

The Status of Legislative Drafting in the Jordanian Legal System:

An Analytic Critical Study

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Abstract

Legislative drafting is one of the most important functions self evidently assigned to Parliamentary councils in accordance with the constitutional provisions governing this industry in each individual state. Hence, each democratic state is obliged to prevent the passing of any legislative initiative that might affect the methodologies and requirements of good governance, through developing clear and disciplined basics and procedures for the drafting of legislations, so that the process is not left to the jurisprudence of parties entrusted with legislations, thus maintaining a legislative way out that takes into account human rights, gender needs, and environmental impacts of the law to be developed.

This study sheds light on the status of legislative drafting in the Jordanian legal system in terms of parties entrusted with the drafting of legislation and the entities aiding in the drafting of legislation, as well as legal problems arising during implementation and the effects on the quality of the legislative product. The study adopted the descriptive approach to identify and answer the questions of this study regarding the status of legislative drafting in the Jordanian legal system.

Keywords: Legislative Drafting, Mechanisms, Jordan Legal System.

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Introduction:

The process of legislative drafting, with its multi-phase stages correspondent to the stages required by the constitutional order that regulates its issuance, is an accurate and precise process demonstrating the description of this industry as being both a science and an art. Therefore, the legislator's – the architect of social relations- task of legislating laws and regulations is not an easy one. It entails the regulation of relations among individuals on the one hand, and the individuals' with the state on the other hand. Hence, it should be consistent with the reality in dealing with the relations to realize the objective behind the legislation². In light of the above, legislations should be exhaustive and the purpose behind them should be the general interest with no incursion of others' rights and interests. Legislations should also be valid and appropriate for that interest during and after its issuance.

However the legislator, when issuing the various legislation, attempted to ensure they are exhaustive so that they be able to tackle all issues and developments, taking into consideration the necessity of ease of understanding and comprehension, some flaws and defects will yet appear when issuing those legislations, whether in the inability to address some important matters due to new developments and complexity, conflict between the various legislation on the one hand , or conflict between the provisions of the one legislation.³The most important cause of ambiguity of the legal texts is the one related to the art of legal legislation. The art of legal legislation is a set of tools and rules utilized in the making of legal ideas and legislative provisions in a way that facilitates the application of the law in practice, through assimilating the facts of life in verbal patterns to achieve the purpose of the legal policy.⁴Ambiguity may also arise due to deficiency in language or expression, thus one term of a text may have more than one meaning, or phrases may be drafted in a complex manner, or the text may be concise.

In light of the above mentioned considerations related to the need to avoid all defects in the legislation that may be revealed during application, the legal systems have varied in the different states with relation to their attempt to avoid those

² Dr. Tawfiq faraj, Introduction to Legal Sciences- First Book – The Theory of Law/ Alexandria 1961, p.5, Dr. Hassan Samira, Introduction to the Science of Law, Cairo, 1954, p.23.

³ See Dr. Muhamad Sheriff, explanation of civil texts, A Comparative Study between the Civil and the Islamic Jurisprudence, a PhD Thesis, Al Awqaf Printing Press, Baghdad, 1979, p. 102.

⁴ Dr. Mohamad Sheriff, *ibid*, p.103.

defects, through the establishments of specialized entities to help parties assigned by the constitutional system propose law drafts that would help avoid legislative defects. In this context, this study sheds light on the mechanism of drafting of legislations in the Jordanian legal system in terms of the parties entrusted with the drafting of legislations and the bodies contributing to the drafting process, as well as the legal problems arising during application. To examine the status of legislative drafting in Jordan, it is necessary to discuss the organic and substantive scope of legislation (First Topic), then the procedural scope of legislation (Second Topic).

First Topic: Organic and Substantive Legislation in the Jordanian Legal System

In this topic, we will attempt to tackle the organic scope of legislation; i.e. determine the parties in charge of legislative drafting at all levels within the framework of the first requirement. The second requirement however, will be dedicated to discussing the substantive scope of legislative drafting.

First Requirement: The Organic Scope of Legislative Drafting in Jordan

Perhaps the most important requirement of legislative drafting is the existence of competent entities specialized in establishing and drafting legal rules, thus helping parties in charge of legislation control the content of the legal text in terms of precision and clarity so that it will appear as a general and abstract rule. In addition, rules should be consistent, clear and indicative of the intended meaning of the legal text. Out of awareness of the need to avoid defects that may affect some legislation before being issued, the Jordanian legislator developed some solutions aiming at establishing some specialized entities that may contribute to sound legislative drafting prior to issuance.

Section 1: Legislation and Opinion Bureau: The Legislation and Opinion Bureau was established in 1974 and is affiliated with the Prime Ministry. This Bureau is

comprised of a Chairman and a number of Legal consultants as needed. It is required that any one working in the Bureau be qualified educationally and legally and has judiciary and legal expertise and legal instruction. Of the most important functions are:

1. Reviewing draft laws and regulations and updating the enacted legislation.
2. Making legal opinions on issues presented before it by the government.
3. Preparing draft laws for the government for submission to the Parliament in accordance with the established constitutional rules for approval.

Legislative drafting is the most important phases of legislation, requiring a clear identification of matters, and a demonstration of objectives to be achieved through the proposed legislation. A clear legislative policy requires a clarification of the nature of objectives, which might be political, economic or social. It is noteworthy here that the executive power is the author of the practice of general mandate to propose draft laws, which is the case in most constitutional systems as it is considered the most capable of all other entities in assessing the reasons and the society's need for laws. The bureau, in being a government consultant, plays a significant role in the formulation of the concluding draft laws of the executive power. The Bureau is also assigned for the drafting of proposed laws by the Parliament. The Bureau is comprised also of a number of departments of interior which are in turn composed of legal consultants, namely: the Department of Legislation, the Legal Department to offer legal opinions on legal issues, the Department of Legislation Development⁵. Given the great functions assigned to the Legislation and Opinion Bureau, the executive power is to develop the Bureau and to provide the qualified professional staff, which will demonstrate its effectiveness and contribute to building a legal system that is desired, as well as achieve stability in public life and harmony with the international standards.

Section 2: Laws Interpretation Bureau:

⁵ See article (12) of the system of Legislation and Opinion Bureau for the year 1993. For more details on the Bureau, see: Nawwaf Kanaan, Administrative Law, First Book, Al-Thaqafa for Publishing and distribution, Amman, 2008, p (218) and after. Also, Al _Tahrawi, Al-Thaqafa for Publishing and Distribution, Amman, 2009, p (189) and after.

This Bureau was established in 1930 under the basic Jordanian Law⁶. It was also mentioned in the current constitution. The Bureau consists of the president of the highest court order as the chairman, two judge members, a senior management personnel to be appointed by the Cabinet, in addition to a member of the senior personnel of the Ministry in charge of interpretation to be deputized by the Minister. The bureau exercises the right to interpret any law not interpreted by the courts upon a request from the Prime Minister. The Bureau's resolutions are issued by majority. Interpretative notes of the Constitution's texts was ruled out by virtue of article (123) after it was a right of the Bureau exercised by virtue of the Basic Law of the year 1928 and the constitution of the year 1947. This is due to the establishment of a special party for constitutional interpretations, which is the Higher Council⁷ that has become specialized in constitutional interpretations and Minister's prosecution for actions resulting from the performance of their jobs.

The interpretations of the Laws Interpretation Bureau are considered Legislative ones, Thus the interpreted law is an integral part of the basic one (the interpretive law) and is enforceable upon issuance, or rather upon the enactment of the interpretive law (the former)⁸. It is binding for courts, and so is unlike the judicial interpretation, which is characterized by the relativity of impact, and the jurisprudent interpretation, which is characterized by an exceptional value, on basis of its issuance by the legislator in the form of legislation or a delegated entity. Interpretations by the Interpretation Bureau help remove ambiguity surrounding the drafting of legislations, which in turn help with better application of the law through disclosing the real intention of the legislator as defects, lacking or material errors in legislation it might be revealed during application of the law.⁹

⁶ Article (125) issued related to the interpretation of the laws and regulations are resolved through a special bureau to convene for that purpose upon request from the intended Director of the Department. This Bureau consists of two senior management personnel to be elected by the executive council and two senior personnel of the Ministry of Justice to be elected by the Higher Judicial Council chaired by the Minister of Justice.

⁷ Eid Al- Hosban, Development of Constitutional Interpretation in The Jordanian Constitutions, *ibid.*, p. (78) and after. Adel Al-Hyari, the Jordanian Constitutional Law, Ghanem Printing Press, Amman, p. (584) and after.

⁸ Dr. Ghaleb Al- Daawoodi, Introduction to Law Science, especially the Jordanian.

⁹ Dr. Hassan Keira, General Theory of the Legal Rule and General Theory of Rights, Sixth Edition, Al ma'aaref Institution, Alexandria, 1993, Pp. 399 – 400. Dr. Abbas Al-Sarraaf, George Hazboun, *ibid*, p. 68.

Section Three: Legal Constituencies in the Legal Units

There is no doubt that the organizational structure of governmental units includes the Legal Affairs Unit. This unit may contribute to legal drafting through offering recommendations and legal opinions regarding legislation related to the unit and its functions.

