
- 7 A copy of any comment letters received from the ministries by the Diwan in regard to the drafting request
- 8 A copy of any redraft prepared to incorporate comments contained in the comment letters
- 9 A copy of the final draft that is sent to the Secretary General for Cabinet review
- 10 A memorandum of explanation containing a plain language explanation of the legal effect of the draft and a brief explanation of the drafting history of the proposal
- 11 A copy of the certifications received from the requester and the GDPP stating that they have reviewed the final draft and are in agreement with the policy contained in it
- 12 Any redraft instructions received from the Cabinet and, if such redraft instructions were received, the final version approved by the Cabinet



STANDARDS FOR REVIEW

4 01 Consistency with the Requester's Intent

4 01 1 Understanding the requester's intent

The primary responsibility of the Diwan with respect to legislative drafting is to ensure that each draft accomplishes the requester's intent in a legally accurate, effective manner. Many of the principles discussed in this chapter will help to make sure that the draft law will actually achieve the legal results desired by the requester. If the researcher does not have a clear understanding of what the requester intends the draft law to accomplish, it is unlikely that researcher will be able to prepare a clear, coherent, legally correct draft. Without an understanding of the requester's intent, the researcher may make stylistic or other linguistic changes to a draft that may inadvertently have policy impacts that are different from that which the requester intended. Failure to have a thorough understanding of the desired effect of the law will also make it more difficult for the researcher to identify conflicts with existing law. It is therefore essential that the researcher thoroughly understand the requester's intent.

The Diwan researcher should generally commence his or her review of a draft with the statement of purpose. The statement of purpose explains the reasons for the law and the general effect that the requester would like the law to have. The Diwan researcher should not be concerned with the merits of the policy to be implemented by the draft law. Evaluation of the merits of a proposed piece of legislation is the role of the requester and the GDPP. After reviewing the statement of purpose, the researcher should read the entire draft carefully. Often policies that are not stated in the statement of purpose can be inferred from the substantive provisions contained in the draft. If the policy expressed in the statement of purpose differs substantially from the policy that appears to be implemented by the substantive provisions of the draft, the researcher should discuss this difference with the requester. Based on these discussions, the researcher should either revise the statement of purpose or the substantive provisions so that they are internally consistent.

4 01 2 Background research

After reviewing the statement of purpose and the substantive provisions of the draft, the researcher should review any supporting materials provided with the request. If the law draft involves a subject matter area with which the researcher is not familiar, the researcher may need to do some additional background research. For example, if a law deals with the establishment of a securities exchange for Palestinian companies, the researcher may need to understand the mechanics of securities transfers and securities settlement procedures. Without this background knowledge, it may be impossible for the researcher to fully understand the desired policy objectives of the requester and to ensure that the provisions of the bill effectively implement those policy objectives. It is generally helpful for researchers to specialize in a particular subject matter area, so that they can become familiar with the technical and scientific issues raised by that subject matter area.

Inexperienced researchers often do not know when they have done enough background research on a particular subject. There is rarely enough time to read all of the material on a particular subject. The amount of time that a researcher should devote to research varies according to the degree to which the research is legally essential, as well as the number of requests that the researcher has pending at any given time. If a researcher has questions regarding the depth of research which should be conducted on a particular topic, the researcher should discuss the matter with the Director of Legislative Drafting.

4 01 3 Checklist regarding the requester's intent

Generally, the researcher should be able to answer the following questions about a requester's intent before he or she begins working on a draft law.

- What is the problem(s) that the requester is trying to address?
- What are some examples of this problem(s)?
- What is the requester trying to change, prevent or accomplish?
- What individuals and groups are intended to be covered by the draft?
- What individuals and groups are intended to be excluded?
- Who is responsible for administering the provisions of the draft law?
- Does this administrator need additional powers or additional staff?
- What enforcement mechanisms and penalties apply if the provisions of the draft law are violated?
- When does the draft law take effect?

- Will the draft law cost money to implement?
- What will be the source of this revenue?

If the researcher does not have an understanding of the requester's intent with respect to any of these questions, or if the researcher identifies additional questions during the drafting process, the researcher should contact the persons listed as contacts on the request information form

4 02 Integration with Existing Law

4 02 1 Researching existing law

After the researcher has developed an understanding of the legal result that the requester would like to achieve, the researcher should research existing law in order to determine how it must be changed to achieve the desired legal result. The primary resource for researching existing Palestinian law is the Legislative Compilation. The researcher should check the subject matter index to the Legislative Compilation to identify all laws covering the same subject matter as the draft law being reviewed. There are a wide variety of ways to describe a particular subject. Depending on the index, a "companies law" might appear under any of the following headings: "Companies", "Business Organizations", "Corporations", "Commercial Entities", etc. The subject matter topics used in the index to the Legislative Compilation is attached as Appendix A to this manual. Researchers at the Diwan must be very familiar with how subjects are indexed under this system.

A draft law may touch on a number of different subject matter areas. A "companies law" may have provisions that deal with arbitration of commercial disputes, with taxation of companies, with contract law, etc. As the researcher reviews the draft law, the researcher should make a list of provisions that involve ancillary subjects, so that the researcher can also research those subjects to determine whether those provisions conflict with a provision in existing law.

For each existing law that the researcher identifies, the researcher must check the history of that law to see if the law has been amended or repealed since its enactment. The Legislative Compilation is a compilation, not a codification, of law. This means that subsequent amendments to a law contained in the compilation are not integrated into the text of that law. To see the text of a subsequent amendment, the researcher will need to look at the law that has amended the original enactment. The index to the Legislative Compilation indicates whether a law has been subsequently amended or repealed, as well as the law that contained that amendment or repeal.

4 02 2 *Appropriateness of a request for legislation*

Occasionally, after the researcher has an understanding of the requester's intent and the current law on the subject, the researcher may believe that a legislative draft is not the appropriate method of accomplishing the policy that the requester wishes to implement. For example, it may turn out that the conduct that the requester wants to prohibit is already prohibited under existing law. The problem may not be the law, but a lack of enforcement of it. In this case, the requester may simply want to work with the agency responsible for enforcing the provisions to step up enforcement actions.

After doing research on current law, the researcher may determine that existing law gives the requesting ministry the authority to promulgate administrative rules addressing the issues covered by the draft law. If this is the case, the researcher should explain to the requester that the requester can accomplish the desired result simply by promulgating administrative rules under existing law. Similarly, if the draft law contains detailed provisions governing a subject that is constantly changing, it may be in the requester's interest to remove the detailed provisions from the draft law and instead proceed with a bill that is more general and allows the requesting ministry to promulgate administrative rules governing the details. The researcher should feel free to discuss these options with the requester, although it is ultimately the requester, in conjunction with the GDPP, who makes the policy choice of how much should be specified by law and how much discretion should be left to the ministry to promulgate administrative regulations.

4 02 3 *Identification of conflicts with existing law*

After identifying the laws that deal with the same subject matter as the draft law and after determining how these laws have been amended or repealed since their enactment, the researcher should review these laws to determine whether they conflict with provisions in the draft law being reviewed by the Diwan. In addition to identifying provisions in existing law that are directly contradictory to provisions in the draft law, the researcher should be alert to conceptual or logical inconsistencies between current law and the draft law. A draft law that criminalizes a particular act may not directly conflict with existing criminal law. However, the draft law may contain a penalty for the crime created in the draft that differs substantially from penalties for similar crimes in current law. Logically, it may make sense for similar crimes to have similar penalties.

4 02 4 *Resolution of policy questions presented by conflicts with existing law*

After identifying all direct and indirect conflicts with existing law, the researcher must obtain the policy input from the requester that is needed to resolve the conflicts. The researcher cannot always assume that the requester would like to resolve the conflict simply by repealing the existing law that contains the conflict. Often the discovery of previously unidentified conflicts with existing law indicates that the requester has not fully considered all policy implications of the proposed draft. For example, if the researcher points out to the requester that a provision in a draft law on securities is inconsistent with a provision in the

existing company law, the requester, after considering the issue, may want to revise the draft securities law to eliminate the conflict, rather than repealing the inconsistent provision in the companies law. Alternatively, the requester may want to modify both the existing law and the draft law to reflect a "compromise" between the existing law and the approach taken in the draft law. The Diwan researcher is responsible for identifying all conflicts with existing law and ensuring that they are resolved in a legally correct manner, it is the requester and the GDPP that are responsible for making the policy determination regarding how the conflicts should be resolved.

