

## **Inclusion of Definitions in Legislative Drafting: A Necessity or a Luxury?**

**Souad Ezzerouali<sup>1\*</sup>, Yassine Chami<sup>2</sup>**

<sup>1&2</sup> Dhofar University, Oman

### **Abstract**

Legislative drafting is a crucial element in the formation of legal norms. The success of these norms depends on the accuracy of the words used and the appropriateness of its tools, as it is subject to a set of rules and mechanisms that the legislator must follow, whether at the level of form or at the level of content. Our study will focus on the rule related to using definitions in the exact way to include them in the legislative drafting. It aims to standardize the terms used by the legislator in the legal text in order to avoid any confusion or ambiguity about these terms, and to distinguish it from other meanings that may come in other texts but in a different concepts. The research problem revolves around the extent to which legislation needs to include definitions in laws, is it a necessity or just a luxury? We will address this problem using the descriptive and comparative approach by dividing the study into two parts, the first part deal with the need to include definitions in laws, and the second part addresses the norms governing the use of definitions in legislative drafting. We conclude, that adding a legal definition to the legislative process, giving it legal meaning, would perpetuate the rigid, ossified concept of law. Contrast that with jurisprudential definitions, which sometimes change the true meaning of jurists' terms. However, each definition will be kept in line with the pace of legislation to keep up with the pace of social development, in case it becomes outdated or needs to be supplemented.

**Keywords:** legal drafting, definitions, improvement of law, legal security.

---

\* Corresponding Author, Email: [sezzerouali@du.edu.om](mailto:sezzerouali@du.edu.om)

## Introduction

The legal rule consists of two main components:<sup>1</sup> legal science and legal drafting. Legal science refers to the essence of law and its subject matter, i.e., the first fundamental elements of which law is made. Legal drafting<sup>2</sup> involves expressing legal content using technical tools to establish legal rules. These tools are known as legal drafting tools. The French jurist François Gény<sup>3</sup> distinguished between the essence of the legal rule and its content and form by considering that knowing the legal rule is its essence and drafting consists of the form of the legal text.

Legal drafting is a fundamental element of legal rule formation. It brings it into being, and that rule's success depends on the accuracy of drafting and the suitability of its tools.<sup>4</sup> Thus, it transforms the raw materials that the law is made of into applicable practical rules to achieve the aim revealed by its essence.<sup>5</sup> This is done by choosing accurate tools that guarantee a faithful interpretation of the rule content and give it the practical form suitable for its application.<sup>6</sup> Therefore, accuracy should be considered in drafting the legal rule by choosing the most practical and technical expressions and the best tools to achieve the intended aim.

---

<sup>1</sup> Kazem Abdullah Hussein, and Shaker Nuri Ismail. "The origins of the legislative drafting of the penal procedural rule." *Journal of Legal Sciences* 34.5 (2019): 178

<sup>2</sup> Al-Mu'jam al-Wasit, 4th ed. (Egypt: Academy of the Arabic Language, 2004), s.v. "صاغ".

<sup>3</sup> François Gény, *Science et technique en droit privé positif : nouvelle contribution à la critique de la méthode juridique*, (Paris :Sirey, 1914), 72.

<sup>4</sup> Ahmed Sharaf El-Din, *The First Legal Drafting of Contracts*, (Cairo: Wahba Hassan Sons Press, year of publication unavailable), 14.

<sup>5</sup> Khalid Jamal Ahmed Hassan, "Principles of Legislative Drafting", *Legal Journal*, no 4 (June 2015): 20.

<sup>6</sup> Robert C.Dick, *Legal drafting*, 2<sup>nd</sup> ed. (Toronto: Carswell, 1985)1.

Legal drafting contributes to achieving the aims set by the legislative policy, starting from issuing legislation to authenticating contractual relations following the legal systems and even the drafting of lawsuits and the causation of judicial judgments. Legal drafting is divided into four types:<sup>7</sup>

**Practical drafting** refers to the legal drafting of judicial judgments and administrative decisions. The drafting of judicial judgments comprises three parts: the preamble, the judgment reasons, and the judgment sentence. In comparison, drafting an administrative decision should encompass the quality of the decision issuer, the legal documents for the right of issuing the decision, the decision object, and the decision itself. It should also include the date determined for the decision's entry into force, the authorities or departments that are competent in applying this decision, the name of the person who took the decision, his signature and stamp, and the number and date of decision issuance.

**Preventive drafting** refers to the legal drafting used in writing contracts according to many factors to obtain exact and explicit drafting. Among these factors is the method of drafting and terminology used, as well as the way of covering all aspects of the subject matter of the contract and producing it in the form of contractual clauses.

**Data drafting:** it is a type of legal drafting that consists of two forms, namely, indictments that should include fundamental clauses that determine the accusing party, such as writing the case number and the name of the accused and information about him, describing facts in question in terms of the filed complaint, stating evidence that proves the complaint, mentioning the texts that criminalize the act (accusation), mention the penalty that is required to be imposed on the accused and its legal basis. Then, there is the second form which consists of the legal memoranda, i.e., memoranda of pleadings before the

---

<sup>7</sup> Mohammed Al Mazine, *ALAQD*, <https://theaqd.com/>.

court, and there are many rules that the lawyer should consider and many factors that can help him when writing legal memoranda.

