

## **Chapter IV:**

### **The Research Process**

The drafting process though seems to start when the legislator puts pen to paper, actually begins earlier as there are some other more important points prior to that. First the drafting process as in any other writing should start by planning. For effective writing one need to have outlines that are going to guide throughout the writing process as plans help order and list. But before we even start to talk about writing, we should set the time table, which is going to guide all the planned processes go through the actual writing process. Time tables give the drafter a clear program of action .Moreover, there are times when this time tables could be drawn by or between the drafter and the organ initiating and supervising the draft law. In such a case the time table not only serves as a guiding line for the drafter, but is also beneficial for the supervisor to plan ahead on the next processes of adopting the legislation. The time table shall take into account the following:

- The steps that need to be followed for that particular drafting and the time needed to complete each of the steps.
- Activities that need to be conducted to draft, like consultation.
- The length and complexity of the legislation.
- The level of the controversy of the issues involved.
- The scope of the law's potential impact.
- The urgency of the law.<sup>1</sup>

After we get our time table we follow through it and conduct different activities. The next step is impact assessment. The drafter needs to check the probable impact of the up coming legislation at different levels, based on which different consultations could be conducted. The assessment could be done at the level of:

- Various social strata,
- Different valued interests
  - o Human Rights,
  - o Good governance

---

<sup>1</sup> Id., pp. 85 – 126.

- o Environmental protection, etc

- National economy, by cost assessment and/or cost–benefit analysis.<sup>2</sup>

Then follows conducting the research. How the research is conducted and how the research report is to be prepared is covered in the following section. Now we will look at the importance of outlining and writing plans once we are in the middle of the drafting process.

For a professional writer who must organize extensive and complex material, spending time creating an outline or writing plan almost always saves time in the end. An outline or plan will keep you from backtracking, repeating yourself, missing a key point, or finally discovering what it is you want to say after you have written the whole thing the wrong way.

But creating order in extensive and complex material is not an easy task; it takes the writer's complete attention. Consequently, it deserves a distinct block of time for just that task. Don't fall into the trap of trying to create order at the same time you are drafting sentences and paragraphs. That approach is needlessly stressful because it forces you to keep track of several big tasks all at once.

Writing a good outline or plan may also mean that you have to change some of your preconceived ideas about outlines. First of all, the outline or plan is for you<sup>3</sup> (this is one difference with time tables that could also be designed with the initiating organ), therefore try to design it as you feel comfortable and not as you are supposed to write in the final draft.

## **Section I. The Role of the Drafter<sup>4</sup>**

### **4.1.1 Ethical Responsibility of the Drafter**

---

<sup>2</sup> Ibid.

<sup>3</sup> Ibid

<sup>4</sup> Id., pp. 41 – 49.

This Chapter tries to show how legislative policy could be used to deal with social problems. In the course of these Chapters, the author of this paper tries to use traffic jam as show case in legislating and drafting as problem-solving methodology.

This Chapter also tries to show how to make use of all afore mentioned steps while writing a formal *Research Report* in a manner that helps justify the proposal to be made.

#### **4.1.2 Writing the Research Report**

A '*Research Report*' is a tool to control the quality of a draft policy or law. This report gives the drafters and other parties the information required to review (or check the quality of) the proposed policy or law. It is also an advocacy document justifying and arguing for the solution the drafter proposes by relying on the drafter's a) quality of research, b) soundness of logic, and c) ability to make the reader see the benefits of the chosen policy solution over other alternatives, including doing nothing (that is, maintaining the "status quo").

##### ***Function of the research report***

The research report serves several functions. First, it justifies the choice of policy by detailed and systematic analysis of the social problem using logic based on experience. Second, it provides information to the reader about the methodology used to arrive at the conclusion. Finally, it provides information and justification for the policy or law makers (in addition to the drafters) that they can use to influence other decision makers.

##### ***Structure of the research report***

The research report described here contains four parts: (1) identification of the characteristics and scope of the social problem, (2) explanations of the problematic behavior(s) that contribute to the social problem, (3) proposed solution(s) to the social problem, and (4) provisions for implementing, monitoring, and evaluating the proposed solution(s).

*Part 1 — Identification of the characteristics and scope of the social problem identifies the scope of the social problem, includes identification of probable role occupants and implementing agencies.*

*Part 2 — Explanations of the problematic behavior(s) The ROCCIPi problem-solving methodology*

The ROCCIPi problem-solving methodology is simply a way to explain repetitive problematic behavior in order better to understand the behavior. By better understanding the behavior, we can begin proposing precise policy responses to change this behavior. ROCCIPi is an acronym for the seven categories or factors that provide explanations for problematic behavior. Each factor focuses on one aspect of a behavior and asks questions that will lead to a better understanding of the problem and more meaningful policy responses. These factors are a) rules, b) opportunity, c) capacity, d) communication, e) interest, f) process, and g) ideology.

This part of the research report systematically examines each ROCCIPi factor for the identified role occupants and implementing agencies, explaining how each factor contributes to the problem. Make sure to acknowledge factors that do not contribute and briefly explain why.

*Part 3 — Proposal(s) for solution*

This part of the research report contains proposed solutions addressing every contributing ROCCIPi factor. These proposed solutions are then transformed from separate proposals into a single unified policy statement.

*Part 4 — Implementation, monitoring, and evaluation*

This part of the research report proposes implementation, monitoring, and evaluation provisions, as well as provisions for making future changes. First, it must include provisions for effectively implementing the proposed policy. Second, it must include provisions for monitoring the proposed policy after implementation. That is, it should have an adequate control and evaluation mechanism to measure the policy's effect and effectiveness. Finally, it must include a procedure for making necessary changes in areas in which the policy falls short of expectations.

## ***Checklist for the research report***

To recap: This outline should be treated as a flexible guide, not a straitjacket. Every 'Research Report' constitutes a special case.

First try to attract the readers' attention to the social problem's importance and the necessity of considering a possible legislative programme to resolve it. If used, it should lead logically into the body of the report as here outlined.

1. Brief statement of the problem and the bill's proposed solution.
2. Fitting the social problem addressed by the bill into the larger context. Frequently, the problem constitutes a small part of a much larger one. The research report's introduction should indicate the particular problem's relationship to the larger social problem and that larger legislative programme.
3. History of the general problem.
4. The difficulty the bill shall address.

### ***1. Brief-Introduction***

Relate the specific difficulty to the larger context; indicate the difficulty statement's function in the logic of problem-solving, and outline the content of this section

#### ***2. The nature and scope of the difficulty's superficial manifestations as they affect human, physical, or financial resources***

- (a) Frequently the social problem manifests itself as a problem in resource allocation. If the social problem appears first as a question of resource allocation, the drafters should here describe the nature and scope of the resources' misallocation.
- (b) Under this heading, as under most of the headings of this checklist, drafters should include the relevant descriptive hypotheses and the data that warrant them.

#### ***3. Whose and what behaviors constitute the difficulty?***

- a) Law can only address behaviors. Having identified the mis-allocation of resources, for example, this section of the report should describe the relevant primary role occupants and implementing agencies and the aspects of their behaviors that prove

problematic. (Not infrequently, even the difficulty's superficial manifestations consist of problematic behaviors, like unfair trade practices, domestic violence, motor vehicle traffic problems or dishonest banking practices.)

b) In describing the role occupants and their behaviors which comprise the social problem, drafters should differentiate between the several sets of role occupants. The explanations for each of these sets of role occupants' behaviors undoubtedly differ, so to change those behaviors, the drafters will first have to identify the specific causes for each, and then draft measures to change those causes. Because the problem-solving methodology's solutions logically derive from explanations, to ignore these differences among role occupants and the different causes of their behaviors make it likely that the bill will not induce all the new behaviors needed to solve the problem.

#### *1. Comparative law and experience*

#### *5. History of the difficulty*

#### *6. Who benefits and who suffers from the present situation.*

A significant part of the social cost-benefit analysis of the preferred solution — that is, the social impact statement — should focus on the new law's probable impact on different groups in society. To articulate the impact of existing law on these groups constitutes a necessary predicate for that social impact statement.

#### *7. Brief-conclusion.*

Summarize the section; indicate the connection between the statement of the difficulty and the explanations section that follows by stating,

*'Explanations to the Causes of the Behaviors that Comprise the Difficulty'*

A) Brief-introduction. Describe the function of explanations in the logic of problem-solving; and outline contents.

B) Where relevant, discuss history and comparative law as possible sources of hypotheses as to explanations

C) Relate concepts, with respect of role occupant A and behavior 1:

The *'Research Report'* should group together the explanatory hypotheses and the evidence relating to each set of behaviors. Occasionally, a drafter may want to vary this practice. For example, if dealing with three role occupants and behaviors all subject to the same existing

rules of law, a preliminary section on the law followed by three separate analyses of the ROCCIP factors causing the three different behaviors might provide a more effective organization of the report.

