



THE UNITED
REPUBLIC OF TANZANIA



LEGISLATIVE DRAFTING MANUAL

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FOREWORD BY THE ATTORNEY GENERAL



The term “legislative” derives its meaning from two latin words “*legis*” meaning law and “*latum*” meaning to make, put or set. Simply put, a legislation is a set of rules passed by the Parliament to regulate human behavior in a society as such having a binding nature upon them. That being the case, it is of utmost importance for any piece of legislation to be clear and concise in order to allow smooth implementation of the enacted legislation by individuals and entities.

Apart from the Parliament, the Government and members of the society, among the key persons in the process of formulation of a legislation is a Parliamentary Drafter. It is generally presumed that a Parliamentary Drafter’s role in the legislative process is to put the drafting instructions for a particular legislation into writing and, in the strict sense, take into consideration of the use of proper grammar, style, vocabulary, correctness of language and textual structure in drafting the legislation.

Ironically, in order to achieve the desired effect and ensure efficiency of the intended legislation, it is pertinent for a Parliamentary Drafter to be concerned with the content of the legislation to be enacted, in other words, the legislative intent of the statute. If an enacted legislation is not effective or efficient, it becomes no different than a “dead letter” and undermines the rule of law. Therefore, while drafting a legislation, a Parliamentary Drafter should also ascertain that the legislation:

- (a) is not inconsistent with the Constitution of the United Republic and other laws;
- (b) promotes democratic governance thus giving effect to the rule of law;
- (c) address the needs of the society;
- (d) gives rise to less litigation; and

(e) does not have deficiencies that would otherwise subject it to frequent amendments thereby adding costs to the Government.

Application of proper skills of legislative drafting by a Parliamentary Drafter can service the transformation of laws to meeting the growing demands of public interest promotion, institutional transformation, the law-making process, democratic change, deter crime, fight corruption as well promote good governance.

Legislative drafting is an obligatory instrument for the transformation of the laws of any state therefore, good drafting is required so as to capture the essence of any transformation agenda in the process of enactment of a legislation.

The relationship between a properly drafted legislation, good governance, development and institutions are intertwined because, much as a legislation may be enacted for the functioning of a particular institution, it cannot stand alone, it needs complementing by institutional behavioral changes that reflect the political will of those at the wheel of affairs to produce the desired transformation. Therefore, a legislation that is enacted in adherence to the rules of legislative drafting contributes to the better performance of an institution in achieving the objectives of development and good governance.

Once a policy is in place, it is the role of the Parliamentary Drafter to translate the same into legislation. If the respective Bills is analysed within the framework of jurisprudential philosophies about, the nature of law itself, the said law will not only solve social problems, but the citizens and all stakeholders will understand their obligations, and in turn courts can enforce the laws effectively.

The commencement of the process of disciplining and refining political will through application of constitutional reason and conclusively enacting a clear and unambiguous legislation, which is then continued at the stage of interpretation of statutes by the courts, contributes to development of a society. Transformation involves change and the pursuit of social change always

involves an engagement with the law, therefore the legislature must act as the eyes, ears, and voice of the people. The better the drafting of a legislation, the smoother the integration of democracy and the rule of law and the less need there is for interstitial law-making by judges in the interpretative exercise.

This Legislative Drafting Manual is a useful tool, aimed at contributing to the realisation of the rule of law, promotion of sustainable development and promoting greater stylistic uniformity in the work drafted by Legislative Drafters, State Attorneys and other persons involved in the process of legislative drafting.

My forwarding message would not be complete without acknowledging the contributions of all persons who contributed towards development of this Manual. In particular, I wish to express my sincere appreciation to Dr. Evaristo E. Longopa, the Deputy Attorney General, for coordination and facilitation of the preparation of this Manual. The successful development of the Manual is a testament of his hard work and dedication.

My heartiest appreciation goes to Mr. Onorius J. Njole, the Chief Parliamentary Draftsman for his meticulous contribution towards development of this Manual. What the Office of the Attorney General has achieved through development of this Manual is not insignificant, it is one of our biggest success yet and his strong leadership skills, and dedication have contributed to this.

My sincere appreciation extends to the Management team of the Office of the Attorney General and the entire staff of the Legislative Drafting Division for their immense contribution towards development of this Manual. Their tireless efforts are evident throughout the Manual.

Last but not least, I wish to acknowledge my profound gratitude to the Review Committee which was Chaired by the Hon. Judge Juxon Mlay (RTD), who is also a former Deputy Parliamentary Draftsman and former Director of Public Prosecutions, the Hon. Judge Julius B. Mallaba (RTD) who has also served at the Office of the Attorney General (then Attorney General's Chambers) as Director of Civil Litigation, Contract and International Treaties, the Hon.

Judge Sirilius B. Matupa (RTD) who, before being appointed Judge of the High Court, was the Legal Adviser to the President of the United Republic of Tanzania. Hon. Judge Matupa has also served at the Office of the Attorney General (then Attorney General's Chambers) as Private Assistant to the Attorney General and Ms. Sarah K. Barahomoka, the former Chief Parliamentary Draftsman. The collective efforts of the Committee have yielded a great outcome not only for the Office of the Attorney General, but the nation at large. The achievement was only possible through their dedication, time and efforts, given their normal responsibilities.



Hon. Judge Dr. Eliezer Mbuki Feleshi

ATTORNEY GENERAL

February, 2023



MESSAGE FROM THE CHIEF PARLIAMENTARY DRAFTSMAN



It is a well-established principle that a good law depends on abilities and capabilities of a Parliamentary Draftsman, who is called upon to translate policy into simple, concise and lucid Bills which have clarity as their essence make the work of the Parliament of enacting legislation easier and more effective. This goes to show that the process by which laws are made is determinative of their ultimate quality.

In order to realise the norms and principles of legislative drafting and to bring all lawyers onboard, the Office of the Attorney General has officiated and issued this Drafting Manual which in one way or another will serve such purpose. This Manual sets out the norms and principles of making laws that promote greater stylistic uniformity in the work drafted by, not only a Parliamentary Draftsman, but also a State Attorney employed in the public sector. Therefore, a lawyer engaged in drafting any legislative instrument is required to adhere to the principles enshrined in this Manual. The Manual also serves as a teaching aid on legislative drafting matters.

The initiation of this Manual is drawn back to the recognition of the former Chief Parliamentary Draftsmen, the late Mr. Siegfried K. Lushagara, Ms. Esther J. Manyesha, Mr. Casmir S. Kyuki and Ms. Sarah K. Barahomoka. I am extremely grateful to you all, because the present achievement of the development of this Manual would not have been possible without your indefatigable laid foundation. Your diverse professionalism, background, strong leadership skills and dedication have contributed immensely towards the successful development of this Manual.

My sincere gratitude extends to the Hon. Attorney General, Judge Dr. Eliezer Mbuki Feleshi and the Deputy Attorney General Dr. Evaristo E. Longopa, for their dedication and unwavering support in the preparation of this Manual. I

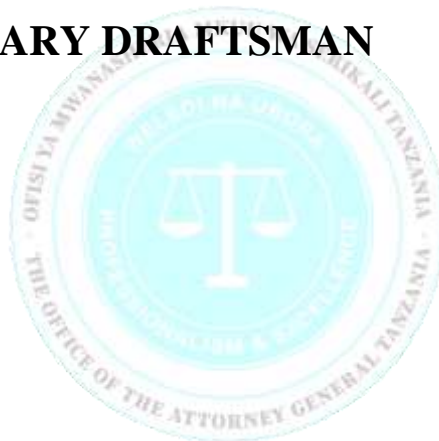
wish to thank the entire Management team of the Office of the Attorney General for their contribution towards development of this Manual. My heartfelt gratitude goes to each staff of the Legislative Drafting Division of the Office of the Attorney General for their tireless efforts in preparation of this Manual. It gives me immense pride to know that the Legislative Drafting Division has a workforce as creative and as hardworking as all of you.

I wish readers a happy reading.

Onorius J. Njole

CHIEF PARLIAMENTARY DRAFTSMAN

February, 2023



EXECUTIVE SUMMARY

Being a specialised discipline, legislative drafting requires skills and expertise in order to effectively communicate the law in a manner that is understood by its designated audience. The task of drafting legislation is not merely putting words from a policy in writing, it entails giving effect to Government policies and directives by drafting legislation that is legally correct and observant of accepted principles of legislative drafting.

This Manual has been developed as a guiding tool to Parliamentary Draftsmen and other key persons involved in the process of developing and drafting legislation. It is the first comprehensive consolidation of drafting style and practices that have, over the course of time, been adopted by Parliamentary Draftsmen in the Office of the Attorney General when drafting legislation. Apart from offering instruction on development and drafting of legislation, the Manual also lays down major principles and considerations when revising or translating legislation.

The key purpose for issuance of this Manual includes promoting uniformity in drafting style, outlining principles, skills and techniques of drafting legislation, highlighting procedures and processes for legislative drafting, with the view to improving the quality of legislation.

This Manual is divided into Twelve Parts which cover preliminary matters, principles, skills and procedures of legislative drafting from the initial stage of policy making to publication of proposed Bills and Acts of Parliament.

Part One provides for preliminary matters while Part Two deals with legislative drafting and highlights mandatory principles to be observed prior to and during the process of drafting legislation.

Part Three deals with the process involved the policy formulation in Mainland Tanzania and the rationale behind the development of policy, while Part Four

explains on translation of policy into legislation. Part Five gives a step-by-step summary of the process of enacting legislation from inception to commencement.

Part Six of the Manual gives an account of considerations to be taken into account by a Parliamentary Draftsman when amending or repealing legislation and rectification of errors. While Part Seven elucidates on skills necessary in drafting of legislation and the standard format of legislation, Part Eight on the other hand, deals with key considerations in legislative language which include the use of plain language in communicating the legislative intent to users.

Part Nine focuses on drafting subsidiary legislation and special attention is drawn to drafting of by-laws due to the peculiarity of the procedures involved in their development. Parts Ten and Eleven relate to revision and translation of laws respectively. Part Twelve deals with drafting of documents necessary for ratification of international treaties and agreements, report writing, confidentiality and self-development for parliamentary draftsmen.



PART ONE

PRELIMINARY MATTERS

1.0 Citation

This Manual may be cited as the Legislative Drafting Manual of 2022.

1.1 Application

This Manual applies to all Parliamentary Draftsmen in the Office of the Attorney General, State Attorneys in the local government authorities involved in the preparation of subsidiary legislation under the local government within the Ministries or Government institutions, State Attorneys and other key persons who are involved in the legislative processes.

1.2 Objectives of the Manual

The objectives of the Manual are to:

- (a) provide for basic legislative drafting principles, skills and techniques to Parliamentary Draftsmen and State Attorneys working in Government Ministries, Departments, Agencies and local government authorities and other key persons involved in the process of developing and drafting legislation;
- (b) serve as a working tool and reference material for other persons involved in developing legislation and for scholarly purposes;
- (c) achieve and enhance uniformity, precision and style of legislation;
- (d) provide guidance on policy formulation and translation of policy into legislation; and
- (e) provide for legislative process of enactment of legislation from inception to the commencement stage.

PART TWO

LEGISLATIVE DRAFTING

2.0 LEGISLATIVE DRAFTING

Experience and practice reveal that legislative drafting simply means the process of drafting or preparation of intended or proposed legislation in a written form. The drafting process which relates to the law making involves legal and other knowledge, skills and techniques in the preparation of the legislation.

As a matter of legislative procedures, the proposed legislation to be drafted has to undergo various processes and stages of legislative meetings for scrutiny prior to its enactment by the Legislature.