**Legislative drafting:**<sup>8</sup> As a type of legal drafting, it means producing legal systems, whether laws, regulations, or other legal rules. Alternatively, as one of the jurists views it, legal drafting can be defined in its narrow sense as “studying methods of writing and drafting laws”<sup>9</sup> and in its broad sense as a branch of legal research based on thinking and analyzing methods of establishing and applying the law.<sup>10</sup> According to the French jurist Jaques Chevalier, the person charged with legal drafting is figuring out the best means to produce, draft, issue, and apply rules.<sup>11</sup> He is also tasked with foreseeing potential challenges while reading, interpreting, and applying legal text.<sup>12</sup> Thus, legal drafting means the technique or the art

---

<sup>8</sup> Legislative policy differs from legislative drafting in that the former refers to the philosophy or the purpose from issuing legislation. It starts with the decision of stipulating a law through studying the society needs and priorities and the impact of that law on individuals, then it interprets the principles of that policy into legal texts. The latter means the process of organizing ideas in precise and clear applicable clauses. For further information see: Ali Al-Sawy, “Legislative Drafting for Good Governance: A Proposed Framework for Arab Countries”, (The Arab Parliamentary Symposium entitled: Towards Developing the Legislative Drafting of Arab Parliaments, Lebanese Parliament, February 3-6, 2003) 5.

<sup>9</sup> *Dictionnaire de la culture juridique*, Stéphane Rials and Denis Alland, (Quadrige-dicos poche, 2003), s.v. "Légistique".

<sup>10</sup> *La légistique ou l'art de rédiger le droit*, (Le courrier juridique des finances et de l'industrie juin 2008).

<sup>11</sup> J. Chevallier, "L'évaluation législative : un enjeu politique", in, *Contrôle parlementaire et évaluation*, ed. J.-L. Bergel, Alain Delcamp, (Paris: La documentation française, 1995) 15.

<sup>12</sup> «*Guide pour l'élaboration des textes législatifs et réglementaires*», Élaboré par le Conseil d'État et le Secrétariat général du Gouvernement (SGG) est publié par la Documentation française .disponible et tenu à jour sur le site public : [www.legifrance.fr](http://www.legifrance.fr).

of establishing the law in a manner that considers the quality requirements.

Legislative drafting is subject to a set of norms and mechanisms that the legislator should adhere to because it represents the form of legislation, and if the essence of legislation means the content of the legal rule, this content cannot be without the form of legislation. However, drafting legislation is not merely transcribing legal texts into formal templates, but rather it is, first and foremost, a legal thought that converts the texts into their legal norms in the constitution and the laws in force to achieve harmony, consistency, and interdependence between them.<sup>13</sup>

The drafting style is essential in converting legislation goals into a coherent set of consistent and transparent standards that make it easy to abstract legal provisions that align with the legislation's goals. A set of rules should be taken into account during the drafting process consisting mainly in:

- 1- Ensuring the text is clear and the language is straightforward.
- 2- Composing texts using words and phrases that convey the text's intended meaning.
- 3- Avoid using phrases or terms that refer to a specific gender.
- 4- In case when the text content indicates several cases or organizes more than one issue, or includes conditions for some cases that are part of that content, it is preferable to specify the elements of the text and divide them when drafting into parts in the form of paragraphs.
- 5- The use of definitions in an exact way: Definitions are specifications of the meaning intended by the legislator to understand what the phrase means. Definitions should only be used when the term's meaning is crucial to the comprehension and

---

<sup>13</sup> Mahmoud Muhammad Ali Sabra, *Modern Trends in Preparing and Drafting Laws*, (edition and publisher unavailable, Egypt).

application of the proposed legislation or if the term is used frequently in the legislation. When defining a given term, the legislator should refer to the definitions in pre-existing laws.<sup>14</sup>

Our research focuses on the last rule related to the use of definitions in an exact way and includes them in the legislative drafting. This rule aims to standardize the terminology the legislator uses in the legal text to avoid any confusion or ambiguity about the term and to distinguish it from other meanings that may come in other texts but with a different concept. Because every legislation has its peculiarity, dimensions, and context on the one hand, and the process of including definitions helps in producing legal texts and makes them easy to understand by its addressees and those charged with implementing them, especially the judiciary, in order to achieve legal security on the other hand.

The problem of this research revolves around the need for legislation to include definitions in-laws. Is it a necessity or a luxury? Moreover, what is the importance of including the technique of definitions? Does it help avoid ambiguity in understanding legal rules? To what extent does it contribute to creating harmony and clarity within legislation?

Many questions arise from this problem, mainly; what is the meaning of definitions in legislative drafting? What is the aim of inserting them among the components of legislation? Furthermore, what rules and restrictions are required to produce definitions to achieve the purpose thereof?

We will try to provide explanatory answers to all of these issues using the descriptive method by reviewing the evidence that dealt with the methodology of legislative drafting and analyzing it with a comparative approach to manifest its shortcomings and strengths.

