

# Legislative Guidelines: content and rationale

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# Outline

- 1 Rationale of the Legislative guidelines
- 2 The contents of the Guidelines

This discipline, my King, will make the Egyptians wiser and will improve their memories: my invention is a recipe for both memory and wisdom.

(Theuth, the god living at Naucratis in Egypt, whose sacred bird is the ibis.)

The essence of the law is that it is clear and concise, readable and easily understood by the well trained and disciplined in the law and by the “ordinary man in the street”.

(V.C.R.A.C. Crabbe)

# Legislation and ICT

Legislation is becoming more and more complex and difficult to manage

- More laws
- Lower quality
- Increased speed of change
- More dependencies within legislation and with other legal sources

ICT offers an unprecedented opportunity

# Why guidelines on legislative drafting (1)?

- Openness
  - Most drafting knowledge is passed down in informal ways (drafters as the high priest of the mystery)
  - We need to make this knowledge explicit and open to all
- Simplicity
  - Traditional drafting style is complex and legalistic
  - We need to make it simpler and more concise

# Why guidelines on legislative drafting (2)?

## Clarity

- Often legal text are ambiguous, references are undetermined, the effects of multiple modifications cannot be easily assessed
- We need to ensure that everybody can easily know what it the law in force

## Computer support

- When we cannot figure out the structure, the content, the modifications, computers cannot help us
- We need to improve drafting so that we can use ICT for accessing and processing legal documents

# History of the guidelines for Africa

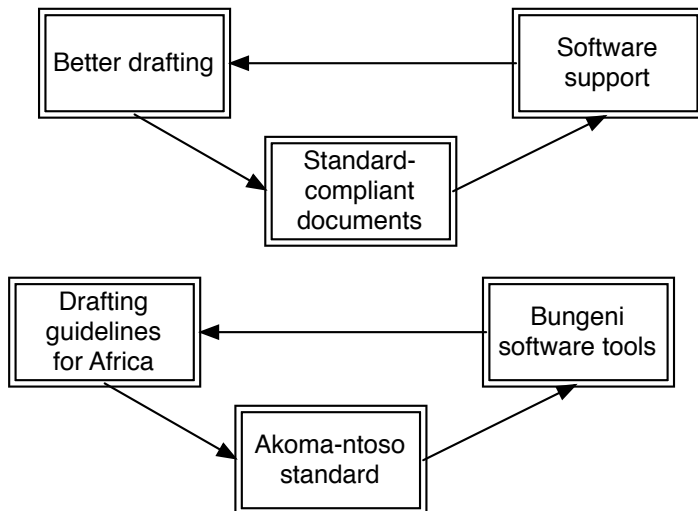
- The idea: better drafting and better computer support (according to Akoma-Ntoso standard)
- Abuja conference (March 2007): first preliminary draft, welcomed by the attending Parliaments
- Pretoria meeting of drafters from many African countries (December 2007): agreement on a shared document
- Internet discussion: observations and many revisions
- Cairo (June 2008): the final text (in 5 languages)

# The rationale for the guidelines for Africa

## Contributing to

- quality of African legislation,
- harmonisation of African laws,
- the development of advanced legal information services,
- support economic integration

# Integrating objectives and technologies



# The contents of guidelines for Africa

- General principles
- Linguistic aspects
- Structure of legislative Acts
- Normative references
- Modifications
- Amendments
- Norms over time
- Glossary

# General principles

## How

- An Act must be clear, simple, and precise.
- An Act should take into account both the needs of the addressees, and of the persons responsible for putting the Act into effect.
- An Act should be concise and its content should be as uniform as possible.

## Why

- facilitate reading and understanding
- reduce costs and uncertainty

# Examples

- **Negative example**

(a) Hereinafter, no employee or other public official or any other corporation or individual in a public office being at the same time open to the public is authorized, permitted, or allowed to enjoy any tobacco product or other smoke producing leisure activity. Violators and transgressors as stated above shall be punished and deterred by being subject to a fine in an amount that is adequate and necessary, not to exceed 1000 Egyptian pounds

- **Positive example**

(a) Whoever smokes in a public office open to the public shall be fined up to 1000 Egyptian pounds

# Linguistic aspects

## How

- Basic units should be simple, syntax should be linear
- Terminology should be coherent
- Different language versions should have the same structure and meaning

## Why

- Facilitate understanding and interpretation
- Prevent ambiguities
- Enable computer retrieval and support

# Examples

- **Negative example**

(a) No tax shall be imposed on red, white, and black flags.