- The state of the existing law ('rule') as it presently bears on the behavior or role occupant A as identified in the difficulty part. (Actors behave within a cage of laws. Almost invariably, by the time a law comes to the point of drafting, earlier laws have addressed the difficulty, although frequently under a title different from that under consideration. Usually, more than one law relates to any given social problem. Drafters must resist the temptation to search only for a law that has a name similar to the title of the social problem in question. Instead, they should take care to discover all the legislation (from the constitution through legislation enacted by national and provincial legislatures to administrative regulations) that bear on their particular problem.)
- The non-legal factors that may affect the problematic behaviors.
  - A) Objective factors:
    - Opportunity;
    - Capacity;
    - Communication of the law;
    - The effect of the role occupants' decision-making process on their decisions.
  - B) Subjective factors:
    - The role occupant's interest ('incentives'), including the effect of potential sanctions;
    - Ideology (values and attitudes) as it affects the role occupants' behavior.
    - Where relevant, the foreign experience as to possible causes of the behaviors at issue
- If more than one role occupant or problematic behavior exists, repeat, for each successive set of role occupants and their behaviors.
- If implementing agency behaviors seem problematic, repeat, for the implementing agency. (The behavior of the implementing agency constitutes a factor in the primary role occupant's circumstances that to one degree or

another the role occupant takes into account. An implementing agency's officials act in the face of a rule addressed to it.) An explanation for those officials' behavior in the face of a rule follows the same general structure as an explanation for any other role occupant's behavior in the face of a rule. To analyze the causes of the implementing agency's problematic behaviors, therefore, use the same checklist for non-legal factors mentioned above. (Because implementing institutions always comprise complex organizations, however, analysis usually requires focus on the implementing agency's decision-making processes. Almost invariably, the research report will have to review the causes of problematic behaviors of central agency decision-making officials.)

- Foreign law
- Brief-conclusion. (Summarize this section, and reiterate the connection between explanations and solutions. The brief-conclusion may contain a brief list of the explanation for each set of behaviors identified in the difficulty section. That list comprises a summary of the causal factors which the preferred solution — the proposed bill's detailed measures — must alter or eliminate to induce more desirable behaviors.)

### *Proposal for Solution*

- Brief-introduction. Note the requirements that the logic of problem-solving imposes on the proposed solutions. List alternative potential proposals for solutions that logically seem likely to alter or eliminate the causes of existing problematic behaviors.
  - a) The persuasiveness of a justification to a considerable degree depends upon whether you have convinced the readers that you have considered all the logically-possible potential measures for inducing the behaviors desired; and that, all things considered, your preferred solution (the specific measures in your bill) really does constitute the best available.
  - b) Drafters may obtain ideas for alternative solutions from three principal sources: comparative law and experience; scholarly books and journals; the drafter's own ideas.
- Describe the details of your bill's major provisions.



- a) This section should describe and explain every important provision of your bill. If the bill seems unusually long and detailed, you may consider, in addition to the research report's more general analysis, using an annotated bill to explain specific provisions' details.
- b) This section should include a detailed description of the proposed implementing agency, with a special focus on its decision-making processes and the provisions for participation, accountability and transparency.
- Demonstrate how the preferred solution addresses the causes of the difficulty as revealed in the explanations section. (Use the ROCCIP research agenda as a device to predict the behaviors of the bill's addressees.)
- Analyze the costs and benefits of your bill, by including
  - (a) economic costs and benefits,
  - b) Non-quantifiable social costs and benefits,
  - c) Social impact statement, which, among other things should include:
    - Impact of the bill of different social groups, especially on the poor, women, children and minorities.
    - Impact of the bill on valued but poorly represented interests, especially on the environment, human rights, and the rule of law and the prevention of corruption.
- Monitoring performance:
  - Show how your bill provides for monitoring and evaluating its implementation. (Here, list alternative monitoring devices and give reason for the one included in your bill.)
  - Foreign experience in monitoring implementation of analogous laws.
- Brief-conclusion.

## **Section II. Notes on writing style for the research report**

This section provides specific guidance about how to write the research report (that is, the style of the report).

*Use clear and simple language*

Keep the language of the report clear and simple. The depth of your analysis and quality of logic can easily be lost in an attempt to impress the reader with the size of your vocabulary.

You should use the following general rules in crafting clear sentences in your report.

*Rule 1.* Write brief sentences. These should generally be no more than about 17 words long. More words than necessary, are not likely to be understood by many readers. If a sentence is too long, break it into shorter sentences.

*Rule 2.* Place the most important concept at the end of the sentence.

*Rule 3.* Keep together the subject and the verb, the parts of a compound verb, and the verb and object. Thus, the sentence core should be as follows: subject – verb – object.

*Rule 4.* Use as few conjunctions (such as “and”, “or”, “but”) as possible.

*Rule 5.* Write sentences using nouns and verbs rather than using adjectives and adverbs.

*Rule 6.* Avoid connective words and phrases (such as “however”, “thus”, “therefore”, or “It is a fact that...”).

*Rule 7.* Avoid passive sentences. Instead, use active sentences.

*Rule 8.* Avoid the verb “to be”, in any form.

Use “signposts” to guide the reader through the problem-solving methodology. It is important to provide a brief explanation of the problem-solving methodology in your introduction to the research report and then to provide updates throughout the report on your progress in using the methodology. These updates are called “signposts” because they tell readers where they are, where they have just been, and where they are going next.

*For example:*

*“The previous section identified the social problem of traffic jams in Merkato and, as a contributing behavior, careless drivers stopping at unmarked stops. The problem-solving methodology requires that next should be examined what*

*factors influence the careless drivers to act as they do. Understanding this can create a policy that might efficiently and effectively deal with the problem.”*

Mention sources of information used in the research report

Provide references or citations to the sources of information you use in the research report (such as facts, data, and quotations) using

- footnotes,
- endnotes, or
- bibliographic references.

It is advisable to use a standardized format, if one exists, for citations, but any format that clearly identifies the source so that a reader may locate the information will be sufficient.

### ***Rules for drafting policy***

There isn't a particular formula to be used on the use of language, whether it is for the research report, for the draft document itself or for writing in general. However in the area of legislative drafting, as we have said in Chapter One earlier, there are a lot of "Dont's". And for the research report in particular, there are general rules that should be followed so that all the hard work you put into the research report is translated into an effective policy or law. These are for the most part principles that you will repeat in the body of the legislation you are working on. They are the following:<sup>5</sup>

Rule 1. Avoid vague language.

Rule 2. Avoid ambiguous words.

Rule 3. Cover the entire "domain".

Rule 4. Use rigorously consistent language.

Rule 5. Avoid redundancy.

Rule 6. Adopt words from related policies or laws.

Rule 7. Avoid ambiguous modifiers.

---

<sup>5</sup> Id., pp. 187 – 198 & 262 – 278.

Rule 8. Use ‘and’ and ‘or’ carefully.

Rule 9. Keep sentences short.

Rule 10. Use tabulations freely.

Rule 11. Draft in the positive.

Rule 12. Avoid using the verb ‘to be’.

Rule 13. Use vocabulary adapted to the policy’s readers.

Rule 14. Put the most important concepts at the end of the sentence.

Rule 15. Avoid incorporation by reference.

In Chapter One, we have tried to introduce the idea of legislative drafting in general and have dealt with the approach that should be followed in designing policy and conducting the work of drafting, i.e. the problem solving approach. And the first part of this chapter has dealt with the first step in the drafting process i.e. preparing the research report. As has been said earlier, the ‘*Research Report*’ does not only serve as a persuading instrument in place of the drafter and in the face of computing legislation, to be eye catching in the prioritization process, but also serves as a guideline for the drafter.

#### **4.2.1 Role, Responsibility of the Drafter Substantiation**

The early involvement of the drafter in the legislative process is highly essential. The drafter should not be considered and is not a person to change documents into legal language. But should be a person who advises in policy design, and then work in resolving the social problems, following if possible the problem solving approach discussed with in.

The drafter as the person bestowed with this duty owes the responsibilities of ‘*confidentiality*’ and ‘*loyalty*’, declining inappropriate instructions are not in line with the Constitution and principles of Human Rights Ethiopia has already adopted.

#### **4.2.2 Prioritizing Proposed Bills<sup>6</sup>**

A recent workshop in a developing country illustrated many law-makers’ difficulties in deciding which bills to draft first. Most of the country’s inhabitants confront a grossly

---

<sup>6</sup> Id., pp. 51 – 72.

inequitable distribution of land, widespread unemployment, obscene gaps between rich and poor that reflect long-standing ethnic cleavages, and grossly inadequate schooling, health facilities and housing. A new, populist government had won elections, by promising to dramatically improve quality of life.

The workshop organizers had requested the participants from government ministries to bring with them their ministries' priority drafting projects. Senior officials from the Ministry of Trade and Industry — presumably responsible for planning transformation — brought three projects: to license highway tow trucks; to permit corporations to buy in their own shares; and to repeal the usury law (which prohibited charging interest of more than 29% per year). Surely no one could claim these as central social problems!

This section looks at:

- A. How prioritization works in most countries, and your role as a drafter of legislations in the process;
- B. General criteria as guides to prioritization of alternative legislative proposals; and
- C. Prioritizing proposed laws likely to affect the people's job opportunities and quality of life.

Every day you hear demands for new laws. Governments never seem to have enough resources for drafting, enacting and implementing them all. To avoid wasting time and money on relatively unimportant bills, you as a drafter for the law-maker, the executive and the legislature, which work together, should understand the value vested on prioritization when it comes to drafting *transformatory legislations*.

#### **4.2.3 Haphazard Prioritization**

Decisions met over prioritizing proposed legislation in developing and transitional countries, often seem reached haphazardly. In reality, too often, those processes assist the beneficiaries of the existing *status quo* like, for example, gives them the opportunity to press for unimportant measures to be taken that leave intact the institutional causes; factors believed to be cause of a growing 'have-have not' gap. That seems to reflect the skewed nature of the need to prioritize from among legal issues and institutions of which primarily the executive body is cognizant.