In this regard, the Parliamentary Draftsman needs to be an experienced person equipped with such legal and other knowledge, skills and techniques as are necessary for efficient drafting of the proposed legislation. In addition, such Parliamentary Draftsman is required to be conversant with the legislative procedures and processes under which the proposed legislation is subjected to.

2.1 Sources of Legislation

There are various sources from which legislation emanates. The sources of legislation include:

- (a) Constitution of the United Republic of Tanzania;
- (b) Government Policies;
- (c) Government Directives;
- (d) Parliamentary Debates;
- (e) Court's Decision;
- (f) Treaties, Protocols and International Conventions;
- (g) Regional Acts;
- (h) Reports of Law Reform Commission;
- (i) Commissions formed for a specific purpose;

- (j) Implementation of existing laws;
- (k) Proposals from Civil Societies; and
- (l) Religion, Norms and Customs of a Society.

Knowledge on the source of legislation is vital as it enables a Parliamentary Draftsman to understand the background, nature and circumstances surrounding the subject matter to be legislated on and determine legislative requirements of the intended legislation.

2.2 Role of the Parliamentary Draftsman

In the process of legislative drafting a Parliamentary Draftsman plays a significant role from the initial stage of drafting or preparation of the proposed legislation to the enactment of the legislation by the Legislature. Thus, in this process the role of the Parliamentary Draftsman includes:

- (a) analysing and conceptualising Government instructions and policies for intended legislation;
- (b) designing and drafting of Government Bills or legislation to be tabled before various legislative meetings, including Cabinet Committees, Parliamentary Committees, the National Assembly and Regional fora;
- (c) drafting or vetting of subsidiary legislation where the preparation of a Bill so requires;
- (d) providing legal advice to Ministries, Government institutions and independent Departments (through the Attorney General), on various legal and legislative matters;
- (e) providing clarification during deliberation and scrutiny of the proposed legislation by parliamentary committees;
- (f) preparing or drafting of the Finance Bill for amendment of existing tax, revenue laws and other related laws for enhancement of collection of revenue and management of Government revenues;
- (g) preparing of Schedules of amendments in the course of discussion of the Bills by the parliamentary committees and the National Assembly;

- (h) revision of laws;
- (i) preparing resolution documents for ratification of international treaties and agreements by the National Assembly;
- (j) translation of Bills and other legislative instruments from English to Kiswahili languages and vice versa;
- (k) preparation of all documents and instruments as may be required for legislative drafting;
- (l) facilitating publication of principal and subsidiary legislation in the *Government Gazette*; and
- (m) performing such other legislative duties as may be directed from time to time by the Attorney General.

Considering the nature of the legislative activities, the Parliamentary Draftsman is always required to attend all legislative meetings throughout the legislative processes so as to provide advice or clarification as may be required in the process.

2.3 Basic Principles in Legislative Drafting

The legislative process entails adherence to certain mandatory principles prior to and during the process. A person engaged in the legislative process should take into account the principles with a view to ensuring that the intended legislation conforms to the existing policy and legal framework. These principles include:

- (a) upholding the Constitution and other laws of the country;
- (b) observance of international treaties and agreements;
- (c) consideration of matters relating to territorial and extra territorial jurisdiction;
- (d) implementation of policy; and
- (e) public participation.

2.3.1 Upholding the Constitution and Other Laws of the Country

A Parliamentary Draftsman must consider the Constitution and other basic laws of the country when engaging in the legislative process. Consideration of the same is significant in removing or minimising the likelihood of derogation from constitutional principles, policy and legal framework or legislating on a matter that has previously been legislated on. It is necessary for a Parliamentary Draftsman to undertake a detailed research so as to ascertain whether the matter has been legislated previously or not or whether the existing legal framework needs to be modified, amended or repealed to cater for the situation at hand. By so doing, the Parliamentary Draftsman will be in a position to determine other measures that can be employed to address the situation other than legislative measures and advise accordingly.

The basic laws that lay down the principles, art and practice of legislative drafting include the following:

(a) The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania, 1977 is the supreme law of the country. Therefore, every law must be consistent with the provisions of the Constitution, otherwise such law is considered to be null and void to the extent of the inconsistency. A Parliamentary Draftsman must adhere to constitutional provisions with regard to-

- (i) the fundamental rights, freedoms and duties;
- (ii) union and non union matters;
- (iii) functions, powers, duties and limitations of state organs and public entities.

(b) The Interpretation of Laws Act, Cap. 1

The Interpretation of Laws Act, Cap 1, provides the basic rules of interpretation of laws which a person engaged in the legislative process is required to be conversant with. During the legislative process, it is imperative to understand key words and expressions of general

application as defined in the Act in order to avoid repetition or misinterpretation in the intended legislation. Understanding of matters relating to enactment, amendments, repeal, commencement and publication of legislation is of utmost importance during the legislative process as the same have impact on the existing legislation in relation to the intended legislation.

(c) The Public Service Act, Cap. 298

When engaging in drafting of legislation involving an organisational structure of certain Government offices or departments and scheme of service for particular public servants, a person is required to consult the Public Service Act, Cap. 298, its regulations and the Standing Orders. The Act, its regulations and Standing Orders are the principal source of law in matters relating to public service, scheme of service and organisational structures of public institutions.

(d) Public financial management laws

Public financial management laws such as the Public Finance Act, Cap. 348, the Public Procurement Act, Cap. 410 and the Public Audit Act, Cap. 418 should be considered in the legislative process with a view to ensuring that the proposed law conforms to requirements of the said laws.

(e) Tax Laws

Tax laws form significant component of laws providing for imposition and collection of taxes and levies as fundamental sources of revenue for the Government. The principles and positions established under such laws need to be observed by a Parliamentary Draftsman during preparation or drafting of the Bill so as to avoid contravention or conflict with such important laws.

(f) Penal laws

Penal laws such as the Penal Code, Cap. 16 and the Minimum Sentences Act, Cap. 90 should be consulted during the legislative process to avoid creation of offences and penalties that are already in the existing legislations.

(g) Procedural laws

In the legislative process, it is prudent to consider procedural laws such as the Civil Procedure Code, Cap. 33, the Criminal Procedure Act, Cap. 20, the Evidence Act, Cap. 6 and the Law of Limitation Act, Cap. 89. This is due to the fact that such laws take precedence over other laws in procedural matters applicable in courts.

(h) Other Specific Laws

The laws providing for specific matters such as electoral laws, pension laws, local government laws, the Office of the Attorney General (Discharge of Duties) Act, Cap. 268 etc. need to be observed by a Parliamentary Draftsman to avoid unnecessary conflict with such laws. It is important for a Parliamentary Draftsman to note the interpretation principle that, whenever there is the conflict between the general law and a specific law that the specific law prevails.

2.5 Observation of International Treaties and Agreements

Tanzania as a sovereign country is a state party to various international treaties and agreements. Article 63(3)(e) of the Constitution provides for the powers of the Parliament to deliberate and ratify all treaties and agreements to which the United Republic is a party and the provisions of which may require ratification. Once ratified, the treaties and agreements are implemented through various methods such as policies, legislation and programs. In view of this, a person engaged in the legislative process ought to consider ratified international treaties and agreements pertinent to the intended legislation.

2.6 Regional Laws

Some of the regional blocks to which Tanzania is a party have enacted laws which are binding to all partner states. Therefore, it is important for a Parliamentary Draftsman to take into consideration the provisions of such laws.

2.7 Consideration of Matters Relating to Territorial and Extra Territorial Jurisdiction

Principally, a country can only enact laws which are applicable within its territorial boundaries. However, there are matters for which a country may enact laws with extraterritorial application. Those matters include cross-border crimes such as money laundering, trafficking in persons and cyber crimes. It is the duty of a person engaged in legislative process to ascertain the applicability of the intended legislation in terms of jurisdiction and to foresee possible challenges of implementation and their solution, in the case of extra territorial jurisdiction.

2.8 Implementation of Policy

National goals and targets are stipulated in various documents including policies. In most cases, legislative process is necessary in giving effect to policies. Hence, in that process, it is important to comprehensively consider national policies in order to realise harmony between policies and legislation.

2.9 Public Participation

Public participation in the legislative process is a constitutional requirement envisaged under Articles 18 and 21 of the Constitution which provide for freedom of expression and freedom of participating in public affairs. Cognisant of this fact, involvement of the public in the legislative process is vital to improving the contents of the legislation.

PART THREE

POLICY MAKING PROCESS

3.0 INTRODUCTION

As indicated in the previous Part, policies are the most fundamental sources of law in Tanzania which need to be observed in legislative drafting. Therefore, this Part intends to provide a general overview of the policy making process in Mainland Tanzania. In this Part, the main theme will be on the meaning of policy, rationale for policy development, policy formulation process and policy approvals.

3.1 Meaning of a Policy

In principle, a Policy is a statement of guiding principles and goals for the purpose of addressing a certain issue with a view to improving the welfare of the people. It is defined by the Cambridge International Dictionary of English (first published 1995) as “a set of ideas or a plan of what to do, in particular situations, that has been agreed officially by a group of people, a business organisation, a government or a political party.”

In the legal context, a policy is defined by the Black’s Law Dictionary as “the general principles by which a government is guided in its management of public affairs.” Generally, policies tend to be a cornerstone on which legislation are developed for giving effect to policy objectives.

3.2 Basis of Policy Formulation

Article 53(2) of the Constitution of the United Republic places the role of policy formulation on the Government of the United Republic. In view of this, every instrument establishing any sectoral ministry stipulates making of policies as one of the duties of such ministry.

3.3 Rationale for Policy Development

Policy formulation may be triggered by a number of factors. These include:

(a) Societal changes or socio-economic changes

Every society is dynamic in nature. The dynamism precipitates societal changes which require policies to cope with the new structures, developments or challenges.

(b) Regime change

Normally, when a political party enters into power, it brings its own agenda, mission and vision through its election manifesto. To give effect to the same, policies are formulated or existing policies are amended.

(c) Conditions from donors

Donors whether corporate or nations play a key role in influencing development of policies in recipient countries. There are instances in which aids and grants are given on the conditions that certain policies be formulated or amended by recipient countries.

(d) International agreements

Some international agreements necessitate formulation or amendment of policies for a state party to international agreement to be in conformity to the agreement.

(e) Court orders:

Courts of record, through their orders, may influence formulation of new policy or amendment of an existing policy.

3.4 Policy Formulation Process

Formulation of policy in Mainland Tanzania is mainly coordinated at the Ministerial level. In performing this task, ministries are expected to

identify problems that require policy intervention to be addressed. The policy formulation process is summarised as follows:

(a) Identification of problems in the sector

The sectoral ministry is responsible for identification of problems that require policy intervention. The identification may be caused by a situational analysis conducted by the ministry or influenced by any government decision or any other cause including those mentioned in paragraph 3.3.

(b) Review of the performance and preparation of the draft framework

In the policy making process, a sectoral ministry ought, through its department responsible for policy and planning, to review its performance in the sector. During this stage, the team is expected to review the ministry's strengths, weaknesses, opportunities and challenges in overseeing the sector. Having reviewed the performance of the ministry, the team is expected to prepare a draft policy framework and statements with a view to ameliorating the situation.

(c) Involvement of stakeholders

Policy formulation process in Mainland Tanzania is participatory in nature. It is a constitutional right as enshrined under Articles 18 and 21 of the Constitution that every person has a right to opinion and participate in the activities relating to the affairs of the nation. That being the case, the sectoral ministry, through its department responsible for policy and planning, is required to solicit views from both public and private sector stakeholders. Solicitation is effected through meetings and correspondences.

(d) Finalisation and adoption of a draft policy

The team of experts appointed by the sectoral ministry to review the ministry's performance in the sector is responsible for finalisation of the draft policy. During this process, the department responsible for

policy and planning takes into consideration views and other representations from stakeholders. After finalising the draft, the team is required to submit the draft policy to the ministry for adoption.