---

<sup>14</sup> Ali Ahmed Hassan. Drafting the legislative text. *Journal of Legal Sciences* 34.1 (2019): 36

The research falls into two parts according to the Latin school.<sup>15</sup> The first part investigates the need to include definitions in the legislative drafting by addressing the concept of definitions and distinguishing them from similar ones, then manifesting the advantages of including definitions in the formal structure of legal texts. The second part deals with rules and restrictions organizing definitions in legal drafting, namely formal restrictions related to their position in legislation and objective restrictions linked to the essence of the defined terms.

### **I. The extent of the need to include definitions in the legislative drafting**

Including definitions in legislative drafting raises questions regarding the extent of their necessity and importance in legal texts. It is evident that the answer to such a question differs depending on the nature of the legal system from one state to another; even inside the same state, it differs from one law to another.

Law is an act of communication, and this communication is made through language. This language is binding on the legislator and those affected by the law. Thus, the legislator should use words with their ordinary meanings to make them easy to understand. It is also established that the terms used in legislative texts must be understood in the sense of these terms in the ordinary language.<sup>16</sup>

Ambiguity and polysemy are two common linguistic phenomena that the legislator often finds difficult to deal with, making him either choose between different interpretations of the same term or, in some cases, give the term an accuracy that is broad or broad limited in order to

---

<sup>15</sup> Jedidi, and Daa El Din Ramadan. "Quality Controls of Legislative Drafting." *Journal of Rights and Freedoms* 10.2 (2022): 131

<sup>16</sup> *Jurisprudential trends in the divisions of legislative drafting*, 2016, 8.29/1.

develop the meaning of the text.<sup>17</sup> When drafting legal texts, the legislator utilizes terms in their specific concepts rather than their broad linguistic meanings. Unless something in the text proves that the legislator specifically targeted a term with its linguistic meaning rather than its legal meaning, thus, the interpretation of legal texts must be based on what is required by legal terminology and tradition rather than linguistic circumstances. Furthermore, the law is a specified scientific branch with a complete system of concepts within which interconnected sub-systems constitute the terminological system of the law. This system includes civil law, personal status, penal law, the law of civil and commercial pleadings, and administrative law. Each of these branches may split into new sub-branches that extend depending on the need for it to form an interconnected network of concepts that fall within the field of legal terminology and create a technical language of its own, in which every word has its particular balanced meaning. This language is simple, straightforward, and easy to understand by addressees to the provisions of the law. This explains the urge of the legislator to include in the law an article defining the terms contained therein.

In this part, we will determine what the definitions included in the legislative drafting mean and then discuss later their importance in improving the legal texts.

### **The meaning of definitions in legislative drafting**

“Definition” is a specification of the meaning that the legislator intended to understand the phrase sense. Al-Jurjani<sup>18</sup> describes it as saying something whose

---

<sup>17</sup> Gérard Cornu, "Les définitions dans la loi", in *Langage du droit et traduction : Essais de jurilinguistique*, J.-C. Gémar (éd.), (Éditeur officiel du Québec, 1982) ٢٧

<sup>18</sup> Ali bin Muhammad bin Ali al-Sharif al-Hasani al-Jurjani, *The Book of Definitions*, ed. Muhammad Abd al-Rahman al-Mar'aashli (Beirut, Lebanon: Dar al-Nafa'is, 2012).



understanding depends on knowing something else. He also divides it into “real definition” and “verbal definition,” where the former means giving a term a definition different from its real meaning, and the latter means when the meaning of a term is already clear and is further clarified using another, more precise term.

The definition is a logical method since it enables us to look for the essence of things before differentiating and producing them. The definition also helps develop new scientific terminology to extend the verbal system, clear up any confusion, and explain the terms’ significance.<sup>19</sup> Thus, a definition is the conception of a thing in mind regarding its singular, compound, essential, and accidental qualities.

In his book “كشاف اصطلاحات الفنون”<sup>20</sup> [Arts Terms Explorer], Al-Tahaoui included some definitions derived from different fields of knowledge for Arabs, it is to refer to something different from its present state. Moreover, according to *Kalām* scholars (*Al-mutakallimīn*) and logicians, the path leads to the conceptual requirement.

In determining the meaning of the definition, Aristotle focused on the essence of the thing and sought to codify its norms to establish the pillars of his theory of expressions or words: gender, specificity, definition, and presentation. Arabic logicians emphasized distinguishing it from the genus-differentia, where the former “is intended only to collect or clarify the image of the thing in the mind,” while the latter “indicates the essence of the thing and consists of gender and differentia.” “Every genus-

---

<sup>19</sup> Retrieved April 15, 2022.