#### **4.2.4 Prioritization from Among Institutions: An overview**

In most countries, most bills originate in the executive branch, mainly in the ministries, as government bills. While implementing existing laws, ministry officials frequently identify new problems that call for new legislation. Occasionally, parliamentary committees or staff members or a legislator prepare the initial draft of the bill. Ministries usually submit their proposed legislative draft to some governmental body that prioritizes all the country's drafting proposals. In some countries, ministries submit their projects to a Cabinet Committee on Legislation, composed of senior ministers, which determines priorities. In others, ministries simply forward them to a Central Drafting Office, which allocates its scarce resources to bills its board considers more important. In effect, then, the Office determines the bill's priority. Whatever the institutional structure, in practice prioritizing frequently seems completely haphazard.<sup>7</sup>

Taking advantage of the unsystematic prioritization process, political leaders, not infrequently, press hardest for bills they prefer most. Those with the best channels to decision-makers – almost everywhere, those with power and privilege – usually win priority for bills that advance their interests.

In this regard there are generally two types of systems: the continental tradition, where a specific organ or ministry would have its own legislative office and would draft bills of its own interest. The other is that of the British tradition, which has a central legislative organ, where all legislations are drafted by an independent central organ. Both systems have their own advantages and disadvantages. The centralized system is mostly considered advantageous because it is economical, as it collectively uses the resource allocated for drafting as well as provides consistent standard. On the other hand, some criticize this system pointing to the fact that it employs specialized experts, while the continental system enables legislators to draft on particular areas, enabling them to become experts in areas of their concern. For example, drafters in the ministry of health would be well versed with the needs and interests of that specific area. Moreover, such central drafting offices get rarely involved

---

<sup>7</sup> In the United States, a leading article on prioritizing practice bore the title, A Garbage Can Model of Organizational Choice.

in the policy devising stage, which, continental system proponents contend, is a crucial point for it to be up held.

#### **4.2.5 How to improve prioritization of legislations**

Law-makers must give answer to the question in light of their country's special circumstances. By setting the law-making agenda or prioritizing, the executive body's decision is actually shaping the direction of the government's exercise of power. As an important task, by giving preferential priority, the decision maker ensures that you and your colleagues get an opportunity to assess and approve the government's legislative program.

Here, we suggest a few factors that you might consider. Prioritization requires comparing the claims of the many bills that scream for legislative attention. The principal legislative opportunity to do that occurs where government presents its annual legislative program to the legislature for approval. In most Commonwealth countries, for example, the Head of State reads out the annual legislative program at the opening of the first session of Parliament for the year.

Whichever committee's issue dominates the legislative agenda, every bill is required to have substantial proponents to enable the appropriate legislative committee to wisely determine its relative priority. That could take the form of a memorandum that describes the social problem the bill will address, a timetable for drafting the bill, and an estimate of the order of magnitude of resources required to formulate and implement its provisions.

That memorandum should also specify the criteria, facts and logic that the proponents believe justifies granting the bill preferential priority treatment. It should also suggest the composition of the drafting committee and the mechanism for consulting stakeholders. By ranking proposed bills, the prioritizing body sets a plan of function. Like all plans, its decision would be open to flexibility, if, for example, in the course of that year, a new social problem emerges that seems to require urgently a new legislation; i.e. in light of available facts, reasons and clearly defined criteria, previously set priority gets revised.

## **A. Criteria for Prioritization**

For prioritizing proposed legislation in a given country at a specific time, no one can provide a blue print. In 1994, as its first task, immediately after its first democratic elections, South Africa's new government appropriately abolished state-enforced apartheid. In many countries, land reform held first place. In Afghanistan, after the Taliban's ouster, laws to establish the new government, to ensure security and protect women's rights, demanded immediate attention. No single, ready-made size fits to all.

Reason and experience, however, do suggest guidelines for questions you should ask ministers as to which bills to rank first for drafting legislation; that is, what criteria to use for prioritizing from among legislations. In prioritizing, as in all law-making processes, the discourse of power inevitably also presses for your attention. Here focus is only on considerations of the public interest as determined by logic and facts.

## **B. Getting Information for Prioritizing Legislation**

To prioritize proposed legislation, you need to ask: “Will a proposed bill:

1. Improve the quality of governance? How?
2. Increase employment opportunities?
3. Increase the production of goods and services to meet the basic needs of the majority of the population?
4. Increase equity? How? In the short-, medium-, or long-term, who will win? Who would lose?

You should also ask:

5. Do the bill's detailed provisions seem do-able? At what cost? What possible social consequences would ensue?
6. What constitute the bill's likely social costs and benefits?
7. In light of available drafting resources, how difficult and how long a drafting task does the bill seem likely to present?
8. What other proposed legislation competes for priority?



As emphasized in Chapter 1, development comprises an on-going process of institutional change to ensure the use of national resources to improve people's quality of life. That process resembles a chain. How law-makers act to change one link, inevitably will affect the others. In prioritizing needed legislation, you must decide which institutions require change NOW. Which key link should you, as legislators, grasp to pull forward the whole chain of development?

The third world's post-colonial experience holds valuable lessons. Immediately after independence, in many countries, populist law-makers voted to expand social services, especially education and health facilities. Within a few years, their countries' competitive expansion of crude exports to earn the revenues needed to finance these services led to falling world prices — and many fell deeply into debt. Currency devaluations, sky-rocketing inflation, and externally imposed financial constraints forced them to curb social service expenditures. Growing numbers — as much as 20 to 40 percent of the labor force — found themselves without paying jobs. Deepening poverty engulfed their populations. Economic inequality and destabilization, rampant corruption, mounting ethnic conflicts, and military coups fostered growing global demands for democratic social change and good governance.

As the new millennium opens, in what order of priority should you, as law-makers, enact laws to achieve sustainable, peaceful development? At the prioritizing stage, you likely have relatively little information. Working with whatever information you have, give higher rank to those proposals with the greatest potential, net economic and social benefits. Even at an early stage, ask for and weigh the facts as to a law's probable socio-economic costs and benefits. In weighing those facts, remember: existing national and global institutions, perpetuating dependence on crude exports and labor-intensive manufacturing mechanisms, have tended to aggravate unemployment and deepening poverty.

The rest of this Chapter focuses on the questions you should ask to decide the relative priority of legislation designed to restructure the institutions. List the criteria which, in your country, seem appropriate for prioritizing the drafting of legislative proposals.

### **C. Prioritizing Legislation for Economic Development**

Development is not associated 'merely' to economic growth; social welfare and good governance, too, must remain high on the agenda. Without an adequate economic foundation, however, governments cannot finance projects likely to enhance social welfare. All the same, laws looking to strengthen the economy often fail to win priority. To help you understand the obstacles faced by developing and transitional countries in enhancing their economic development by means of enacting legislations for present day globalized era, this section presents first a model of the institutions that define the relationship between the industrialized and the other countries; second, the economists' debates over issues on development strategies as they bear on prioritization choices; and, finally, more detailed criteria for assessing the priority of legislation relating to agriculture, industry (including the informal sector), trade, finance and foreign investment.

### **Section III. Typologies of LDCs**

To improve the quality of life of a country's population requires both increasing the total national pie – the sum total of available goods and services (essential economists' indicators like 'the Gross National Product', 'National Income'..) – and distributing it more equitably.

Laws to enhance good governance and social welfare, of course, deserve high priority. But, so do laws, too, especially those aimed at strengthening your country's economic foundations. A simple model shows the global resource allocations which reflect and perpetuate the underemployment of developing and transitional countries' human and physical resources.

Between nations, enormous disparities of wealth persist. The United Nations Development Programme (UNDP) estimated in 1998 that

*"a fifth of the world's population, living in industrialized nations, consumes more than four fifths of the world's resources. That means that four out of five of the world's peoples, mainly in the third world and transitional nations, must struggle to survive on a bare fifth of the world's goods and services."*

Within most developing countries, narrow 'modern' enclaves have emerged that are dominated by local elites, who, closely associated with transnational corporate enterprises, reap half to three fourths of the national income. Foreign- and domestically-owned

enterprises employ low-cost labor – frequently, migrants seeking to escape from neglected rural hinterlands – to produce and export the countries' rich mineral and agricultural materials, mainly in crude form and at low prices, to first world markets.

In the new millennium, a few factories employ unskilled workers (at wages a fourth or less than those of first world factory workers). Mainly, they assemble and process imported parts and materials to make cheap consumer goods – shoes, TV sets, even computer parts – for sale in first world markets.

Typically, the value of most developing countries' exports exceeds the cost of imports which are mostly machinery and parts for enclave firms, and luxuries for those few who can afford them. Nevertheless, most of these countries pay out, in the form of profits, interest, and dividends to global investors and financial institutions, more than they earn. Those payments and the flight of capital to 'safer' foreign havens leave precious little internally-generated savings for investment to spur domestic production and job creation.

### **1.3.1 The Institutional basis**

No nation's raw materials are produced and sold by the nation itself to foreign countries. Historically-shaped institutions perpetuate these externally-dependent development patterns. Often rooted in the past colonial era, inherited institutions still channel local labor to work on the plantations, the mines, and, increasingly, to factories that produce crude, unprocessed materials and cheap consumer goods for export. Big wholesale trading firms purchase small farmers' crops at low prices. Large industrial corporations employ unskilled workers for long hours at minimal wages to manufacture cheap consumer exports. Property and contract laws make it possible for transnational corporations and wealthy nationals to reap the profits of third world production and marketing facilities.