There are several approaches that the Diwan researcher can take to resolve conflicts with existing law. If the conflicts identified by the researcher present significant policy questions, the researcher should contact the requester directly. The researcher should explain the issue and the options available to the requester, and ask for input on how the conflict should be resolved. If the conflicts identified by the researcher are relatively minor and the researcher has developed a thorough understanding of the policy that the requester is trying to implement, the researcher may be able to make a preliminary judgment regarding how the requester will most likely want to resolve the conflict. The researcher may wish to incorporate this preliminary judgment into a draft to be submitted to the requester for the requester's review. If the researcher takes this approach, the researcher **MUST** attach a drafter's note to the draft explaining the conflict with existing law and how the researcher resolved it, so that the requester can review the issue to ensure that approach taken by the researcher is consistent with the requester's intent. Because the amount of effort that may be wasted if the researcher's judgment regarding the requester's intent is incorrect, it is generally advisable to take this approach only if the researcher is fairly confident that he or she understands the requester's intent.

4.02 5 Drafting provisions to resolve conflicts with existing law

Once the researcher has identified all conflicts with existing law and has obtained the policy input necessary to resolve these conflicts, the researcher must decide on the drafting approach that he or she wishes to use to address the conflicts. The Diwan is responsible for ensuring that a new draft law is fully integrated with the existing statutory framework. If only minor changes need to be made to existing law, it is generally preferable to simply amend those provisions. Section 4.09.3 of this manual discusses how to draft provisions to amend existing law. If a number of changes are needed to a discrete part of an existing law and that part is as related to the draft law as it is to the existing law, it may be appropriate to repeal that discrete portion of the existing law and incorporate the substance of those provisions into the draft law, making necessary changes as appropriate. Finally, if a large number of changes to an existing law are required, it may be easiest to repeal that law in its entirety and incorporate all of the substance of the repealed law, modified as appropriate, into the new draft law. Section 4.09.4 of this manual discusses how to draft a provision to repeal all or part of an existing law.

4.03 Proper Format

4 03 1 Source of format requirements

After reviewing the draft for conflicts with existing law, the Diwan researcher should review the draft for proper format. Legislative rules, or standing orders, typically govern the format of legislation. Because it is the legislature that adopts draft laws, it is ultimately the legislature that determines the proper formatting of bills. The Diwan staff should establish working relationships with the Legal Department of the Palestinian Legislative Council and should coordinate with the Legal Department on matters of proper legislative draft format. The Legal Department of the Palestinian Legislative Council is working on establishing standards for formatting legislative proposals. To the extent that those standards conflict with the format discussed in this section, this manual should be revised to conform to those standards.

4 03 2 Required parts of a legislative draft

All legislative drafts have the same general format. The main parts of a legislative draft are discussed in this section.

Title The law should begin with the phrase "Draft Law No () of 19__". This is the formal title of the legislative draft. The year of the title should be the year when the draft law is formally introduced to the PLC, not the year when drafting of it commenced. As a result, the year used in the title of the bill may differ from the year indicated in the first two digits of the draft reference number. Immediately following the formal title, there should be a descriptive title indicating the subject matter of the bill, e.g., "Concerning Reform and Rehabilitation Centers (Prisons)". Both titles should appear in bold type and should be centered on top of the page. It is important that the descriptive title accurately describe the content of the draft legislation. As the researcher reviews the draft, the researcher should keep the descriptive title of the legislative draft in mind. If the legislative draft contains content unrelated to the descriptive title of the draft, the title should be revised to accurately reflect the draft's content.

Preamble The title of the legislative draft is followed by a preamble. A typical preamble reads as follows:

The Chairman, Executive Committee of the Palestine Liberation Organization (PLO),
The President, Palestinian National Authority (PNA),
At the proposal of the [list the requesting ministry or official government body],
Based on the exigencies of public interest, and
After approval of the Legislative Council at its session of , 1997,

If laws are repealed or heavily modified, or if the goal of the bill is the harmonization of laws between the West Bank and the Gaza Strip, it is appropriate to add language immediately after the reference to the chairman of the PNA noting the laws that have been reviewed in preparation of the bill. For example, the Draft Law Concerning Reform and Rehabilitation Centers (Prisons) contains the following language

Having seen
The Prisons Law No 3/1946 in force in the provinces of Gaza,
The Prisons Law No 23/1952 in force in the provinces of the West Bank,

The researcher should verify the references to the laws contained in any draft preamble and should carefully review these laws. Other laws which have a special bearing or significance to the subject matter being treated by the draft law should be added to the preamble.

Enacting clause The preamble is followed by an enacting clause. The enacting clause is a simple statement that separates the text of the title and the preamble from the substantive provisions of the law. It reads simply "We enact the following law."

Text of law The substantive provisions of the draft law follow the enacting clause. The statement of purpose is typically one of the first articles in the text of the law, the drafting of these provisions is discussed in section 4.09.1 of this manual. The numbering and formatting of the substantive provisions of the bill are discussed in section 4.03.3 of this manual. The proper organization of these provisions is discussed in section 4.04 of this manual.

Amendments and repeals Following the text of the law, the draft law should contain a section for making any necessary amendments or repeals to current law. The drafting of these provisions is discussed in sections 4.09.3 and 4.09.4 of this manual.

Appropriations Appropriation provisions authorize the expenditure of funds. The drafting of these provisions is discussed in section 4.09.5 of this manual.

Transitional provisions Transitional provisions are the final provisions of a draft law. They include initial applicability provisions and effective date provisions. The drafting of these provisions is discussed in sections 4.09.6 to 4.09.10 of this manual.

Closing In order to indicate the end of draft law, all draft laws have a standard closing, indicating the date and place of issuance of the law. The standard form for the closing paragraph is as follows:

Issued in [city of issuance],
On [date, Gregorian calendar]
Corresponding to [date, Islamic calendar]

[Name of Executive]
Chairman, PLO Executive Committee
President, Palestinian National Authority

4 03 3 Numbering and format of units in a draft law

Except for the title, the preamble, the enacting clause and the closing, all provisions in a draft law are divided into titles, chapters, articles and paragraphs. The formatting of each of these units is discussed below.

Titles Titles are groupings of related chapters. They are generally required only for exceptionally long draft laws, such as a revised criminal code. Titles should be consecutively numbered, should appear in large, bold type and should be centered on the page. Titles should have a title describing the subject matter of the material covered in that title. For example, a title in a revised criminal code may read as follows:

TITLE 3 CRIMES AGAINST PROPERTY

Chapters Chapters are groupings of related articles. Generally, it is appropriate to group articles into chapters if there are more than 20 to 30 articles in a draft law. Chapters should be consecutively numbered, should appear in bold type and should be centered on the page. Chapters should have a title describing the subject matter of the material covered in that chapter. For example, a chapter in a revised criminal code may read as follows:

CHAPTER 4 THEFT

Articles Articles are the basic organizational unit of a draft law. Articles are consecutively numbered, with the numbers appearing in parentheses. Articles should appear in bold type and should be centered on the page. Articles generally do not have titles. The text of the article follows immediately after the article number. For example, an article in a revised criminal code may read as follows:

Article (15)

No person may enter a building with the intent to unlawfully remove property.

Paragraphs Articles may be subdivided into paragraphs. Paragraphs are numbered alphabetically. They do not have titles. Paragraphs may follow introductory material in an article. For example, an article that is subdivided into 2 paragraphs may read as follows:

Article (7)

In this chapter

- (a) "Office" means the legal support office of the ministry of justice
- (b) "Ministry" means the ministry of justice

4 03 4 Amending a law to insert additional material

Occasionally, a law may need to be amended to add additional articles or paragraphs. In order for the additional articles or paragraphs to be properly integrated into the organization of the law, the articles or paragraphs may need to be inserted in between existing, consecutively numbered articles or paragraphs. To do this, an additional letter is placed immediately after the number of the article or the letter of the paragraph. For example, an article inserted between articles (4) and (5) could be designated article (4m). It is useful to use (4m) instead of (4a), because the letter "m" is in the middle of the alphabet. This allows room for future insertions between (4) and (4m), e.g. (4e). This technique can be used to insert multiple articles or paragraphs between consecutively numbered units. For example, if a provision needed to be amended to add 3 new paragraphs between paragraph (c) and paragraph (d), the new paragraphs could be designated (ce), (cm) and (cs).

4 04 Proper Organization

After ensuring that a draft is placed in proper format, the researcher should analyze the organization and structure of the substantive provisions of the draft law. The most logical method of arranging the material of a legislative draft will depend on the substance of the draft. The draft's length, complexity and subject matter will all influence the way the draft should be organized. There are, however, a few general principles which should be observed for all drafts.

First, related provisions should be grouped together. The researcher should determine the main categories of provisions included in the bill. The researcher should consider whether the initial draft submitted to the Diwan for its review breaks up the bill's provisions into logical categories. The researcher should consider the following questions: If the bill uses chapters, do all the provisions in a chapter deal with the topic expressed in the chapter title? Do the subject matter categories used for the chapters make sense? If a chapter is exceptionally short, can it be grouped with one of the other chapters by broadening the chapter title to cover the subject matter of both chapters? If a chapter is exceptionally long, should it be broken up into more workable units?