3.5 Policy Approvals

Sanction of the Cabinet is a prerequisite for a policy to be rolled out, hence, once the draft policy is adopted by the sectoral ministry, the same is submitted to the Cabinet Secretariat for its scrutiny in accordance with the Guidelines on Drafting Cabinet Papers, 2010 (2014 Edition).

Upon being scrutinised by the Cabinet Secretariat, the draft policy is submitted to the Inter Ministerial Technical Committee (IMTC) for its scrutinization. Once, the IMTC is satisfied that proper analysis is made, different approaches have been identified and discussed, and that the policy document provides the best option available to redress a situation, it endorses the policy document for submission to the Cabinet.

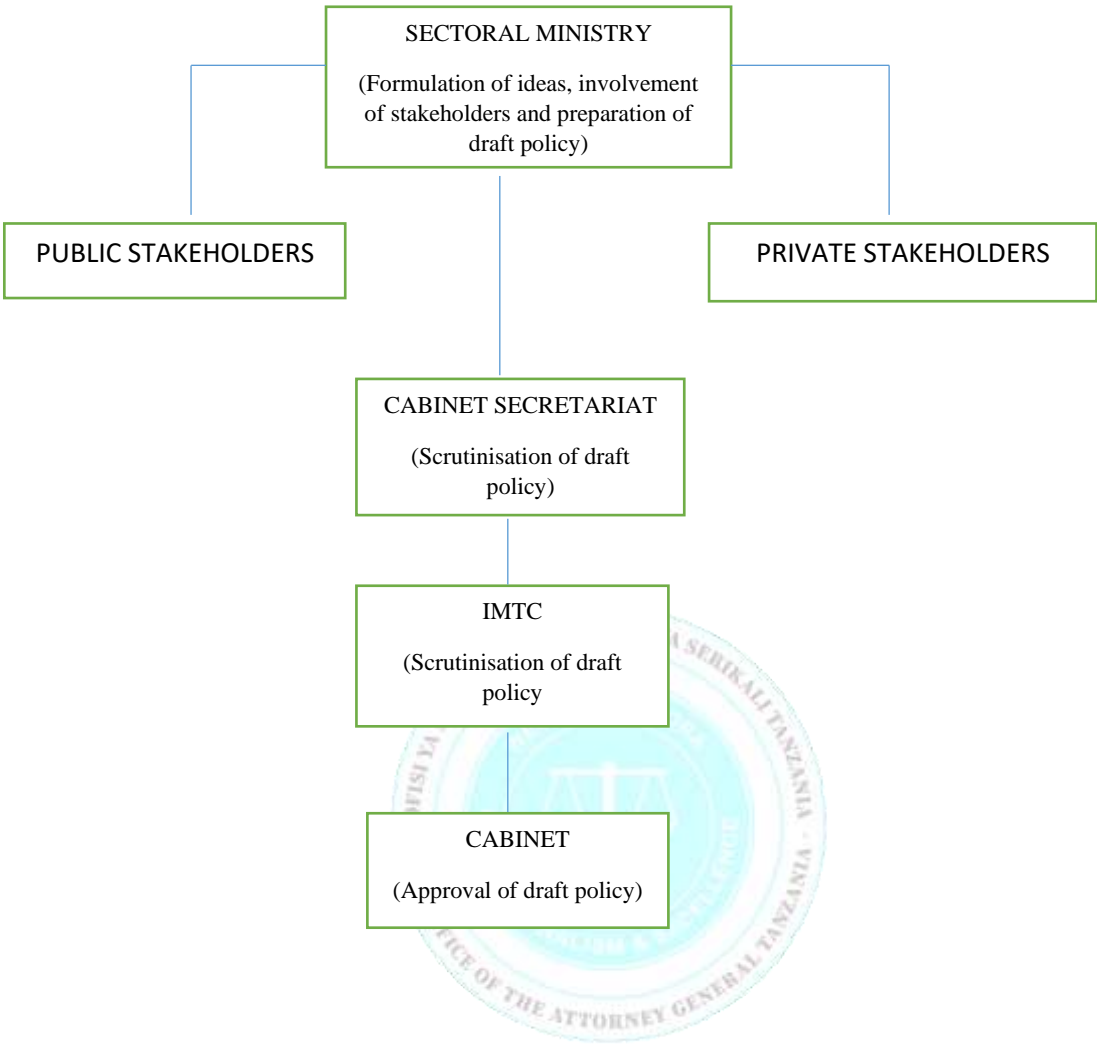
When the Cabinet is satisfied as to the perfection of the draft policy, it approves it and from that point the policy is due to be rolled out and disseminated to the public by the sectoral ministry for implementation.

3.6 Contents of a Policy

As a matter of principle, a policy contains the following:

- (a) situational analysis and problem identification;
- (b) policy objectives, mission and vision;
- (c) policy statements;
- (d) implementation arrangement;
- (e) policy strategies; and
- (f) monitoring and evaluation framework.

Fig. 1 Policy Formulation Process



3.7 Role of Parliamentary Draftsman in the Policy Making Process

In the process of policy making, an opinion or advice of a Parliamentary Draftsman may be required regarding legislative issues involved in the proposed policy. In performing the advisory task, the Parliamentary Draftsman shall study or examine the contents of the policy relating to drafting of legislation and advise the policy maker on the following:

- (a) whether the intended legislation conforms to the Constitution;
- (b) whether the legislation is in harmony with other existing laws or policies;
- (c) whether the legislation satisfies the need or requirement of the Policy;
- (d) whether the subject matter for the intended legislation is not provided for in other laws;
- (e) whether the subject matter for the intended legislation can be addressed or achieved through administrative measures; and
- (f) if the intended legislation proposes to repeal or amend an existing legislation, whether the consequential matters shall be properly taken care of.

The Parliamentary Draftsman dealing with provision of advice on the policies must ensure that the opinion is given in writing and submitted to the Chief Parliamentary Draftsman for approval.

PART FOUR

TRANSLATING POLICY INTO LEGISLATION

4.0 INTRODUCTION

Policy and legislation in most cases are inseparable as the former informs the latter. Although this position is considered to be the best practice, invariably this has not been the case as some legislations have been enacted before the policy being formulated.

A legislation that emanates from a policy is likely to be a comprehensive one as compared to the other legislation. The latter legislation is prone to difficulties in relation to its implementation which may necessitate amendments at its infant stage. Hence, it is ideal for a legislation to be preceded by a policy framework so as to minimise incongruities which can be taken care of during policy formulation.

Although it is generally accepted that a policy needs legislative measures to make it effective, not all policies need such measures as some policies are self-executing.

The approval of policy by the Government, is normally followed by publication and implementation of the policy. There are matters in policy which can be implemented directly without necessitating legislation and there are matters which need legislative measures in order for their implementation. For matters requiring a legislative enactment, the ministry prepares a Cabinet Paper (Policy Paper) for approval by the Government. Just like a policy, a Cabinet Paper also calls for the Government and Stakeholders to provide their views on the intended legislation. At this stage, a Parliamentary Draftsman is involved in the provision of advice on the matters to be legislated on.

4.1 Factors to be considered before translating policy into legislation

One of the major roles of a Parliamentary Draftsman is to translate policy into legislation. This entails use of legal principles to give effect to the policy. In view of this, there are factors which a Parliamentary Draftsman should consider before embarking on the exercise of translating policy into legislation. These are:

(a) Whether a policy needs legislation or is self-executing or needs non legislative measures to be effective

A Parliamentary Draftsman should be capable of comprehending a policy so as to determine whether or not the policy needs legislation or whether it is self-executing or needs non legislative measures and advise accordingly. Where the policy needs legislative measures, ascertainment of whether or not a new legislation is needed or whether an existing legislation is to be amended or the making of regulations will suffice to implement the policy is inevitable. This duty when exercised diligently prevents the country from having unnecessary laws and saves costs.

(b) Whether the policy objectives and purposes of legislation are clearly defined

A clear understanding of a policy's objectives when translating it into legislation is instrumental in determining purpose of the intended legislation. In case of any failure on the part of the Parliamentary Draftsman regarding the policy objective, likelihood of misnomer between the policy and the legislation is imminent. In that case, consultations between the Parliamentary Draftsman and policy makers is inevitable.

(c) Whether legislative measures are cost effective

Cost analysis should be conducted with a view to establish whether legislative measures to be taken as part of giving effect to a policy are cost effective. A Parliamentary Draftsman should engage the ministry

responsible for the policy in determining cost effectiveness of the intended legislation bearing in mind that there are legislations more expensive to implement compared to others and non-legislative means may be suitable for implementing the policy.

(d) Whether existing rights and obligations are modified by the policy

An assessment of the policy with a view to determine whether or not existing rights and obligations are modified by the policy should be conducted. If it is observed that the policy modifies existing rights and obligations, a Parliamentary Draftsman should consider drafting of a legislation to give effect to those modified rights and obligations.

(e) Whether the policy has permanency

Permanence of a policy is an element which a Parliamentary Draftsman ought to consider when advising on whether the policy needs enactment of a legislation in order to make it effective. Generally, it is not prudent to enact a law basing on a policy which deals with temporary issues.

4.2 Role of the Ministry

The ministry responsible for a formulated policy has a role to play in the development of a legislation that springs from the policy. Responsible officers of the ministry should be comprehensively conversant with details of the policy so as to explain to the Parliamentary Draftsman pertinent policy issues in respect of the intended legislation. Further, they are supposed to attend and explain issues in various approval meetings. During the development stage, the ministry should understand what the proposed legislation is intended to achieve in respect of the policy.

PART FIVE

THE LEGISLATIVE PROCESS

5.0 INTRODUCTION

Article 97(1) of the Constitution of the United Republic vests legislative powers in the Parliament. Such powers are exercised by the National Assembly and the President of the United Republic. The National Assembly considers and passes Bills submitted by the Government or Members of Parliament or a Parliamentary Committee by way of a private Bill. Upon being passed by the National Assembly, bills must be assented to by the President to become laws.

5.1 Legislative Process

The legislative process is summarised as follows:

(a) Preparation of Cabinet Papers

The legislative process is initiated through a Cabinet Paper prepared by the Ministry after consultation with the Attorney General and other stakeholders who are likely to be affected by enactment of the intended legislation. A draft Cabinet Paper is prepared in accordance with the Guidelines on Drafting Cabinet Papers, 2010 (2014 Edition). Generally, the Cabinet Paper, apart from being informed by views from stakeholders; is informed by policy document.

(b) Contents of a Cabinet Paper

A Cabinet Paper shall contain the following-

- (i) the background of the subject matter in question;
- (ii) the situational analysis regarding the current circumstances and changes or development on the subject matter;
- (iii) the details of the problem or situation which has necessitated the intended legislation;
- (iv) efforts, if any, made to address the situation;
- (v) the purpose or objective of the intended legislation;
- (vi) the scope or coverage of the legislation;

- (vii) the significance of the legislation in the implementation of the policy;
- (viii) advantages and disadvantages of having the intended legislation in place;
- (ix) financial and other implications of the legislation;
- (x) significant issues in the contents of the intended legislation;
- (xi) experience from other jurisdictions;
- (xii) stakeholders involvement;
- (xiii) tentative legislative schedule;
- (xiv) timeframe and urgency for implementation of the intended legislation; and
- (xv) request to the Government for preparation of the proposed legislation.