### **1.3.2 The Economists' Debates**

Many economists teach that the quality of life of the population of a developing or transitional country depends on its productivity, the distribution of the fruits of its labor, and its ability to earn foreign exchange in order to purchase what the country cannot produce

itself. The model above demonstrates that, too often instead, inherited institutions drain off funds, thwarting the inhabitants' efforts to accumulate and invest capital.

Economists agree to enjoy the good lives those economists promise. Nevertheless, now-a-days most economists agree that to increase a nation's productivity requires government legislative action to:

- A) Provide social and economic infrastructure and conditions that enable nationals to obtain jobs and earn higher incomes in the context of more balanced, integrated, specialized national trade;
- B) Systematic introduction of appropriate new technologies with the view to increase productive employment and productivity; and
- C) Create institutional frameworks that empower a nation's citizens to work together increasingly, effectively; i.e. to increase their output and incomes as the essential foundation for improving their quality of life.

Debates about the kinds of laws likely to help attain these goals tend to degenerate into statements of dichotomies: '*Big Bang*' or incremental change; '*market-led*' or '*plan-led*'; '*export-led*' or '*internal demand-led*' development; private or state ownership. For a while, in the 1990s, many economists seemed bemused by the '*Washington consensus*', a form of neo-liberalism that seemed to assume freeing 'the market's invisible hand' would, over time, ensure increased production, would trickle down benefits to those in need.

Those debates often generate disagreements as to whether, on the one hand, to enact legislation to encourage investment and support business, or, on the other, laws to meet people's socio-economic needs. Too often, proponents on both sides seem to ignore the facts of country-specific characteristics which logically should under gird a government's development strategy.

### **1.3.3 'Market-led' vs. 'Plan-led' Debates: Some basic issues**

One cannot afford to speculate over state planed or market-led economy as an '*either-or*' dichotomy. Today, every country's economy exhibits some planning. Even in an archetypical free-market state like the United States, considerable planning takes place.

How else could firms – public or private – run an electrical supply system, a telephone system, or any other ‘natural monopoly’? On the other hand, given scarcities of funds and of skilled personnel, market-driven solutions sometimes trump plan solutions. Studying your country’s unique circumstances, you must determine the mix of plan and market each sector of the economy requires. Especially in small countries, where one or two large firms often dominate entire sectors – like mining and oil production, iron, steel, chemical or service industry – you should study the merits of alternative regulatory regimes for each sector. Whether a particular sector lends itself better to planning or market solutions depends on the facts, not abstract theory. For markets, as for every other aspect of life, no particular legal framework proves universally applicable.

#### **1.3.4 Shaping a market’s legal framework.**

Most economists agree that, to function well, a market must operate within an appropriate legal framework; 3 laws to improve that framework deserve a high priority. To determine what constitutes an appropriate legal framework in your country's historically-shaped conditions, you may wish to ask two further sets of questions:

- A) Ought business laws invariably to receive priority?
- B) Do those kinds of laws exhaust the category of the laws that markets require?

As to the first question, citing Max Weber, some theorists claim that in every market economy, to ensure the predictability for investments that capitalists seek, law-makers should prioritize business laws, which an earlier generation called ‘private law’.<sup>8</sup> These theorists call for legislation to privatize state-owned property, property laws generally, and contract and corporation laws in all their elaborate variations – principally enforced by private litigation in law Courts. Each country’s transition to a market economy does tend to resemble that transition in other, relatively similar countries. (That explains why one country's law-makers can learn something about that transition from other countries’ experiences.) Significant differences also inevitably exist.

To make a mature judgment as to whether a particular country should adopt a check law or a titling law, before enacting other kinds of laws it needs to undertake empirical studies of its

---

<sup>8</sup> Id., pp. 57 – 59.

specific state of conditions. As to the second question, some authorities insist that business laws exhaust the list of priority legislation a market economy requires.

An alternative view holds that markets work not merely because of business laws, but also because of the existence of an appropriate legal and institutional as well as infrastructure (physical). That includes laws to regulate the money supply and credit; to ensure government's fiscal responsibility for budget formation and budget discipline; to shape the educational system to provide an educated work force; to provide publicly-financed old age and disability pensions; to foster a mobile work force and social stability; to establish an agricultural extension service to stimulate a progressive agricultural sector; to establish effective environmental protection agencies to protect the environment against the ravages of private greed – the long list goes on.

This view suggests that, to prioritize laws in developing and transitional polities, you should weigh the claims not only for business laws, but also for the full range of legislation required to bolster the market's institutional infrastructure. Notwithstanding neo-liberal economists' advice, you should never blindly copy laws in a rush to privatize state-owned facilities. Typically, taxpayer funds originally financed those assets. To sell them to the wealthy few who happen to have capital, or to foreign investors, does not ensure their future development in the public interest. To maximize short term profits (and executive salaries), the buyers often lay off workers and strip production to the most profitable lines, aggravating unemployment and leaving unfilled essential economic functions, like building roads to remote rural areas; giving the poor access to water, housing, electricity and public transport; and establishing industrial plants to produce parts, equipment and materials to facilitate growth of small scale enterprises. In short, nobody has a silver bullet that in one shot can vanquish the devils that plague the world's disinherited: poverty, vulnerability, poor governance. No easy short-cuts exist. You must assess your own country's realities to determine which laws require early drafting and enactment, and which to defer. In every case, you need to consider whether a proposed law seems likely to help shape the markets' essential institutional infrastructure, and facilitate production of the goods needed to improve productive employment and all people's quality of life.

### **1.3.5 Prioritizing legislation for economic transformation**

Legislative theory argues that an appropriate legal framework can lead to significantly increased productivity, providing the basis for meeting the entire population's basic needs. This requires transforming legislation in each of the major areas of economic activity: agriculture; industry; wholesale trade; finance; and foreign, private investment.

This section asks what information you need, in order to decide which legislation will likely be helpful in strengthening the 'key links' that foster development in each economic sector.

*1. Agriculture* Over the past century, many countries in the developing world have seen a shift from subsistence and small scale agriculture to large scale agriculture and to cash crop production. Often, this induces the formation of small-scale agro-processing factories, at times even large-scale agro-industries. Large mechanized farms — whether owned by foreign firms, wealthy private farmers, state farms or cooperatives — use large areas, suitable for farming, and employ more capital, equipment, advanced know-how and machinery than in small-scale farming. As they employ more advanced and efficient technologies, they employ less labor per unit of output. At the same time, they often push small farmers off the lands, as a more competitive condition is created, forcing them to take up jobs with low-payment, hire them as farm-labors or conditions force them to migrate to cities or other areas. Given access to appropriate technologies, small-scale farmers (typically of family level with limited capital), can significantly improve the productivity of their farm. In order to enable such small-scale farmers acquire advanced inputs, credits and access to better markets and, especially, facilitate to the desire to work together in cooperatives, law-makers could work out necessary provisions.

Legislation has played a key role in structuring as well as transformation of agricultural – both, in enhancing small-scale agro-processing factories as well as large-scale agro-industries, and ensuring the entitlement of small-scale farmers to better utilize the land they possess and labour they hire under ever changing circumstances. Most agricultural experts agree that, to increase agricultural productivity, legislation should facilitate farmers' efforts to gain access to six essentials:

- (1) Sufficient arable and well-watered land;
- (2) Farm inputs (fertilizers, appropriate machinery, seeds, water supplies, etc);
- (3) Credit to purchase those inputs;
- (4) Adequate technology;

- (5) The necessary skills to maximize their use of these inputs; and
- (6) Markets, including transport, storage, and marketing facilities they need to sell their increased outputs.

2. *Industry* Law and the legal order can and do change inherited institutions to give farmers access to these essentials. That may produce mixed results. The devil lies in the laws' details as laws determine which particular group of people may be affected, and how they will behave in the face of a new legislation.

United Nation's assessments of agricultural assistance programs in Africa point out that although women comprise 80 per cent of the targeted farmers, three quarters of the credit provided goes to men. That makes it far less likely that women farmers can adjust to new economic conditions. Women subsistence farmers that wish to engage in cash crop production, rarely have access to credit for buying fertilizers or seeds, as regulations of financial institutions often require a (male) head of households to provide surety for credit.

Over time, increased agricultural productivity tends to reduce the demand for agricultural labor per unit of crop produced. As a legislator, you should ask for facts concerning each law's likely impact; not only on productivity, but also on agricultural employment and equity.

In recent years, trans-national corporations, together with locally based affiliates, have begun to invest in last-stage assembly and processing of imported parts and materials for export from developing countries to developed nations. While this seems will increase industrial production, it may aggravate not only dependence on imported parts and materials, but also induce an ever growing foreign debt of imported machines, parts and materials. Typically, those industries maximize profits by hiring low-cost national labor – often women, and even children – for long hours at very low wages. Their managers seldom, if ever, transfer to national entrepreneur skills and basic, essential technologies and know-how.