Second, after considering how provisions should be grouped, the researcher should consider how these groups should be ordered. Again, the substance of the draft will dictate how these groupings should be ordered. Generally, the most important provisions should

be put first. A typical ordering of provisions would be as follows: 1) provisions governing purpose, intent, scope or application, 2) definitional provisions, 3) substantive provisions of primary importance, 4) substantive provisions of lesser importance, 5) provisions providing for exemptions, exceptions and exclusions and 6) provisions governing enforcement, benefits, sanctions or penalties. In some instances, it may be appropriate to put the provisions of the bill in "sequential order." For example, in a bill that licenses a profession, the draft might begin with the provisions for applying for a license, followed by provisions that deal with the license issuance, followed by provisions dealing with license suspension and revocation.

4 05 Logical Consistency

The Diwan is responsible for resolving logical problems contained in a proposed legislative draft. This responsibility involves not only making sure that the material contained in the draft is internally consistent, but also ensuring that the draft does not omit a logically necessary component of the program or process being created by the bill.

There are a number of techniques for reviewing a piece of draft legislation to ensure logical consistency and completeness. One of the most useful techniques is the "vertical-horizontal" approach to legislative drafting.¹ After preparing an outline of the draft law and dividing the material in the draft into titles, chapters, articles and paragraphs, the researcher should review each unit before going on to the next. This is the "vertical" component of legislative drafting or review. After the researcher has preliminarily completed his or her review of a series of these separate segments, the researcher should approach these segments "horizontally", ensuring that each separate segment is consistent with each other separate segment. The "vertical-horizontal" approach is discussed in this section.

4 05 1 Vertical review

No researcher can work accurately and efficiently by trying to review all of the problems in a long, complex legislative draft at once. Only by breaking up a large draft into smaller components and dealing with each component separately can the researcher hope to adequately focus on the particular matter that he or she is working on. This portion of the review process is referred to as "vertical review." The researcher should look at each article separately to ensure that it is logical. If the article governs a process, the researcher should make sure that the article is unambiguous with respect to each step in the process. The researcher should also ensure that the article does not require an action to take place before a necessary precondition to that action can possibly occur.

For example, a draft environmental law may require construction companies to submit a study on the environmental impacts of a major construction project before

¹ Dickerson, Reed, *Legislative Drafting*, (Westport, Connecticut: Greenwood Press, 1954)

construction may commence. The ministry may intend to promulgate administrative regulations defining the required components of the environmental study. There may be a logical problem with the draft if the draft takes effect immediately upon publication -- before the ministry has had an opportunity to use the rule-making authority granted in the draft to promulgate administrative regulations defining the required components of the study. In this example, the requester may wish to delay the effective date of the provisions of the law requiring submission of the study to allow a period of time for the ministry to promulgate rules regarding the required content of the study. Alternatively, the requester may wish to specify the required components of the study in the law, so that the requirement is not dependent upon an administrative regulation in order to be implemented.

Although a penalty or other consequence may be prescribed for violations of a provision, a researcher should ensure that no provision of the draft requires a violation of another provision of the law to be given effect. For example, a law should not require a ministry to fulfill a duty and then assign that ministry a second duty to fulfill if the first duty is not carried out. The researcher must assume that ministries will comply with the law. If the requester is concerned that a ministry will not carry out a duty completely and effectively, the researcher should suggest the following possibilities to the requester: 1) expanding the scope of the duty, 2) rewording the law to make the duty easier to carry out, 3) increasing funding or staff to provide more resources to carry out the duty, or 4) provide for a judicial remedy for enforcement, if the ministry fails to comply with the duty.

In addition to spotting logical problems with components contained in the draft, the researcher should seek to identify omissions of logically necessary components. If the bill requires a chain of events, the researcher should ensure that no link in the chain is omitted from the draft. Comparative legal analysis is an important tool in vertical review. It is far easier to spot a problem with a component contained in the draft than it is to spot the omission of a necessary component. Comparative legal analysis can inform a researcher about what issues similar jurisdictions have found it necessary to address in similar legislation. Techniques of comparative legal analysis are discussed in chapter 5 of this manual.

4.05.2 Horizontal review

“Horizontal review” of a legislative draft requires the researcher to ensure that all of the separate segments of the draft are substantively integrated in a logical manner. The researcher should analyze whether similar problems are addressed in a similar fashion. The researcher must ensure that terminology and concepts are used consistently throughout all parts of the bill. The researcher should ensure that cross-references within the bill to other articles and paragraphs are accurate and consistently formatted.

For example, if the legislative draft uses the phrase an “absolute majority of members of the Council of Ministers” in some articles, but simply uses the phrase “majority of members of the Council of Ministers” in others, a reader of the legislative draft may conclude that the different usage is intended to have a different meaning. If the term “Cabinet” is used in some places and the term “Council of Ministers” is used in others,

determine if a substantive difference is intended. If so, the researcher should ensure that the intended difference is clear. If not, the same term should be used in both places. The researcher must ensure that a particular regulatory provision is not described as a “power” of a ministry (which may or not be exercised) in one part of the legislative draft and as a “duty” of the ministry (which must be exercised) in another part of the draft.

In nonlegal drafting or in everyday speech, synonyms are often employed to avoid repetition or to add emphasis. A legislative draft should avoid using synonyms. The researcher should ensure that the draft says the same thing the same way and says different things in different ways. “Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony.” Sutherland, *Statutory Construction* (4th Ed), s 21.05. A horizontal check of the draft should identify similar terms and concepts and ensure that they are expressed similarly.

4.06 Reducing Ambiguities

The Diwan is responsible for identifying and clarifying ambiguities contained in the requester’s initial draft or instructions. For example, if a draft provides for a 2-year minimum sentence for robbery, the Diwan should clarify with the requester whether the minimum sentence was intended to apply to all types of robbery (shoplifting? embezzlement? armed robbery?), whether the requester wanted to allow a person to be sentenced to 2 years of probation or whether the intent was to require 2 years of prison time, and whether the requester intended that the person could be paroled before the 2-year period expires. As the researcher reviews the draft, the researcher should read each sentence critically to determine whether it is subject to multiple interpretations. There are a number of sources of possible ambiguities that the researcher should consider.

4.06.1 Modifiers

When modifiers are used in a legislative draft, it must be absolutely clear what the modifiers are intended to modify. In the phrase “licensed motorcycles, cars and trucks”, does the term “licensed” modify just the word “motorcycles” or does it modify all 3 terms -- “motorcycles, cars and trucks”? If the word “licensed” is intended to refer only to motorcycles, the researcher should reword the phrase so that it reads “cars, trucks and licensed motorcycles”. If the word “licensed” is intended to refer to all 3 and the meaning is not unmistakably clear from the context, the researcher should reword the phrase as follows: “A vehicle that is licensed and is a motorcycle, car or truck”. The researcher should ensure that pronouns are used in a draft only if the antecedent of the pronoun is unmistakable. The researcher should reword the draft as necessary to eliminate ambiguities. If the researcher does not know how the requester intended the provision to be interpreted, the researcher should contact the requester for clarification.

4 06 2 Active voice

The researcher should ensure that the draft uses the active voice , rather than the passive voice For example, a draft should provide that "the minister of justice shall appoint one or more deputy ministers", rather than providing that "one or more deputy ministers shall be appointed" The use of the passive voice often makes it unclear who is responsible for carrying out the provision

4 06 3 Excluding surplus material

A law should consist only of provisions that are intended to have a legal effect The one exception to this rule is the statement of purpose, which is intended to provide the reader with the reasons for, and the policies behind, the law Inclusion of material that is not intended to have legal effect (in places other than the statement of purpose) is likely to create ambiguities and misinterpretations Material without legal effect includes examples, illustrations, rationale, background information, estimates, projections, suggestions, advice or argumentative matter It is a well-established principle of statutory construction that a court should interpret a law in such a way as to give effect to every word If extraneous material is included, a court interpreting the law may infer legal duties and obligations from the language, regardless of the requester's intent

4 06 4 Measuring time

Legal provisions often require that an action be taken within a specified period of time Often, jurisdictions have formally adopted conventions regarding how time is to be calculated for purposes of these provisions For example, if a report must be filed with a ministry within 7 days of an event, what happens if the 7th day falls on a Friday? May the report be filed the following day? What if a number of days during the period were legal holidays, are the holidays counted? In the absence of a general "law on statutory interpretation" that governs such questions, each draft containing time limits should be explicit about how the time limit should be calculated

4.07 Proper Style

The researcher should seek to ensure that the requester's intent is expressed in a way that is as easy as possible to understand The researcher should ensure that a draft follows the stylistic guidelines described in this section

4 07 1 Sentence structure

The researcher should express the requester's intent in a way that is as easy as possible to understand If possible, the researcher should use short, simple sentences

and should avoid the use of dependent clauses, complex sentences or other complicated sentence structures. The draft should use parallel sentence structure to express parallel ideas. Instead of providing that “A copy may be obtained by mail or if the person appears personally,” the draft should provide that “A person may obtain a copy by mail or in person”

4 07 2 Brevity

If a word has the same meaning as a phrase, the researcher should substitute the word for the phrase. A draft should use only necessary words. In construing statutes, courts generally try to give each word meaning. Unnecessary language is more likely to mislead than be helpful. The researcher should eliminate unnecessary rhetorical flourishes, such as “of any kind” or “under any circumstances whatsoever”

4 07 3 Precision

A researcher must remember that the Diwan's primary goal in reviewing legislative drafts is to ensure that the requester's intent is effected. Precision is perhaps the most important requirement of legislative drafting. A researcher should not substitute a familiar term that may have more than one meaning when the situation requires the use of a less familiar term to make the intended meaning unmistakable.