- **Positive example**

(a) No tax shall be imposed on red flags, white flags, or black flags.

(a) No tax shall be imposed on a flag that is red, white, and black.

# Examples

- **Negative example**

(a) Wherever the term “chicken” is used in the Chicken inspection Act, such term shall be deemed to refer to domesticated rabbits

- **Positive examples**

(a) The Chicken inspection Act applies to domesticated rabbits in the same manner as it applies to chicken.

(a) The Chicken inspection Act is amended by striking “chicken” each place such term appears and inserting “chicken or domesticated rabbit”?

# Structure of legislative Acts

## How

- All Acts must be structured: front-matter, basic-units (with higher and lower divisions), end-matter, annexes
- The basic-units of an Act should not include provisions having a non-normative nature
- Definitions should be provided when necessary

## Why

- Facilitate reading and referencing
- Facilitate standard-based tagging and computer processing

# Examples

- **Negative example**

This Act aims at improving schools, since children need to have a better education than they are currently receiving, as often remarked by our honorable President

- **Positive example**

The purpose of this Act is to improve school facilities

# Normative references

## How

- References should be kept to a minimum
- Internal and external references must be precise, to enable unequivocal identification.
- Circular references, serial references, and relative references should be avoided.

## Why

- To enhance readability
- To prevent uncertainties
- To enable automatic detection, tagging, and navigation

# Examples

- **Negative example**

Section 3. Tax deductions include all cases referred to in the section above as well as all cases indicated in the Family Taxation Act

- **Positive example**

Section 3. Tax deductions include all cases in Section 2 and the tax exemptions listed in Section 3.2 of the Act 33 of 2005 (Family Taxation Act)

# Modifications

## How

- identify clearly the result to be produced and choose the correct linguistic expression and legislative technique.
- whenever possible, explicitly amend the text.
- modifications should be explicit and clearly detectable, and expressed using a standard form.

## Why

- enable reader to identify unambiguously the law in force
- enable computers to identify modification and produce consolidated text

# Examples

- **Negative example**
  - (a) All provisions incompatible with the present Act are abrogated
- **Positive example**
  - (a) Act 22 of 2002 is repealed.
  - (b) The following provisions are repealed: Section 3 of Act 44 of 2004, etc.

# Examples

- **Negative example**

(a) Section 3 of Act 34 of 2002 is modified by inserting the words “and tax exemptions”

- **Positive examples**

(a) Section 3 II of Act 34 of 2002 is amended by inserting “and tax exemptions” before the period.

(a) Section 3 II of Act 34 of 2002 is substituted with the following:

Section 3 II. This Act applies to all tax exceptions and tax exemptions.”

# Amendments

## How

- All modifications of the provisions of an existing Act should be performed by amending that Act
- An amendment should be explicit, concern a whole textual unit, and specify the text to be inserted, added, deleted, or replaced in the amended Act.

## Why

- To ensure readability and coherence (all information inside the same consolidated text)
- To enable automatic construction of consolidated texts

# Examples

- **Negative example**

(a) In Section 1 of Act 1, the following words are added:  
“open to the public”

- **Positive examples**

(a) Section 1 of Act 1 is substituted with the following:  
“Section 1. Regulation of smoking  
(a) Smoking in public offices open to the public is  
forbidden”

# Norms over time

## How

- An Act enters into force on the date specified in it, or, after a period following that of their publication
- Provisions providing dates, time-limits, exceptions, derogations and extensions, transitional provisions and final provisions should be drafted in precise terms

## Why

- Removing uncertainties on the applicable law
- Providing point-in-time legislation

# Examples

- **Negative example**  
This Act enters into force when appropriate accompanying regulations will be issued
- **Positive example**  
This Act enters into force on 1.1.2009

# The future of the Guidelines for Africa

- Guidelines are available through the Akoma-Ntoso, they will be available also through APKN portal
- Revise and harmonise linguistic versions, develop local extensions
- Develop knowledge about their application (examples, question and answers, comments)
- Establish a group of African drafters (and tradition specific groups) involved in developing drafting resources
- Create a forum for discussing drafting issues

# What else for legislative drafting in Africa?

- Build a repository of legislative drafting resources and links to what is available on line
- Develop training materials on legislative drafting and relationship with existing providers of training materials
- Develop guidelines for drafting analytic reports (as well as repositories/links to resources and training materials)
- Develop tutorials for policy makers on the legislative process (how to make best use of drafters and drafting resources)

# Conclusion

- We need to sustain the virtuous development circle connecting good-drafting, XML standards, and software support