METHODOLOGY FOR THE DEVELOPMENT AND SUCCESSFUL IMPLEMENTATION OF QUALITY VETERINARY LEGISLATION

JULY 3-7, 2017, LUSAKA, ZAMBIA

Graham Hamley
OIE Legal Consultant
Content

1. Understanding legislation
2. Drafting roadmap
3. Achieving quality
UNDERSTANDING LEGISLATION

What is it and why do we need it?
What is ‘law’?

- International law
- Constitution
- Primary legislation (Law)
- Secondary legislation (Regulations)
- Guidelines & standards
- Others
- Policy

✓ True
✗ False
Hierarchy of legislation

- Constitution
- Act/Law/Code (primary legislation)
- Implementing/Subsidiary Regulations (secondary legislation)
Constitution

Functions

✓ Supreme legal instrument
✓ Establishes governmental structure
✓ Delineates government power
✓ Sets out fundamental freedoms and rights
✓ Establish country’s identity
Primary legislation

Enacted by Legislative Branch

Functions

✓ Develop institutional frameworks
✓ Create powers of public authorities
✓ Impose prohibitions/obligations
✓ Establish infringements and sanctions
✓ Establish fees/taxes
Secondary legislation

Enacted by **Executive Branch** via legal anchor

**Functions**

✓ Prescribe procedural and technical detail

✓ Regulate new fields not covered under *primary* legislation

✗ Prescribe powers and responsibilities
Why is legislation important?

“Good governance is a recognised global public good and is of critical importance (...) Legislation is a key element in achieving good governance”.

(OIE Terrestrial Animal Health Standards Commission)
LEGISLATIVE DRAFTING ROADMAP

Prerequisites, key steps and considerations
Prerequisites

Without all of the above, a law is not implementable
1. Good policy

- What is the problem that needs to be addressed?
- What is the desired policy objective?
- What is the best strategy to achieve this objective?

Align with COMESA Regional Livestock Policy
2. Good process

Preliminary assessment

- International legal framework
- Domestic legal framework
- Administrative structure
- Institutional structure
2. Good process

*Prelim. assessment – International law*

International  Regional  Bilateral
2. Good process

Prelim. assessment – International law

WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

Article 2: Basic Rights and Obligations
“2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health…”

Article 3: Harmonization
“2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this agreement.”

Annex A: Definitions
“International standards, guidelines and recommendations…for animal health and zoonoses, the standards, guidelines and recommendations developed under the Auspices of the International Office of Epizootics (OIE).”
2. Good process

Prelim. assessment – International law

“…harmonization of trade laws and commercial practices is an important ingredient of regional integration, without which meaningful economic integration cannot be achieved.”


Possible techniques:
1. Multilateral agreement
2. Model legislation

Example: COMESA harmonization of seed legislation
2. Good process

Prelim. assessment – International law

Areas for regional harmonisation include:

- Transportation requirements
- Import/export requirements
- Sanitary measures
- Reference laboratories

Do not transplant legislation from one jurisdiction into another
### 2. Good process

*Prelim. assessment – Domestic law*

Conduct a legislative analysis to research and compile existing legislation **in all related areas** (not solely areas under review)

<table>
<thead>
<tr>
<th>Areas to consider include</th>
<th>Issues to identify</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Biosafety</td>
<td>- Gaps</td>
</tr>
<tr>
<td>- Wildlife and environment</td>
<td>- Overlaps</td>
</tr>
<tr>
<td>- Food safety</td>
<td>- Inconsistencies</td>
</tr>
<tr>
<td>- Trade of food products</td>
<td>- Weaknesses</td>
</tr>
<tr>
<td>- Slaughterhouse control</td>
<td>- Potential areas of conflict with proposed legislation</td>
</tr>
</tbody>
</table>

**Hint:** *When conducting a gap-analysis, the [OIE Terrestrial Animal Health Code](https://www.oie.int/) may be used as a checklist or benchmark*
Assess *practical* impact of legislation

Ineffectiveness may be due to:

- Lack of **capacity** to conform
- Poor **awareness or understanding** of legislation
- Insufficient **enforcement** capacity
2. Good process

Pay special attention in **decentralized** or **federal** states. E.g.:

<table>
<thead>
<tr>
<th>Central/federal government</th>
<th>Regional/state government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human health</td>
<td>Animal health</td>
</tr>
<tr>
<td>Food safety</td>
<td>Animal production</td>
</tr>
</tbody>
</table>

**Required:**
- **Strong coordination** and cooperation
- Clearly defined **roles and responsibilities**

**Proposed:**
- Central government prescribes minimum requirements.
- States may choose to enact stronger systems.
2. Good process

Prelim. assessment – Institutional structure

- Identify key actors and institutions.
- Map out institutional mandates to search for areas of overlap or gaps.
  - Gaps can render mechanisms ineffective.
  - Overlaps increase cost, bureaucracy, and cause confusion.

<table>
<thead>
<tr>
<th>Ministry of Health</th>
<th>Ministry of Agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food safety</td>
<td>Animal production (and slaughter)</td>
</tr>
<tr>
<td>Drugs (including VMPs)</td>
<td>Animal health</td>
</tr>
</tbody>
</table>
2. Good process

Key regulatory decisions

General considerations

- “Patch” existing law, or start again?
- Pursue tiered approach by implementing new regulatory framework (e.g. 10 years), while simultaneously pursuing quicker parallel strategies to address issues in intervening period.