<https://www.marefa.org/%D8%AA%D8%B9%D8%B1%D9%8A%D9%81>

<sup>20</sup> Muhammad Ali Al-Farouqi Al-Tahouni, *Explorer of Terms of Arts and Sciences*, ed. Rafik Al-Ajam, 1<sup>st</sup> ed, (Library of Lebanon Publishers, 1996) 421.

differentia is thus a definition, but not every definition is a genus-differentia.”<sup>21</sup>

The definition is closely related to the essence and its essential qualities. Therefore, the ancient Arabs acknowledged its difficulty, as Ibn Sina puts it, in this regard: “...definition is like something impossible for humans, whether it is genus-differentia or a description.”<sup>22</sup>

In general, it is possible to distinguish between different types of definitions. The most important of which are:

- 1 Reference definition: it links the word to the reference, and it is divided into three parts:
  - Sign definition refers to words using a picture, scheme, or illustration.
  - Descriptive definition: it explores the peculiarities that view the physical appearance of the defined object. It is established that this type does not rise to the level of the ideal definition because it does not say anything about the meaning of the expression required to be defined. If we define the parliamentary representative as a Parliament guest, the identifier does not explain the meaning of the definition.
  - Extensional definition: It identifies, using reference and description, a group of individuals to whom the concept applies.
- 2 Operational definition: it defines a word or a term by highlighting its functional significance. It defines vocabulary within a set of operations, like when we

---

<sup>21</sup> Toubi Lahsen, “Terminological Definition in Some Arabic Dictionaries: Defining the Pragmatic Term as a Model”, *Network of the Arabic Electronic Voice*, May 07, 2008.

<sup>22</sup> Jaafar Al-Yassin, *Annual Logic* (Beirut:Dar Al-Afaq Al-Jadida publications, 1983) 27.

See: Abdel -Ali Al -Wadaghairi, *The issues of the Arabic dictionary in the writings of Ibn al -Tayyib al -Sharqi* (Rabat: Okaz publications, 1989) 8.

Véronique. G , "Évaluation des Définitions d'ouvrages", *Meta*. 42. N° 2 (1997).

define (the computer) as a tool targeting fast computing systems.

- 3 Contextual definition: It is the definition of a term in a unique context or within a specific field of knowledge.
- 4 Stipulative definition: also called (idiomatic definition), it is defining a term with an expression that has a specific significance and functions as an identifier. Furthermore, the use of these expressions depends on what they are stipulated to mean. For instance, in scientific language, the scientist creates a signifier that changes the usage meaning without his creation being objected like when physicists talk about the “charm” of the atom, and no one has the right to object to this expression.
- 5 Substantial definition: it explores the core peculiarities of the thing in terms of gender and separation. Proponents of this type of definition assume that this logical definition achieves the reality of things, and they assert the existence of a correspondence between the defining features of the word and the properties of the thing. The following phrase: (a rational animal) is an actual definition of man, while the claim that he is (a featherless biped) is an unreal definition because it focuses on human descriptions, not on his essence or gender (animal), nor his unique characteristics (sane).
- 6 Analytical definition: It gives specific characteristics or features using previously known terms and phrases: for instance, if we explain the word (widow) with “the wife whose husband died.”
- 7 Definition using synonyms: It replaces the identifier with one word because they both share a connotation.
- 8 Definition by contrast: This type demands that the two phrases belong to the same paradigm in the broad sense of the word. It is occasionally used, despite its difficulty, as when we say (virgin land): land that has not been plowed.

- 9 Definition by inclusion: This is when the definition includes what is indicated by the gender of the identifier.
- 10 Definition by implication: this is when the definition includes evidence of the gender of the identifier.
- 11 Morpho-semantic definition: It depends on the etymological connections between the identifier and the identified since this enables comprehension of the connections between certain words belonging to the same family. For instance: Whiteness: white color.
- 12 The encyclopedical definition includes, in addition to the defining criteria, a series of peculiarities describing all or part of the knowledge of the defined term.
- 13 Defining the example: it is used primarily in the entries of grammatical expressions.
- 14 Dictionary definition: To be familiar with the idiomatic use of the concept and understand its content and distinguish it from other concepts, the dictionary definition uses all the methods above to describe the content of the term and make it clear and understandable to the dictionary user. For example, (the tongue): a long movable fleshy body in the mouth used for tasting, swallowing, and speaking. This entry combines definition by implication, description, and operation.

If we refer to legislative drafting guides, we find that the guide to legislative drafting in the Emirate of Dubai<sup>23</sup> defined definitions as "the text contained in the legislation, through which the intended meanings of words and phrases used in the legislation are determined, and the definition is the specification of a given meaning to each specific word or phrase when its meaning is necessary to understand and apply the legislation, or if there is any

---

<sup>23</sup> Issued by the Supreme Committee for Legislation in the Government of Dubai, drawn up by Counselor Muhammad Salah Al-Atiwi, 2019, 100.

other circumstance where the meaning of the word or phrase is required to be known."

As for the Kingdom of Jordan's legislative drafting guide,<sup>24</sup> definitions are defined as "a text included in the legislation that indicates the intended meaning of a word or term, and the definition is to specify the meaning intended by the legislator by using a word or term through determining its significance...."

The Egyptian guide to drafting laws stated that it is unnecessary to mention the definitions except when the term's meaning is vital to understanding and applying the proposed legislation or if the term is used repeatedly in the legislation.

According to those above, the definitions in legal drafting are all those meanings that the legislation establishes to prevent confusing them with other meanings.

### **The importance of definitions in drafting**

Inserting definitions in any legal text has become a phenomenon in legislative drafting at the beginning of every law after the preamble. A separate article is designed to take the number 1, or the definition may be placed with the first term intended to be defined in the legislation.