4 07 4 Directness

The researcher should ensure that the draft expresses concepts as directly as possible. For example, a researcher should substitute the phrase “Adults with children” for the phrase “Adults other than those without children”

4 07 5 Timelessness

Draft laws should generally avoid the use of verbs such as “prepare”, “establish”, “develop”, “formulate”, “increase” or “decrease” because these verbs imply that an action is to begin and end within a limited time frame. Instead, the researcher should revise the draft to use verbs that will give the law continuing vitality, such as “provide”, “maintain”, “ensure”, “maximize” or “minimize”. If the requester intends an one-time responsibility, rather than an on-going duty, the researcher should make sure that the draft law specifies a time frame for completing the one-time responsibility.

4.08 Definitions and Consistent Terminology

4 08 1 Use of definitions

Definitions are frequently used to 1) define unfamiliar words or phrases, 2) indicate that, in the legislative draft, a term has a more limited meaning than the meaning by which the term is usually understood, and 3) reduce the length of a bill by eliminating the repetition of a long title of a board, commission or agency or a long phrase

4 08 2 Choice of defined term

In reviewing the draft, the researcher should redraft any contorted definitions. A draft should not define a term in a way that is at odds with its commonly accepted meaning. For example, if the requester intends to cover both hospitals and clinics in a definition, the draft should not define the term "hospital" to include clinics. Instead, the draft should use a broader term, such as "medical facility" and should define that term to include both hospitals and clinics.

4 08 3 Content of definitions

Definitions should not include nondefinitional material. Placing substantive material in a definition hides the operative provisions of the law and makes the proposal more difficult to understand and amend. If a definition contains substantive provisions, the researcher should remove these provisions from the definition and place them in the operative provisions of the draft.

4 08 4 Exclusive and nonexclusive definitions

If the requester wants to ensure that certain items are covered by a defined term, but does not want to limit the definition to the enumerated items, the draft should use the term "includes" rather than the term "means." "Means" is complete and "includes" is partial. Using "includes" allows a court or an administering agency to adopt additional meanings, using "means" restricts them to reasonable constructions of the wording used in the definition.

4 08 5 Use of a defined terms

A draft should not use a defined term in its own definition, unless the definition merely particularizes a more general term. If a draft has a defined term for a concept, the researcher must ensure that the draft does not use the defined term to have any meaning other than the defined meaning. If the draft does use the defined term in a way other than

the way it is defined, a second term should be used for the second meaning. A draft should not give two or more terms the same meaning. The researcher should select one term and ensure that it is used uniformly throughout the draft.

4 08 6 Consistency with definitions in related laws

Related laws should be consistent in their use of defined terms. For example, if a researcher is asked to review a draft law on securities exchanges, the researcher should review the definitions in related laws, such as the companies law and the securities law. If the companies law uses the term "company" to mean an incorporated business, the draft law should not use the term "corporation" for the same concept, unless there is a specific reason why the term "company" cannot be used.

In trying to achieve consistency between a draft law and existing law, the researcher may wish to consider incorporating a definition in a different law by reference, i.e., the term "company" could be defined to have the meaning given in the companies law. If this option is chosen, it is essential that the cross-reference accurately cite the law and article that contains the definition that is being incorporated by reference. Incorporation by reference has the advantage of incorporating future amendments to the law that is being cross-referenced. It has the disadvantage of requiring the reader to locate the law being incorporated. The researcher should use his or her judgment in determining whether a definition should be incorporated by cross-reference.

4 08 7 Placement of definitions

In general, definitions should be placed where a reader of the law is most likely to look for them. If a term is used throughout an entire law, the definition should generally be placed as an article in the first chapter of the law. The introduction to the definition should clearly state that the definition applies to the entire law. If a term is used exclusively in a particular chapter or article, the definition should be placed at the beginning of the chapter or article, together with an introductory language stating that the definition applies to that chapter or to that article. If there are a number of terms being defined in an article, the researcher should arrange the definitions alphabetically.

4 09 Special Provisions

4 09.1 Statements of purpose

The statement of purpose is an article, typically placed near the very beginning of the text of a bill, that describes the purpose and policies of the draft law. It is essential that the statement of purpose be consistent with the substantive provisions contained elsewhere in the draft law. During the drafting process, a number of policy changes may

be made to incorporate the comments of interested ministries or the Council of Ministers. Each time a significant change is made to a substantive provision in the draft, the Diwan researcher should consider whether the statement of purpose needs to be revised to reflect the policy of the bill, as modified by the changed substantive provision. Diwan researchers should also review the statement of purpose carefully to ensure that it does not contain any substantive provision. The draft should be a completely workable whole, even if the statement of purpose were to be omitted.

4 09 2 Penalty provisions

There are a number of issues raised by penalty provisions. For each prohibition in a draft law, there should generally be a penalty or remedy that applies in case the prohibition is violated. The following issues should be considered in drafting a penalty provision: What is the prohibited behavior? Who will impose or enforce the penalty? If a fine is imposed, where does the money go? Is the penalty a criminal penalty or a civil forfeiture? Can the penalty be assessed against legal persons, such as corporations, partnerships, etc. If the penalty provides for a fine and for imprisonment, can both the fine and the imprisonment be imposed, or are these alternatives? Are there, or should there be, more severe penalties for repeat offenders? Should there be a minimum, as well as a maximum, penalty?

4 09 3 Amending provisions

Although there are a number of methods to indicate amendments to existing laws, the most common method is to show deleted material by striking and to show inserted material by underscoring. If material is to be deleted and inserted in the same place, the researcher should show the deletion in stricken text before showing the insertion in underscored text. The provision being amended must be accurately and completely identified. If the law containing the provision is in force only in the West Bank or Gaza, indicate the jurisdictions to which the law being amended is applicable. An amending provision should have the following format:

Article (68)

Article (30) of Law of 19 , in force in the West Bank, concerning , is amended as follows:

Article (30)

Whoever violates Articles 28 or 29 is subject to imprisonment for a period not to exceed 4 6 years.

4.09 4 Repealers

A repeal of a law makes that law prospectively ineffective. A law should not use a general repealer, such as "all laws in conflict with this act are repealed". It is often difficult to determine what is meant by "in conflict". As a result, individuals and businesses will be unable to determine the requirements to which they are subject and will generally choose to follow the requirements that are the least burdensome to them. Problems with enforcement and implementation of laws often result. If a draft law is submitted to the Diwan with a general repealer, the researcher reviewing the draft should do the following: 1) identify provisions in current law that are in conflict with the draft law, 2) discuss the list of conflicting provisions and laws with the requester to determine whether the requester, in fact, intends to repeal all of the conflicting provisions and laws, and 3) draft a specific repealer to replace the general repealer provided for in the draft law.

Specific repealers must accurately and completely identify the laws or provisions being repealed. If only certain provisions in a law are being repealed, the law containing these provisions must be reviewed to ensure that all internal cross-references to the repealed provisions either are repealed or are amended to delete the cross-references. If the provisions or law being repealed is in force only in the West Bank or Gaza, the draft law should indicate the jurisdictions to which the law is applicable. A repealer should have the following format:

Article (72)

Articles () and () of Law No () of 19 , in force in the West Bank, are repealed on the effective date of the law.

If administrative regulations have been promulgated under the authority of an article that is to be repealed by a draft law, the researcher should ask the requester whether the requester intends for the regulations to be repealed on the effective date of the act. Occasionally, the requester may wish for the regulations to remain in force until regulations under the new law are promulgated. In this case, the researcher may add language to the end of the repealer similar to the following: "Regulations issued under [cite to the repealed provisions] remain in force, to the extent that they are not inconsistent with this act, until they are replaced by regulations promulgated under the authority of this act."