(c) Role of Parliamentary Draftsman in the preparation of a Cabinet Paper

According to the Guidelines on Preparation of Cabinet Papers, before the ministry responsible submit a draft Cabinet Paper to Cabinet Secretariat the ministry is required to obtain written opinion from the Attorney General. Normally, such opinion is provided by a Parliamentary Draftsman. In providing such opinion, the Attorney General has to take into account the following:

- (i) whether the proposed legislation is in line with policy, if any;
- (ii) the kind of legislation to be preferred, whether to enact a new legislation, to repeal and re enact a new legislation or to amend an existing legislation;
- (iii) whether the challenge for which a legislation is proposed can be addressed through other means such as subsidiary legislation or administratively;
- (iv) application or scope of the intended legislation;
- (v) impact of the legislation on existing laws; and
- (vi) consequential matters, if any.

(d) Submission of a Cabinet Paper to the Cabinet Secretariat

Upon completion of the preparations of the Cabinet Paper, the sponsoring ministry submits it to the Cabinet Secretariat for scrutiny. Usually, the Cabinet Paper is accompanied by the concept note, stakeholder's comments, extract of key matters to be included in the proposed legislation, areas of amendment (in case of amending legislation) and any other documents which may be relevant in the particular matter. In case of repeal and re-enactment of a new legislation, the extract of key matters must include both new and areas not affected by the proposed legislation.

The Cabinet Secretariat, upon scrutiny and if satisfied with the contents, approves the same to be submitted to the Inter-Ministerial Technical Committee (IMTC) for technical and collective advise. The Cabinet Secretariat, if not satisfied with the contents of the Cabinet Paper, returns the same to the sponsoring ministry together with comments.

(e) Submission of Cabinet Paper to the Inter-Ministerial Technical Committee (IMTC)

The IMTC comprises of all Permanent Secretaries and the Deputy Attorney General under the chairmanship of the Chief Secretary. The IMTC considers the draft Cabinet Paper and provides technical input and collective advice. If it is satisfied as to the contents of the draft Cabinet Paper, the IMTC approves submission of the Cabinet Paper together with its recommendations to the Cabinet. In the contrary, the IMTC returns the Cabinet Paper to the sponsoring ministry together with comments.

(f) Submission of the Cabinet Paper to the Cabinet

Upon receipt of the draft Cabinet Paper and other documents attached thereto, and being satisfied with the recommendations of the Cabinet Paper, the Cabinet shall advise the President on whether or not to

accept the recommendations. In case of acceptance of the recommendations by the President, the Cabinet issues drafting instructions to the sponsoring ministry and the Attorney General. Where the acceptance is withheld, the Cabinet Paper is returned to the sponsoring ministry together with comments or instructions.

(g) Drafting instructions

Drafting instructions may consist of the following:

- (i) name of the proposed legislation;
- (ii) scope of the application;
- (iii) institutional framework;
- (iv) substantive provisions relating to the subject matter of the proposed legislation;
- (v) financial provisions;
- (vi) intended application of the proposed legislation, whether retroactive, retrospective, territorial or extraterritorial;
- (vii) laws which may be affected by the coming into operation of the proposed legislation; and
- (viii) if the intended legislation has impact on the activities of another ministry or extends to Tanzania Zanzibar, a statement indicating the extent to which that ministry or the other part of the Union has been consulted and possible solutions to any concerns raised.

In addition to the information contained in the drafting instructions, a Parliamentary Draftsman may require any other information from the responsible Ministry for purposes of getting a clear grasp of the mischief intended to be remedied.

It should be noted that in certain cases, drafting instructions may not be exhaustive to cover the scope of the intended legislation, as the same may be issued in general or in a single paragraph. Under such a situation, the Parliamentary Draftsman is required to be more inventive and to conduct thorough research on any other existing laws from other

jurisdictions (conduct benchmarking) including consultations with other experienced personnel to ensure efficient drafting on the matter.

(h) Preparation of a draft Bill

The sponsoring ministry in collaboration with the Office of the Attorney General through the Chief Parliamentary Draftsman prepares a draft Bill in line with the drafting instructions from the Cabinet.

In the course of drafting, a Parliamentary Draftsman must prepare the summary of objects and reasons stating the rationale for each section or part of the Bill and the Covering Note (Hati ya Kamati) for submission to the Cabinet Committee on Constitutional, Legal and Parliamentary Affairs (known as Kamati ya Baraza la Mawaziri ya Katiba, Sheria na Bunge, in its acronym “KB”) for approval prior to its publication.

It has been a common practise in the Office of the Attorney General that where a proposed Bill is complex in nature, a technical committee may be convened by the Attorney General to scrutinize the Bill prior to its submission to the KB.

(i) Cabinet Committee on Constitutional, Legal and Parliamentary Affairs (KB)

In discussing the Draft Bill, the KB considers whether:

- (i) the Draft Bill is in compliance with the directives or decisions of the Cabinet;
- (ii) the reasons or objectives behind each provision of the proposed Bill are provided;
- (iii) the substantive issues of the Bill are properly addressed;
- (iv) the provisions of the draft Bill clearly convey the intended meaning and purpose;
- (v) the Draft Bill as a whole address the problem or situation for which it was proposed;

- (vi) the Draft Bill creates or causes another problematic situation;
- (vii) there are matters which have been omitted or forgotten in the course of drafting;
- (viii) there are other important or relevant matters which need to be included in the Draft Bill;
- (ix) drafting principles and style are complied with;
- (x) there are any implications financially, politically or socially or any other related matters;
- (xi) the Bill is urgent in order to determine whether it should be tabled before the Parliament under a certificate of urgency or under the normal procedure; and
- (xii) the time frame for publication of the Bill will be complied with.

If the KB is satisfied with the compliance with the drafting instructions, after consideration of the contents of the draft Bill, the KB shall direct the Chief Parliamentary Draftsman to proceed with publication of the Bill for onward submission to the National Assembly.

(j) Publication of a Bill

Upon the draft Bill being sanctioned by the KB, the Office of the Attorney General shall cause the Bill to be published in the *Government Gazette*. The publication of the Bill is, under normal circumstances, required to be effected in not less than twenty one days before the Bill being tabled before the National Assembly for First Reading. However, the Bill may be published and tabled before the National Assembly for the First Reading without due regard to the twenty one day principle under a certificate of urgency issued by the President and accepted by the National Assembly.

(k) First Reading

The First Reading signifies tabling of a Bill for the first time before the National Assembly for its consideration. At this stage, the Clerk to the National Assembly reads the long title of the Bill before the National

Assembly. After First Reading, the Speaker refers the Bill to the appropriate Parliamentary Standing Committee for consideration.

The Standing Committee shall consider the Bill and invite members of public or stakeholders to give their comments on the Bill. At this stage, the Parliamentary Draftsman shall, in consultation with the sponsoring ministry, consider the views of the stakeholders before accommodating the same in the Bill for the following reasons:

- (i) certain comments or views given may be in contravention or conflict with the Constitution or other existing laws of the United Republic of Tanzania;
- (ii) certain comments, if taken without caution, are capable of defeating the purposes of Government for the intended legislation;
- (iii) certain comments such as those which are procedural in nature may be properly accommodated in the subsidiary legislation;
- (iv) certain views and comments can be handled administratively through policies, education or advocacy; and
- (v) other comments may not be applicable within the context of the legislation in question.

(1) Preparation of Schedule of Amendments

The relevant Parliamentary Committee may propose amendments and request the Attorney General or Minister responsible for the Bill to consider the amendments in the Bill during the Second Reading. Matters for consideration by the Parliamentary Draftsman in the preparation of a schedule of amendment include:

- (i) to ensure that the amendment suits the contents of the provisions proposed for amended;
- (ii) to consider implication of the amendment to other provisions of the same Act or other laws;

- (iii) dealing with renumbering and renaming provisions where needed; and
- (iv) dealing with grammatical and other legislative drafting issues.

Upon completion of discussion and analysis of the Bill, the Chairman of the relevant parliamentary Committee informs the Speaker of its observations, findings and recommendations, who then directs that the Bill be placed in the Order Paper for Second Reading.

(m) Re-publication of a Bill

Where the proposed amendments have affected most provisions of the Bill, re-publication of the Bill may be preferred to make the Bill reader friendly. Such re-publication only happens when there are substantial amendments. During re-publication, the Parliamentary Draftsman must ensure that the republished Bill bears a statement showing that it is the same Bill which was initially printed for the First Reading but is currently being re-published for the purpose of Second Reading. The statement on the re-published Bill reads:

“This Bill to be submitted to the National Assembly was published as Bill Supplement No. 9 of 3rd June 2016 and was First Read in the National Assembly on 10th day of June 2016. This Bill is now re-published for purposes of Second and Third Reading.”

(n) Second Reading

The Minister sponsoring the Bill, the Attorney General or a Member of Parliament (in the case of a Private Member’s Bill) moves a motion that the Bill to be read for the second time and gives a detailed explanation of its contents to the National Assembly before the Members of Parliament start debating.

The speech of the Minister, the Attorney General or a Member of Parliament, as the case may be, is followed by a statement of the Chairman of the parliamentary Committee which considered the Bill. The statement outlines the views and recommendation of the Committee regarding that Bill. In the case of a Bill submitted by the Government, after such statement, the shadow Minister of the sector for which the Bill relates will provide the views and recommendations of the official camp of the minority members regarding the Bill. In the case of a Private Member's Bill, the representative of the Government states views of the Government regarding the Bill. Thereafter, a general debate regarding the merits or otherwise of the Bill by Members of Parliament ensues.

(o) Private Member's Schedule of Amendments

A Member of Parliament who has observations on the Bill may prepare a schedule of amendment and submit the same to the Clerk of the National Assembly in accordance with the Parliamentary Standing Orders. The schedule of amendment shall be tabled before commencement of parliamentary activities of the particular day and discussed during the Second Reading of the Bill.

(p) Further Schedule of Amendment

Where in course of debate at the Second Reading of the Bill, an issue arises which in the opinion of the Government or the Speaker, requires consideration in the Bill, the Chief Parliamentary Draftsman shall prepare a further schedule of amendments which shall be tabled before the Parliament before the Parliament sits as the Committee of the Whole House.

Whenever necessary the drafter in preparing Further Schedule of amendments must take into account the First Schedule together with the original provisions of the Bill to ensure harmony and legibility.

Where a Member of Parliament is of the opinion that there are new issues that have arisen necessitating the Bill to be returned to the Committee that deliberated it, the Member may request the Speaker to return the Bill to the Committee.

When the debate of the Parliament is over, the sponsoring Minister, the Attorney General or the Member of Parliament, as the case may be, shall wind up the debate with a closing speech in which he clarifies issues raised during the debate. From that point, he moves a motion requesting approval of the Bill by the National Assembly.

(q) Committee of the Whole House

Upon completion of the general debate during the Second Reading, the National Assembly turns itself into a Committee of the Whole House whereby the Speaker becomes the Chairman of the Committee. During the proceedings of the Committee, for the purpose of seeking approval of the National Assembly in respect of each clause of the Bill, the Clerk to the National Assembly mentions every clause seriatim together with any proposed amendments as reflected in the schedule of amendments. After going through every clause, the National Assembly resumes and the sponsoring minister, Attorney-General or a Member of Parliament, as the case may be, informs the National Assembly that the Committee has considered the Bill, clause by clause and approved the same with or without amendments. After the National Assembly being informed, the Bill is voted for by the National Assembly upon being so requested by the Speaker.

(r) Third Reading and Passing of the Bill

The Third Reading entails reading of the long title of the Bill by the Clerk of the National Assembly. This signifies that the National Assembly has considered, deliberated and passed the Bill into law. At this stage, the Speaker directs the Clerk of the National Assembly to

prepare relevant copies of the Bill and submit them to the President for assent.