Second Requirement: Substantive Scope of Legal Drafting in Jordan

The Jordanian Constitution has identified the way to exercise legal functions by the Parliament. It starts by proposing laws by the Parliament or the Executive authority, followed by discussion, approval, ratification and enactment.¹⁰ The Constitution has also exceptionally granted the executive authority the right to legislation making and called those legislations provisional laws by virtue of constitutional terms stipulated upon in article (94) of the Constitution. Thus, we will focus in this study on the stage of proposing laws.

Section One: The General Mandate in Legislation for the Legislative Authority:

It goes without saying that the rules of attribution regarding the distribution of legislative jurisdiction between the legislative and the executive authority adopted the traditional pattern by giving general mandate in legislation to the legislative authority¹¹. This is reflected through limiting the areas in which the government can initiate legislations both originally or by exception and anything beyond this is the Parliament jurisdiction. Therefore, by virtue of the Jordanian Constitution, legislative function is vested in the King and the National Assembly, and the National Assembly shall consist of the Senate and the House of Deputies.¹² The

¹⁰ Aadel Al hiyari, *ibid*, p. 772 and after. Nouman Al- Khatib, *Political Systems and Constitutional Law*, Al- Thaqaafa for Publishing and Distribution, Amman, 2009, p. 514 and after. Abdel Qader Al- Far, *Introduction to Legal Sciences*, Al-Thaqaafa for Publishing and Distribution, Amman, 2004, P. 66 and after.

¹¹ Aadel Al hiyari, *ibid*, p. 769 and after.

¹² Article 25 of the Jordanian Constitution 1952 published in the Gazette issue 1093 on 1/8/1952 stipulates: (The Legislative Power shall be vested in the National Assembly and the King. The National Assembly shall consist of a Senate and a House of Deputies). For more details on the executive authority, see Adel Al hiyari, *ibid*, p. 592 and

King's role shall be the approval of projects approved by the Senate and the House of Deputies and shall be in effect 30 days after publication in the Gazette unless it is specifically provided in that law that it shall come into force on any other specified date in accordance with article 93/2 of the Constitution. It is worth mentioning here that the lawmaker has granted the King 6 months to exercise his jurisdiction regarding draft legislations submitted to him. During this period, the King has discretionary power to approve the draft and thus be promulgated or to reject it with justifications, thus being referred back to the House for deliberation and amendments. If any draft law (other than constitution) is referred back to the House without the Royal assent, the House may overpass the Royal objection and pass the law by two thirds of the members of each of the Senate and House of Deputies, and it must, in this case, be promulgated, otherwise it cannot be resubmitted during the same session in accordance with article 93/3,4. If the law was not returned with the Royal assent within the six months period, it shall be considered as promulgated and effective. This excludes constitutional draft laws, which according to article 93/4 must be explicitly approved.

Since the Jordanian Constitution rests upon the principle of flexible separation between the legislative and the executive authorities, right of draft proposing is vested in those two authorities, as stipulated by Article (91) of the Constitution, which granted this right to the executive authority "The Prime Minister may place before the House of Deputies any draft law and the House shall be entitled to accept, amend, or reject the draft but, in all cases, the House shall refer the draft law to the Senate. No law may be promulgated unless it is passed by both the Senate and the House of Deputies and confirmed by the King". This right is one form of the executive authority actual take over and a manifestation of co-operation between the legislative and executive authorities in the Parliamentary system, which is based on the principle of flexible separation between the

authorities. The executive authority has enough administrative and technical organs to enable it to propose and prepare sound legislations.¹³

Article (95) on the other hand stipulates: “Any ten or more Senators or Deputies may propose any law. Such proposal shall be referred to the committee concerned in the House for its opinion. If the House is of the opinion that the proposal be accepted, it shall refer it to the Government for drafting it in the form of draft law, and submit it to the House either during the same session or in the following session”. On basis of previous constitutional texts, legislation has been entrusted to the Parliament or the Government by virtue of provisions of the constitution, and the provisions of the By- Laws of the House of Deputies and the Senate.¹⁴ In the case the proposal is submitted by ten or more deputies, it shall be referred to the legal committee or any other committee, based on the nature of the law, together with the mandating reasons for its opinion. Based on the facts, the committee’s task in subsequent stages will be to transform the mandating reasons into a form of general abstract and binding legal rules. On basis of the committee’s report, the proposal shall be referred to the Government in formulate as a draft law and submit it during the same session or the following session. In the case the committee finds no ground for the law, it shall not be referred to the Government. The mandating reasons demonstrate the wisdom behind legislation¹⁵, i.e. the goal of the legal text, which is often for the interest of the individuals and the society, which might be economic, social, or political interests. This in turn helps absorb the legal text in case its wordings were meaningfully ambiguous¹⁶. Determining the mandating reasons require specialized competencies in the subject of the need necessitating the legal regulation, as well as state expertise and political knowledge in the economic and social fields, in addition to expertise in the science of law. In the case the draft law proposal was submitted by the Government, It is referred by the Prime Minister to the House of Deputies, along with the mandating reasons. A copy of the draft law is distributed to the members of the House of Deputies and a preliminary deliberation is started at least 3 days after distribution. In the case the House determines the need for such law; it is referred to the specialized committee

¹³ DR. Hassan Abu Zaid, Balance and Audit of Authorities, Cairo, 2003, p. 49.

¹⁴ Article (69) of the By-Law of the House of Deputies 1998: “Any ten or more Senators or Deputies may propose any law, which shall be referred along with mandating reasons and basic principles to the committee in charge for its opinion. If the House is of the opinion that the proposal be accepted, it shall refer it to the Government for drafting it in the form of draft law, and submit it to the House either during the same session or in the following session”.

¹⁵ Dr. Mohamad Shehadah, Introduction to Law and the Theory of Commitment, Publications Department, Aleppo 1978, p. 100.

¹⁶ Dr. Ali Shatanawi, Higher Council Interpretation of the Constitutional Texts, Dirasat Magazine, University of Jordan, Vol. 24, No. 1, 1997, P. 16.

for examining. After the task of the committee is over, and according to the Constitutional provisions, the draft law is referred to the House for approval. After approval by the House of Deputies and the Senate, it is then considered in effect after promulgation by the King and 30 days after being posted in the Gazette, unless otherwise stipulated. Deputies have the right to accept, reject or amend the draft law submitted by the Government. In any case, the draft law is referred to the Senate. In case the Senate approves it as submitted by the House of Deputies, it is then referred to the King for promulgation. The Senate is entitled to accept the draft, reject it or amend it. If the Senate rejects a draft law that has been rejected by the House of Deputies, the Government is not allowed to re-submit it to the House of Deputies in the same session during which the draft was rejected.

What matters in the course of constitutional stages of the issuance of a legislation is the role of the legal committee in preparing the proposals of the draft laws. The authority of this committee is stipulated in article (36) – A – of the By- Law of the House of Deputies for the year 1998.¹⁷ Thus, it is within the Jurisdiction of the legal committee to study the law proposals, whether they are submitted by the Government or the Parliament. There is no doubt that the majority of committee's members don't have enough qualifications or competencies to assess the need for the law. To account for such shortcoming, they have to seek the assistance and expertise of law professors, as well as develop a certain mechanism for the actions of the committee and other committees as well. This in turn might be reflected upon the law's compatibility with the provisions of the Constitution, in particular laws dealing with rights and public freedoms because such legislations are what basically determine the scope of such practice. In other words, such legislations are what narrows down or expands such practice. Many laws, like laws governing meetings, crimes and political parties of the year 2007 and others, have a constitutional flaw reflected in its limitation of the exercise of such rights.

Section Two: Legislative Jurisdiction of the Executive Authority:

The executive authority practices inherent legislative power, reflected in the issuance of all forms of systems. It also has exceptional legislative power in the

¹⁷ Article (36) – A- of the By – Law of the House of Deputies for the year 1998 stipulates (The study of draft laws, proposals concerning the Constitution and public election, civil, criminal and legal legislations, courts, judicial organization, judicial agreements, procedural laws, civil status laws, laws of citizenship, ownership, rent, defense, amnesty, drugs, psychological impacts, and unions, and equivalents, as well as any laws that are not included in the Jurisdiction of any other committee).

field of law granted originally for the legislative authority, where the latter is not present whether because of dissolution or inability to convene in the so called temporary laws.

First: Inherent Legislative Jurisdiction of the Executive Authority:

The executive authority develops a set of legal rules, which the jurisprudence calls Regulations¹⁸, defined as organizational and administrative decisions by the executive authority. The executive authority does not temporarily replace or represent the legislative authority when issuing any form of sub- legislations. It rather has inherent jurisdiction in this matter stipulated upon by the Constitution. The scope of sub – legislations is restricted to the topics defined by the Constitution. This means that basic issues, especially political and economic rights stipulated upon in the Constitution, cannot be governed by regulations. Sub legislations have many forms in the Jordanian Legal System:

1. **Executive Regulations:** Regulations issued by the executive authority in the implementation of a law. This includes detailed provisions of the principles mentioned in the law, stipulated by article (31) of the Constitution: “The King ratifies the laws and promulgates them. He shall direct the enactment of such regulations as may be necessary for their implementation, provided that such regulations are not inconsistent with the provisions thereof”. For the executive regulations to be legitimate, they must not contradict with the provisions of the law. In case of any contradiction, the law, not the regulation, takes effect¹⁹. The provisions of the executive system must include executive rules which does not increase or limit the texts of the law.
2. **Independent Regulations:** Regulations developed independently by the executive authority with no reference to the law.²⁰The Constitution granted the executive authority the right to issue independent regulations by virtue of article 114 of the Constitution: “The Council of Ministers may, with approval of the King, make regulations for the control of appropriations and expenditures of public funds, and the organization of Government stores”. In

¹⁸ Ali Khattar Shatanawi, *ibid.*, p. 30 and after. Hani al-Tahrawi, *ibid.*, p. 70. Nawwaf Kanaan, *ibid.*, p. 48.