The definition helps achieve several objectives that consist basically in avoiding ambiguity regarding the terminology used by the legislator and standardizing the vocabulary with other terms used in other texts, such as the term "administration" or "trustee," regarding the implementation and application of a specific law that differs from one law to another depending on its scope and field of application. If it is related to the labor law, it refers to the Ministry of Labor. Whereas, if the legal text regulates, for example, hotel contracts or travel agencies, then the administration here is, of course, the Ministry of Tourism.

---

<sup>24</sup> *Guide to Legislative Drafting* (The Hashemite Kingdom of Jordan: Arabs Woman's Legal Network, 2010) 67.

Additionally, the definition is utilized to clearly define each term's meaning so that the legal researcher can identify it from other words with similar meanings and set its semantic bounds and dimensions.

Moreover, definitions help avoid repeating the terms and reduce the number of sentences, predominantly if the term consists of many words.<sup>25</sup> For instance, instead of using the term the “National Authority of Consumer Protection” or the “Higher Authority of Audiovisual Communication,” he can use the word “authority.” Notably, the Canadian Law of Interpretation<sup>26</sup> outlined in the first paragraph of its article No 23 regarding definitions that this latter applies to all laws, which means it applies to all laws that share the same field or regulate the same subject to achieve harmony between all legal texts. The previously mentioned law also emphasized that definitions are formulated explicitly without contradicting the context in which they occurred. Here is the first paragraph of the Canadian Law of Interpretation:

(1) The following definitions apply to all texts:

**Diplomatic or consular agents:** they include ambassadors, envoys, ministers, charges d'affaires, advisers, secretaries, attachés, consuls general, consuls, vice-consuls and their deputies, deputies of consular agents, high commissioners and permanent delegates and their deputies. (diplomatic or consular officer)

*bank figuring in annex I or II of the Bank Act. (bank)*

*Canada, it is established that Canada's territorial sea and internal waterways are included in its territory.*

**Security and sureties:** The use of security or sureties or terms of a similar meaning implies that the corresponding security is sufficient and that, unless

---

<sup>25</sup> Lord Halsbury, *Laws of England*, (Londres: Butterworths, 1907) CCXVI.

<sup>26</sup> Law of Interpretation (L.R.C. (1985), ch. I-21)

expressly provided otherwise, only one person is required to provide it.

**Commonwealth or Commonwealth of Nations, British Commonwealth or British Commonwealth of Nations:** Association of countries listed in the annex.

**Commonwealth and Dependent Territories** The countries of the Commonwealth and their colonies or possessions, as well as the States or territories placed under their protectorate, their condominium, their trusteeship, or, in general, their dependence.

**County:** includes two or more countries united for purposes to which the enactment relates

**Contravene:** Failure to comply with a text is assimilated to a contravention.

**County court** [Appealed, 1990, ch. 17, art. 26]

**Federal court** [Appealed, 2002, ch. 8, art. 151]

**Statutory declaration:** Declaration made under section 41 of the Canada Evidence Act.

**Two justices** At least two holders of this function together or acting together.

**Canadian waters:** namely, the territorial sea and internal waters of Canada.

*Internal waters*

a) in relation to Canada, means the contiguous zone of Canada as determined under the *Oceans Act*, and

b) in relation to any other state, means the contiguous zone of the other state as determined in accordance with international law and the domestic laws of that other state;

**writing**, or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, or photographed.

**United States** means the United States of America

Definitions are essential in achieving legal texts' coherence and cohesion through reference. Each definition refers to an identifier; when it is mentioned again in the

text, it refers to the already stated definition. As a result, the legal text achieves meaning consistency, which contributes to the meaning stability of the legal text.

Although definitions have great significance, as mentioned earlier, a jurisprudential tendency<sup>27</sup> calls for avoiding the procedure of including them in-laws since doing so might result in making those legal texts a legal dictionary that is incorporated into the legislation. Additionally, some legislation, including Egyptian<sup>28</sup>, Palestinian, and the Arab guide for legislative drafting<sup>29</sup>, recommended avoiding using definitions unless they are indispensable and required to appear in the text, like in cases of scientific and technical terms<sup>30</sup>. Alternatively, in-laws that contain lots of chapters and articles in order to clarify the intended meanings of these definitions and when there is a need to set them because, according to these referenced meanings, definitions negatively affect the addressees of the legal text, especially when there is a large number of defined terms, as the addressee may find himself compelled to view of them when searching about the meaning to be reached.

Moreover, the argument made by those who are against using definitions in legislative drafting is that they may be extensively used, which would broaden the law's applicability and include a category that has nothing to do with it. For instance, Iraq's Anti-Terrorism Law No. 13 of 2005 broadened the definition of terrorism to include innocent individuals who had nothing to do with the crime:

---

<sup>27</sup> Michel SPARER et Wallace SCHWAB, *Rédaction des lois : rendez-vous du droit et de la culture*, (Québec : Éditeur officiel du Québec, 1980) 37-44 ; L.-P. PIGEON, *Rédaction et interprétation des lois*, 3e éd., (Québec : Publications du Québec, 1986) 58-60.