Specific considerations

- Select the type of legal instrument(s)
- The scope of the legislation
- Define regulatory objectives
- Consider mechanisms for ensuring appropriate implementation
- Identify competent authority
- Outline Actors’ Responsibilities
- Identify funding mechanisms
2. Good process

Robust drafting process

Ensure a transparent and iterative drafting process: this means nothing more than consultations

Consultations must:

✓ occur early in the policy development stage and throughout the legislative process
✓ include all concerned stakeholders (e.g. within ministry, between government entities, with public at large, and with legal drafters)
✓ be done using appropriate methods of communication
3. Good politics

Alignment with government agenda and political climate

Good relationships between veterinarians and lawyers (including legal drafters)
ACHIEVING QUALITY LEGISLATION

The pursuit of “quality”
What is “quality”? 
Key resource

K.L. Rosenbaum

Legislative Drafting Guide: A Practitioner’s View
FAO Legal Papers Online #64

Three types of quality:
1. **Form** – Format of the law
2. **Fit** – Harmony with legal system
3. **Style** – Careful use of language
1. Good form

Look for:

1) National form manual

2) Style trends in existing legislation

<table>
<thead>
<tr>
<th>Key considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Styles for numbering (“Article”, “Section”)</td>
</tr>
<tr>
<td>Formats for dates (10 June, June 10\textsuperscript{th})</td>
</tr>
<tr>
<td>How to write sums of money</td>
</tr>
<tr>
<td>Titles for legislation (long, short, numeric)</td>
</tr>
</tbody>
</table>

While these may seem trivial, they promote consistency and clarity
2. Good fit

Look for:

1) Requirements in Constitution
   - Legislation must not address more than one subject
   - The purpose of an Act must be expressly stated

2) National statutory interpretation law
   - Repeals: does repeal of primary law also repeal regulations?
   - Pronouns: do male pronouns apply to both males and females?
   - Plurals: do single pronouns also apply to groups?

If updating beware of cross-references
2. Good fit

Definitions:

- Ensure consistency with definitions in related legislation
- Crucial to understanding the legislation and aid in its construction
- Do not define terms unnecessarily
- Do not define a word or phrase in a manner that is far-removed from normal use
- In a single convenient location alphabetically or, if exclusive to a specific article, “For the purpose of this article, X means ….”
3. Good style

**Precise**
Must be sufficiently detailed to avoid ambiguity or confusion

**Accurate**
Information must be correct

**Clear**
Language must be as simple and concise as possible

Poorly drafted legislation may have two or less of these. Well drafted legislation **must have all three.**
3. Good style

Use simple language

Do not use unnecessary words

- Make arrangements for = arrange
- Give payments to = pay
- Null and void = void
- Establish and ordain = establish

Avoid legal jargon

"hereinafter", “aforesaid”, etc.
3. Good style

Use short sentences

Only convey one idea per sentence

BAD
“The producer shall submit a claim for compensation, and the competent authority shall quantify the compensation due within three weeks.”

BETTER
a) The producer shall submit a claim for compensation.
b) The competent authority shall quantify compensation due within three weeks.
Avoid passive language

Specify who is the subject of an obligation

BAD
“Notification of livestock movement must be submitted to the competent authority”.

BETTER
“Livestock keepers must submit notification of livestock movements to the competent authority”.
3. Good style

Use words and phrases consistently

The registrar shall keep a register of semen collectors, embryo collectors, (…)

Upon payment of the prescribed fee, the inventory shall be available for inspection.

In the above example, are the “register” and “inventory” the same document?
3. Good style

Draft in the present tense

- “Shall” ought to be preserved to denote an obligation.
- If past or future tense is necessary, use “will” instead of “shall”.
- Past tense creates uncertainty and risks retroactivity.

BAD
A person who shall keep twenty or more animals shall apply for a permit.

BAD
A person who has kept twenty or more animals shall apply for a permit.

BETTER
A person who keeps twenty or more animals shall apply for a permit.
3. Good style

State exceptions clearly

Introduce exceptions to avoid oversight

BAD
1) All farmers must wear overalls in the field;
2) Subsection 1 does not apply to rice farmers.

BETTER
1) Subject to subsection (2), all farmers must wear overalls in the field;
2) Subsection 1 does not apply to rice farmers.
3. Good style

Be careful with numbers

Avoid ambiguity at all costs

BAD
Fees must be paid by 1\textsuperscript{st} June.

BETTER
Fees must be paid before 1\textsuperscript{st} June.
OR
Fees must be paid after 1\textsuperscript{st} June.
3. Good style

Be careful with numbers

Use vague or imprecise timeframes with caution

**BAD**

“Any person who has reason to suspect that an animal may be suffering from a notifiable disease shall give notice to the competent authority immediately.”

**BETTER**

“Any person who has reason to suspect that an animal may be suffering from a notifiable disease shall give notice to the competent authority as soon as possible, and not later than 24 hours.”
3. Good style

Be careful with numbers

Beware of numeric ranges

**BAD**
1) Keepers of less than twenty animals are exempt from permit requirements.
2) Keepers of more than twenty animals require a permit.

**BETTER**
1) Keepers of less than twenty animals are exempt from permit requirements.
2) Keepers of twenty or more animals require a permit.
3. Good style

Avoid ambiguity in sentence construction

- Use conjunctive and disjunctive words (“and, “or”) carefully
- Use correct grammar and punctuation

Sweeping the floor are the president’s wife who is wearing a red dress and her friend.

OR

Sweeping the floor are the president’s wife, who is wearing a red dress, and her friend.
3. Good style

Avoid ambiguity in sentence construction

Improper use of adjectives and modifiers can lead to ambiguity

**BAD**
A manufacturer may label a feed as organic if the feed does not contain rice or corn treated with chemicals.

**BETTER**
A manufacturer may label a feed as organic if the feed does not contain any of the following:
  a) Rice that has been treated with chemicals;
  b) Corn that has been treated with chemicals.
Thank you for your attention!