¹⁹ Provision of the Supreme Court of Justice published in the Bar, issue 2, year 1966, p. 153 “the regulation developed in implementation of a law must not contravene with the provisions of the law. In case of any contradiction, the law, not the regulation, takes effect”.

²⁰ Ali Khattar Shatanawi, *ibid.*, p. 41 and after. Hani Al- Tahrawi, *ibid.*, p. 72. Nawwaf Kanaan, *ibid.*, P. 51.

addition to article 120 of the Constitution: “The administrative divisions of the Hashemite Kingdom of Jordan, the establishment of the Government Departments, their classification, designation, the program of operations and the manner of their appointment of civil servants, their dismissal, their discipline, supervision and definition of their jurisdiction and powers shall be governed by regulations issued by the Council of Ministers”. In addition also to the regulations that are developed by virtue of article (45/2) of the Constitution.

In light of previous Constitutional texts, it is within the jurisdiction of the executive authority to issue the regulations of government supplies and bidding, and Civil Service regulations, as well as regulations of the administrative Divisions.

3. **Control Systems:** Regulations by the executive authority for purposes of maintaining all elements of the public order (Public security and tranquility, public health, and morals). Despite, as some people believe, lack of reference in terms in the Jordanian Constitution to such type of regulations, the executive authority develops such regulations by virtue of a constitutional norm.²¹ We on the other hand believe that they are issued by virtue of article 124 and article 125 of the Constitution. Regulations governing defense systems for simple emergency cases are issued by virtue of article 124, while t serious emergency cases that defense systems are short of facing are governed by martial administrative regulations by virtue of article 125 of the Constitution.

Second: Exceptional Legislative Jurisdiction of the Executive Authority (Provisional Laws):

While the legislative authority has jurisdiction to exercise the legislative process in accordance with the principle of separation between authorities, the constitutional legislator anticipated the occurrence of exceptional state circumstances that he finds it necessary to organize through granting the executive authority the right to issue legislation to fight such circumstances in case of absence of the Parliament, whether because of inability to convene or because of dissolution. This is clear through article 94 of the Constitution, which stipulates: “In cases where the National Assembly is not sitting or is dissolved, the Council of

²¹ Ali Khattar Shatanawi, *ibid.*, p. 45 and after. Hani Al- Tahrawi, *ibid.*, p. 75. Nawwaf Kanaan, *ibid.*, p. 51.

Ministers has, with the assent of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement. Such provisional laws, which should not contravene the provisions of the Constitution, shall have the force of law, provided that they are placed before the Assembly at the beginning of its next session and the Assembly may approve or amend such laws. In the event of the rejection of such provisional laws, the Council of Ministers shall, with the sanction of the King, immediately declare their nullity, and from the date of declaration such provisional laws shall cease to be in force provided that such nullity shall not affect any contracts or acquired rights". It is noted through the previous constitutional text that resorting to provisional laws is an exceptional matter and is against the rules of distribution of jurisdiction between the authorities in the state, therefore the legislator must determine terms of issuance by the executive authority, mainly:²²

First: Time Limit: This means the Parliament must be dissolved or not convened. This in turn requires the Parliament not be convened: ordinary or extraordinary session. Contrary to these cases, the Assembly is convened²³. Time of dissolution of the Assembly is also included in the time limit by which the executive authority can issue provisional laws. The legislator necessitated these laws should be presented before the Parliament in its first meeting, and this is called political audit. The Parliament can then accept, reject or amend these laws. In short, the Cabinet has the right to exercise legislation in case the Parliament is not convened or is dissolve. The limit is elaborately interpreted, after which the executive authority replaces the legislative authority, in which the legislative jurisdiction is vested.

Second: Substantive Limitation: Although the constitutional legislator did not mention the word "necessity", the context of the constitutional text implies that. Necessity is represented by two cases: The first is matters that necessitate necessary measures that cannot be postponed, and the second is matters that require urgent expenditures that cannot be postponed either. Most Jurisprudents believe that the reference for determining "exceptional circumstances" is by

²² Ali Khattar Shatanawi, *ibid.*, p. 33 and after. Hani AL-Tahrawi, *ibid.*, p. 75. Nawwaf Kanaan, *ibid.*, p. 53. Adel Al-Hiyari, *ibid.*, P. 662 and after.

²³ Article (78)- A- of the Constitution, "King shall summon the National Assembly to an ordinary session on the first day of October of each year. . ." Article 82 "The King may, whenever necessary, convene the National Assembly to meet in an extraordinary session for an unspecified period . . .". Article 73 – 1 "If the House of Deputies is dissolved, a general election must take place, and the new House assembled in an extraordinary session, not later than four months from the date of its dissolution . . ."

reverting to the general rules of the theory of necessity, which are manifested in “exceptional circumstances” that the state faces²⁴, which is a *force majeure* or a significant risk that cannot be faced by regular legal means.²⁵

Third: Non- Violation of the Provisions of the Constitution: This requirement is self-evident and is a necessity of what is not necessary, as all legislations, whether issued by the Parliament or the executive authority in the absence of the Parliament must not violate the provisions of the Constitution.

A shortcoming of provisional laws is that they are issued by the executive authority and do not pass through legislative stages that are common in regular legislations in terms of deliberation and examination by the legal committee in the Parliament. In nature, these laws require speed in issuance, which raises the question of unconstitutionality of some of its provisions, especially that the executive authority has the right to organize any matter by virtue of these laws, despite the fact that they are related to public rights and freedoms. In addition, the Supreme Court of Justice regarded those laws as legislations that cannot be subject to cancellation. In formality, these laws are considered administrative decisions because they are issued by the executive authority. However, in many provisions, the Court hesitated to exercise control over this requirement.²⁶ However, in the face of criticism to the Court, the Court expressed its previous opinion and exercised control over the substantive limitation with regard to the provisional Press and Publication Law of the year 1997, and considered this law as violation of the provisions of the Constitution for lack of the necessity requirement as one requirement of provisional laws issuance.

Second Topic: Procedural Scope of Legislation Making in the Jordanian Legal System:

Legislative drafting is a practical manifestation of the adopted legislative policy for the linguistic and legal constituents, skills and abilities embodied in it that enable

²⁴ Sami Jamal Al- Deen, Administrative Regulations, Alexandria, 2002, p. 34

²⁵ Dr. Yahya Al- Jamal, Theory of Necessity in the Constitutional Law, P. 14 and after.

²⁶ Provision of the Supreme Court of Justice No. 53/1953, second year, volume 2, p. 7 “. . . The Cabinet, with the consent of the King, may develop provisional laws in the absence of the Parliament, and may assess compatibility and necessity of such laws, with only the control of the Parliament when present and when deliberation of such laws . . . There will be no judicial control over the Cabinet.

the legislator to develop provisions that clearly convey the meaning and essence of the text. A legislation is not good unless accompanied by a sound legally drafted legislative process. Legislation is the means by which economic and social changes are enacted. It is the mechanism by which governments and Parliaments can respond to the changing needs of their societies. Furthermore, legislation represents the means to provide a stable practical framework by which individuals and institutions can reasonably organize their affairs. Therefore, legislative drafting requires highly professional technical expertise in written and analytic skills. Law-makers are basically interested in transforming policies into a coherent set of rules and standardized assets, as well as ensuring the legislation draft is compatible with other legislations, be it constitutional or effective regular and legal ones. Law makers also ensure the techniques used by the legislator are practical and legally effective, through the use of appropriate and easily comprehended language for all, because legal rules address all people and are not directed towards certain groups of people.

On basis of the foregoing, while drafting legislative texts, legislators must apply a series of procedures to make sure those requirements are fully met. Other relevant parties should implement similar affirmative controls, especially after the completion of each and every stage of the draft law preparation stages. Legislators must also ensure the accuracy of the drafting by means of consultations and expertise, whether on the part of individuals or other entities in other Ministries or outside the government.