<sup>28</sup> Maged Sobhi, *Guide of the Republic of Egypt for Legislative Drafting*, *Supra* note 22 at 7.

<sup>29</sup> Algeria's Arab Guide to Legislative Drafting, p. 48

<sup>30</sup> Iraqi Legislative Drafting Guide, the Iraqi Council of Representatives, 48.



“Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator [Article (4)].”

As a result, the text loses meaning and negatively affects the society's citizens.

Therefore, some proponents of this trend<sup>31</sup> who oppose the inclusion of definitions at the forefront of legal texts suggest using them in two situations: the first, when resolving a doctrinal dispute over a particular term, and the second, when it concerns a definition that differs from what is currently agreed on.

### **Norms of including definitions in legislative drafting**

In order to achieve the goal for which they were included, the drafting of definitions requires rules and norms, whether at the level of the form or the level of the essence or topic. It is essential to distinguish between “word” and “term” since the former refers to the commonly used broad language, while the latter refers to the specialist technical terminology used in fields like physics, engineering, or medicine. ...<sup>32</sup>

There are different methods of giving definitions, like defining a word or phrase's meaning without altering its usual meaning; for instance, salary is what the employee is paid by the employer under the employment agreement, whether on a daily or weekly, or monthly basis. Alternatively, giving a limited definition, for example, the term "fruits" refers to bananas, apples, and pears, and the word "minister" refers to the minister of justice. Alternatively, the definition provided may also come in an

---

<sup>31</sup> Abdul Qadir Al-Sheikhly, *Legal Drafting: A Legislative Jurisprudence of Advocacy*, 94.

<sup>32</sup> Voir Larousse: « Mot considéré dans sa valeur de désignation, en particulier dans un vocabulaire spécialisé : Terme de chimie ».

expanded manner by adding a new meaning that is not covered by the everyday use of the word, for example, defining the house as every house or part of a house, building, or any other construction, whether all or part of it is above or below the ground and built with fixed or dismountable building materials where people reside or spend the night or use it only during the day. This definition expanded the concept of a "home" to include a variety of habitations, including caves in the mountains, shanty houses, caravans, and tents used by nomadic shepherds.

For instance, when defining the idea of voters under the election law, the legislator typically uses the broader definition to include as many people as possible to increase the percentage of citizens who participate in politics by voting.

On the other hand, the legislator may adopt a straightforward style by shortening long words. For example, instead of repeating the name of the Minister of Social Development, Family, and Childhood every time, he can mention "minister."

We will deal in this part with the norms that the legislator must respect when drafting definitions in laws.

### ***Formal norms***

Drafting definitions necessitates a set of material norms concerned with the formal template in which the definition should occur. For instance, their order in the law necessitates putting them at the beginning of the text or, when needed, in the subdivision where the use of defined terms is limited, according to the alphabetical order rule or according to the occurrence of the definition in the text laws and regulations.

Usually, the article of definitions begins with the sentence: "The following terms and phrases, wherever they appear in this law, decree, judgment, or rule, shall have the meanings specified to each of them, and the

definition is then given for each word. As for the form of the word, the singular form should always be used; and the plural form should only be used in exceptional situations, such as when the singular form of the word does not exist, or uncommon, or has a different meaning (such as "costs" or "laws"), or when the term is never used in the singular form in the text (for example, "internal waters" or "financial statements").

The emphasis on defining a word or a phrase is when they are used more than once in legislation. The word mentioned only once is defined in the article where it occurs and does not need to be defined at the beginning of the legal text because it is not repeated.

The drafter should also avoid mentioning definitions in the articles of the issuance law because it does not concern definitions.

In order to avoid confusion between definitions, it is important not to combine more than one definition in one sentence. For example, the ministry means such and such, and the body in charge of oversight means such and such.

Moreover, expressions like "unless the context of the text indicates otherwise" should not be used at the beginning of a definition because it may lead to a misinterpretation and may even be contradictory. These expressions are not accurate and precise and can confuse the addressees.

### **Core norms**

The definitions content is limited to what is necessary to avoid ambiguity and should be logically linked to the concept of meaning. Indeed, the definition should not contain any objective element. The definition affects the scope of provisions in which the defined term appears. It is difficult to deny the close relationship that links it to the normative content of the text.

In any case, the drafter of the text should avoid including a core element in the definition, even if he does so only to determine the scope of the text. Moreover, since the reader or addressee of its provisions expects to find an interpretation rule and not an objective condition in it, defining the scope of application is much more in place in a separate provision, even if it is under the same title (such as “definitions and scope”). Practically speaking, it is not always easy to distinguish between what may be included in a definition and what should be the subject of an objective judgment. In case of doubt, the latter is chosen.

In order to come out with the best definitions, it is preferable to ultimately determine them and then draft them after drafting the fundamental texts by creating a preliminary list of terms that need to be defined during the drafting of the core texts. This helps to establish the proper meaning for the phrase that is meant to be assigned with a specific meaning consistent with the legislation’s goals.<sup>33</sup> It is also essential to avoid including a definition different from a word's or phrase's ordinary meaning.

This also applies when defining a term or phrase. Whenever these words or phrases are used in the law, they must be utilized following the definition provided for them in the definitions article.