4.09 5 Appropriation provisions

There are generally 5 questions which need to be addressed in an appropriation: 1) How much? 2) From where? 3) To whom? 4) For what purpose? and 5) When? An example of an appropriation follows:

Article (40)

NIS 100,000 are appropriated from the general fund of the ministry of justice to implement articles (1) to (39) of this act, to be made available on the effective date of this act

4 09 6 Severability provisions

A severability provision instructs a court how to handle a law if a provision in it is declared void (because it is found to be contrary to a basic law or, in some cases, because it is found contrary to international law) If a law is severable and a particular provision in the law is declared void, the void provision is “severed” from the remaining provisions in the law and the remainder of the law remains in force If a law is not severable and a particular provision in the law is declared void, the entire law is invalid If there is a question regarding whether a provision of a law is consistent with the draft basic law or with international law, the researcher should address the issue of severability in the draft An example of a severability provision follows

Article (67)

The provisions of this law are severable If any provision of this law is found to be invalid, the remaining provisions of the law remain in force unless the court determines that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with legislative intent

4.09.7 Savings provisions

Normally, a law is construed as having prospective application and effect However, it is not always clear how a legislative draft is intended to affect existing rights A savings clause is an article that is occasionally inserted into a legislative draft to preserve from destruction those rights, remedies or privileges that might otherwise be destroyed by the bill, particularly by repeals or amendments For example, if a bill repeals an old provision for licensing attorneys under which a number of existing practicing attorneys obtained their license, a savings provision could be added stating that the repeal of that section does not invalidate the license of any attorney who validly obtained their license under that section prior to its repeal If the intent of a proposed bill repealing or amending certain laws is to strike down pending actions or rights, you may want to use a “nonsavings clause”, in effect the reverse of a savings clause In the example involving the repeal of an old law governing the licensing of attorneys, the intent may be to require attorneys who obtained their license under that provision to have to reobtain a license under the new licensing provision A nonsavings clause could be used to make the intent clear The draft law’s intended treatment of the affected actions or rights should be clear and explicit In many jurisdictions, the constitution limits the ability of a state to make retroactive legal changes Before drafting a law so that it has retroactive effect, a researcher at the Diwan should be sure to check the draft basic law If a conflict with the

protections in the basic law exists, the researcher should discuss the matter with the requester

4 09 8 "Sunset" provisions

A sunset provision is a provision which automatically terminates a newly created governmental entity or program, unless otherwise renewed by the legislature. Governmental entities and programs, once created, tend to take on a life of their own. Sunset provisions were developed as a method of ensuring that a new entity or program was revisited and evaluated by the legislature at a future point in time (the "sunset date"). If the entity or program was not revisited and evaluated, it would be automatically terminated. In simple terms, a sunset provision is nothing more than a repealer, with a delayed effective date, repealing provisions created by the bill containing the repealer. If a sunset date is included, make sure that there is sufficient time between the time that the entity or program will commence operations and the sunset date. Ideally, the draft law would provide specific criteria by which entity or program should be evaluated. Sunset dates can be extended or postponed by a law that amends the sunset date provision to provide for a longer sunset period.

4 09 9 Initial applicability provisions

An initial applicability provision is used to specify the situations to which a change in the law first applies. It may be needed in addition to an effective date provision and is typically used when the law affects a process. It is important to distinguish between an effective date (the date when a change becomes law) and initial applicability (the first event in a sequence to which the change applies). For example, a change in the rates for the inheritance tax could take effect on the January 1 after publication in the Official Gazette and could initially apply to transfers because of deaths occurring on that day. The initial applicability provision may apply to certain specified provisions in a draft law or to the entire law. An example of an initial applicability provision follows.

Article (79)

Articles (18) to (25) first apply to contracts entered into, extended or renewed on the effective date of this act.

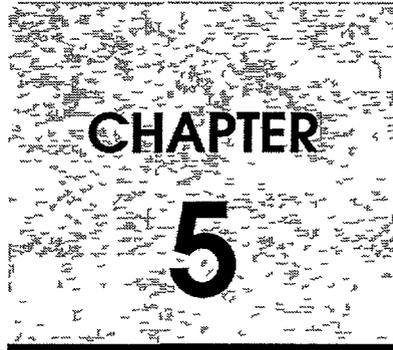
4.09 10 Effective date provisions

In order for a law to be complied with voluntarily, or even for it to be enforced by public officials, those whose conduct is governed by the law must be notified of its enactment. Often publication in the Official Gazette will not occur for weeks or even months after the law is enacted. A law should not take effect before publication in the Official Gazette, except in cases of emergency. Often it is desirable to give the public a period of time to come into compliance with the new law. For example, if a law changes the

requirements for valid apartment leases, the requester may want to allow a period of time for the landlords to learn of the requirements, to draft new apartment lease forms and to have these forms printed. The requester may want the law to take effect a specified number of days after publication in the Official Gazette, i.e., on the 180th day after publication. Requesters do not always consider the question of when a law should take effect. The researcher should ensure that each law specifies an effective date and, after reviewing the draft, should consider whether that effective date is logically consistent with the bill's requirements. It is possible to specify that certain provisions of the law take effect sooner than other provisions. An example of an effective date provision follows.

Article (80)

This law shall take effect on the 30th day following the date of its publication in the Official Gazette, except for article (5) of this act which shall take effect immediately upon enactment.



COMPARATIVE LEGAL ANALYSIS

The Palestinian legal system is undergoing a metamorphosis. Its present system is of mixed heritage, making the legal reform process a challenge to legislators, policy-makers and legal researchers alike. This system combines Islamic rules as codified in the Ottoman Code (*Mejelle*), Anglo-Saxon English Common Law and French Civil Code principles, an amalgamation of Jordanian legislation and Israeli military orders, and a rich tradition of customary practices. The challenge facing Palestinian legal reformers lies in deciding how to draw on this rich legal tradition to chart a course toward the institutionalization of a comprehensive, cohesive and consistent legal system. Comparative legal analysis can be used as a powerful tool in accomplishing this challenge. This chapter provides a general overview of the common law and civil code systems, the mechanics of comparative legal analysis and the ways that the Diwan can use comparative legal analysis in fulfilling its legislative drafting responsibilities.

5.01 Common Law and Civil Code Systems

In reviewing the laws of other countries, it is useful to have a basic understanding of the theoretical distinction between the common law and civil code systems. The older of the two, Common Law, was developed in England. It began when courts had the power to make legal decisions, but little or no basis beyond common sense for making them. Lacking statutory definitions upon which to base their judgments, the courts came to rely on *precedents*, decisions rendered by other courts or the same court under similar fact situations. They could do this because, at the conclusion of each case, the judge would issue a written opinion, providing the legal rationale to support the judgment rendered. Each court decision would later be published. This process of referral to earlier court dispositions of law cases eventually led to a coherent body of law governing almost all legal situations, civil and criminal alike. The role of the judge under the Common Law system is critical, for the system demands highly intellectual, diligent and resourceful judicial talent if the system is to work effectively.

The Civil Code system dates back to the Romans, but its modern implementation began with the Napoleonic Code of 1804. The underlying premise of the Civil Code system is that all law must be defined by statute. The term "code" refers to the entire

corpus of statutes, and to be effective the code must be totally comprehensive, dealing with every legally controlled aspect of human endeavor. The role of the court in a Civil Code system is to apply the codified statutes, and only those statutes, to all cases coming before it. In contrast to Common Law, discretion on the part of a judge is essentially eliminated and the judge is a specialized civil servant.

In practice, the differences between these two major legal traditions is much smaller than these theoretical differences would suggest. In all Common Law countries, including the United States and the United Kingdom, courts are expected to enforce a comprehensive set of laws, regulations, treaties and international agreements and to use those materials as the basis for deciding cases. In Civil Code countries, including France and Germany, courts must consider the existing body of decisions in similar factual situations in framing their judgments. The reasons for this convergence are obvious: all democracies have legislatures that enact laws that must be enforced and executives that issue regulations to implement that legislation, and all democracies require consistency in the application of those laws and regulations. Common Law and Civil Code nations alike seek a Rule of Law, a system that is fair, transparent, predictable and accessible to all. Among other things, the Rule of Law requires the uniform adherence on the part of the judiciary to the will of the legislators and implementers of that legislation. Common Law and Civil Code courts alike must apply and enforce the decisions of the legislative and executive branches of government. In addition, while one goal of good legal drafting is to address all possibilities and remove all ambiguities, in reality there are always unanticipated issues which Common Law and Civil Code courts alike will have to adjudicate based upon materials extrinsic to the governing law or regulation.