Most economists perceive industry as a mighty engine of development. By creating new jobs and manufacturing an expanding array of low-cost goods, it holds the potential for improving the material conditions of life throughout the population, as well as expanding exports. Widespread experience in many different developing countries suggests, however, that industrial growth may have a counterproductive social impact. Wealthy private (foreign or



domestic) investors usually prefer to invest in the least risky, most profitable sectors. Typically, they shun investments in basic industries which might serve as poles of growth, and in small-scale enterprise that may provide job opportunities and produce low-cost tools and consumer goods to meet basic needs. Unable to obtain wage, employment, many working people struggle to earn whatever they can in the growing so-called 'informal' sector — micro-enterprises that operate on a catch-as-catch basis outside of the formal legislated framework. With little or no access to capital, credit, technology, and markets, informal sector entrepreneurs use low-cost, locally-available technologies — often only hand tools — to produce consumer goods for the nation's poor majority. Although they pay employees very little, they do provide jobs for the otherwise unemployed. An alternative strategy might foster investment in more advanced industrial technologies to reduce the cost and increase the supply of nationally-manufactured machinery, equipment and consumer goods to raise national living standards.

In countries as different as Japan, South Africa, South Korea, the former so-called socialist countries and Brazil, law-makers enacted laws to give government a direct role in building basic industries like iron and steel, petrochemicals, electricity.

*3. Telecommunications and transportation* Appropriately drafted laws can strengthen a country's nationally (or regionally) oriented industrial growth, creating more productive rural and urban employment opportunities, more equitable income distribution, and expanding internal markets. To assess a particular law's impact on industrial development, you should ask two sets of questions:

- (1) A reliable source of supplies;
- (2) An adequately educated labor force, including managerial and technical personnel;
- (3) Appropriate technology;
- (4) Credit; and
- (5) Access to markets.

Second, how will the resulting industry likely affect jobs and incomes of the rest of the economy, including the informal sector? For that, you should ask for evidence relating to that industry's potential contribution to:

- A) Job-creation, especially to absorb displaced rural workers;

- B) The foreign-exchange earnings needed to import new machinery and equipment to spur all sectors' productivity; and
- C) The forward and backward linkages between manufacturing and the rest of the economy, including the informal sector; that is, will the resulting industry –
- a) Process agricultural or mineral raw materials for domestic use as well as for export, contributing to increased domestic, including rural, incomes;
  - (b) Manufacture essential machinery and equipment to spur domestic productivity in agriculture or industry; or
  - (c) Produce low-cost consumer necessities to improve the majority's quality of life?

First, how will it contribute to the provision of five factors essential for sustainable industrial growth.

*Trade* In short, to prioritize laws relating to industry, do not rely on abstract theoretical models. Instead ask for facts: will the proposed law foster sustainable industrial growth that contributes to increased productivity and employment in all sectors of the economy, leading to steady improvement in the majority's quality of life? Some transnational firms manipulate global markets and prices with little regard for their impact on third world peoples.

To illustrate: by the 20th Century's end, in many developing countries, HIV/AIDS had reached crisis proportions. Transnational pharmaceutical firms priced drugs that could protect against the disease at four to five times developing country workers' average yearly income. When developing countries sought to import or manufacture generic drugs at more affordable prices, the pharmaceutical companies brought suit in those countries' domestic courts, and pressured their home governments to block those countries' most favored nation status.

Developing countries have often inherited trading institutions that have perpetuated dependence on the export of crude and labor-intensive manufactured goods; import of machinery, equipment and parts for export-enclave industries, and consumer luxuries for the few who can afford them. Post-colonial experience, however, has demonstrated that overcrowded global markets cannot absorb developing countries' competitively expanding exports.

Many wholesale firms enjoy long-established links with overseas buyers and sellers with whom they share lucrative external trade profits. Investing capital to build warehouses, godowns, and transportation capacity, big wholesalers dominate internal trading channels. They charge high prices that squeeze, not only retailers, but also domestic farmers' and local industries' profit margins. These smaller enterprises must pay whatever prices the wholesalers charge for consumer goods, tools and equipment. To become sustainable, increasingly integrated domestic industrial and agricultural growth requires new laws that facilitate the expansion of domestic and international trade.

*4. Finance* Everywhere in the developing and transitional world people experience great difficulty in accumulating and reinvesting capital to finance production and trade geared to their needs. Existing financial institutions — banks, insurance companies, and stock exchanges — tend to finance patterns of production and trade that perpetuate externally dependent development. Both foreign and domestically-owned banks collect and hold whatever savings the poor, as well as the wealthy few, may accumulate. These savings could become a major source to spur economic growth. For the most part, however, large financial organizations limit their loans to large-scale farmers, formal sector manufacturers, and to wholesale trading firms, primarily those engaged in foreign trade. Banks and financial institutions seldom lend money to small farmers to grow food crops. They rarely lend funds to domestic basic industries focused on increasing developing countries' national productivity and employment; even less often do they make loans to informal sector micro-enterprises and traders from the low income majority. Taking advantage of relaxed foreign currency rules, they often ship significant amounts of locally-generated surpluses for investment in more secure markets in industrialized countries.

Over the years, insurance companies and pension funds ( both foreign and domestically-owned, often associated with banks), have accumulated a significant share of many developing countries' savings. Seeking protection against risks of accidents and old age, increasing numbers of individuals pay premiums that swell these institutions' funds. Insurance company managers may reinvest these in government bonds, and sometimes through the stock market, in large-scale business enterprises. Some governments permit

insurance firms to ship the accumulated funds overseas for ‘safe’ investment in foreign industrialized economies — a further drain of national inevitable surpluses.

To prioritize legislation that can improve national financial institutions’ stability and safety, request evidence as to the likelihood that proposed laws will facilitate the accumulation and reinvestment of national savings to:

- increase productive employment opportunities;
- contribute to a balanced, integrated domestic (and where possible regional) economy characterized by expanding production and trade; and
- improve the population's quality of life.

Legislation to help your country's retailers and manufacturers overcome these kinds of obstacles deserves a high priority. You should ask the relevant ministries to provide the factual information you need to propose and prioritize laws likely to help restructure your country's trading institutions. These restructured institutions should foster more balanced, integrated national, and where possible, regional trade directed to boosting national productivity and incomes and fulfilling people's needs.

## 2. *Foreign Investment*

A) Foreign private investment. Some development theorists argue that foreign capital inflows should constitute the ‘*be-all*’ and ‘*end-all*’ of proposed legislative programs. These theorists claim that foreign private investments will lead to expanded foreign exchange, employment, appropriate technology, marketing links, and skilled manpower — all in one package. So, they instantly award priority to any legislation likely to attract foreign investors and reject any legislation that might “scare” them away. If one assumes that the existing institutional structure will remain fixed, immutable, and unchanging, that advice might make some sense.

In contrast, this manual holds that through the wise use of the legislative power you can change institutions. That opens up a wide range of options, of which attracting foreign capital constitutes only one possibility. One counter approach would be to ensure that legislation specifies criteria to make it likely that foreign investments will – in fact – bring their heralded benefits.

Legislation can make tax relief and other benefits to foreign investors dependent upon their contribution to building basic industries, and tie them to the number of jobs and the amount of foreign exchange they generate for the host-nation. It can condition new foreign investments upon the introduction of new technologies and training local personnel, not merely to service or assemble an imported 'black box', but to design new versions to improve national productivity. Say 'no' to prioritization of legislation that simply conforms to theoretically-determined Market or Plan priorities. Ask for the facts you need to assess how a proposed law to stimulate foreign investment in agricultural, industrial, trade, and financial sectors will affect your country's inhabitants.

1. A country's law-making institutions shape the prioritization process. You and your colleagues should critically review and, if necessary, restructure your country's law-making processes to ensure prioritization of legislation in the public interest.
2. In general, give precedence to legislation likely to strengthen the institutions required to ensure good governance, as well as the socio-economic institutions that shape the population's employment opportunities and quality of life.

## **SUMMARY**

1. In practice, how does your country prioritize bills for drafting? In practice, what proposition best explains what bills get drafted first? What suggestions might you make to improve the prioritization process?
2. The text recommends prioritizing legislation that seems likely to strengthen the institutions of governance and to expand balanced, integrated domestic output to increase job opportunities and a better quality of life. What alternative criteria might a contrarian suggest? How might a contrarian justify those alternative criteria?
3. Pretend that you sit as a member of a committee of the Parliament charged with the duty to report on the government's annual plan for legislation. The Secretary to Cabinet sits before you, ready to answer questions. State at least three different categories of questions that you might ask the Secretary about how the proposed annual legislation plan relates to issues of economic development. facts demonstrate that the expected benefits of proposed institutional changes will likely outweigh their probable costs.
4. When assessing the relative priority of legislation likely to affect your country's economic institutions in the fields of agriculture, industry, the informal sector, trade and finance,

- Base your decisions, not on abstract models or theories, but on the facts of your own country's specific circumstances; and
- Think carefully about the questions you should ask to assess their likely social impact, not only on the growth in the 'national pie', but on the people's productive employment opportunities and quality of life.

## Questions

1. What is the importance of the research report to the legislative process?
2. Why is it important to involve the drafter at the early stage of policy design?
3. How is prioritization a political job? And what is the duty of the drafter to make sure socially beneficial legislation got prioritized?

### 4.3.6 Techniques in Drafting

#### A. Reading a Bill<sup>9</sup>

Here you are considered to see yourself as a reader and try to find out what you want in the bill, by focusing on the difficulties that you might be faced in reading. Hence whether a drafter or a lawyer merely using the law books, or a lay person who has been confronted with a complex legislation, you are to walk through a reading of legislation.

Just as music is composed on staves with bars indicating timing, so should rules have a consistent framework for their component parts, divisions, sections, subsections, and other segments. Structural conventions, for music and for rules, provide a framework for both writers and readers. The framework aids in communicating the writer's musical or written message.