In this definition, the legislator often utilizes verbal formulas such as: “intend – mean – consider – is...”. Considering definitions aids the judicial system by helping it use the terms in question correctly and clearly<sup>34</sup>. Furthermore, there is no doubt that this issue is deemed as a factor of stabilizing and

---

<sup>33</sup> *Guide to Legislative Drafting* (The Hashemite Kingdom of Jordan: Arabs Woman’s Legal Network, 2010) *Supra* note 21 at 6.

<sup>34</sup> Mathieu Devinat, "Les définitions dans les codes civils", *Cahiers de Droit*<sup>20</sup> (2005) : 519.

establishing terminology, like what is happening to determine the meaning of electronic crime and information piracy, as well as what is included in and excluded from internet crime. In this regard, the legislator or the drafter must utilize modern terms to keep pace with the developments in all fields, whether economic, social, political, or technological.

### **A general discussion on the practical importance of including definitions in legislative drafting**

Interest in defining a word or phrase by its repeated use in legislation has been discussed above. As for the word or phrase used once is defined by the article in which it was used, and it does not need to be mentioned at the beginning because it is not repeated.

When using the definition in legislation, it is advised to avoid including a definition foreign to the known meaning of a word or phrase. When defining a word or phrase, it must be proven that it is used according to the definition shown in the definitions article, wherever these words and phrases are mentioned in the legislation. Definitions play an essential role in achieving the coherence of legal texts.<sup>35</sup>

The definition has a semantic function in defining the names and what they mean to clarify the legal text in the minds of the addressees with its provisions. On the other hand, it achieves the coherence and molding of legal texts by referential linkage. Every definition refers to an identifier, and this identifier, when another mention is made of it throughout the text, it refers to the definition. Thus the continuity of meaning is achieved throughout the legal text and is more conducive to the stability of meanings.

When the regulator stipulates in the implementation system regulation at its beginning that: "The judicial sales agent is the one whom the Ministry of Justice authorizes to

---

<sup>35</sup> Crabbe, *Legislative Drafting*, (Cavendish Publishing, 1993). 71

sell the debtor's assets for settlement." The definition contained in this text of the word "judicial sales agent" remains dominant in the minds of those addressed by the provisions of the enforcement system whenever it is mentioned throughout it, which supports its cohesion. Most definitions in legal texts are idiomatic definitions. It is by defining the meaning and describing it in detail. The definition may appear in the legal text in form (a) is (b), that is: (a) means (b), that is, the definition is the whole definition. Thus there is an obligation when applying the rules and provisions contained in the law to include the definition of all parts of the defined meaning. An example is the provision: "The dispute of execution is the lawsuits that arise because of the execution and are related to the availability of the conditions for its validity and presented by the parties to the execution dispute or others."<sup>36</sup>

The definite "subject" is the same as the definition "predicate," The definition is the same as the definite and includes it all. In this definition, the legislator often uses verbal formulas such as: "intends - means - considers - is."

Attention to definitions guides jurisprudence and controls the meanings spread in the system. There is no doubt that this is a factor of stability and general restraint, and the effect of that is only apparent when there is disagreement or in the corridors of the courts and enforcement agencies, such as what is happening in defining the definition of the concept of the information network and the computer, and what goes into information crime and what comes out.

The science of drafting and interest in legal definitions is no longer formal but has become an urgent requirement. How we wished that these specialized topics would be studied in the postgraduate stages, such as the science of the legal text, then the science of legal drafting, then the drafting of legislation and contracts, where the

---

<sup>36</sup> As Article (35) of the Omani Civil and Commercial Procedure Code

development of legislation stems from the need of society and the establishment of the form of writing it as an idea local without attracting legislation from Arab countries, so our hands make the essence and form, but others depend on us in this field

The justice environment seeks this in light of the remarkable and tangible gradual development that now touches all spectrums of society, considering the development of the expert division apparatus in the Council of Ministers and the search for actual competencies that can create, establish, or even export. Knowledge is issued; the best knowledge is the law that has been and will remain a point. A balance between states and individuals, upon which civilizations are established, flourishes public life.

### **Conclusion**

From those above, we conclude that using legal terms in legislative drafting is no more just an additional step or an ideological luxury. However, it instead became an urgent requirement and a technical necessity to set the meanings included in the legislation. It helps standardize vocabulary, avoid repetition, be transparent with meanings, make it easier for addressees to grasp the legal norms, and provide consistent justifications to those implementing them.

Adding a legal definition to the legislative process to give it a legal meaning will render the notion of the law permanently rigid and inflexible.<sup>37</sup> Unlike jurisprudential definitions, which can sometimes alter the real meaning of the term for jurists, any definition would be compatible with the legislative pace of keeping up with societal advances if it became out of date or required additions.

In this regard, we recommend, on the one hand, the drafting of a unified Arabic guide on legislative drafting, in

---

<sup>37</sup> J.E.C. Brifri .F," les langues du Code civil du Québec" dans : P.-A. COTE, (dir.) *Le nouveau Code civil: interpretation et application* (Montreal:Themis, 1993) 134.

which the legal definitions' norms are included, and on the other hand, we suggest avoiding ambiguous or inaccurate phrases that may confuse addressees of the text, such as: "unless the context of the text indicates otherwise." which may lead to a misinterpretation.