What is important here is to shed light on the legislative process in the Jordanian constitutional system in terms of regulations and procedures, with the aim of monitoring the status of legislative drafting. It goes without saying that constitutional rules of attribution concerning appropriation of legislative jurisdiction on the executive and legislative authorities have adopted the conventional method through giving the legislative authority the general mandate with regard to legislation. This is manifested through limiting the areas in which the government can initiate legislations, and anything beyond this is the Parliament jurisdiction. Therefore, the Jordanian Constitution has vested the legislative task in the King and the General Assembly. The General Assembly consists of the Senate and the House of Deputies.²⁷ The King's role is to ratify the proposals submitted

²⁷ Article 25 of the Jordanian Constitution 1952, Gazette No. 1093, on 01/08/1952 "The Legislative Power shall be vested in the National Assembly and the King. The National Assembly shall consist of a Senate and a House of Deputies."

by the Senate and the House of Deputies. Any law shall become effective upon the King's promulgation after thirty days from the date of its publication in the Official Gazette unless it is specifically provided in that law that it shall come into force on any other specified date.²⁸ It is worth mentioning that the constitutional legislator granted the King 6 months to practice jurisdiction over proposals submitted to him, during which he has judgmental authority to assent the proposal, in this case it must be promulgated, or return it to the House with a statement showing the reasons for withholding his assent. If any draft law fails to obtain the two-thirds majority of votes, it cannot be resubmitted during the same session, provided that the National Assembly may reconsider the draft during its next ordinary session. In this case, it shall be considered as promulgated and effective by the executive authority.²⁹ - If any draft law, (other than the Constitution) is referred back to the House within the period specified in, it must, in this case, be promulgated.³⁰

Based on the foregoing, the executive authority plays a vital role in the legislative process and in developing the legislative structure through the enactment of laws that address the issues of the society or amend some of the laws in force. This in turn is based on legislative drafting. Whenever drafting is sound and strong, the legislation or the law is also sound and applicable and does not cause conflicts regarding its implementation.

In the context of legislative drafting, one cannot overlook the vital role the executive authority in Jordan plays through the Legislation and Opinion Bureau, as it is the most capable of realizing the legislative needs and has the required information for legislative work.³¹ It is through the legislative authority that laws

²⁸ Article 93 of the Jordanian Constitution "1- Every draft law passed by the Senate and the House of Deputies shall be submitted to the King for his ratification. 2- Any law shall become effective upon the King's promulgation after thirty days from the date of its publication in the Official Gazette unless it is specifically provided in that law that it shall come into force on any other specified date".

²⁹ Article 93 of the Jordanian Constitution, "3- If the King did not see fit to give his assent to any law, He may, within six months from the date on which the law was submitted to him, return it to the House with a statement showing the reasons for withholding his assent. 4- If any draft law, (other than the Constitution) is referred back to the House within the period is passed, for the second time, by two-thirds of the members of each of the Senate and the House of Deputies, it must, in this case, be promulgated. If the law was not returned with the Royal assent within the period prescribed, it shall be considered as promulgated and effective

³⁰ Paragraph 4 of Article 93 of the current Jordanian Constitution.

³¹ For more details on the Bureau, see: Nawwaf Kanaan, *ibid.*, p. 218 and after. Hani Al- Tahrawi, *ibid.*, p. 189.

are proposed, texts are amended or new articles are added.³²The General Assembly is also entitled to propose laws where any ten or more Senators or Deputies may propose any law.³³The Assembly may also study proposals submitted to it by the Government.³⁴For purposes of legislative effectiveness and patience in issuance, the principles of duality councils was adopted by virtue of article 25 of the Constitution, where both councils are give the right to legislations,³⁵which helps ensure accuracy and flow of Parliamentary work. This also helps prevent monopoly by the legislative authority and avoid mistakes and hasty legislations, for if one council made a mistake, it can be the other can avoid such mistake when the draft is submitted to it. Redliberation can also help study the draft more thoroughly as well as help avoid mistakes. The second review is very important in the case of any conflict between the two councils and can ensure legislation output that is linguistically sound and accurate. Therefore, legislation must take time, even if it was a long time. It is better to delay the enactment of legislation that to hastily enact it the matter that can result in its instability because of the continuous need for amendments when found insufficient at implementation, for law guarantees individuals' rights and is compatible to their customs and traditions. Law, as it is said, is a mirror reflecting the status of the society.

Based on the foregoing, and for purposed of familiarizing ourselves with the nature and limitations of legislative policy and legislative drafting of the legal system, it is necessary to emphasize a basic fact, which is that the legislative process is an extended and comprehensive process. This is obvious through the fact that this process is directly related to most categories of the society, if not all. On the other hand, it is a process that has several phases starting with the law being

³² Article 91 of the current Jordanian Constitution, "The Prime Minister may place before the House of Deputies any draft law and the House shall be entitled to accept, amend, or reject the draft but, in all cases, the House shall refer the draft law to the Senate. No law may be promulgated unless it is passed by both the Senate and the House of Deputies and confirmed by the King".

³³ Paragraph 1 of Article 95 of the Constitution, "Any ten or more Senators or Deputies may propose any law. Such proposal shall be referred to the committee concerned in the House for its opinion. If the House is of the opinion that the proposal be accepted, it shall refer it to the Government for drafting it in the form of draft law, and submit it to the House either during the same session or in the following session".

³⁴ Article 91 of the current Jordanian Constitution.

³⁵ Article 93/1 of the current Jordanian Constitution.

just an idea and ending with its implementation, i.e. its becoming binding and being part of the legal system of the state. Therefore, and in light of this fact, contemporary constitutional systems entrust the task of legislation to more than one party, thus it is considered a collaborative process.

However, because this study addresses the status of legislative drafting in the Jordanian legal system, we will try to examine the status of procedures adopted in the legislative drafting process according to the current Jordanian Constitution 1952 and the BY-laws of the House of Deputies and the Senate, as well as the procedures adopted by the Legislation and Opinion Bureau regarding legislative drafting of constitutional law drafts as well as regular legal drafts and provisional laws and all form of regulations. Since the procedures adopted by the Bureau in drafting legal rules do not differ according to the nature of the rules, we will not assign a section for each, but will rather attempt to do so when possible, and thus the methodology of the study will be as follows:

First Requirement: Principle of Integration of Jurisdiction of the Legislative Initiative between the Legislative and the Executive Authority:

There is no doubt that the phase of legislative initiative is one basic phase of legislation making. It is centered on the question whether there are any issues that need legal organization. If the answer is “yes”, one must first identify these issues and know the status. The same goes whether there are new and un-organized cases or there is insufficiency in the current legal organization, which may force the relevant parties to initiate a legal organization. Any legislative process must go through the initiative process which is based on two factors: science and drafting. Science is manifested through identifying the economic, political, social and environmental factors that are necessary for legislation, while drafting represents the need to transform the general ideas from a political, economic and social pattern into a sound and easily comprehended legal pattern to achieve stability in all walks of life. Because Jordan has adopted the parliamentary system, as mentioned above, it has followed a collaborative approach in terms of jurisdiction in legislative initiatives and has granted the right of legislation to both the legislative and executive authority. Based on the foregoing, and for purposes of analytic study of the legislative initiative phase and its impact on legislative drafting, we believe it is better to address the issue from two angles: the first is centered around the legal basis of the legislative initiative (Section One), while the other addresses the procedural legal system of the legislative initiative (Section Two).

Section One: The Legal Basis of the Legislative Initiative:

It goes without saying that the legal attribution rules, in particular the constitutional ones, are part of the general system. The Jordanian constitutional legislator granted jurisdiction of legislative initiative to the legislative authority represented by the General Assembly, where he granted any ten or more Senators or Deputies the right to propose any law³⁶, whether constitutional or regular legal proposals, and this is clear from the constitutional text, where the phrase “propose any law” came absolute and consistent with rules of fundamentalism, absolute is absolute unless restricted by text or implication, and there is nothing in the constitutional texts that indicate restriction. Therefore we say that Senates and Deputies may propose constitutional or regular legal laws, The By-laws of both the Senate and the House of Deputies have also emphasized this right³⁷. We believe these texts are affirmation of the constitutional text.

The Constitution did not overlook the right of the executive authority to propose draft laws. This is obvious through the constitutional emphasis on the Prime Minister responsibility to present the draft laws before the House of Deputies, as mentioned in article 91 of the Constitution. The House of Deputies in turn, has the right to accept, amend or reject them. In all cases, they should be submitted to the Senate. This indicates that draft laws submitted by the Prime Minister might originally be proposals submitted by either the Deputies or the Senates, and might as well be initially submitted by the Government. This is also clear in the constitutional text regarding the phrase “absolute”, as well as the phrase “draft laws”. It makes no difference whether the proposal is submitted by the Government or that that Government has performed the legislative drafting of the proposal that is submitted by either the Deputies or the Senates. On the other hand,

³⁶ Article 95/1 of the current Jordanian Constitution.

³⁷ Article 66 of the By-law of the House of Deputies published in the Gazette No. 4106 on 03/16/1996 states: (A- Any ten or more Senators or Deputies may propose any law, which shall be referred along with mandating reasons and basic principles to the committee in charge for its opinion. If the House is of the opinion that the proposal be accepted, it shall refer it to the Government for drafting it in the form of draft law, and submit it to the House either during the same session or in the following session B- Any proposal submitted by the council in accordance with the previous paragraph and is rejected by the Council cannot be re-submitted during the same session or the following one). Also Article 20 of the By-law of the Senate 1998, published in the Gazette 4258 on 02/01/1998 and amended in accordance with the amendment published in Gazette No. 4756 on 04/16/2006, which states: (A- Any ten or more Senators can propose laws. Any proposal shall be referred to the committee for examination and recommendation. If the Senate accepts the proposal, it is referred to the Government in for drafting and submission to the Senate in the same session or the following one. B- Any proposal submitted by the Senators and rejected by the Senate cannot be resubmitted during the same session.)