A bill's printed pages look different from those of novels, magazines, or history and science texts. Most sentences begin with a number or letter. Some sentences seem to stop in the middle, followed by a new numbered subparagraph. They seem written in a strange language,

---

<sup>9</sup> Id., pp. 205 – 227.

with many almost unrecognizable words. Some appear so tangled that you can only try to puzzle them out.

To assess whether a bill will serve the public interest – and at what economic and social cost — you must read and understand the bill on its face.

As you examine a bill on its face, keep in mind these essential points:

1. For historical reasons, people used to believe that judges constituted the law's only important readers. Today, especially for development, transformatory law must change behaviors. Drafters must draft so that the people whose behaviors the law aims to change can read and understand what the bill says. If you do not understand a bill, neither will its addressees; the drafter has drafted it badly.
2. Do not listen to the drafter who says that, for 'legal' reasons, a bill requires hard to-comprehend words or sentences. If drafters cannot explain a section in simple terms, they themselves probably do not know its meaning. Nothing in the law defies explanation in simple terms. If a bill's addressees could not readily understand it, send it back for redrafting.

A law prescribes how a primary role occupant and designated implementing agency officials should behave. It consists of a series of rules.

Each legislative sentence specifies what someone must, may not or may do.

You might think of a bill as an onion. To get at its core meaning, you must peel back layer after layer. To help you peel back those layers, this chapter explains

A. Why drafters number practically every sentence, and formally organize a bill into Sections, Chapters, and Parts:

B. Why most lawyers (including drafters) frequently use a strange dialect ('Legalese');

C. The meaning of a bill's 'technical' sections; that the individual, numbered sections -- each composed of a single narrow command, prohibition or permission — constitute the bill's basic building blocks; and

D. In the context of the existing legal system, the bill's prescriptions of behaviors comprise the bill's substantive thrust: its legislative content.

## **B. Bill's Formal Elements**

In a bill, numbers or letters denote titles, parts, divisions (or chapters), and sections.

The past 20 years has seen a growing interest in the format of legal texts. Part of this interest stems from public demand for more readable legal documents, part from legislative and policy initiatives (particularly in the United States and Australia), and in part from development in printing technology. Research knowledge about layout and spatial and typographical cues is slowly being considered and incorporated into legislation. These cues have been shown to improve readability and assist readers in finding their way around texts.

Another factor highly responsible for this change in the past decade is the Plain Language movement, which pushes for clearer language in legal documents and limiting the use of legalese for situations of necessity alone.

Clarity is now recognized as involving consideration of type-style, line length, typographical aids, white space, headings and the like. Several jurisdictions, research bodies, and individuals have undertaken research into improving the structure and format of legislation. The result of these inquiries commonly leads to recommendations

- \* for headings to sections in distinctive type
- \* for section numbers printed in a place and in a style that makes them easily identifiable without being intrusive
- \* for a modern readable typeface of appropriate size
- \* for print features to aid readers (for example, italicizing definitions, and to indicate the hierarchy of provisions in the text)
- \* for appropriate use of white space
- \* for limited line length and consideration of page size and colour.



Commentators have also considered the use of decimal numbering systems, the use of running headings to pages and the use of justified and unjustified text. The overall response to these proposals has been very positive.

Differences of opinion over decimal numbering:

Canadian legislative counsel considered and rejected a full decimal numbering system for legislation 20 years ago (although most Canadian jurisdictions use a decimal system for adding new sections or subsections to existing legislation). The Victoria Law Reform Commission recommended a decimal system in 1988. The New South Wales Parliamentary Counsel's Office has considered, and to date rejected, a decimal system.

Martin Cutts, of England, found a full decimal system ugly, but suggested subsections be decimally numbered (for example 3.1; 3.2; 3.3 instead of 3(1); 3(2); 3(3)). Fred Martin, a Canadian lawyer, has experimented with this system for some years. It has been well received. The difficulty is that new sections or subsections added by amendment could not then be added using a decimal system.

Though there exists no evidence as to whether there was even any question about its use in Ethiopia, the use of the decimal numbering is fully avoided in Ethiopian legislations.

An alternative:

Non-lawyers developing a National Building Code for Canada took a rather different approach to numbering rules. The Code explains and demonstrates its system as follows:

Section 1.1 Referencing

1.1.2. Numbering System

1.1.2.1. Nomenclature

(1) In the numbering system used in this Code the first number indicates the Part, the second number indicates the Section of the Part, the third number indicates the Subsection of the Section, and the fourth number indicates the Article of the Subsection.

(2) An Article in this Code may be divided into Sentences, which are indicated by numbers in parentheses, the Sentences may be divided into Clauses, which are indicated by lower case letters in parentheses, and the Clauses may be divided into sub-clauses, which are indicated by roman numerals in parentheses.

(3) A reference in this Code by number to two or more Sections, Subsections, Articles, Sentences, Clauses or Sub-clauses shall be read as including the number first mentioned and the number last mentioned.

(4) A reference in this Code to a Sentence, Clause or Sub-clause shall, unless a contrary intention is given, be read as a reference to a Sentence, Clause or Sub-clause of the Article, Sentence or Clause, as the case may be, in which the reference is made.

A bill's numbering system identifies the separate commands that together make up that bill. Drafters number sections (articles), so that, in legislative debates or in court, lawmakers and judges can refer to particular ones. Drafters group sections that deal with a single issue into a Chapter, and

Chapters that have some common attribute into a Part.

A bill's formal structure follows the form similar to that of any outline:

#### Part I

##### Chapter 1

###### Section 1

###### Section 2

###### Subsection (1)

###### Subsection (2)

###### Section 3

##### Chapter 2

###### Section 4

###### Section 5

#### Part II

##### Chapter 3

###### Section 6

###### Section 7

Bills everywhere follow that outline form, but different jurisdictions' drafting conventions assign different names to the outline's various levels. The Ethiopian system however follows the exact structure indicated above.

(The names of a bill's levels should conform to your country's practice.)

1. "Sections" (some jurisdictions call them Articles) constitute a bill's basic building blocks. A section should contain no more than one 'legislative' concept, that is, a single rule
2. "Chapter" (or "Division"). Some jurisdictions call a group of sections within each part, 'Chapters,' while others use 'Divisions'. Most jurisdictions number chapters (or divisions) consecutively throughout a bill. Many simple bills include no level higher than chapters, and even simpler ones, no level higher than sections.
3. "Part". Conventionally, usually numbered consecutively by a Roman numeral ("I" or "II"), Parts constitute a bill's largest divisions. If a bill contains a large number of parts, each of which might stand alone, you should consider whether its sponsors tried to resolve too many diverse problems in one law (called 'stuffing a bill,' see Chapter 5).
4. "Title". Only a few jurisdictions use the word "Title" to mark a division in a single bill.

Historically, law-makers published statutes in the order of the dates of their promulgation. Today, some jurisdictions codify their laws, putting them together in a single giant compilation. They insert each new law into that compilation, and use the label "Title" to cover all the laws concerning a particular subject, like "Education," "Transportation," or "Prisons."

Understanding the bill's numbering system should help you to peel back the bill's first layer. The language in which drafters expresses commands in each section may appear as a second impassable layer.

### **C. The Law's Language**

In most of the world, drafters write a strange, convoluted, unfathomable language. Some call it 'legalese'.

Complex legal words fall into two categories. Some reflect the requirements of law's specialized subject-matter. Others merely obscure plain meanings.

1. Law's specialized vocabulary. Like most professions, law sometimes requires elements of a specialized vocabulary. To illustrate: In different relationships, a person may promise to do something: To pay a debt, to complete a building pursuant to a contract, to deliver

some promised goods. Another person may promise to perform if the first promissory does not. The law of guarantees uses specialized words for elements common to all those kinds of promises: 'Principal' means the debtor who promises to

If in your country's drafters write bills so the ordinary person can understand them?

To understand some bills' specific subject-matter, you have to learn the relevant specialized vocabulary. If you do not understand the words used, ask!

2. 'Legalese'. Often, however, drafters use unnecessarily complicated words, and long, tortuous sentences. Insist that they re-write them in plain language.

Conveyances (long paid by the word to write deeds and wills for landed interests) used the same language to draft bills. Central drafting office drafters adopted the same form and style. They taught it to drafters in the colonies, where obscure vocabulary and convoluted legalese gave colonial officials and judges broad discretion to rule pretty much as they wished. Unfortunately, not a few post-colonial and transitional government drafters still grant broad discretion by using hard-to-understand legalese.

If you recognize a bill's underlying pattern, however, you can understand it even when written in the densest legalese. To discover a bill's pattern, try to decode the words the drafter used to write it.

Thomas Jefferson, one of the authors of the United States' Declaration of Independence and the United States' second President, wrote that those authors decided: "to reform the style of the later British statutes and of our Acts of Assembly, which by their verbosity, their endless tautologies, their involutions of case within case and parenthesis within parenthesis, and their multiplied efforts at certainty, by said and aforesaid, by ors and ands, to make them more plain, do really render them more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves.

"For many legalese words, drafters could easily find common-language equivalents. If at a meal I said, "Those oranges look delicious. Please pass the said oranges," my friends might well look at me with alarm. 'The said oranges' here only means 'those oranges.' Words like 'said', 'such', 'heretofore', 'hereinabove', 'whereas', or 'provided that', serve no function useful to the law.