Notwithstanding the similarities that have inevitably evolved between the Common and Civil Code systems, there remain several very basic distinctions between the two in the court systems and legal professions themselves. The divergence begins with legal education. In Common Law systems, all members of the legal profession enter it with a post-graduate law school education, culminating in a Juris Doctor (JD) degree. Most degree holders go into the practice of law, either public or private, and from that cadre of legal practitioners, some are chosen to become judges, almost always, judges in Common Law jurisdictions have spent some years as practicing attorneys before becoming judges. In Civil Code systems, all members of the legal profession have received a Bachelor of Law degree (*License en droit*). Most of these degree holders (probably 90%) then drop out of the legal profession, going instead into government or the private sector. Those who do choose to enter the legal profession must first select one of three career paths: lawyer, magistrate, or prosecutor. Each path entails separate and lengthy post-graduate training. Of significance here is that, under Civil Code systems, judges have no experience as practicing attorneys. The first distinction between the two systems, thus, is in the educational backgrounds of the members of the legal profession.

A second, more important distinction, one to which the differing educational backgrounds of the members of the legal profession undoubtedly contribute, is that the Common Law has an adversarial judicial system, while the Civil Code system has a prosecutorial judicial system. Under the former, both plaintiff and defendant are equals before an impartial court. Opposing lawyers each present their cases in terms most

favorable to their clients, with the judge acting as a moderator, and the lawyer with the better case wins. This adversarial approach to resolving court cases applies to both civil and criminal law proceedings. By contrast, in Civil Code systems such a relationship between plaintiff, defendant and judge normally applies only to civil law cases involving private disputants. Whenever the government becomes a party to the case, whether civil or criminal in nature, the procedural rules of the court change dramatically. The prosecutor is, in effect, an arm of the judiciary, and the prosecutor works in tandem with the judge. The judge is also an active participant in the presentation of the evidence, with prosecutorial rights to question witnesses, examine evidence, and even require the production of additional evidence. This difference between the two systems is probably most obvious in criminal law proceedings. With the judge acting primarily as a mediator during the course of the trial, under a Common Law system the criminal trial entails a lively interchange between prosecution and defense counsel over disputed facts and legal theory, and the trial may even take on some entertainment value. The Civil Code criminal trial is much more staid, but to a Common Law attorney the trial may appear to be basically unfair to the accused, for the judge is not only the moderator but also serves as a co-prosecutor and jury.

This overview of the differences between the common law and civil code systems is intended only to provide a very general picture of some of the types of differences that exist among legal systems. When reviewing a law of another jurisdiction, a Diwan researcher must always consider the legal context within which that law was intended to operate. Wholesale importation of laws from different countries is rarely effective. A myriad of variables interact with laws and their implementation: level of economic development, legal culture, social and religious traditions, level of legal development, legal educational systems, judicial infrastructure, etc. For these reasons, comparative legal analysis must be viewed as a tool -- not a solution -- in Palestine's legal reform effort.

5.02 Mechanics of Comparative Legal Analysis

Comparative analysis is not restricted to examining a body of rules and principles. Rather, it is a method for looking at legal problems, legal institutions, and entire legal systems. By the use of the comparative method, observations and insights not possible when looking at the law within a single system become possible, and the quality of the legislation improves. Generally, comparative legal analysis involves the following steps:

1. Choose the jurisdictions to review. In general, it is wise to have a diverse group of jurisdictions to review, however, the choice of jurisdictions will vary greatly depending on the subject matter being reviewed. For a business law, it may make sense to include the U.S. and other G7 countries in addition to regional countries. For a law affecting marriage and the family, it may make sense to have a stronger focus on countries with a similar cultural and religious traditions.

- 2 Identify the laws of other jurisdictions on the substantive subject matter at issue For example, if the subject of the draft at hand is company law, find the company laws from the jurisdictions chosen Occasionally, the search must be broadened beyond legislation to include rules, orders or case law In some jurisdictions, a particular matter may be handled at the national level, in other jurisdictions, the same matter may be handled at a provincial or state level
- 3 Analyze the collected materials At this step in the process, the researcher should consider not only the differences among the laws, but the similarities as well The researcher will find not only that the laws cover the same ground in different ways, but that the laws cover different ground The researcher must be alert to this fact A companies law in one jurisdiction may require incorporated companies to pay an annual fee for maintaining their corporate status, the researcher may find a companies law from a 2nd jurisdiction that does not provide for such a fee The researcher should not automatically assume that the 2nd jurisdiction does not have such a fee, it may be that the fee is included in a tax law, rather than the companies law
- 4 Seek additional reference sources as needed If the collected materials do not provide sufficient assistance with the necessary answers, or if the materials are insufficient to answer legal questions, additional sources, including scholarly works, should be consulted, and interviews and working sessions with authorities and experts may be useful
- 5 Compile the results of the comparative review It is often extremely useful for the researcher to present the information in chart form Typically, the chart would have a column for each jurisdictions whose laws were reviewed The rows of the chart would list particular features or aspects of the subject matter under consideration For example, if a researcher were conducting a comparative legal analysis of the law on criminal tax evasion, the features or aspects of the subject matter may include elements of the crime, penalties, enforcement responsibilities, etc The body of the chart would show how each jurisdiction resolved the particular feature or aspect

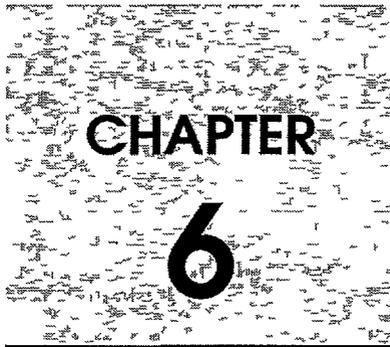
5.03 Uses of Comparative Legal Analysis

As noted above, comparative legal analysis is a tool, not a solution As a tool, it can be employed for a number of purposes The purposes for which the Diwan employs this tool must be consistent with the role of the Diwan As the Diwan is not responsible for making the policy choices embodied in a legislative draft, it must not use comparative legal analysis to incorporate policies (based on a law from a different jurisdiction) without the input of the relevant ministry and the GDPP

If the Diwan is asked to review a draft law, comparative legal analysis can be useful in ensuring that the draft is logically consistent and unambiguous. As discussed in section 4.05, it is often easier to identify a logical inconsistency in a provision of a legislative draft than it is to identify the omission of a logically necessary provision. Ideally, laws should cover all possible factual situations so that the application of the law to a particular fact situation is clear and unambiguous. In practice, this is never the case. Issues arise that were unforeseen at the time the law was drafted. Laws from other jurisdictions are just as likely as the draft law to fail to address all possible factual situations. The value of comparative legal analysis is not that laws from other jurisdictions are less likely to fail to cover important issues -- the value is that these omissions may be different omissions than the ones in the draft law. By reviewing a variety of laws from other jurisdictions, the researcher may be able to identify additional issues should be addressed in the draft legislation.

In addition to using comparative legal analysis to identify "holes" in a proposed draft, comparative legal analysis can be used to identify a range of options available to the requester in deciding how the holes should be filled. If a draft law is silent on an issue that should be addressed, it is likely that the requester did not consider the issue and is not familiar with all of the possible ways of addressing the issue. Comparative legal analysis can be used to identify options which can be presented to the requester for consideration. It must be remembered however, that the decision about whether to follow an option used in another jurisdiction rests with the requester and the GDPP. As discussed above, comparative legal analysis is a tool, not a solution. The Diwan may identify a number of issues which should be addressed in a draft law and may present the requester with information on the ways in which other jurisdictions have addressed the issues. The requester and the GDPP may not wish to follow any of the options. Indeed, it may often make the most sense for the requester to draw on the approaches taken in other jurisdictions and blend and modify them to create a new approach more closely suited to the particular needs of Palestine's current situation.

Although the Diwan is primarily engaged in reviewing legislative drafts rather than the preparation of an initial draft, it should be noted that comparative legal analysis is also extremely valuable in the preparation of an initial draft. Many legal areas are not covered by existing Palestinian law and new subjects must be introduced in Palestine, such as commercial and financial sector laws (e.g., securities, secured lending, leasing, banking, taxation, commercial agencies, and franchises). Foreign laws can often be a useful starting point for the preparation of an initial draft. However, it is crucial that a researcher that uses a foreign law as a starting point for a legislative draft clearly understand how those laws operate in the foreign system and recognize that, most likely, a wide range of changes will need to be made before the legislative draft will be ready for introduction.



CODIFICATION AND HARMONIZATION OF LAWS

Over the last 3 centuries of Palestine's legal history, new legal principles were layered atop old ones without any effort to resolve the philosophical and procedural discrepancies between them. New laws were promulgated that neither repealed nor superseded earlier laws governing the same subject matter. The Ottoman Codes became integrated, at least selectively, into the Common Law system brought by the British. This merger of legal systems, and the increments that followed, have rendered most areas of substantive law badly in need of systematic, coherent reform.