The constitutional legislator's will cannot be based on the first possibility, for scientific logic in the context of constitutional interpretation is based on the interpreter's commitment to the legislator's will, no additions or deletions, because any of these two will be considered an amendment to the constitutional text, which the interpreter is not entitled to.³⁸

With regard to necessity drafts (Provisional laws), it is the right of the executive authority, whether in terms of initiative or ratification, and this is clear by virtue of article 94/1 of the constitution³⁹ which emphasized the fact that in cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the assent of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement Thus, it can be said that proposals cannot be submitted if the National Assembly is not sitting or is dissolved unless the proposals were submitted before the dissolution⁴⁰ or the end of the session and were not referred to the Council by the Government after drafting.⁴¹ As for the

³⁸ For more details on this point, See Eid Al- Hosban, Interpretation of Constitutional Texts in Contemporary Constitutional Systems, Law Magazine, Issue 2, Volume 4, August 2007, Al- Bahrain University, p. 101 and after. And for the same author, Development of Constitutional Interpretation in Jordanian Constitutions, Mu'tah for Research and Studies, Mu'tah University, and Ali Khattar Shatanawi, Higher Council Interpretation of Constitutional Texts, Dirasat Magazine, University of Jordan, Volume 24, Issue 1, 1997, P. 16.

³⁹ Paragraph 1 of Article 94 of the current Jordanian Constitution amended in 1958 states that: "In cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the assent of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement. Such provisional laws, which should not contravene the provisions of the Constitution, shall have the force of law, provided that they are placed before the Assembly at the beginning of its next session and the Assembly may approve or amend such laws. In the event of the rejection of such provisional laws, the Council of Ministers shall, with the sanction of the King, immediately declare their nullity, and from the date of declaration such provisional laws shall cease to be in force provided that such nullity shall not affect any contracts or acquired rights".

⁴⁰ Article 34 of the Jordanian Constitution, paragraph 3 states: "... 3- The King may dissolve the House of Deputies. 4- The King may dissolve the Senate or he may suspend the membership of one of its members".

⁴¹ Article 78 of the Constitution, paragraph (3) states: "The ordinary session of the National Assembly shall begin on the date upon which it was summoned to meet in accordance with the two preceding paragraphs, and shall last for four months unless the House of Deputies is dissolved by the King before the expiration of that period. The session may be prolonged by the King for a further period not exceeding three months to allow for the dispatch of pending matters. At the expiration of the four months or any such prolongation thereof, the King shall prorogue the Assembly".

legislative initiative of the sub- legislation (all forms of regulations), it is the right of the government which no other party shall share, and every relevant Ministry shall, each according to its jurisdiction, submit proposals of regulations and rules necessary for the fulfillment of its constitutional duties in order to meet individuals' needs and ensure good flow of work and normal functioning of the states facilities.⁴² Finally and with regard to legislative initiative of the By-laws of the House of Deputies and the Senate, and in accordance with the principle of separation between authorities, it is the right exclusive to each Council apart and no other party shall share.⁴³

Section Two: Procedural Legal System of Legal Drafting:

As mentioned previously, the legislative initiative begins with a general idea that is centered on a question that faces the party responsible of the initiative, and that is: Is there a legal rule that can be referred to resolve a real conflict and find practical solutions, or does the legal system lack such rule? In other words, is there a legislative gap that should be addressed by the competent parties to generally maintain the regular flow of the state's affairs?

If the answer is "No", meaning there is no such legal rule, the competent parties should interfere, and their behavior is positive by perceiving the general ideas, which if adopted, will definitely lead to finding of practical solutions for the issues faced by the public authorities that the legal system lacks. Thus, it must be emphasized that when the initiative is merely a general idea, it is necessary to adopt practical procedures that help crystallize it and transform it from the political nature, as adopted by the initiating party, and into an accurate and easily implemented legal rule. In this context, constitutional systems vary on this issue; some take in the responsibility of drafting the initiative in a legal manner, while the Jordanian constitutional legislator adopted a different approach by entrusting the executive authority with the accurate legislative drafting task through the Legislation and Opinion Bureau of the Prime Ministry.

On basis of the foregoing, the question arise regarding the nature of procedures adopted to transform the general idea of the initiative into categorized, easily comprehended and clear legal texts in the draft law that arouse no ambiguity after ratification in the context of the legal system. The answer to this question and other questions can be reached through reviewing the relevant legal texts, whether

⁴² See articles 31, 45/2, 114, 120 of the current Jordanian Constitution.

⁴³ Article 83 of the current Jordanian Constitution

constitutional or texts mentioned in the By-laws of the competent parties entrusted with submitting and drafting the legislative initiative.

First: Constitutional Procedures of the Legislative Initiative Drafting:

It is agreed that constitutions are classified according to its content into concise constitutions and detailed one. The Jordanian constitution is considered generally concise, especially in terms of procedural aspects. Hence, it can be said that the Jordanian constitutional legislator in presenting the legislative function and procedures, has listed the general basics of the legislative drafting leaving the details of the executive rules for the procedural constitutional rules. Therefore, the constitutional legislator mentioned only measures related to the formulation of the draft law in its broader sense, whether constitutional or regular legal ones and this can be inferred from the fact that the constitution has necessitated the Prime Minister's presentation of any draft law before the House of Deputies by virtue of article 91 of the Constitution. He has also mentioned some measures when defining the competent parties entrusted with the legislative initiative, of these measures is the legal texts that granted ten or more Deputies or Senates the right to propose laws, while necessitating the fact that any proposal shall be referred to the competent party by virtue of article 95 of the Constitution for opinion. In case it is accepted, it must be referred to the Government for legislative drafting as a draft law. By this, it can be inferred that the party entrusted with the drafting of the legislative initiatives, regardless of its source, is the Government by means of its Legislation and opinion Bureau. Hence, we believe such constitutional tendency has its justification from a practical and technical view. We also agree with whoever believes the justification lie in the following⁴⁴:

- 1- That governments are more knowledgeable and capable of knowing the legislative needs of the country, for they are the ones fulfilling the daily needs, and it would be easy for them to know the shortcomings of the legislations and thus gap them through proposing draft laws. This justifies the increasing amount of proposals that are submitted by the government in comparison to proposals submitted by the Parliaments.
- 2- That governments have the necessary technical and human expertise through employees with long history of experience in this field, as opposed to Parliaments which do not own such expertise. On the other hand, one cannot

⁴⁴ Mohamad masalha, Commentary on the paper submitted by the researcher Keith Patchett in the Arab Parliamentary Seminar on Feb 4-6 , 2002, **Towards Developing Legislative Drafting for Arab Parliaments**, p. 227.

overlook the economic dimension and its impact on the state's treasury. Thus, it is sufficient to have one permanent entity for legal grafting affiliated with the executive authority. Furthermore, the aim might be to unify the attribution of the final legal drafting of legislative initiatives, with the possibility of seeking assistance from whoever is deemed expert in draft laws. This will prevent duality in order to control the economic, social and environmental impacts resulting from the ratification of the proposal by the Parliament, as well as preventing contravention between it and the components of the legal system, in particular the constitutional texts in order for the law, after its enactment, to be in conjunction with the constitution as a practical basis to ensure the neutrality, integrity, and independence of the public authorities.

- 3- That the government has various databases that are extremely significant and the validity as a reference for the party entrusted with drafting, and can be easily referred to when necessary.

Based on the foregoing, it can be emphasized that the procedural rules of legal drafting refer to the constitutional rule of relevance to legislation with regard to executive legal texts as these constitutional rules have enough wisdom to confirm a set of matters and objectives, of which for instance:⁴⁵

- 1- The rights of individuals and needs of gender must be taken into account in every new legislation. This cannot be achieved unless it is tackled and respected during the legislative drafting, and not after, for it is well known that prevention is better than cure. This in turn requires the review of all legislation of relevance to the draft law before the completion of the drafting process.
- 2- The environmental impacts must be taken into consideration through attempting to anticipate all impacts that might result from the implementation of the law if enacted, and developing solutions that alleviate those impacts or prevent them, in particular with regard to legislations of relevance to the industrial, investment and commercial sectors. In other words, determining the feasibility of the draft law.
- 3- Any legislative initiative cannot be passed that might affect the methodologies of good governance. Thus, any initiative that aims at restricting the scope of governance must be get rid of before approval. This can only be achieved through linking the legislative initiative with other

⁴⁵ Waseem Harb, a paper presented in the Arab Parliament Seminar 4-6 February, 2002, **Towards Developing Legislative Drafting of the Arab Parliaments**, p. 136.

legislations of relevance to the method of good governance by the party entrusted with drafting.

After examining the constitutional rules and standards of legislative drafting and its objectives, we move on to the next point to examine the manner of legislative drafting in each of the By-laws of the public authorities with legislative jurisdiction.