In many legalese phrases – 'to have and to hold', 'null and void', 'give, devise, bequeath, grant and bequest', 'building or structure', 'lot, tract or parcel of land' – two words mean the same thing. The drafter could easily delete one.

If you do not understand a word in a bill, ask what it means. If, like 'surety' it constitutes a technical term, insist that the bill define it in lay terms. If a word like 'said' or

‘hereinbefore’ seems meaningless, insist that the drafter use plain English. If a bill includes redundant words or phrases, insist that the drafter use one or the other, not both.

3. Definitional clauses: Frequently, a statute begins with a section entitled ‘Definitions.’ In a long statute, the definition section may go on for pages.

A quick review of present U.S. drafting reveals that Jefferson and his colleagues failed to persuade all future U.S. drafters.

#### **D. Definitions: Some Examples**

“In this Act –

1. ‘Television dealer’ means a person who by way of trade or reader’s failure to look up important words might lead to significant misunderstandings.
2. Stipulate an important word’s definition in the text where that word first appears.

Then, at the end of the bill, list those words alphabetically in a glossary, specifying the page numbers where the reader can find their definitions.

business

- (a) Sells television sets by retail;
  - (b) Lets such sets on hire or by hire purchase;
  - (c) Arranges for such sets to be sold or let as aforesaid by another television dealer; or
  - (d) holds himself out as willing to engage in any of the foregoing activities;
3. ‘animal’ includes whales and other mammals living in the sea.
4. ‘vehicle’ does not include a wheelchair.

Many people either

- (a) assume that, since the list of definitions comes at the beginning, they must drag through it – and forget half the words; or

What purpose does this section serve?

- (b) throw up their hands and retire — cursing the whole tribe of drafters.

A drafter might put a bill's definitions in one of two places in a bill:

- ☒ List the definitions of key words alphabetically in a glossary at the beginning or end of the bill (preferably the end) so readers can look up the meanings of words as needed. Unfortunately, a reader’s failure to look up important words may lead to significant misunderstanding.

- ☑ Stipulate an important word's definition in the text where that word first appears. Then, at the end of the bill, list those words alphabetically in a glossary, specifying the page numbers where the reader can find their definitions.

Make sure that, whenever a word or concept appears more than once in a bill the drafter always uses the same definition for it. Throughout the (fictional) bill in the previous example, for example, the word 'television dealer' should always have the meaning given it in the bill's definition section.

Bills use definitions for either of two reasons. In some statutes, drafters must use many, sometimes even a long list, of words to describe a complex concept. Using the word(s) as defined in the bill's definitions section throughout the statute avoids tedious repetition and increases the bill's readability.

Second, a definition helps to avoid the vagueness inherent in every word. Consider the word 'vehicle' in legislation, "A person may not drive a motor vehicle in a city park." Plainly, the ordinance prohibits a person from driving an automobile in a city park. Yet reasonable speakers of English could disagree as to whether the bill prohibited motor-driven wheelchairs. To avoid disagreement, a drafter could expressly define the word 'vehicles' to exclude 'wheelchairs.' Occasionally, a drafter may intend a bill's reader to construe a word to include in its meaning items that, in ordinary language, that word might exclude. To avoid misunderstanding, the drafter should define the word in the bill, for example, by defining 'animals' to include whales and other sea mammals.

### **E. The Structure of a Section**

As a bill's basic building block, a section constitutes a single rule, a prescription. Sometimes that prescription seems hidden behind an undergrowth of dense language. As you analyze a section's words, keep in mind that you need to identify the behaviors they prescribe.

With very few exceptions (usually less than 5 per cent) each section of a well-drawn bill commands, prohibits or permits a social actor to behave as it prescribes. (Even the remaining 5 per cent constitutes commands, although of a peculiar sort; below.) Always ask, does a section properly tell the reader, Who? What? When? And where?

### **Who?**

To answer the question, ‘Who?’ look for the person whose behaviors the section prescribes? A language expert would tell you to identify the sentence’s subject.

(Mistakenly using a passive voice, a drafter may fail to specify the rule’s subject.

Take for example, a legislative sentence that states: “*The accounts of the Small Claims Court shall be audited at least twice a year.*” (Does it state who will audit the accounts?) If you cannot discover the subject of a sentence, insist that the drafter redraft it.

### **What?**

The question, ‘What?’ tells you to look at how the sentence commands the person (the ‘subject’) to behave. A language expert would tell you to look at the sentence’s verb.

Does the section’s prescription command, prohibit, or permit a subject to ‘behave’ as the verb indicates? For that, language experts would tell you to look at the section’s auxiliary verb: by convention in English, drafters use ‘shall’ (in some jurisdictions, ‘must’) for a command; ‘may not’ (or ‘shall not’), for a prohibition; and ‘may’ for a permission. If a bill’s section does not limit the prescription, it applies at all times and under all conditions.

### **Where and when?**

Most sections do specify where and when the command, prohibition or permission goes into effect. A section may limit the behavior prescribed – the When? and Where? — by stating a case, a condition, or an exception.

#### **1. A case modifies either**

- a subject: “An individual who has passed that individual’s eighteenth birthday may vote in a national election.” This sentence limits the subject to an individual who has reached 18 years of age.
- a verb: “[Under specified circumstances, a person] may vote by absentee ballot.” This sentence limits the verb, ‘to vote,’ to voting by an absentee ballot.
- the object of the verb: “[Under specified circumstances] a person may cast a paper ballot.” This limits the object (the kind of ballot the voter may cast).

2. A condition states what must happen before the rule comes into force: “If an individual has passed that individual’s eighteenth birthday, that individual may vote in a national election.” (Usually the words ‘if’ or ‘where’ precede a condition.)
3. In the exception, the prescription states a general rule applying to the whole domain, and then carves a portion out of it – the exception – limiting the prescription to only that part of the whole domain not excepted. “Except when an individual’s eighteenth birthday has not passed, an individual may vote in a national election.” (Usually, the word ‘except’ precedes the ‘exception’.)

All three forms tell the reader the circumstances in which the permission granted (that is, to vote in a national election) comes into effect.

These four questions – the Who? the What ? and (where relevant) the Where? and the When? – focus attention on a section as a single prescription. Once you understand a bill’s formal structure of sections, chapters and parts, and what the individual words and sentences mean on their face, the answers to these four questions will give you a grasp on the meanings of about 95 per cent of that bill’s substantive commands.

## **F. Discovering The Bill’s Substance**

After you have peeled back the layers of legalisms in which drafters couch their bill’s commands, after you understand its various prescriptions and its ‘technical’ provisions, you should find it easier to assess the bill as an integrated whole. Its prescriptions may aim either to change an existing institutional structure or, more rarely, to create a whole new institutional structure.

The bill’s text gives you no direct information to enable you to determine whether or how the new law, once enacted, will function. To make an estimate of the bill’s probable social consequences, you must understand the bill’s substantive core, the central purpose and thrust of all its commands.

If, in the context of existing law, the relevant actors behave as the new law ‘s rules prescribe, they will create or change eight different kinds of interrelated institutional sub-systems – an entire legislative system – embodied in the existing legal order.



Whether the new law will prove effectively implemented and achieve its stated purposes depends on whether and how each of those subsystems affects and becomes affected by the relevant actors' prescribed new behaviors.

A complete legislative scheme prescribes behaviors that institute eight subsystems. It consists of rules addressed to:

1. Primary role occupants.
2. Principal implementing agencies.
3. Sanctioning agencies.
4. Dispute-settlement agencies
5. Funding agencies.
6. Monitoring and evaluation agencies.
7. The agency that makes regulations under the law.
8. The personnel who keep the corpus of the law in order.

A simple bill, like one prohibiting spitting on the sidewalk, may expressly address only one aspect of one sub-system (see example on page 58). When enacted, however, the new law will exist in the context of other laws that provide for the on-going operation of the other seven sub-systems. Assuming the other seven sub-systems function reasonably well, you can assess a simple bill on its face.

A large and complex bill may incorporate rules affecting all sub-systems.

### **G. How a Bill Fits into the Existing Legislation**

Consider a simple bill forbidding spitting on the sidewalk in urban areas. It contains only a few short sections.

- ☒ [Short title]
- ☒ Within the boundaries of an incorporated city, a person may not spit on the sidewalk.
- ☒ A Court shall convict a person of an offence whom after a hearing it finds violated section 2 and fine that person not more than 50 birr."

This bill, on its face, only prescribes part of the behaviors of two subsystems – the primary role occupants and the sanctioning agency. It assumes that elsewhere in the body of law exist other rules addressed to the relevant actors in other subsystems.

These implicit prescriptions include rules addressed to:

1. The implementing agency. The police, whom an existing Police Act usually commands to arrest a person they have reasonable ground to believe committed an offence (here, spitting on the sidewalk).
2. The sanctioning agency. The prosecutors and the judges for whom the existing Court Act and Criminal Procedures Act prescribe procedures for bringing an accused person to trial and deciding its outcome.
3. The dispute-settlement agency. Frequently (as here), the courts serve simultaneously as both the sanctioning agency and the dispute-settlement agency. Existing procedural laws prescribe how courts should hold criminal trials and settle disputes over guilt or innocence.
4. Funding agencies which, under existing budget and finance laws, provide funds for the police and the courts.
5. Monitoring and evaluating agencies. Existing law usually requires the elected legislature to oversee government's implementation of laws. The Chief of Police's annual report on the incidence of crime may list the number of people arrested for spitting on the sidewalk, an indication of whether the police enforce the new law.
6. The rule-making agencies. In many laws (particularly those that aim to transform an institution), some agency must make and promulgate detailed regulations. In complex legislative schemes, without detailed rules, the scheme will not work. Either in the bill proposing complex legislation, or elsewhere in the body of the law, authorization to make detailed rules must exist together with criteria and procedures for doing so.
7. The people who keep the corpus of the law in order. The bill's section 1 constitutes a command to those concerned with the law.

