



**The United Arab Emirates University - College of Law
The Arab Association of Constitutional Law (AACL)
The International Association of Constitutional Law (IACL)
In partnership with
The Rule of Law Programme Middle East / North Africa, Konrad-Adenauer-Stiftung**

**International Conference on
Independent regulatory agencies and
administrative governance in MENA countries**

April 2020 – UAE University

Concept Note

Background. In recent decades, governments and legislators in many countries have moved to ensure more effective, transparent, competitive and quality services. At the same time, international organizations have encouraged a greater focus on the rule of law, citizen participation and the streamlining of policies. Both of these phenomena have caused for many countries around the world to integrate the regulatory governance model. The impact has been a standardization of the public governance model and its translation into national legal systems, which is one of the most important effects of globalization.

In that context, “Independent Regulatory Agencies” (IRAs) are often considered the most effective tools to regulate public sectors and rationalize public utilities management. IRAs are seen as institutional instruments capable of playing a role of intermediation and balance between public administrations, economic operators, civil society organizations and citizens.

Regulatory bodies pre-exist globalization¹. Some Arab countries experienced forms of regulation through more or less independent bodies during the first wave of liberalization, between 1970 and 1980, as a sign of openness to the international economic and administrative norms of the time. The model of regulatory governance in its globalized form began to take root in Arab countries in the 1990s. This was the result of a broad transition that took place at the time from the “welfare state” to the “regulatory state”. The new model was intended to provide more opportunities for non-governmental actors to engage in economic and social activities. The principles that are now enshrined in the

¹ Arab lawmakers have used a large number of terms to describe IRAs in their respective countries, including but not limited to “independent agencies”, “advisory bodies”, “regulatory authorities” or “governance agencies”. Nevertheless, Arab public law scholars have long agreed to qualify these bodies as “independent administrative authorities”, like many of their European counterparts.

constitutions and laws of many Arab countries – such as public-private partnership, civil society, good governance, transparency, and free competition – are the result of this shift.

In this context, policy makers have been relying on IRAs to make a number of changes, in particular by overseeing sectors that require special attention in terms of pluralism, neutrality and transparency. By way of example, the Competition Council in certain Arab countries or the Securities and Commodities Authority or the National Media Council in the United Arab Emirates. To enable these bodies to perform their duties effectively, legislators have assigned to them a variety of legal attributes. This includes the organic and functional independence that implies in particular the recognition of legal personality and financial and administrative autonomy. These bodies have also been granted, pursuant to the Constitution and by law, competence to set rules and regulations to organize sectors under their supervision and control implementation of these rules. In addition, IRAs have, in most of cases, received quasi-judicial powers to impose specific penalties on offenders. However, organic and functional independence does not prevent IRAs' decisions and acts from judicial review. Given the administrative nature of their acts, remedies can include annulment and compensation.

Recent constitutional revisions in some Arab countries, especially Egypt, Morocco and Tunisia, have addressed this issue. By reading constitutional provisions on IRAs and regulatory governance, it is clear that constitutionalization has particularly affected authorities devoted to promoting governance and human rights protection: national commission for human rights, electoral commission, media committee, anti-corruption commission, competition commission, gender and equal opportunities authority, committee on governance and sustainable Development. IRAs dealing with infrastructure (water, electricity, telecommunications, transport...) and utilities (health, education, housing, etc.) have not been subject to constitutionalization because they are probably considered less important in terms of strengthening the rule of law. The constitution drafters, however, left to the discretion of the legislature to create bodies other than those mentioned in the constitution. In light of these legal developments, the conference intends to address the following issues:

- (i) How have these newly constitutionalized bodies impacted the institutional division of labor within the state, and the relationship between public administrations and non-governmental actors?
- (ii) What is the appropriate balance between IRAs and the legislative and executive branches of government, and what roles for the judiciary and auditing courts in protecting and reviewing IRAs' acts?
- (iii) How should IRAs' independence be reconciled with accountability? These concerns are all the more relevant in the light of recent judicial developments in Morocco, Tunisia and other MENA countries concerning the relationship between IRAs and the rest of public authorities, where most of the judiciary stressed the need to respect the regulatory agencies' independence.

The conference. The conference will in parallel explore the best ways to leverage the regulatory governance model to strengthen the rule of law in MENA countries and to integrate best practices in administration and public policy. As is well known, the fundamental values of regulatory governance (quality, efficiency, transparency, rationalization, integration, equal opportunities, solidarity, competitiveness, partnership, evaluation and accountability...) largely correspond to the legal principles underlying public services. Users confidence, the quality of services and the consolidation of the public-

private partnership ensure the participation of all the actors in the implementation of public policies.

On the other hand, academics, experts and international organizations all agree on the role played by IRAs in economic development. The more these agencies are independent and have sufficient financial and human resources, the greater their contribution to the performance of the sectors they oversee. Various studies in this field thus correlate the existence of these agencies with the growth of certain sectors such as finance, foreign trade, food processing, medicine, infrastructures such as transport, housing, water, electricity and other areas such as media, communication, education and science. Indeed, besides the positive impact that the implementation of regulatory governance has on the competitiveness of the regulated sectors, it contributes to strengthening the international partner's confidence, reinforces the investment climate attractiveness and improves the indicators of national sectors.

The conference aims to shed light on the legal frameworks governing IRAs in Arab countries as well as the opportunities and challenges presented by these frameworks in the wake of the recent constitutionalization of these bodies in some Arab countries. To that end, the conference, with due regard to a comprehensive and comparative approach, will identify and confront the various national experiences in Arab countries and elsewhere in the light of evolving legislation and jurisprudence.

Agenda

The following questions will be at the center of the debate at the Conference:

1. The historical evolution of IRAs in the MENA region and the gradual convergence process of Arab regulatory regimes with international standards.
2. The constitutional and legislative foundations and conceded scope of work of regulatory governance and IRAs in the MENA countries. Institutional and functional legitimation of IRA's and their activities.
3. Organizational structure and composition of IRAs, appointment processes to IRAs in the light of constitutional and legislative rules. Their role and position within the constitutional order and democratic framework of accountability.
4. Powers and competences granted to IRAs: scope of their regulatory competences, e.g. establish regulatory rules for specific sectors, provide technical assistance to public authorities, monitor regulated sectors and impose sanctions.
5. Constitutional limits for the delegation of competences and perception of the state: The state's core responsibilities and the distinction between direct and indirect regulation.
6. Procedural, administrative and financial aspects of IRAs: Internal decision-making processes for the production of regulations and norms; human and financial resources and funding mechanism.
7. Coordinating relations between IRAs and the legislative and executive branches through legal and institutional mechanisms.
8. The role of the judiciary and auditing courts in protecting IRA's legal status. The role of the judiciary in reviewing IRA's actions. Complaint procedures and procedures before courts, impact of judicial review.
9. Typology of regulatory independent bodies and scope of their functional and organic

independence.

10. What are the roles for IRAs in strengthening administrative governance and management policy in MENA countries? Developing transparency, performance and competitiveness of the public sector, strengthening public-private partnerships, promoting social justice and equal opportunities.

Scientific Committee

1. Dr. Abderrahim El Maslouhi, Professor of public law in UAE University – College of Law
2. Dr. Cheryl Saunders, Former President of IACL, Professor Emeritus, Melbourne Law School
3. Dr. Anja Schoeller-Schletter, KAS, Head of the Rule of Law Program Middle East/North Africa:
4. Mr. Zaid Al Ali, Member of AACL Executive Committee

Conference languages

Arabic and English will be the conference's official languages.