(s) Revision of Passed Bill

Prior to publication of the Bill for assent by the President, revision of the Bill is effected to accommodate all amendments appearing in the Schedules and to delete the objects and reasons. The exercise is done by the parliamentary officials in collaboration with officers from the Legislative Drafting Division, and in practise a Parliamentary Draftsman who drafted the Bill. At this stage, a Parliamentary Draftsman needs to be vigilant to avoid insertion of any amendments which were not initially passed by the National Assembly.

(t) Assent to Bills

Upon receipt of a Bill, the President may assent the Bill or withhold assent. In the event the President withholds his assent, he is required to conform to Article 97 of the Constitution.

(u) Publication and Commencement

It is a legal requirement for a Bill which has been assented to by the President to be published in the *Gazette* as an Act of Parliament. An Act which has been published shall come into operation on the date of its publication or other date fixed by Minister responsible.

(v) Multiple commencements

Under normal circumstances the whole Act comes into operation on the date to be appointed by the Minister responsible or on the date of publication. However, in rare cases the Act can have different dates of commencement in respect of certain provisions or parts.

Example:

“The provisions under Part one shall come into operation on the 1st day of July, 2022 and the remaining parts shall come

into operation on the date to be appointed by the Minister through a Notice published in the Gazette.”

Different dates of commencement for different provisions of the same Act always depend on the circumstances of preparation for implementation of the Act. However, prior to making such commencement provision, a Parliamentary Draftsman must consult the responsible ministry which has the mandate to determine the commencement date or dates for the legislation in question.



PART SIX

AMENDMENT, REPEAL OF LEGISLATION AND RECTIFICATION OF ERROR

6.0 INTRODUCTION

Legislation may be overtaken by time, change of circumstances, change of policy, enactment of new legislation, advancement in technology and other factors. In that case, amendment of legislation is necessary in keeping it up to date. Further, loopholes observed in the legislation and challenges in its the enforcement may also lead to its amendment. This Part gives an account of considerations which a Parliamentary Draftsman should take when amending legislation and a manner of effecting.

6.1 Considerations when Amending Legislation

Although amendment to legislation is usually carried out through a separate legislative instrument, the amendment forms part and is read as one with the amended legislation. To enable legislation to be read coherently with its amendments, a Parliamentary Draftsman should take several aspects into consideration. Generally, care should be taken not to draft amendments that are inconsistent in language and style with the legislation to be amended. For example, if the legislation refers to “issue of permit” the amendment should as well use “issue” not “grant of permit”. A Parliamentary Draftsman should assess the effect of the amendment to existing legislation and seek to address such effect, for instance cross-references in other sections or legislation.

Before drafting any amendment, a Parliamentary Draftsman should consider the following:

- (a) where the proposed amendments do not entail policy issues, the Written Laws (Miscellaneous Amendments) Bill should be used to effect such amendments;

- (b) where the proposed amendments are minor but extensive (not including policy issues), a specific amendments Bill should be used to effect those amendments; and
- (c) where the proposed amendments contain policy issues, the amendments should be effected after obtaining Cabinet approval, through a specific Bill or a Written Laws (Miscellaneous Amendments) Bill.

6.2 Forms of Amending Legislation

In drafting amendment of a legislation, a Parliamentary Draftsman may employ either of the following forms-

(a) **Textual amendment**

In the textual amendment, the legislation and provisions intended to be amended and the amendment to be effected are specifically identified. For example, “The principal Act is amended in section 27 by deleting subsection (2)”. As much as a Parliamentary Draftsman has to expressly identify what is to be amended in the legislation. He should avoid the reference to lines when identifying the location of the subject of amendment. *For example*, “The principal Regulations are amended in regulation 5 by deleting the words “ten thousand shillings” appearing in the third line and substituting for them the words “one million shillings”. The reference to lines may pose a risk of causing confusion in case of a reprint or different format used in the text of the legislation.

(b) **Non-textual amendment**

In non-textual amendment, the statement is written to describe generally how another legislation is to be amended. This form of amendment is also referred to as “descriptive amendment”. *For example*, a legislation stating that it removes reference to “Tanganyika” in all Acts and in its place introduces reference to the

“United Republic of Tanzania”. In such amendment the Parliamentary Draftsman needs to be careful on the grammatical issues involved.

Where a provision has more than two amendments a Parliamentary Draftsman should consider repealing the same and substituting it with a new provision.

6.3 Drafting of an Amending Legislation

(a) Title

The title of an amending legislation should correctly state the name of the legislation intended to be amended. As with a new enactment, an amending legislation must have a long title and a short title. The long title should be coined in general words so as to cover the range of amendments proposed to be made in a legislation. The short title should contain the name of the Act to be amended or description of the subject matter in the case of amendment of several laws, and the word “Amendment” in brackets. For example:

- (i) for amendment of a single legislation – The Mining (Amendment) Regulations;
- (ii) for multiple laws with related subject – The Agricultural and Crop Laws (Amendment) Act;
- (iii) for minor amendments in multiple laws with unrelated subject – The Written Laws (Miscellaneous Amendments) Act;
- (iv) for amendments during the preparation of finance Bill, the short title does not include the word “Amendment” rather it reads “The Finance Act”.

(b) Contents of the Amendment

The amendment legislation usually consists of the-

- (i) repeal of a provision, part or schedule;
- (ii) repeal and replacement of a provision, part or schedule;
- (iii) deletion of a word or phrase;

- (iv) the deletion of a word or phrase and substitution of another;
- (v) insertion of a word or phrase in the middle of a provision;
- (vi) addition of a provision, part or schedule; and
- (vii) addition of a word or phrase at the end of a provision.

(c) Reference to the principal legislation

When drafting amendments, the legislation intended to be amended is referred to as the principal legislation. In the case of an Act, the reference would read “principal Act” and in the case of Regulations, the reference would read “principal Regulations”. The same format applies when amending other legislative instruments such as Rules, Notices, Orders, Declarations etc. The use of the “principal Act” simplifies the reference to the legislation being amended as a Parliamentary Draftsman does not have to repeat the name of the legislation in each provision of the amendment. The practice in Tanzania is to cite the full name of the legislation and introduce the reference to that legislation as the “principal legislation” in the first or one of the earliest provisions of the amending legislation. *For example-*

- (i) for amendment of a single legislation-“This Act shall be cited as the Advocates (Amendment) Act and shall be read as one with the Advocates Act, hereinafter referred to as the “principal Act”;
- (ii) for minor amendments in multiple laws through the Written Laws (Miscellaneous Amendments) Act, the amendment of each law is contained in a separate Part. Each Part carries a construction provision which shall be read as follows- “This Part shall be read as one with the (*insert the name of the Act to be amended*), hereinafter referred to as the “principal Act”.

(d) Numbering of Provisions

Best practice demands that where the amending legislation repeals, deletes or adds a provision, the initial numbering in the legislation should not be disturbed by the amending legislation. Renumbering of provisions during amendment may cause misunderstandings,

particularly cross-references in other provisions or schedules in the legislation to be amended or in another legislation.

Where a new provision is added, it should be assigned a number of the provision preceding it together with an alphabetical letter in chronological order. *For example*, if a new section is intended to be added after section 10, the appropriate number of such section should be 10A. The sequential re-numbering of provisions in legislation that has been amended should be done during the revision of the Statute Book. That way, a Parliamentary Draftsman engaged in revision of laws is in a position to correct cross-references wherever the affected provisions are referred.

Where a new subsection or paragraph is inserted in between other subsections or subparagraphs, it is recommended to renumber or rename the existing subsections or subparagraphs respectively.

(e) **Transitional Provisions**

Whenever there is a substantive amendment or repeal of an Act, the Parliamentary Draftsman shall ensure transitional provisions and savings are in place to provide for the fate of existed matters affected by the amendments or repeal of the Act. Such matters include rights of individuals, employee, assets and liabilities etc.

6.4 Repeal or amendment of an Act of Parliament

- (a) There has to be justification for repeal or amendment of an Act of Parliament which may include whether:
 - (i) the Act is out dated and can no longer stand the taste of time;
 - (ii) there are other Acts which can provide for the same issues; and
 - (iii) the Act is just redundant due to overriding changes etc.
- (b) Matters for consideration before repeal or amendment includes:
 - (i) certain rights of individuals;

- (ii) pending issues in courts of law;
- (iii) contract entered or concluded in terms of the repealed Act;
- (iv) fate of bodies and individuals or employees under the repealed Act;
- (v) transfer of properties, assets and liabilities; and
- (vi) such other consequential matters as may be necessary.

6.5 Rectification of Printing Errors

Where after publication of an Act of Parliament it is found that there are some typographical or printing errors, the Chief Parliamentary Draftsman shall exercise his powers under section 26(3) of the Interpretation of Laws Act, Cap. 1 to rectify the errors. It should be noted that the powers to rectify the printing errors conferred under the Act, do not in any way empower the Chief Parliamentary Draftsman to amend or alter any provision of the rectified Act. In relation to interpretation of printing errors, it shall be the duty of the Parliamentary Draftsman to advise the Chief Parliamentary Draftsman on the matter for his action.

Where the typographical or printing errors is in the revised edition or in any annual supplement, the Chief Parliamentary Draftsman shall exercise his powers under section 13 of the Law Revision Act, Cap. 4 to rectify such errors.

PART SEVEN

SKILLS OF DRAFTING LEGISLATION

7.0 INTRODUCTION

Having discussed the legislative process in Part Five, this Part focuses on skills that are necessary in legislative drafting. These include comprehensive understanding of stages of drafting legislation, preparation of a legislative plan, features of a Bill and segmentation of text in legislation.

7.1 Stages of Drafting Legislation

A Parliamentary Draftsman, having fully understood the drafting instructions, is required to-

- (a) conduct a thorough study of instructions issued by the Government with the view to understanding the instructions;
- (b) identify available precedents if any, in the existing legislation including standard provisions, as in certain cases there is no need to invent the wheel although it is still important to be creative in designing and composing a draft Bill;
- (c) seek clarification from the sponsoring ministry on any issue that will assist in drafting of intended legislation;
- (d) make a draft that reflects the policy objectives of the sponsoring ministry;
- (e) conduct comparative analysis to ensure that the draft has taken into account international and regional best practices;
- (f) devise solutions for any problems that may arise out of the proposal;
- (g) ascertain whether the draft conforms and adheres to the Constitution;
- (h) consider consequential matters and determine whether the same may need amendment;
- (i) consider and observe the time available for working on the proposed legislation as prescribed in the Standing Orders of the Parliament;
- (j) identify matters on procedure to be kept in the regulations;

- (k) identify matters to be kept in the schedules; and
- (l) identify any precedent on the subject matter, if any, to be considered during legislative drafting; and
- (m) consider or visualise implementation of the legislation to be drafted.

7.2 Preparation of a Legislative Plan or Scheme

A Parliamentary Draftsman is required, before embarking on the task of drafting legislation, to develop a legislative plan in line with the drafting instructions. A legislative plan provides the basic outline and logical sequence of the legislation. It gives a lay out and possible content of the proposed legislation. It includes-

- (a) objects of the required legislation;
- (b) proposed title which is required to capture the overall objectives of the proposed legislation;
- (c) substantive issues to be covered by the legislation;
- (d) impact of the proposed legislation with regard to-
 - (i) whether the proposed legislation abides to Constitution;
 - (ii) whether the proposed legislation has any effect on the existing law or *vice versa*; and
 - (iii) whether the required standards of the legislation, such as retrospective or retroactive application of the proposed legislation are applicable.

Basically, legislative plan or scheme is nothing but arrangement of sections of the intended legislation which eventually forms the marginal notes.

7.3 Salient Features of a Bill

In practice, a Bill commonly includes the following features:

- (a) Preliminary Matters
 - (i) Arrangement of sections;
 - (ii) Long title;

- (iii) Preamble; and
- (iv) Enacting clause.