This reform process involves 2 components: recodification and harmonization. These 2 components differ in a number of significant ways -- particularly as they relate to the role of the Diwan. Recodification of laws, strictly speaking, does not involve policy choices. In its purest form, recodification simply changes the organization of existing law, rather than its content. It involves collecting all of the existing laws on a topic, repealing all of these laws and enacting a new law containing the content of the pre-existing laws. The goal of a recodification is the production of a well organized, well drafted version of the existing law. To the extent that the recodification process is limited in this way, it can be conducted solely by the Diwan, without the need for input from the requesting ministries and the GDPP.

Harmonization of laws necessarily involves policy choices. Policy input is required in order to decide questions like: Should the Gazan law replace the West Bank law on a particular matter so that the law is uniform in the two jurisdictions? Should the West Bank law replace the Gazan law? Should a new law, combining elements of the two existing laws, be created and made applicable to both jurisdictions? If so, what policy should the new law reflect? The resolution of these questions requires input from the relevant ministry(ies) and from the GDPP.

Because of the staff resources needed to undertake a recodification or harmonization project and the legislative resources needed to consider and enact the resulting draft law, it generally makes sense to pursue recodification in conjunction with harmonization. It makes little sense for the Diwan to prepare an extensive recodification of Palestinian business law, only for a relevant ministry or the GDPP to request a legislative draft that substantially rewrites the new recodification to harmonize the business laws of Gaza and the West Bank. Moreover, the narrow concept of pure

recodification is not likely to be sufficient to meet the needs of current Palestinian legal system. Because of the number of conflicts within existing law, the recodification will also need to make minor policy choices regarding how these conflicts should be resolved. For these reasons, recodification and harmonization should generally be pursued at the same time, using a cooperative process involving the relevant ministries and the GDPP.

As a general matter, the process of harmonization and recodification of laws should proceed in the following manner:

1. The GDPP should decide, as a policy matter, which substantive topics are the government's highest priorities for recodification and harmonization. The GDPP should communicate these priorities to the Diwan.
2. To the extent that the Diwan's other drafting responsibilities permit, the Diwan should begin recodification/harmonization projects in accordance with the GDPP's priorities. The highest priorities should be entered as requests in the manner provided for in section 3.02 of this manual. Where possible, the requests should be assigned to researchers having substantive expertise in the subject matter to be recodified and harmonized.
3. The Diwan researcher should begin each project by collecting all of the relevant laws governing the topic to be recodified and harmonized. After collecting all of the relevant laws, the Diwan researcher must review the history of each such law to determine whether the law has been amended or repealed. If a law has been amended, the researcher should mark up the text of the law to reflect the amendments. Repealed laws will not be included in the recodification and should be discarded.
4. To the extent that the collected laws, after incorporating all amendments, provide for differing treatment of the West Bank and Gaza, the Diwan researcher should prepare a chart describing all of the differences. It may make sense to have one row in the chart for each issue where the laws of the two jurisdictions diverge. It may make sense to have a column for the researcher to describe the treatment of the issue in Gaza, a second column for the researcher to describe the treatment of the issue in the West Bank, and a blank third column for the relevant ministry and the GDPP to fill in with a description of how the issue should be harmonized. The chart should be given to the relevant ministry and the GDPP for their review and completion.
5. The relevant ministry and the GDPP should review the chart and make policy decisions regarding how each issue should be harmonized. After the relevant ministry and the GDPP have resolved these harmonization issues, these policy decisions need to be communicated to the Diwan.

- 6 While the relevant ministry and the GDPP are reviewing the legal differences between the two jurisdictions and making policy decisions regarding how they should be resolved, the Diwan researcher should begin the process of organizing the material from the laws that are to be recodified. The researcher should ask him or herself how he or she would organize the material if he or she was drafting the proposal from scratch. The Diwan researcher may wish to seek advice from experts on the substantive area being recodified regarding the best organization and structure for the recodified law.
- 7 In reorganizing and restructuring the collected laws into a single, well-organized framework, the Diwan should maintain an annotated draft that includes an annotation after each article of the draft indicating the source of the article. This provides a useful reference tool for legal researchers and practitioners in linking the recodified provisions to their pre-recodification source. It also can be useful in ensuring that provisions in existing law are not inadvertently dropped in the recodification process and in ensuring that new provisions are not inadvertently added without a conscious policy choice to do so.
- 8 If, as part of the Diwan's reorganization process, the Diwan discovers legal conflicts or problems with the existing law which require policy input to resolve, the Diwan should prepare a memorandum explaining the issues and provide the memorandum to the relevant ministry and the GDPP. The relevant ministry and the GDPP should make the necessary policy decisions and communicate them back to the Diwan.
- 9 After receiving policy instructions from the relevant ministry and the GDPP on how harmonization issues and conflicts should be resolved, the Diwan is in a position to prepare an initial draft of the recodified/ harmonized law. At this point, the process of preparing a recodification/ harmonization draft does not differ significantly from the process of preparing other drafts. For the most part, the Diwan should follow the procedures specified in sections 3.03 to 3.11 of the manual. Like all other legislative drafts, it is essential that the Diwan ensure that recodification/harmonization drafts adhere to the standards specified in chapter 4 of this manual.

It should be recognized that the recodification and harmonization process is likely to be a very lengthy, time-consuming process, and may strain the Diwan beyond its present drafting capacity. It may be necessary for the Diwan or the ministry of justice to enlist outside help in working on recodification and harmonization projects. While this may be a workable option, mechanisms must be put in place to ensure a consistent work product. The administrative procedures described in chapter 3 of this manual are necessary to ensure that the recodification and harmonization process is transparent and involves all relevant actors. The substantive standards described in chapter 4 of this

manual should be consistently applied regardless of who does the work. Unless these standards are consistently adhered to, the full benefits of recodification and harmonization will not be realized.

APPENDIX A:
SUBJECT CATEGORIES USED BY THE DIWAN
AND BY THE LEGISLATIVE COMPILATION

Arabic/English Classification of legal areas

Classification (A)	A_ID	Classification (E)
القانون الدولي العام	100	Public International Law
المعاهدات والاتفاقات	101	Treaties and Agreements
التشريعات الدبلوماسية	102	Diplomatic Legislation
القانون الدستوري	200	Constitutional Law
الدساتير والقوانين الاساسية والتشريعات	201	Constitutions, Basic Laws and Interpreting Legislation
التشريعات السياسية	202	Political Legislation
الحريات العامة	203	Public Freedoms
تشريعات الطوارئ	204	Emergency Legislation
المجلس الاستشاري الفلسطيني	205	Palestinian Consultative Council
القانون الاداري	300	Administrative Law
الادارة المحلية والحكم المحلي	301	Local Administration and Government
خدمات البلديات	302	Municipal Services
التخطيط والتخطيط والاملاك	303	Survey, Planning and Confiscation of Land
الوظيفة العامة	304	Civil Service
اجرة الحكومه والشكليات الادارية	305	Government Institutions and Administrative Agencies
الاحوال المدنية	306	Civil Affairs
العقود الادارية والادارة العامة	307	Administrative Contracts and Public Works
الخدمات	400	Services
الصحة	401	Health
المواصلات	402	Transportation
الاتصالات	403	Communications
التربية والتدريب والثقافة والفنون	404	Education Culture and Youth
الاعلام	500	Media
الصحف الرسمية	501	Official Publications
وسائل الاعلام	502	Mass Media
المطبوعات	503	Publications
مراسلو وسائل الاعلام الاجنبية	504	Foreign Correspondents
المساحة والآثار والمتاحف	600	Tourism Archaeological Sites and Holy Sites
الآثار	601	Archaeological Sites
المقدسات - حرمة الاماكن المقدسة	602	Holy Sites - Sanctity of Holy Sites
المصادر الطبيعية والطاقة	700	Natural Resources and Energy
الطاقة	701	Energy
المصادر الطبيعية	702	Natural Resources
المحروقات والمواد المتفجرة	703	Flammable Materials
قوات الامن	800	Security Forces
قانون العمل وتشريعات الشؤون الاجتماعية	900	Labor Law and Social Legislation
قانون العمل	901	Labor Law
الشؤون الاجتماعية	902	Social Affairs
الجمعيات	1000	Associations
القانون المالي	1100	Financial Law
الضرائب	1101	Taxes
البنوك والعملة	1102	Banks and Currency
الموازنة العامة	1103	Public Budget
الجمارك والرسوم	1104	Customs and Duties
القانون الجنائي	1200	Criminal Law
العقوبات	1201	Penalties
النظام العام	1202	Public Order
الاجداث	1203	Juveniles