Second: Executive Procedural Rules of Legislative Drafting:

At the outset, there is no doubt that any legislative initiative is originally either a proposal by ten or more of the House of Deputies or the Senate, or is a proposal submitted by the government. Regardless of the source, the legislative initiative passes through a set of stages until it reaches the Council in the form of a draft law. If it was submitted by the legislative authority, it is then and according to the By-law of the House of Deputies 1996, Article 66 A and the By-law of the Senate 1998, article 20-a, referred to the competent committee in the Council, that the members who submitted the initiative are members in, along with the mandating reasons and the basic principles of the initiative so as the committee can study and offer opinion with that regard. In case the Council accepts the initiative after hearing the competent committee's opinion, the initiative is referred to the government for drafting in the form of a draft law and presenting before the House of Deputies by the Prime Minister in the same session or the following one. On the other hand, if the initiative was submitted by the government, it is then referred along with the mandating reasons by the Prime Minister to the Cabinet for examination. If the Cabinet approves it, it is referred to the Legislation and Opinion Bureau⁴⁶ for examining and drafting in the form of a draft law, after which it is submitted to the Prime Minister for presentation before the Cabinet. After the draft is approved, the Prime Minister presents it before the House of Deputies to complete the procedures of its enactment.

The Legislation entity⁴⁷, an entity in the Legislation and Opinion Bureau, takes over the task of legislation of all draft laws and regulations demanded by the Prime Minister. Legislative drafting is significant in terms of being the tool and mechanism through which legislative initiative is transferred from being general ideas into the form of an easily comprehended draft law, which is clear and concise in output and its components do not contravene with other legislations in force. Because of this significance, the legislative entity performs thorough studies of

⁴⁶ The Bureau consists of a chairman and a number of consultants, legal experts, employees and workers.

⁴⁷ The legislation entity composes of the chairman of the Bureau and membership of all consultants in the Bureau.

proposals submitted to it. To this effect, the Chairman of the Bureau can summon whoever it sees necessary to clarify the legislative initiative and its dimensions, in particular the party who originally submitted the initiative and/or the parties affected by the legislation in case of its promulgation. On the other hand, the Bureau is entitled to seek the assistance of expertise in the field of the legislative initiative, whether legal experts, economists, politicians, sociologist or employees in the field of media, who can attend the sessions of the legislation entity and participate in deliberations and dialogue concerning drafting. The legislative entity can also request any information of relevance to the subject of the initiative, as well as legal jurisprudence studies and judicial judgments of relevance. Hence, one cannot overlook the role of the entity of legal consultations⁴⁸ in the Legislation and Opinion Bureau in supporting the legislation entity through providing all previous legal Fatwas (legal pronouncements) of relevance to the subject of the initiative.

After much study and examination of all aspects of the initiative by the legislation entity, the law is drafted and is classified and mandating reasons are controlled, after which, the draft law is submitted to the Prime Minister via the Chairman of the Bureau. After approval by the Cabinet, the Prime Minister refers the draft law to the House of Deputies to go through the procedures of ratification in accordance with the constitutional rules and the Bu- law of the House of Deputies.

Second Requirement: Impact of Ratification of the Draft Law on the Legislative Drafting:

First, it must be emphasized that the study of the ratification phase does not aim at defining the stages of promulgation, but rather at determining the impact of Parliamentary intervention in the draft law and the constitutional and legal controls of this stage as practical guarantees to maintain the proposal during deliberation in fulfillment of the basic needs and objectives previously mentioned regarding the specifications of the draft law, such as clarity, accuracy, briefness, and lack of contravention with the legislations in effect. This will eventually lead to maintaining the general features of legislation, mainly generality and abstractness, because unexamined and uncontrolled amendments that might be included into the draft law during deliberation might cause it to lose such important feature that aims at achieving equality and justice for the texts of the law after its promulgation.

⁴⁸ The Legal Consultations Entity comprises of the Chairman of the Bureau as president and the membership of whoever he assigns of consultants, legal experts according to the nature and type of consultations.

In light of the foregoing, we will attempt to examine the constitutional and legal controls mentioned in the BY-laws of the House of Deputies and the Senate regarding the legislations ratification phase and determine its impact on legislative drafting, knowing that we will only discuss these controls once and in a general manner to meet the objectives of this study. We will attempt to assign only in cases where these controls differ between the By-law of the House of Deputies and the Senate (Section One). In this context, one cannot overlook the impact of constitutional controls regarding the Royal ratification phase of the draft laws approved by the House of Deputies and the Senate on legislative drafting, especially if the King requested amendments to the proposals (Section Two).

Section One: The impact of Constitutional and Legal Controls of the Proposal Ratification Phase on Legislative Drafting:

It is agreed that legislation is the jurisdiction of the legislative authority in accordance to Article 25 of the Constitution. It is exercised as needed in accordance with the procedures set by the Constitution in order to maintain the flow of work in the public facilities of the state. It has been agreed also in the previous requirement that legislative initiative, regardless of its source, is referred eventually to the government for drafting, and after that presentation before the legislative authority to finalize its ratification procedures. The legislative authority's role in the legislative process actually starts as soon as the draft law is referred to it by the government via the Prime Minister.⁴⁹ So, what are the constitutional and legal procedures that govern the work of the legislative authority in the performance of the legislation process that guarantee the soundness and accuracy of the legislative drafting?

The constitutional legislator necessitated that the Prime Minister presents every draft law before the House of Deputies, which owns authority regarding this proposal. So, the House can approve, amend or reject the proposal after deliberation. However, this does not mean the finalization of the proposal, for it has to be referred to the Senate, which owns authority with regard to the proposal and does not abide by the decision of the House of Deputies, because each council is completely independent of the other in its practices and jurisdiction, of which the legislative jurisdiction is part. Laws are not promulgated unless they are approved by both Councils and promulgated by the King. What are the procedures that control the process of draft law ratification in both Councils and guarantee the

⁴⁹ Paragraph one of Article 91 of the current Jordanian Constitution.

soundness of the legislative drafting? Referring back to the constitutional texts and the By-laws of both Councils, one can identify the measures and controls in two cases; the case of agreement between the two Councils, and the case of disagreement between the two Councils.

First: Controls and Measures in Case of Agreement between the Two Councils on the Proposal:

The phase of draft laws ratification begins with their referral along with the mandating reasons to the House of Deputies by the Prime Minister, and then listing them on the Council's agenda through consultation between the Chairman of the House of Deputies and the Prime Minister. This is performed through a first public reading of the proposal before the Council unless otherwise pre-circulated to the members. The Council provides opinion regarding the need for such law. In case the Council does not approve the proposal, it is referred along with the resolution to the Senate. However, if the Council approves the proposal in principles, it is referred along with the mandating reasons and the resolution of the Council to the competent committee.⁵⁰ It is worth mentioning here that there can be no deliberation in any draft law unless it was distributed to the members at least 3 days ahead.⁵¹ However, and as an exception, there is no need to comply with the 3 days period in cases of urgency and compelling reasons, and the Chairman of the House of Deputies can include this with the referral resolution to the Council. If the Council agrees by majority to bestow the nature of urgency upon the proposal, the proposal is publicly read and deliberated or is referred to the competent committee for discussion regarding this urgency.⁵²

What should be emphasized here is that amendments can be enacted to the draft law that is referred to the competent committee upon request from a member; however this amendment is subject to a set of criteria and controls, which are:⁵³

⁵⁰ Article 68 of the By-laws of the House of Deputies 1996 – Any proposal is publically read before the Council, unless it is pre- circulated to the members. If the Council approved the need for such law, it is referred to the competent committee. However, if the Council sees no need for such law, it is referred to the Senate.

⁵¹ Article 67/a of the By-law of the House of Deputies 1996 – Any draft law is not subject to research or study at the Council unless a copy of the project and the mandating reasons is distributed to each member at least 3 days before that.

⁵² Article 67/b of the By-laws of the House of Deputies 1996 – In case of urgency or compelling reasons speedy reading, the Chairman presents this for discussion. If approved by the majority, the proposal is publicly read or is referred to the competent committee.

⁵³ Article 69 of the By-law of the House of Deputies which states that: (If any member requested amendments to any draft law that is referred to any committee, this member has to submit a report to the Chairman explaining the proposed amendment and the mandating reasons for this. The Chairman refers this proposal to the competent committee). And Article 22 of the By-law of the Senate, which states that: (Any member with an opinion regarding

- 1- The need to submit a report by the member/members who proposed the amendment to the Chairman explaining the reasons for the proposed amendment.
- 2- The need to clarify the mandating reasons for the amendment.
- 3- The resolution to refer the amendments to the competent committee by the Chairman.

There is no doubt that these measures and controls aim at ensuring the seriousness of the required amendments to the proposal so that the proposal is not subject to unjustified amendments, and on the other hand to prevent insufficiently examined amendments in order to ensure no contravention occurs between the content of the proposal and other legal texts in effect. Furthermore, to enact amendments with no sufficient information might lead to duality of the legal organization or at least to wasting the time of the committees entrusted with researching data. This in turn might lead to confusion in legislative drafting. Hence, the wisdom behind entrusting only one party with the task of legal legislation, and this party is the Legislation and Opinion Bureau as it is the party with sufficient information via the legislative information unit in the Bureau. This unit has an integrated database with regard to basic references of legal drafting, such as legislations in effect, jurisprudence and legal studies and judicial jurisprudence. Thus, it can be said that the proposal referred to the competent committee is considered binding in its content unless amendment were introduced to it as explained above.