(b) Preliminary Provisions

- (i) Short title;
- (ii) Commencement;
- (iii) Application or scope; and
- (iv) Interpretation.

(c) Principal or operational provisions

- (i) Administrative provisions;
- (ii) Substantive provisions; and
- (iii) Financial provisions.

(d) Miscellaneous provisions or General provisions

- (i) Offences and provisions ancillary to offences such as time limit for prosecution, continuing offences, offences by legal person and vicarious liability; and
- (ii) powers to make subsidiary legislation etc.

(a) Final provisions

- (i) Repeals and consequential amendments; and
- (ii) Savings and transitional provisions.

(b) Schedules

The Schedule should contain the following:

- (i) Diagram, maps;
- (ii) Forms;
- (iii) Set of rules; and
- (iv) Tables etc.

7.4 Preliminary Matters

(a) *Arrangement of Sections, Legislative Scheme or Table of Contents*

A Bill is arranged in Parts and sections which are listed in a specific sequence before the main body of the Bill. Although these do not form part of the Bill and are not subject to debate in the Parliament, it is important to ensure that each clause in a Bill corresponds to the section title that appears in the arrangement of sections page.

(b) Long Title

The long title describes the main or basic contents of the Bill by explaining its scope, general purpose and intention. The long title is written in a general way to reflect the contents of the Bill. For example:

- (i) “A Bill for an Act to impose and alter certain taxes, duties, levies and fees and to amend certain written laws relating to the collection and management of public revenues”
- (ii) “A Bill for an Act to amend certain written laws” or
- (iii) “A Bill for an Act to provide for conduct relating to domestic arbitration, international arbitration and enforcement of foreign arbitral awards, repeal of the Arbitration Act and to provide for related matters.”

(c) Preamble

Preambles are introductory words explaining the rationale behind the legislation and provide the spirit and principles of the law. Not all Bills contain preambles as the same are reserved for exceptional cases where it is necessary to explain the context for better understanding of the legislation. A preamble is normally used:

- (i) where the subject matter of the legislation is of constitutional or international importance;
- (ii) where the purpose of the legislation is to ratify or approve an agreement entered into by the Government;
- (iii) where the legislation is intended to provide for exceptional circumstances of such complexity that a preamble is necessary for better understanding of the legislation;

- (iv) where there are prerequisite conditions or procedures to be observed prior to enactment of the legislation which require an explanatory preamble.

A Parliamentary Draftsman is therefore required to consider the background and nature of the intended legislation to ensure whether there is need for a preamble. When a preamble is used in a Bill, such Bill will not contain a long title.

(d) Enacting Clause or Enacting Formula

This is a statement in active voice recognising the Parliament as a legislative authority which enacted the legislation. It usually reads “*Enacted by Parliament of the United Republic of Tanzania.*”

7.5 Preliminary Provisions

(a) Short Title

The short title is a short name of the legislation which is normally cited with the year in which the legislation was enacted. The citation of the year makes a difference from one Act to another. For example “The Legal Aid Act, 2016”. The year appearing in the title of the Act is the year in which the Act is passed by Parliament. The short title chosen for a Bill should be concise but as informative as possible.

(b) Commencement Provisions

Commencement provisions specify when the legislation becomes operational. According to sections 14 and 37 of the Interpretation of Laws Act (Cap. 1), an Act or subsidiary legislation, as the case may be, comes into operation on the date of publication in the *Gazette* or if another date is specified, on that date. Some other Acts provide, in the short title, that they shall come into operation on a certain date to be fixed by notice. This position is as per section 16 of the Interpretation of Laws Act.

(c) Application or Scope

The application provision serves the purpose of providing the extent to which the legislation is intended to apply. It is basically applied to remove uncertainties, especially on which persons, circumstances or geographical area the Act applies.

(d) Interpretation

The interpretation provision assigns meaning to words, terms or expressions used throughout a Bill. A definition should be self-sufficient unless the words, terms or expressions that are used in such legislation have the same meaning to words, terms or expressions that have been defined in another legislation which has an overriding effect to the instant legislation. Further, one word, term or expression should not be defined to have different meanings in different provisions of the same legislation. The interpretation clause should not carry substantive provisions of the legislation.

A word or expression that is not used in an enactment should not be defined.

. A Parliamentary Draftsman should note that in certain situations the definition of terms may be provided for in a specific provision or part of the legislation. Such definitions are meant to be construed within the context of the particular provision or part under which they are provided or defined.

Example:

“For the purpose of this section, “Director” means.....; or
For the purpose of this Part, “Director” means..... ”

7.6 Principal or Operational Provisions

(a) Administrative Provisions

Administrative provisions give information on organisational matters such as establishment of statutory bodies, corporate status and related

matters. They also provide for powers, functions, duties and limitations of established bodies. They further provide for the qualifications of people to serve in the established bodies and procedures for their appointment.

(b) Substantive or Operational Provisions

Substantive provisions provide for matters that are the subject matter of the legislation. These may include regulation of a certain sector or profession and procedural matters relating to it.

(c) Financial Provisions

Financial provisions provide for sources of funds available to the body established in the legislation for effective delivery of its functions. They also provide for investment and accounting provisions, accounts and audit, preparation of financial and performance reports and procedure for laying financial reports before the Parliament.

7.7 Miscellaneous or General Provisions

Miscellaneous or general provisions provide for matters arising out of the main objects of the legislation. They provide for provisions relating to offences and penalties, powers to make subsidiary legislation, imposition of fees, appeals or other information regarding the enforcement of the law.

7.8 Final Provisions

(a) Repeals and consequential amendments

It is common for an Act to repeal or amend an existing Act. In the case of repealing another Act, a Bill should clearly contain a provision to that effect. When the intention of a Bill necessitates amendments to an existing Act, such amendments should be effected through a Bill and they will be recognised as consequential amendments.

(b) Savings and transitional provisions

Savings provisions intend to preserve existing rights, obligations, decisions, subsidiary legislation and other acts or things that have been made under the latter legislation prior to enactment of the former that would extinguish after operation of a new legislation. Transitional provisions explain the manner and time frame within which existing situations should be aligned with the new legislation.

7.9 Schedules

Schedules, where provided for in legislation, are placed at the end of legislation. Schedules are used to provide for minor or technical provisions that may be too detailed to be included in the main body of the legislation. These include forms, fees, list of items, texts of international conventions or agreements, codes of conduct and procedural matters of a body established by the legislation.

Schedules must have headings and where appropriate, subheadings to guide the contents and must bear reference to the section of the legislation under which they are made as shown below-

“

SCHEDULE

(Made under section 7(1)(a))

PROCEDURES FOR THE BOARD”

7.10 Segmentation of Legislation

Divisions depend on the length of the Act and subject matter.

(a) Chapters, Parts, Divisions and Subdivisions

Parts, divisions and subdivisions are used to group provisions with related contents. Headings to parts are written in a capitalised form while headings of divisions and subdivisions are written in a sentence form with italics. The headings of parts, divisions and subdivisions are not part of the legislation:

(b) Provisions

- (i) In the case of a principal legislation, provisions are divided into sections. Sections can be divided into subsections, paragraphs and subparagraphs and sometimes sub-subparagraphs.
- (ii) In the case of subsidiary legislation such as-
 - (aa) Regulations, the provisions are divided into a regulation, sub regulation, paragraph and subparagraph;
 - (bb) Rules, the provisions are divided into a rule, sub rule, paragraph and subparagraph; and
 - (cc) Orders, Notices, Declarations and Proclamations, the provisions are divided into a paragraph and subparagraph.

That being the case, a Parliamentary Draftsman should segment a provision with the view to making it comprehensible and avoid over segmenting which may cause confusion to a reader. If a provision has too many sub-sets, a drafter should consider converting it into two or more stand-alone provisions. Below is an example of over segmentation-

Marginal
note

- 1.-(1)** First provision
- (2) Second provision-
- (a)an element of the second provision;
 - (b) a second element of the second provision;
 - (c)a third element of the second provision;
and
 - (d) a fourth element of the second provision-
 - (i) sub-element of the fourth element of the second provision; or
 - (ii) second sub-element of the fourth element of the second provision;
 - (A)first element within second sub-element of fourth

element of second provision;
and

(B) second element within
second sub-element of
fourth element of second
provision.

Sections, regulations and rules are identified by Arabic numbers while subsections, subregulations and subrules are identified by bracketed Arabic numbers.

Paragraphs in relation to sections, subsections, regulations, subregulations, rules and subrules are identified by bracketed alphabetical letters. Subparagraphs in relation to subsections, regulations, subregulations, rules and subrules are identified by bracketed Roman numbers.

Paragraphs in relation to Orders, Notices, Declarations and Proclamations are identified by Arabic numbers while subparagraphs in relation to Orders, Notices, Declarations and Proclamations are identified by bracketed Arabic numbers.

(c) Marginal notes

Marginal notes or side notes are explanations that guide a reader as to the contents of the provision. They are placed on the left hand side of the section, regulation, rule or paragraph. Although marginal notes may not sometimes constitute complete grammatical sentences, they must not contradict the content of the provisions to which they refer. They must be brief and to the point and without unnecessary use of articles such as “the”, “a” or “an”.

PART EIGHT

LEGISLATIVE LANGUAGE

8.0 INTRODUCTION

Legislative language is the medium of communication used by a Parliamentary Draftsman in his professional capacity to communicate the legislator's intention to the targeted user. Legislative drafting being a technical subject uses the right language to effectuate the wishes of the legislator. In order to ensure effective communication of that intention, a Parliamentary Draftsman should observe drafting principles. These include the use of plain language, words and expressions to be avoided, paragraphing, sentence length, nominalisation, spelling, capitalisation, formulation of legislative sentence, syntax and punctuation.

8.1 Use of Plain Language

Traditionally, legal jargons and long sentences were part of legislative drafting hence causing difficulties so far as interpretation of laws is concerned. In view of this, modern drafting entails observation of principles of plain language drafting. Hence, Parliamentary Draftsmen are discouraged from using complex legal jargons and long sentences so as to make the legislation less ambiguous and ensure that it is understood by the ordinary reader. To achieve this goal, a Parliamentary Draftsman must observe the following generally accepted principles:

- (a) write simple, precise but understandable provisions;
- (b) draft in the present tense rather than the future;
- (c) organise materials logically, and chronologically where appropriate;
- (d) use the active voice as opposed to the passive;
- (e) avoid using double negatives in one sentence;
- (f) use words consistently;
- (g) don't split verb forms unnecessarily;
- (h) where possible avoid over segmentation of provisions;
- (i) minimise cross-references;
- (j) avoid jargon, legalese, archaic and unfamiliar words;

- (k) avoid non-English expressions or show them in italics;
- (l) avoid unnecessary adjectives, adverbs and qualifiers; and
- (m) avoid using informal words.

8.2 Words and expressions to be avoided

Caution should be exercised when using particular expressions in a legislation. These include avoiding the use of registered trademarks, terminologies that are no longer in use in Tanzanian context and terms which are no longer regarded as suitable in the society or which infer guilt. For example-

- (a) use “mental disorder” or “mental illness” instead of “insanity”
- (b) use “persons with disabilities” instead of “disabled persons”
- (c) use “commits an offence” instead of “is guilty of an offence”

Below are some of words and expressions to be avoided and the alternatives which may be used:

<i>Avoid</i>	<i>Use</i>
aforesaid	under
construed to mean	means
during such time as or during the time that	while
during the course of or in the course of	during
each and all	each, or all
each and every	each, or every
foregoing	under
for the duration of	during
Hereby or thereby or thereafter	then
herein	in this
in the event that	where

8.3 Sentence Length

Long sentences which contain a lot of information may be difficult to understand. Good drafting requires the maximum length of a sentence that

is not segmented to be about fifty words or five lines of unbroken text. Shorter sentences always make the text more readable. Where a legislative sentence contains more than five lines of unbroken text, a Parliamentary Draftsman should consider breaking down the sentence further. To avoid lengthy sentences, it is recommended that one provision should contain one distinct idea.