In short, to understand a bill, you should take five steps:

1. Outline the bill, following its numbering system for Sections, Chapters, and Parts. Fill in the Chapter and Part headings from the bill.

2. Read each section carefully. Make sure that you understand the words it uses. Don't let legalese upset you. Insist that the bill's sponsors and drafters explain each word with which you have difficulty.
3. Analyze each section by asking who does what? Under what limits or circumstances? When?
4. Disentangle the 'technical' sections by interpreting them as commands, especially to government officials about how to fit the bill into the existing body of law.
5. Complete the outline you started in step 1 by putting each of the commands related to one of the subsystems into a separate group. Where, as frequently happens, the bill says nothing about a whole subsystem, ask whether another law will work to provide for that function. (For example, in the absence of a specific dispute settlement system, ask, will your country's court system adequately settle disputes arising under this bill?)

Having completed those five steps, you should understand the bill well enough to decide whether it merits your support – that is; you are at last in position to assess the bill.

1. Explain why outlining a bill constitutes the first step in assessing it.
2. You ask a drafter what a phrase in the bill means. He replies, "Don't worry about it. That's only technical language necessary to ensure the bill's legality. You have to be lawyer to understand that phrase." How would you reply to the drafter?
3. "In a well-drawn bill, almost every sentence commands, permits, or forbids." What does that proposition reveal about the nature of the law? Is it consistent with the proposition that almost every sentence in a bill must state who does what? How might you use that proposition in asking questions about the meaning of a section of a bill?
4. Whether, in the bill itself, or in other, existing applicable legislation, a complete legislative scheme' contains some 'technical' provisions. Give some examples of these 'technical' provisions. Why does every legislative scheme include some of these?
5. "Whether contained in the bill before you or in other, existing legislation, a complete legislative scheme contains prescriptions addressed to eight sets of addressees." Who constitute those eight sets of addressees? How might you use that information to help you to assess a bill?

#### **4.3.7 Specific Parts of a Bill**

The earliest laws written in English had no parts, divisions, sections, or subsections. The text filled the page from margin to margin and top to bottom. In part, this was to prevent extra words or sentences being slipped into the text when authentication of original laws was problematic. But the practice of "wall to wall" text went on long after the reason for doing so had passed. More over the writers of rules as mentioned earlier used to be paid by the number of words and hence tried to include as many words as possible with repetition and legalese.

As rule-writers, our task is a dual one - to create a rule that is legally certain, and to do it in a way that is functional. When the subject-matter is complex, or a process is difficult to follow, drafters should seek additional ways of improving clarity, by a diagram, by an algorithm, by examples embedded in the text, or by using other techniques.

As a society, we really have not even started to invent ways of writing rules helpfully. Most of our energies are used up arguing over the need to try and improve clarity, rather than inventing new ways of doing so.

A great deal of very useful information is generated during the rule-writing process - but it is not used when the rule is finally adopted - a valuable resource is squandered, lost to the very people who could make most use of it.

We will move beyond the fruitless debate over the "right" drafting style (common law or civil law - both have their place and both can be drafted plainly) and move towards a capacity to draft in the style that best suits the readers' needs, with all the aids necessary to provide a useful rule.

For these endeavors a multi-disciplinary team is necessary, combining the skills of linguists, lawyers, computer experts, communications experts, and no doubt others. With the resources we now waste in drafting rules, and, more importantly, the time and resources others waste in reading unnecessarily complex rules, it is surely only a matter of time before we invest more resources in the way in which our rules are written for a more productive, effective, and efficient result. Now there is a task linguists and lawyers can really confront!

Hence as we have mention in the part earlier, if legislation are to be used as a means of resolving problems it is important that they are clear and in addition to the words that are used, about which we are going to say something, later in this chapter, it is important that we

have a clear structure. We have said some about structure in the earlier portion, but it is important to specifically mention some of its parts and deal with the need for and the type of structure deeper.

#### \* Title or Caption

The title is that portion of the bill that expresses the subject of the bill. A properly prepared title is essential to the validity of the law to be enacted. The title should briefly summarize in a general statement the subject of the proposed legislation so that the reading of it will be sufficient to indicate the general nature of the changes, which are embodied in the legislation.

It is not desirable to enumerate all the details and provisions of a bill in the title. If the title attempts to be a complete and detailed index of the contents of the bill, any addition to or deletion from the body of the bill will necessitate a corresponding change in the title which is unnecessary if the title is sufficiently broad to indicate the general purpose of the bill. When constructing a bill title, two purposes should be foremost. First, the title should be written so that the reader can understand what the enactment of the bill will accomplish without reading the body of the bill. Secondly, the title should be written so that minor amendments will not necessitate a title amendment. Direct citations to existing laws should not be made in the title. The keystone of the title is the selection of active verb forms, which will express the purpose of the bill. Some of the most useful of these are:

Add, appropriate, Authorize, create, declare, define, delete, direct, establish, exempt, extend, increase, limit, modify, permit, prohibit, provide, remove, rename, require, retain, revise, subject, transfer, etc

#### \* Enacting Clause

A document without an enacting clause is not a bill; the enacting clause is the same in every legislation and may never vary. And in Ethiopia it reads as Enacted by the FDRE House of People's Representatives, and no other.

#### \* Short Title

A short title is used to supply a convenient way of citing a cohesive body of law that deals comprehensively with a subject.

\* Statement of Policy or Purpose

Statements of policy or purpose are rarely needed and generally should be avoided. This kind of provision may be useful, however, when a substantial body of new law is introduced. A purpose clause also may be helpful in a short bill if the operative provisions do not clearly indicate what the bill is intended to accomplish.

\* Definitions

(Refer to the discussion on the earlier part on the purpose and kinds of definitions.)

\* Principal Operative Provisions

A) Types of provisions.

Most statutory provisions may be classified under four major categories:

- ☒ general provisions, such as short titles, purpose sections, and definitions, which relate primarily to the text of the statute rather than to persons or agencies;
- ☒ administrative provisions, which relate to the creation, organization, powers, and procedures of the governmental units that enforce or adjudicate the law;
- ☒ substantive provisions, which give to or impose on a class of persons rights, duties, powers, and privileges; and
- ☒ enforcement provisions, which provide a particular kind of enforcement that is in addition to the remedial powers of the governmental unit.

The second and third of these categories constitute the principal operative provisions.

Not all bills will have all these types of provisions. Many will contain only one or two of them, relying by implication on the operative provisions of existing law. For example, a bill creating a penal offense will rely on other law to create courts and to empower peace officers.

to arrest offenders. It is generally best to organize a new law so that the operative provisions appear in the order indicated by this subsection.

b) Organizing operative provisions. Sorting the operative provisions of a bill into the categories indicated does not complete the task of organization: within each category, individual sections (and even smaller units) should be organized in a logical order to make the proposed statute as readable and easy to use as possible. The following general principles should be followed in organizing any draft:

- Assume that provisions will be read in the order in which they appear. Avoid arranging a bill in such a way that a provision makes no sense until a subsequent provision is read.
- Provisions should appear in the order of their importance, beginning with the most important. General provisions should precede special ones; the general rule should precede an exception.
- To the extent possible, provisions dealing with the same subject should be grouped together.

#### \* Enforcement Provisions

The purpose of the law is to govern conduct. This is often accomplished by announcing a rule, which may be a mandate or prohibition, and prescribing a punishment for noncompliance or a reward for compliance. The announcement of a rule is referred to as a substantive provision, and the prescribing of a consequence is called an enforcement provision.

#### Repeals/Amendments

Each enacted bill affects, by addition, deletion, repeal or other alteration, the cumulative body of existing state law and is in that limited sense an amendment of existing law.

Amendments are an essential part of the legislative process because amendments allow the alteration of bills and resolutions after introduction. The principles of style and form that apply to bills also apply to amendments.

In drafting amendments, imagine giving instructions to a secretary for alterations in a bill. Although some amendments may be pages long and make dozens of changes, the basics of each amendment never change; identify the following:

- \* the legislation to be amended
- \* the place at which the change will occur
- \* the change itself<sup>10</sup>
- . \* Saving and Transition Provisions

Saving and transition provisions help to minimize the disruption and inequities that often attend the taking effect of legislation. A saving provision “saves” from the application of a law certain conduct or legal relationships that occurred before or existed on the effective date of the law. Transition provisions provide for the orderly implementation of legislation, helping to avoid the shock that can result from an abrupt change in the law. The most common transition provision is the effective date section, which provides for orderly implementation of a statute by delaying its effective date or by providing staggered effective dates for various provisions.

#### \* Effective Date

In Ethiopia since there is no specific effective date on which legislation becomes functional, a particular date on which it will become effective is written. Here one point to be raised is that the date on which it is drawn may not necessarily be the date on which it will become effective. On the other hand to give time for change as has been mentioned earlier it rather might be effective at a later date. And next to that legislation is signed by the Head of State.