After finalizing the study and amendments of the proposal and after deliberation by the competent committee, a written report is developed by the committee, which must include the following:⁵⁴a- the original draft laws and mandating reasons b- proposed amendments to the proposals and the mandating reasons c-the committee's recommendations with regard to the original proposal and the amendments too it.

any draft law or proposal that was referred to a committee in which he is not a member, has to send this opinion in writing to the Chairman, who in turn refers it to the committee. In this case, he can participate in the deliberations of the committee, but has no right to vote).

⁵⁴ Article 70 of the By-law of the House of Deputies which states that: (committee's reports are printed along with the texts of the draft laws, amendments and mandating reasons as well as the committee's recommendations. The reports are distributed to the members at least 24 hours before discussion unless the Council decided to bestow an urgency nature on the subject, in this case it is discussed immediately) And article 23 of the By-law of the Senate which states that: (Every session ends up with minutes where the names of the attending members are recorded as well as the proceedings of every session and the resolution and is signed by the members present).

It is worth mentioning here that a discussion of the committee's report cannot be started unless after distribution to the members at least 24 hours in advance, unless the Council decides to bestow the urgency nature upon it, in this case it is not necessary to comply with the specified time frame and thus can start the discussion immediately. The discussion processed is governed by a set of criteria and procedural rules, which can be summarized in the following:⁵⁵ a- The reading of the draft law and the committee's resolution attached to it, unless the Council find it is sufficient to distribute it to the members in advance. B- The articles are discussed one by one after reading the original proposal and the proposed amendments by the Council's members that were previously referred to the competent committee, as well as the committee's views on these amendments. Discussion of the article is performed beginning with the broadest and moving to the narrowest. After discussion, an initial opinion poll is performed regarding the whole article through voting. In this context, we believe that voting on the whole article is the best and most sound approach to maintain the legislative drafting of this article, especially that voting is conducted after all paragraphs of the article are discussed, and thus the discussion is considered integrated and not partial. C- Recommendations proposed by the members can be related to the original proposal, or to the amendments proposed on the original proposal or may represent requests to add new articles, in this case the request must be in writing and addressed to the chairman of the committee. In this context, there are two assumptions:⁵⁶ **First Assumption:** That these requests were submitted before the

⁵⁵ Article 71 of the By-law of the House of Deputies which states that: (A reading is conducted of the draft law and the committee's resolution attached to it, unless the Council finds it is sufficient to distribute it to the members in advance. B- The articles are discussed one by one after reading the original proposal and the proposed amendments by the Council's members that were previously referred to the competent committee, as well as the committee's views on these amendments. Discussion of the article is performed beginning with the broadest and moving to the narrowest. After discussion, an initial opinion poll is performed regarding the whole article through voting. C- Voting can be conducted on each paragraph, in this case a voting of the whole article is not performed. And article 47 of the By-law of the Senate which states that: (a- the Chairman of the committee reads the committee's resolution on the draft law. The proposal is considered approved in principle unless the Council decides not to approve it upon recommendation from the committee or a suggestion by any member. B- If the draft is not rejected in principle by the Council, the chairman of the committee reads the draft law unless the Council decides to overlook the reading, in this case the Council begins the discussion of each and every article of the draft after reading each article and its amendments. An opinion poll is conducted for each article and any amendments performed by the House of Deputies or approved by the committee or the members).

⁵⁶ Article 72 of the By-law of the House of Deputies which states that: (Any member proposing amendment to the original text or to the amendment of the competent committee proposing addition of new articles, must submit his proposal in writing to the Chairman of the committee. In case the proposal is submitted before the committee's resolution is issued, the proposal is referred by the Chairman to the competent committee. However, if the proposal is submitted during the discussion, it is discussed during the session and opinion poll is performed with its regard, unless otherwise decided to refer it to the committee for study. And article 50 of the By-law of the Senate, which states that: (a-Any member proposing amendments to the original text or to the amendments proposed by the competent committee or proposing addition of new articles must submit his proposal in writing.

report of the competent committee. Hence, the solution is to refer those requests to the committee for study and discussion and later inclusion in the report. **The Second Assumption:** That these requests were submitted after the issuance of the competent committee's report and during the discussion of the proposal in the Council, and hence these requests will be attached to the proposal and discussed simultaneously, unless the Council decided to refer them to the committee for study and opinion.

On basis of the foregoing, we believe and for purposes of sound legislative drafting that requests within the second assumption must always be referred to the competent committee for opinion and legal drafting in a manner that takes into account scientific bases of drafting, and must not be discussed directly in the Council so there is no haste in their ratification which may lead to imbalance in the legislative drafting of the proposal, as one of the most problematic issues facing legislative process is insufficient time of discussions of the legislative content. These problems will soon be evident with the first application of the law. On basis of the foregoing justifications, we believe it is better for the legislative process in general and the legal drafting in particular to exercise patience and avoid haste in ratifications of proposals rather than waiting a long time to amend them in case there were flaws in formality or objectivity.

d- The Final Ratification of the Draft Law, through voting on all articles after complete discussion of all articles.⁵⁷ However, the norm is the direct and immediate voting on the whole draft law after completing the discussions, and the exception is to defer the final voting to a later session. In order for this exception to apply, some criteria must be sufficient and available, of which: submitting an application by the Chairman of the Council or the Chairman of the competent committee or the rapporteur of the Deputies committee or the government or a number of members (ten Deputies and five Senators) to re-discuss one or more articles of the Proposal⁵⁸. In this case, the voting is deferred to a later session, and after

B- The Chairman of the committee reads the proposed amendments on any article during discussion of the article
c- If the proposal was submitted during deliberation, it is discussed during the session and opinion poll is performed unless otherwise decided to refer it to the committee for study. The referral is obligatory if requested by the Chairman of the committee or the government or by the Chairman of the Council.

⁵⁷ Article 73 of the By-law of the House of Deputies, which states that: (a- After discussion of the articles, an opinion poll is conducted of the whole draft. The Council may defer the opinion poll to a following session to re-discuss one or more of its articles upon request from the Chairman of the Council or the Chairman of the committee or the rapporteur government or ten of the Council's members. B- If the majority approved the draft law or rejected it, it is referred to the Chairman of the Senate). And article 47 of the By-law of the Senate mentioned previously.

⁵⁸ Article 73/a of the By – law of the House of Deputies which states that: (a- After discussion of the articles, an opinion poll is conducted of the whole draft. The Council may defer the opinion poll to a following session to re-

completing the required discussion, a voting is conducted. If the draft law is approved by the required majority, which is the majority for regular law drafts⁵⁹ and two third of the members for constitutional drafts⁶⁰, it is referred to the King by the Chairman of the Senate to exercise his right in ratification.⁶¹

Second: Controls and Measures in Case of Disagreement between the Two Councils on the Proposal:

After reviewing the measures and controls that govern the legislative drafting during the ratification phase in case of agreement between the House of Deputies and the Senate whether with regard to approval, amendment or rejection, we will attempt in this point to review the measures and controls in the case of disagreement between the two Councils on the proposal presented to them.

Sometimes, one Council may approve a draft law and the other Council amends it. What is the legal solution for this dilemma and what is its impact on the legislative drafting of the proposal? It is noted that the constitutional legislator has

discuss one or more of its articles upon request from the Chairman of the Council or the Chairman of the committee or the rapporteur government or ten of the Council's members. And article 54 of the By-law of the Senate which states that: (a- After discussion of the articles, an opinion poll is conducted of the whole draft. The Council, before the opinion poll on the draft law, may defer the opinion poll to a following session to re-discuss one or more of its articles upon request from the Chairman of the Council or the Chairman of the committee or the government or five of the Council's members

⁵⁹ Article 89/3 of the Jordanian Constitution states that: (A joint meeting of the Senate and House of Deputies shall not be considered valid unless an absolute majority of members of each House is present. Resolutions at such a meeting shall be taken by a majority of the Senators and Deputies present, exclusive of the Speaker who, in case of equality of votes, shall have a casting vote).

⁶⁰ Article 126/1 of the Jordanian Constitution states that: (The procedure prescribed in this Constitution with regard to draft laws shall apply to any draft law for the amendment of this Constitution, provided that any such amendment is passed by a two-thirds majority of members of both the Senate and the House of Deputies separately. In the event of a joint meeting of the Senate and the House of Deputies, in accordance with Article (92) of this Constitution, the amendment must be passed by a two-thirds majority of members of both houses provided that, in each case, the amendment shall not come into force unless approved by the King).