8.4 Nominalisation

Nominalisation is the tendency of deriving a noun from a verb. To attain more direct and less wordy provisions, a Parliamentary Draftsman should avoid nominalisations. Below are a few examples of nominalisation to be avoided and the alternatives which could be used.

<i>Avoid</i>	<i>Use</i>
to give account of	to account for
to conduct a hearing	to hear
to make or give a decision	to decide
to take into consideration	to consider
to conduct an investigation	to investigate

8.5 Spelling

Different jurisdictions adopt different spellings for certain words that have varying spellings. It is important to be consistent in the use of spelling when drafting legislation. In Tanzanian context, the preferable choice in spelling of words is the standard British English as opposed to American English. This means that in words such as “organisation” or “minimise” we use “s” instead of “z”. For words such as “to advise” we use “s” instead of “c” but retain “c” when using the word as a noun.

8.6 Capitalization

Capital letters should be used sparingly. The use of capital letters should be limited to circumstances where attention needs to be drawn to something. Capital letters should not be used when referring to ordinary nouns or generic terms, for instance in the interpretation provision if the

word or term is used in lower case in the body of the legislation. Cases where capital letters are used include the following:

- (a) at the beginning of a legislative sentence;
- (b) when making reference to a statutory body e.g the Energy and Water Utilities Regulatory Authority;
- (c) for proper names and titles e.g President, Director General;
- (d) when referring to a specific legislative instrument e.g the Mining Regulations, the Finance Act but not when referring to a singular provision in the instrument;
- (e) for names of places e.g Chamwino;
- (f) for acronyms and abbreviations e.g EWURA, TLS.

8.7 Legislative Sentence

Legislative sentences are tools used in a legislation to express a command, a prohibition or a state of affairs. A legislative sentence must contain the legal subject, the legal action and the circumstances in which the legislation shall apply. The legal subject is the person to whom the legislation applies or to whom the legislation is addressed and the legal action is the legislation which is to apply. A common form of legislative sentence must state-

- (a) *how*, the matter in which the legislation is to operate;
- (b) *what*, nature of the legal action;
- (c) *when*, the conditions under which the legislation operates;
- (d) *where*, the circumstance in which the legislation will operate;
- (e) *who*, the person to whom the legislation applies or to whom the legislation is addressed; and
- (f) *why*, the policy considerations of the legislation.

Examples of a Legislative sentence may include:

- “(i) An aggrieved person may, within seven days, appeal to the Minister;
- (ii) A Parliamentary Draftsman may draft several Bills for consideration; and

(iii) A Police Officer shall arrest a suspect.”

The Parliamentary Draftsman shall ensure that a number of ideas are not expressed in one sentence.

8.8 Language and Syntax

Legislative language deals with how the message of the law is conveyed to the targeted audience. On the other hand, syntax refers to the arrangement of words and phrases to create legislative sentences. When drafting a legislation, a Parliamentary Draftsman should consider the following language and syntax rules:

- (a) *familiarity*-use of short familiar words and phrases;
- (b) *brevity*- short sentences which communicate only one message;
- (c) *consistency*-the same word should be used to express one meaning within the legislation;
- (d) *spelling*-the same word should be spelled similarly within the legislation;
- (e) *standard language*- use of formal words and phrases;
- (f) *clarity*- use clear, simple and precise language to avoid ambiguity;
- (g) *harmony*-the draft should correlate with other existing laws on a similar subject matter; and
- (h) *logic*-organisation of the proposed legislation should be in a logical manner with the different subjects dealt with separately and sequentially.

A Parliamentary Draftsman should pay special attention when choosing words to be used in drafting legislation such as-

- (a) *shall* - used to impose a duty or obligation;
- (b) *may-used*
- (c) *any* – used to mean one or some;
- (d) *each and every* - each refers to two or more in a numerical context while every refers to a class;

- (e) *all* - this doesn't serve a significant purpose other than a form of emphasis and should be avoided;
- (f) *on or after*-this should be used when the specified day is to be included;
- (g) *and or* 'or- "and" implies togetherness while "or" proposes a choice between two or more options;
- (h) *such and same*- used as a substitute for a preceding noun or phrase, should be substituted with "the" "a" or "that";
- (i) *by, until, till* – it is best to use "not later than" or "before";
- (j) *which and that* - while the word "which" is non-restrictive, "that" is used in restrictive context; and
- (k) "*Notwithstanding*" the expression is used when the provision is intended to negate the conditions set by other provision.

Examples:

- (i) "Notwithstanding section 7, the appointing authority may terminate the Director any time before expiry of his tenure; or
 - (ii) Notwithstanding the conditions prescribed under Section 7, the Commissioner shall have power to issue additional tax assessment if there is default."
- (l) "*Subject to*" the expression is used where the legal action is to be done in compliance with the conditions stated in another provision.

Examples:

- (i) "The Commissioner shall, subject subsection (1) issue a tax clearance certificate to a tax payer.
 - (ii) A Parliamentary Draftsman may, subject to Guidelines contained in the Manual, be innovative in his drafting undertaking."
- (m) "*Without prejudice*" the expression is used where the provision is intended not to prejudice or alter the conditions set in another provision.

Examples:

- (i) Without prejudice to the conditions or requirement stipulated under Section 7, other requirements for membership shall include...
- (ii) Without prejudice to the generality of section (1), the Commissioner shall consider the application
- (n) “*Repeal*” in Tanzania the term “*Repeal*” is used to repeal the Act, Acts and Sections and Schedules.
- (o) “*Delete*” “*Deletion*” is used for deleting paragraphs, definitions, expression or words;
- (p) “*Insert*” is used to insert a new word or words between two words;
- (q) “*add*” is used to add Part, section, subsection and paragraph immediately after the existing one;
- (r) “*Revocation*” is used to revoke a subsidiary legislation;
- (s) “*Short title*” is used to the Principal legislation; and
- (t) “*Citation*” is used to the Subsidiary legislation.

8.9 Punctuations

Punctuation in legislative drafting is used to facilitate a reader to comprehend and interpret legislative sentences. Types of punctuation commonly used in Tanzanian legislations are as follows:

(a) *Full stop* (.)

A full stop is used-

- (i) to mark the end of a complete legislative sentence;
- (ii) after section number but this should be only at the beginning of the section

Example: 1. A person ...

2. A licence shall be ...

A full stop should not appear in the middle of a section or subsection as for each of these divisions should constitute as each single sentence on its own. A Parliamentary Draftsman should ensure a full stop is not used at the heading of Parts, Divisions, Marginal Notes or in the arrangement of provisions (table of contents).

(b) *Comma (,)*

A comma marks a slight break between different parts of a sentence. A Parliamentary Draftsman should use commas with care, since their insertion or omission can greatly alter the meaning of a sentence. Commas serve several distinct purposes, including:

- (i) to separate long independent clauses eg. Where the minister is satisfied with the application, he may direct the Director General to issue the relevant permit etc.;
- (ii) to separate an introductory modifying clause or phrase from what follows eg. Provided that, For avoidance of doubt etc.;
- (iii) to separate a series of items eg. subsidiary legislation means regulations, rules, notices, orders, by-laws etc.
- (iv) to enclose non restrictive modifying phrase and clauses eg. This Act shall be read as one with the Mining Act, hereinafter referred to as the “principal Act”;
- (v) to enclose parenthetical expressions interrupting in the main communications in the sentence eg. The Minister or the Director-General, as the case may be, shall appoint another officer to perform such function;
- (vi) to enclose modifying phrases and clauses if the enclosure clarifies the structure of the sentence eg. The Minister shall, by order published in the *Gazette*, prescribe fees to be paid;
- (vii) to be used at the closing phrase, at the end of the last item in a list.

Example:

“Where a Competent Authority is of the opinion that-

(a) a witness may be subjected to dismissal or suspension by his employer; and

(b) the life or property of the witness is in danger,

the Competent Authority shall refer the matter to an institution capable of providing protection to the witness.”

- (viii) to avoid repetition

Example:

“Where in a public institution there is, there has been or there is likely to be, misappropriation of public funds...”

(c) *Colon (:)*

A colon is placed after an expression that introduces a series of items. It indicates that what follows is a list of items which do not depend grammatically on each other. Colon is used in the following circumstances:

- (i) to introduce a list.

Example:

“The Board shall be composed of the following:

- (a) chairman who shall be appointed by ...;
- (b) Law Officer representing the Office of the Attorney General”; and

- (ii) between two main clauses in cases where the second clause explains or follows from the first.

Example:

“The quorum at any meeting of the Executive Committee shall be at least half of the members from each side of the Union:

Provided that, in all meetings the Permanent Secretary responsible for fisheries for both side of the Union shall be present.”

(d) *Semi Colon (;)*

Semicolon is most commonly used to mark a break that is stronger than a comma but not as final as a full stop. It is used between two main clauses that balance each other and are too closely linked to be made into separate sentences.

The function of the semi-colon is to-

- (i) show a relationship between elements of a sentence which a complete break into separate sentences may obscure;
- (ii) co-ordinate a series of paragraphs, subparagraphs or listed items.

(e) *Dash (–)*

The dash is used to introduce a list. It indicates that what follows is a list of items which depend grammatically on each other. For example:

The function of the semi-colon is to–

- (i) show a relationship between elements of a sentence which a complete break into separate sentences may obscure;*
- (ii) co-ordinate a series of paragraphs, subparagraphs or listed items.*

(f) *Hyphen (-)*

Hyphens are used to link words and parts of words. They are commonly used–

- (i) to show word breaks eg. two-third;
- (ii) in compound words eg. Director-General, cross-reference, officer in-charge;
- (iii) if the second element of the word is capitalised eg. e-Government.

(g) *Quotation marks or inverted commas (“ ”)*

In legislation, quotation marks or inverted commas are used to indicate a definition term or words to be defined eg.

- (a) “Director” means ...
- (b) “Appointing Committee” means ...

(h) *Cross reference*

Cross reference is another skill of drafting which helps to avoid unnecessary repetition. Under this skill, a Parliamentary Draftsman may make reference to other provisions of the same Act or another Act instead of repeating what is already provided for in the referred provisions. However, precaution needs to be taken when making such

cross reference to ensure the validity or existence of the referred provisions or their numbering.

(i) *Choice of style or format*

A style or format differs from one legislation to another depending on the nature of the contents of a legislation.

(j) *Limitation and conditions*

In drafting, a Parliamentary Draftsman must provide for necessary limitation in certain legal actions such as the exercise of certain powers, tenure of office and time for legal action.

Consideration of limitations and other conditions in the drafting of provisions conferring powers or for appointment in the office is vital. Therefore, a Parliamentary Draftsman must ensure that there are such limitations of time and conditions for appointments.

(k) *Delegation of powers and functions*

While drafting provisions for delegation of powers, a Parliamentary Draftsman must provide for limitations or conditions to be observed by the delegating authority. Under such limitations a delegating authority should not be allowed to delegate each and every powers and functions to another person.

Thus, it is the duty of the Parliamentary Draftsman to make provisions ensuring that a delegating authority is limited to delegating certain powers and functions as prescribed in the legislation.

(l) *Consistency*

Consistency is another principle or skill in legislative drafting which requires a Parliamentary Draftsman to ensure the same word is applied consistently throughout the legislation to have the same meaning.

Under this principle, words should not be used interchangeably to mean the same thing.