## BIBLIOGRAPHY

- “Guide pour l’élaboration des textes législatifs et réglementaires”, Élaboré par le Conseil d’État et le Secrétariat général du Gouvernement(SGG) est publié par la Documentation française disponible et tenu à jour sur le site public : [www.legifrance.fr](http://www.legifrance.fr).
- Al Mazine, Mohammed, ALAQD, <https://theaqd.com/>.
- Al –Wadaghairi, Abdel –Ali. *The issues of the Arabic dictionary in the writings of Ibn al-Tayyib al–Sharqi*. Rabat: Okaz publications, 1989.
- Ali Ahmed Hassan. *Drafting the legislative text*. *Journal of Legal Sciences* 34.1, 2019.
- al-Jurjani, Ali bin Muhammad bin Ali al-Sharif al-Hasani. *The Book of Definitions*, ed. Muhammad Abd al-Rahman al-Mar’aashli. Beirut-Lebanon: Dar al-Nafa’is, 2012.
- Al-Mu’jam al-Wasit, 4th ed. Egypt: Academy of the Arabic Language, 2004
- Al-Sawy, Ali, “Legislative Drafting for Good Governance: A Proposed Framework for Arab Countries.” Paper presented at the Arab Parliamentary Symposium entitled: *Towards Developing the Legislative Drafting of Arab Parliaments*, Lebanese Parliament, February 3-6, 2003..
- Al-Sheikhly, Abdul Qadir. *Legal Drafting: A Legislative Jurisprudence of Advocacy*.
- Al-Tahouni, Muhammad Ali Al-Farouqi. *Explorer of Terms of Arts and Sciences*. ed. Rafik Al-Ajam, 1st ed, Library of Lebanon Publishers, 1996.
- Al-Yassin, Jaafar. *Annual Logic*. Beirut:Dar Al-Afaq Al-Jadida publications, 1983.
- Brifri, F J.E.C. “les langues du Code civil du Québec” dans : P.-A. COTE, (dir.) *Le nouveau Code civil: interpretation et application*. Montreal: Themis, 1993.
- C.Dick, Robert. *Legal drafting*. 2nd ed., Toronto: Carswell, 1985.
- Chevallier, J.. “L’évaluation législative : un enjeu politique”, in, *Contrôle parlementaire et évaluation*, ed. J.-L.

- Bergel, Alain Delcamp, Paris: La documentation française, 1995.*
- Cornu, Gérard. "Les définitions dans la loi." in Langage du droit et traduction : Essais de jurilinguistique, J.-C. Gémar (éd.), Éditeur officiel du Québec, 1982.*
- Crabbe, Legislative Drafting, (Cavendish Publishing, 1993)*
- Devinat, Mathieu, "Les définitions dans les codes civils". Cahiers de Droit 25:519. (2005)*
- Dictionnaire de la culture juridique. Stéphane Rials and Denis Alland, Quadrige-dicos poche, 2003.*
- Dictionnaire Larousse.*
- Gény, François. Science et technique en droit privé positif : nouvelle contribution à la critique de la méthode juridique. Paris: Sirey, 1914.*
- Guide to Legislative Drafting. The Hashemite Kingdom of Jordan: Arabs Woman's Legal Network, 2010.*
- Hassan, Khalid Jamal Ahmed. "Principles of Legislative Drafting," Legal Journal no 4 (June 2015): 20.*
- Jedidi, and Daa El Din Ramadan. "Quality Controls of Legislative Drafting." Journal of Rights and Freedoms 10.2 (2022)*
- Jurisprudential trends in the divisions of legislative drafting. , 2016, 8.29/1.*
- Kazem Abdullah Hussein, and Shaker Nuri Ismail. "The origins of the legislative drafting of the penal procedural rule." Journal of Legal Sciences 34.5 (2019)*
- La légistique ou l'art de rédiger le droit, (Le courrier juridique des finances et de l'industrie juin 2008).*
- Lahsen, Toubi. "Terminological Definition in Some Arabic Dictionaries: Defining the Pragmatic Term as a Model". Network of the Arabic Electronic Voice, May 07, 2008.*
- Law of Interpretation (L.R.C. (1985), ch. I-21)*
- Lord Halsbury, Laws of England. Londres: Butterworths, 1907. Retrieved April 15, 2022.*
- <https://www.marefa.org/%D8%AA%D8%B9%D8%B1%D9%8A%D9%81>*

- Sabra, Mahmoud Muhammad Ali. Modern Trends in Preparing and Drafting Laws. Egypt: Edition and publisher unavailable.*
- Sharaf El-Din, Ahmed. The First Legal Drafting of Contracts. Cairo: Wahba Hassan Sons Press, year of publication unavailable.*
- Sobhi, Maged. Guide of the Republic of Egypt for Legislative Drafting. Egypt: the Ministry of Justice, 2018.*
- Véronique. G . "Évaluation des Définitions d'ouvrages". Meta. 42. N° 2 (1997).*

*This page is intentionally left blank*