⁶¹ Article 91 of the Jordanian Constitution and article 63 of the By – law of the Senate which states that: (In case the Council approves a draft law as ratified by the House of Deputies, the Chairman shall present the draft law with his signature and that of the secretary general to the Prime Minister for submission to the King).

anticipated this case and developed a constitutional solution to it. This solution is manifested in the second reading of the proposal by the disagreeing Council, after which it shall be returned to the other Council in case of disapproval of amendments, so that there is discussion of the articles subject of disagreement. If each Council insisted on its position, then the solution is to hold a joint session for both Councils upon request from and presided by the Chairman of the Senate to discuss the points of disagreement and attempting to reach a solution. Resolutions are taken in the joint session and with the majority of two third of the members present in the case of the regular legal proposals by virtue of article 92 of the Constitution, and the majority of two third of the members in case of constitutional rules by virtue of article 126/1 of the Constitution. If no agreement is reached, it is considered invalid and shall not be presented in the same session. Here, we notice that the joint sessions between the two Councils are presided by the Chairman of the Senate and not the Chairman of the House of Deputies elected by means of direct secret public elections, which is not the case within the comparative constitutional systems where the joint sessions are presided by the lower Council which reflects the people's will on the basis of equality and competition on the national level. On the other hand, the constitutional legislator has adopted a special majority in these types of sessions, which is the majority of two third of the members present. Hence we believe the wisdom behind this majority is to prevent either Council of exercising monopoly on decision making, especially the Higher Council. By- laws of both Councils has mentioned the joint session in case of disagreement between the Councils after the second reading of the proposal, where it was clarified that discussion in the joint session is centered on two points; approval of the resolution of one Council, or rejection of the proposal.⁶²

Section Two: Constitutional and Legal Measures and Controls for the Ratification of Draft Laws:

It goes without saying that the head of the state in Parliamentary systems shares the elected Councils the legislative task, and this is manifested through his right to ratify the draft laws approved by those Councils, and the law is not promulgated

⁶² Article 75 of the By- law of the House of Deputies states that: (a-If the Senate referred the draft law back with rejection, it is reviewed for two points, approval of the decision of the Senate or insisting on the previous decision of the House of Deputies. B- If the Senate referred the draft law back with amendments, the following provisions apply: 1- Discussion is performed only of the articles subject of disagreement 2- the Council votes during discussion on maintaining the decision of the House of Deputies or the approval of the Senate's decision c- If the Senate insisted on disagreeing with the decision of the House of Deputies as referred back to it, the provisions of article 92 of the Constitution apply.

unless it is approved. Jordan, as a state which adopted the parliamentary system follows the same approach. The constitutional legislator stated that legislative power is vested in the King and the General Assembly. The General Assembly consists of the House of Deputies and the Senate in accordance with article 25 of the Constitution. Hence, and after approval of draft laws, they are submitted to the King by either the Chairman of the Senate or the House of Deputies, as appropriate, for ratification. Because of the pivotal role of the ratification and the possible disagreement between the King and the General Assembly with regard to the proposal, the question is raised regarding the impact of controls and measures of ratification on the legislative drafting of the draft law. The answer can be reached by reviewing and analyzing all possible assumptions regarding the ratification phase, which are mainly three assumptions: **First Assumption**: which is represented by the Royal decree regarding the explicit ratification of the draft law within the constitutional period granted for the King to ratify the law, which is 6 months from the date of its submission to the King⁶³, without requesting any amendments to the draft law. In this case, procedures should be followed to promulgate it and other formalities like issuance⁶⁴ in the Gazette and the passing of 30 days period of promulgation, unless otherwise stated⁶⁵, all this is the task of the executive authority. It is noted here that there is no impact of the ratification phase on the legislative drafting. **Second Assumption**: represented by withholding assent on the Draft law until amendments are performed. In this case, the draft law is returned along with the justifications for amendment to the General Assembly starting with the House of Deputies for discussion of the required amendments. If the amendments were approved, the draft law is referred to the Senate to take the necessary measures. If it was approved, it is considered as ratified. Here, we note the impact of amendments on the legislative drafting of the draft law.

The problematic issue here is that in the case of approval by one Council of the amendments and disapproval of the other, it is necessary to resort to the specified measures of the second reading. If each Council insisted on his opinion regarding the royal amendments to the draft law, the draft law is considered as ratified and procedure are followed to put it in effect. It is worth mentioning here that the

⁶³ Article 93/3 of the current Jordanian Constitution states that : (If the King did not see fit to give his assent to any law, He may, within six months from the date on which the law was submitted to him, return it to the House with a statement showing the reasons for withholding his assent).

⁶⁴ Article 31 of the current Jordanian Constitution states that: (The King ratifies the laws and promulgates them. He shall direct the enactment of such regulations as may be necessary for their implementation, provided that such regulations are not inconsistent with the provisions thereof).

⁶⁵ Article 93/2 of the current Jordanian Constitution states that: (Any law shall become effective upon the King's promulgation after thirty days from the date of its publication in the Official Gazette unless it is specifically provided in that law that it shall come into force on any other specified date).

Councils may overlook the amendments by the King and insist on promulgating the draft law in the form it was approved the Councils. As for the regular non – constitutional draft law, if each Council made its decision with the majority of two third of its members, it is considered are ratified.⁶⁶

On basis of the foregoing, we note that if the royal amendments were not approved, that may affect the legislative drafting of the draft law. If the disapproval was overlooked by the majority of two third of the members, there will be no impact on the legislative drafting of the proposal.

Third Assumption: This assumption is represented by the King's not assenting on the draft law within the constitutional period granted to him for ratification. This might happen since submitting the draft law to the King where the six months period for approval, amendment or rejection may be over. This assumption requires distinction between two cases: **First case:** is related to the constitution rules proposals, as these proposals require the explicit royal approval, which if not granted within the constitutional period is considered as a rejection of the proposal by virtue of article 94/paragraph 4 of the Jordanian Constitution. **Second case:** is related to regular law proposals, as these proposals do not require the explicit Royal approval, which if not issued within the constitutional period, the proposal is considered as implicitly approved by virtue of article 94/paragraph four of the Jordanian Constitution.

On basis of the third assumption, we notice that there is no impact on the legislative drafting of the proposal with regard to regular laws, while for constitutional rules proposal the expiration of the constitutional period granted for ratification might lead to the expiration of the constitutional proposal so that it will not be presented in the same parliamentary session.

⁶⁶ Article 93/4 of the current Jordanian Constitution states that: () If any draft law, (other than the Constitution) is referred back to the House within the period specified in the preceding paragraph and is passed, for the second time, by two-thirds of the members of each of the Senate and the House of Deputies, it must, in this case, be promulgated. If the law was not returned with the Royal assent within the period prescribed in paragraph (iii) above, it shall be considered as promulgated and effective. If any draft law fails to obtain the two-thirds majority of votes, it cannot be resubmitted during the same session, provided that the National Assembly may reconsider the draft during its next ordinary session).

Conclusion and Recommendations:

Since the Jordanian constitutional system is considered a Parliamentary one, it is based on the principle of flexible separation between the authorities so that there is co-operation between the legislative authority and the executive authority, although the executive authority might have more power on the practical level. It was clear through the foregoing information about the legislative process and measures in the Jordanian constitutional system that the Jordanian Constitution, through the constitutional rules of attribution regarding legislative jurisdiction between the executive and the legislative authorities, had adopted a conventional approach by granting the general mandate in legislation to the legislative authority. This is clear through restricting the areas in which the government may exercise legislation, whether as a general rule or as exception and anything beyond this is the jurisdiction of the Parliament. Therefore, according to the Jordanian Constitution, the legislative task is vested in the King and the General Assembly. The General Assembly consists of the Senate and the House of Deputies. The study confirmed the fact that legislative drafting must be characterized with commitment to the following objectives; otherwise it will be inaccurate and ungoverned.

- 1- Emphasizing the principle of Supremacy of the Constitution, through the commitment of the competent party entrusted with legislative drafting to producing the draft law in a manner that is consistent with the text and spirit of the constitutional texts, as well as with the higher legal rules, regardless of its source.
- 2- The need to prevent any contravention between the draft law and components of the legal system like ratified treaties and international agreements or laws in effect, which facilitates the implementation of the new law after its promulgation and avoid any practical difficulties that may prevent the implementation.
- 3- Ensuring no duality occurs in the legal organization through referring back to databases that are related to the legal rules in effect and making sure no other enacted legal rules are available that address the same subject.
- 4- Ensuring rights and freedoms of individuals remain intact and not restricted unless for the protection of the public order and morals in the country, as

well as making sure the legislative process is not a means to achieving the goals of the government by restricting the individual rights and freedoms.

The study also reaches at the following recommendations:

- 1- The need to set up clear and governed bases and procedures for the legislative drafting and not leaving it to the jurisprudence of the parties entrusted with legislation.
- 2- The need to take human rights and gender needs into account in every new law. This cannot be achieved unless it is addresses during the legislative drafting, and not after its completion, for it is known that prevention is better than cure. This in turn require the review of all legislations of relevance to the draft law before finalizing the drafting, and non- restriction unless it is for the purpose of protecting the public order in the state within the minimum limits of international standards.
- 3- The need to observe the environmental impacts of the law that is to be developed on the part of the legislative parties through attempting to anticipate all the impacts that may result from the implementation of the law in case of promulgation, as well as develop solutions that are capable of alleviating the impacts, especially with regard to legislation related to the industrial, economic, investment, and commercial sectors. In other words, determining the feasibility of the draft law.
- 4- The need to prevent the passing of any legislative initiative that may affect the methodologies and requirements of good governance. This cannot be achieved unless the operative part of the legislative initiative is linked to other legislations of relevance to the approach of good governance by the party entrusted with the drafting.

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