1204	قانون أمن الدولة	National Security
1205	السجون	Prisons
1300	القانون المدني	Civil Law
1301	المعاملات المدنية	Civil Transactions
1302	المالكون والمستأجرون	Landlord and Tenant
1400	تشريعات البيئة	Environmental Law
1401	الحفاظة على البيئة	Environmental Protection
1402	الزراعة	Agriculture
1403	الحيوانات	Livestock
1500	المهنيين	Professions
1501	تنظيم المهنة والحرف	Regulation of Professions and Crafts
1502	المهنة القانونية	Legal Professions
1503	المهنة الطبية	Medical Professions
1504	مهن اخرى	Other Professions
1600	الاموال غير المنقولة	Immovable Property
1601	الاراضي	Lands
1602	الشقق والفلتات	Apartments and Flats
1700	التقاضي	Judiciary
1701	تنظيم التقاضي	Judicial Organization
1702	اصول المحاكمات	Court Procedures
1703	التحكيم	Arbitration
1704	المجلس القضائي	Judicial Council
1800	القانون التجاري	Commercial Law
1801	قانون التجارة - السجل التجاري - الوكلاء	Commercial Law - Registry - Agency - Bankruptcy and
1802	الحرف والصناعة والتجارية	Chambers of Commerce and Industry
1803	العلامات التجارية وعلامات الصانع	Trademarks
1804	الاوراق والمعايير والمكاييل	Weights and Measures
1805	براءات الاختراعات	Patents
1806	الاستيراد والتصدير	Imports and Exports
1807	التزويد	Food Supply
1808	الصناعات الخفيفة والثقيلة	Light and Heavy Industry
1809	التجارة البحرية والموانئ	Sea Trade and Harbors
1810	شركات	Corporations
1811	تشجيع الاستثمار	Investment Stimulation
1812	التأمين	Insurance
1813	الملكية الفكرية	Intellectual Property
1900	القانون الدولي الخاص	Private International Law
1901	الوثائق الاجنبية	Foreign Documents
1902	التجنس	Naturalization
1903	الاجانب	Aliens
2000	تشريعات القدس	Jerusalem Legislation
2001	البطاقة الاسرائيلية	Israeli Identity Cards
2002	التأمين الوطني	National Insurance
2003	ضريبة الاملاك	Property Tax
2004	أرخص البناء في القدس	Building Permits in Jerusalem
2005	ضريبة اروننا	Arnona Tax
2006	خضوع المؤسسات والفنادق والعمال في	Subjection of Institutions Hotels and Laborers to Israeli

APPENDIX B:
REQUEST INFORMATION FORM

Request Information Form

_____ -- _____

Date Request Received _____
 Assigned To _____
 Subjects _____

Requester _____
 Contacts _____
 Special Instructions _____

Draft Tracking Information

Prcleared by GDPP	OR	<input type="checkbox"/> Copy of request sent to GDPP on
		Date: _____
		<input type="checkbox"/> Approval or modified instructions received from GDPP on
		Date: _____

	Date Drafted	Date Reviewed	Date Sent to Requester & GDPP
1 st Preliminary Draft			
2 nd Preliminary Draft			
3 rd Preliminary Draft			

	Diwan	Requester	GDPP
Date Approved to Send to Ministries for Comment			

Date Sent out for Comment: _____ Date Comments Due: _____

Comments received from the following ministries:	Date received by Diwan.	Date sent to Requester:	Date sent to GDPP.

	Diwan	Requester	GDPP
Date Final Draft Approved to Send to the Cabinet			

Draft and Version Number of Draft Sent to Cabinet: _____

Date of Cabinet Approval or Redraft Request: _____

If Redraft Requested, Date Redraft Completed: _____

If Redraft Requested, Version number of Redraft: _____

Date Signed by President and Sent to PLC: _____

If Adopted, date printed in the Official Gazette: _____

Volume and Page Number in Official Gazette: _____

APPENDIX C:

Drafting Checklist

For each draft, a researcher should ensure that he or she has done the following

- ~ Has the proposal been given a Draft Reference Number?
- ~ Has a drafting folder been created, with a request information form?
- ~ Has the drafting request been precleared by the GDPP?
- ~ If the draft has not been precleared, has a copy been sent to the GDPP no later than the next business day after receipt?
- ~ Once the draft is precleared, have you reviewed all materials submitted by the requester?
- ~ Have you done any background research needed to understand the requester's intent (see Section 4 01 2)?
- ~ Do you understand the requester's intended policy (see Section 4 01 3)?
- ~ Have you contacted the requester with to ask any questions needed to understand the requester's intent (see Section 3 03)?
- ~ Have you made a list of all existing laws, executive orders and administrative regulations relating to the proposal (see Section 4 02 1)?
- ~ Have you checked to determine whether any of these laws, orders or regulations have been amended or repealed (see Section 4 02 1)?
- ~ After doing this legal research, have you considered whether a law is the appropriate vehicle to accomplish the requester's intent (see Section 4 02 2)?
- ~ Have you reviewed all of these laws, orders and regulations to identify all substantive conflicts with the proposal (see Section 4 02 3)?
- ~ Have you contacted the requester to obtain any policy information needed to resolve these conflicts (see Section 4 02 4)?
- ~ After determining how conflicts with existing laws, orders and regulations should be resolved, have you drafted the necessary amending provisions or repealers (see Sections 4 02 5, 4 09 3 and 4 09 4)?

- ~ Have you replaced any general repealers with a provision repealing any specific laws that are in conflict with the proposal (see Section 4 09 4)?
- ~ Have you reviewed the draft for proper format (see Section 4 03)?
- ~ Have you reviewed the draft for proper organization (see Section 4 04)?
- ~ Have you reviewed the draft vertically for logical consistency (see Section 4 05 1)?
- ~ Have you reviewed the draft horizontally for logical consistency (see Section 4 05 2)?
- ~ Have you reviewed the draft for ambiguities (see Section 4 06)?
- ~ Have you reviewed the draft for proper style (see Section 4 07)?
- ~ Have you reviewed the draft for proper use of definitions (see Section 4 08)?
- ~ Are any necessary special provisions included and properly drafted (see Section 4 09)?
- ~ Have all substantive changes necessary to resolve ambiguities or logical problems been discussed with the requester or included in a drafter's note (see Section 3 03)?
- ~ Does the initial draft properly indicate whether it is preliminary or introducible (see Sections 2 19, 2 29, and 3 03)?
- ~ Has the draft been reviewed by the Arabic language specialist (see Section 3 03)?
- ~ Have copies of the initial draft been sent to both the requester and the GDPP (see Section 3 03)?
- ~ After the draft has been reviewed by the requester and the GDPP, has the researcher incorporated any redraft instructions (see Section 3 04)?
- ~ Has the draft been redrafted until it is acceptable to the Diwan, the GDPP and the requester?
- ~ After the parties have signed off on the draft, has the draft been submitted to the ministries for comment (see Section 3 05 and Appendix D)?
- ~ Have all comment letters been reviewed and all comments been addressed or rejected in a manner satisfactory to the Diwan, the GDPP and the requester? (see Section 3 07)?
- ~ Has a memorandum of explanation been prepared (see Section 3 08)?
- ~ Have the certifications needed for submission to the Cabinet been received (see Section 3 08)?

- ~ Has the draft been sent to the Cabinet for review?
- ~ Have any Cabinet changes been incorporated (see Section 3 09)?
- ~ Has all necessary information been recorded on the request information form and is the drafting file complete (see Section 3 10)?
- ~ After approval by the PLC and the President, has the draft been published in the Official Gazette?

APPENDIX D:
LIST OF MINISTRIES TO WHICH
DRAFTS SHOULD BE SENT FOR COMMENT

- 1 The President's Office
- 2 Ministry of Youth & Sports
- 3 Ministry of Planning & International Cooperation
- 4 Ministry of Finance
- 5 Ministry of Local Government Affairs
- 6 Ministry of Telecommunication
- 7 Ministry of Housing
- 8 Ministry of Civil Affairs
- 9 Ministry of Public Works
- 10 Ministry of Supply
- 11 Ministry of Health
- 12 Ministry of Education
- 13 Ministry of Higher Education
- 14 Ministry of Transport
- 15 Ministry of Economy & Trade
- 16 Ministry of Industry
- 17 Ministry of Labor
- 18 Ministry of Culture
- 19 Ministry of Tourism
- 20 Ministry of Agriculture
- 21 Ministry of Justice
- 22 Ministry of Social Affair
- 23 Ministry of Waqf & Religious Affairs
- 24 Monitoring Committee

APPENDIX E:
FLOW CHART OF DRAFTING PROCESS

FLOW CHART OF DRAFTING PROCESS