(m) Penal Provisions

Naturally a legislation is the command which requires persons to obey or observe the terms or conditions as stipulated therein. To ensure compliance with such requirements, the legislation creates offences and various penalties as sanction for failure to comply with the legislation or for commission of offences. Basically the legislation requires total compliance and requires non compliance to be punishable by legislation. Therefore, provisions providing for penalties and other sanctions for failure to comply with the legislation become inevitable in the legislation.

Thus, Parliamentary Draftsmen must in their legislative undertaking, whenever appropriate, ensure inclusion of provisions providing for offences and penalties in the legislation. Such penal provisions must be properly drafted to ensure that the created offences with their ingredients or elements are clearly stated to avoid any kind of ambiguity.

Under normal circumstances the provisions providing for penalties, that is fines and imprisonment must indicate the minimum and maximum fines or imprisonment. It is the duty of a Parliamentary Draftsman to ensure proper drafting of penal provisions.

1. Example:

A person who-

- (a);
- (b)
- (c)

Commits an offence and is liable, on conviction, to a fine of not less than ten hundred shillings but not exceeding twenty thousand

shillings, or to imprisonment for a term of not less than three months but not exceeding six months or both.

2. Example:

A person who contravenes the provision of section 7, commits an offence and is liable, on conviction, to a fine of not less than ten thousand shillings but not exceeding twenty thousand shillings, or to imprisonment for a term of not less than three months but not exceeding six months or both.

In the drafting of Example 2, a Parliamentary Draftsman must take precaution to ensure that the offence or offences created under section 7 as referred to in the penal provision, are clearly stated in the said provision.

Practice reveals that offences and penalties are normally created in the same provision. However, there are situations where offences may be created in a separate provisions without their respective penalties. Thus, a Parliamentary Draftsman in the drafting of such provisions, must remember to draft a provision providing for general penalties in respect of such separated offences in the legislation.

PART NINE

DRAFTING OF SUBSIDIARY LEGISLATION

9.0 INTRODUCTION

Subsidiary legislation also known as subordinate legislation or delegated legislation means any legislation made under or by virtue of an Act and having legislative effect. Section 4 of the Interpretation of Laws Act, Cap. 1 defines a subsidiary legislation to mean any order, proclamation, and rule, rule of court, regulation, notice, by-law or instrument made under any Act or other lawful authority. This Part focuses on powers to make subsidiary legislation, drafting of subsidiary legislation, types of subsidiary legislation, structure and layout of subsidiary legislation and the procedures for making by-laws.

9.1 Powers to Make Subsidiary Legislation

Article 64(1) of the Constitution of the United Republic confers upon the Parliament powers to enact laws. In exercising such powers, the Parliament, by virtue of Article 97(5) of the Constitution may delegate them to various authorities including Ministers, local government authorities and heads of public institutions. When such powers are exercised by delegate, such legislation are known as subsidiary legislation, delegated legislation or subordinate legislation. The Parliament delegates its powers to legislate due to-

- (a) limited time for parliamentary business;
- (b) difficulty of legislating in detail; and
- (c) technical and procedural nature of some legislation.

When drafting a subsidiary legislation, a Parliamentary Draftsman should ensure that the drafted subsidiary legislation is consistent with the principal legislation under which it is made as provided for under section 36(1) of the Interpretation Laws Act, as well as complying with any other law. Principally, a subsidiary legislation commences when gazetted, except where it is otherwise expressly stated therein.

9.2 Types of Subsidiary Legislation

There are different types of subsidiary legislation which are common in Tanzania. These are-

- (a) Regulations;
- (b) Rules;
- (c) Orders;
- (d) By Laws;
- (e) Proclamation;
- (f) Declaration;
- (g) Notice; and
- (h) Instrument.

9.3 Drafting Subsidiary Legislation in Tanzania

When drafting a subsidiary legislation, a Parliamentary Draftsman must be conversant with the Act under which the enabling provisions are provided to ensure that the subsidiary legislation is made within the parameters and scope of the power delegated.

Therefore the Parliamentary Draftsman must consider-

- (a) whether the power to legislate on the issue has been given;
- (b) whether the enabling provision is still valid;
- (c) which authority or person to which the power to legislate has been given or delegated;
- (d) whether there are other conditions or procedures to be observed prior to making a subsidiary legislation; and
- (e) whether there are other authorities or persons to be consulted prior to making a subsidiary legislation and whether such consultation has been effected as required.

In the drafting of subsidiary legislation, a Parliamentary Draftsman should ensure that-

- (a) thorough research on the subject matter is conducted;

- (b) close consultation is made with all key stakeholders within the Government and the public;
- (c) the principles under the Interpretation of Laws Act, Cap. 1, relating to subsidiary legislations are applied; and
- (d) that the subsidiary legislation complies with the enabling provisions of the principal legislation.

9.4 Structure of a Subsidiary Legislation

- (a) A Parliamentary Draftsman when drafting a subsidiary legislation should take into consideration the following preliminary requirements:

- (i) *Title (Citation)*

When giving a subsidiary legislation a title, it is important to assign a title that reflects its parent legislation. For example, the title of any subsidiary legislation made under the Road Traffic Act, Cap. 168 should reflect the name of Act. When a subsidiary legislation is for general matters stipulated in the Act, a title to it may include the word “General”. In the case of a subsidiary legislation that is for a specific matter provided in the Act, the title to it should indicate that matter. Examples are given below:

- (aa) The Road Traffic Regulations, 2020;

} General matters

- (bb) The Road Traffic (General) Regulations, 2020;

- (cc) The Road Traffic (Breath Analysis Machine) Regulations, 2020 – specific matters.

- (ii) *Enabling Provisions*

The enabling provision should be clearly indicated to show the authority empowered to make such subsidiary legislation.

- (iii) *Arrangement of Provisions*

As the principal legislation, arrangement of provisions should appear before the main body of the subsidiary legislation and a Parliamentary Draftsman must ensure that the Parts, headings and

marginal notes within the subsidiary legislation correspond with the arrangement of provisions.

(iv) *Marginal Notes*

Each provision of a subsidiary legislation should be given its own marginal note which reflects the contents of such provision.

9.5 Layout of a Subsidiary Legislation

Layout of a subsidiary legislation shall be as indicated in the Schedule to this Manual.

9.6 By-laws Making Procedures

In Tanzania, most of by-laws are enacted by the local government authorities. In view of that, the focus will be on the procedures of making by-laws by local government authorities. The procedures for making by-laws are summarised as follows:

(a) Formation of an idea

By-laws, like any other legislation, start as an idea. In that case, by-laws originate from the Council management team, any standing committee of the council or the Council itself. Once the idea is conceived, the Council Management Team will submit the same to the Standing Committee responsible for the matter for which the by-laws are intended to be made. When the Committee is satisfied as to the thrust of the proposed by-laws, the Chairman or Mayor of the Council, as the case may be, will be informed of the intention to enact the by-laws;

(b) Notice to the general public

It is a fundamental principle as provided in the Local Government (District Authorities) Act, Cap. 287 and the Local Government (Urban Authorities) Act, Cap. 288 that before making by-laws, residents of the respective Council and other stakeholders should be informed of the impending by-laws. The Director of the Council shall, after being

sanctioned by the Chairman or Mayor, issue a public notice informing residents and other stakeholders about the proposed by-laws. The notice ought to be affixed at the notice boards of all Council's offices in *mtaa*, village, ward and principal office of the Council. Generally, in that notice, the public is invited to submit to the Council written objections or representations with regard to proposed by-laws within thirty days from the date of issuance a notice. The notice should specify the genesis and objective of the intended by-laws. Besides, the notice shall provide for matters that will be covered and outcomes of the intended legislation. At the expiry of thirty days, the Council may proceed with preparation of by-laws while taking into consideration objections or representations, if any;

(c) Compilation of objections or representations

At the expiry of thirty days, the Council is required to prepare a summary in a matrix form of all objections or representations submitted to it. The summary shall provide names of those who submitted their objections or representations, whether the objections or representations have been accepted or otherwise, and in the case of rejection, reasons of the Council for the rejection;

(d) Drafting of by-laws

Subject to objections or representations, the State Attorney working in the Council shall prepare draft by-laws. In discharging that duty, State Attorney shall ensure that the contents of the draft by-laws are within the ambit of the principal legislation and are not in conflict with other written laws;

(e) Approvals

(i) Council Management Team

Upon completion of the draft by-laws, the same together with a summary of objections or representations shall be submitted to the Council management team for its consideration;

(ii) **Standing Committee**

If the Council management team is satisfied as to the gist of the proposed by-laws, the same will be submitted together with a summary of objections or representations to the standing committee responsible for the matter for which by-laws are proposed for its consideration;

(iii) **Council**

Upon its consideration, responsible standing committee may sanction that the proposed by-laws and the summary of objections or representations be submitted to the Council for its approval. Once the Council is contented as to the contents of the proposed by-laws, it will make a resolution to pass the proposed by-laws; subsequently, the by-laws will be signed by the Chairman or Mayor and the Council Director before being affixed with an official seal;

(iv) **Regional Commissioner**

Once by-laws are passed by the Council, the same with a summary of objections or representations are submitted to the Regional Commissioner of the region, in which the Council situates, for his comments;

(v) **Minister responsible for local governments**

After being commented on by the Regional Commissioner, by-laws are forwarded by the Regional Commissioner to the Minister responsible for local governments. At that ministerial level, proposed by-laws are scrutinised by legal experts within the Ministry with a view to ensuring that the proposed by-laws are in conformity to constitutional principles, the principal legislation and policies. In the case of by-laws that govern matters that are under the auspices of another Ministry, the Minister

responsible for local governments ought to consult such other Minister.

Where the Minister responsible for local governments is satisfied as to the thrust of by-laws, he may forward the same to the Office of the Attorney General for vetting;

(vi) **Office of the Attorney-General**

The role of the Office of the Attorney General in respect of submitted by-laws is vetting them. In exercising such a role, the Office of the Attorney-General ensures the constitutionality of the proposed by-laws and adherence to the principal legislation. Besides, it is the role of the Office of the Attorney General to ensure that the submitted by-laws conform to the legislative drafting principles. Once it is satisfied as to the contents of the by-laws, the Office of the Attorney General returns the same to the Minister for his signature and then forward them back to the Office of the Attorney General for submission to the Government Printer for publication in the *Gazette*.

9.7 Publication and Commencement

It is a legal requirement under section 37(1) of the Interpretation of Laws Act, that all subsidiary legislation be published in the *Gazette*. Generally, once a by-law is gazetted it comes into operation unless otherwise stated in such by-law.

9.8 Factors to be Considered in Preparing By-Laws

Like any other legislation, the drafting of by-laws entails observance of principles of legislative drafting. A State Attorney, when preparing by-laws should be keen to observe the following:

(a) **Delegation of powers**

As it has been pointed hereinabove, enactment of laws is the domain of the Parliament as per the Constitution of the United Republic. In view of this, before preparing by-laws, a State Attorney should ensure

that the Parliament has, through the principal Act, delegated its powers to make by-laws;

(b) Conformity to Constitution, principal legislation and other Acts of Parliament

By-laws as the name insinuates are subsidiary legislation made under principal legislation passed by the Parliament. In view of this, by-laws are not expected to override or derogate from the principles enshrined in the Constitution, principal legislation and other Acts of Parliament. In the event of overriding or derogation, such by-laws are considered to be ultra vires.

9.9 Vetting of Subsidiary Legislation:

It is a legal requirement under section B.12 of the Standing Orders for the Public Service, 2009 that a subsidiary legislation should be vetted by the Office of the Attorney General before it is signed and published. Matters for consideration during vetting include:

- (a) to ensure whether the subsidiary legislation is made in compliance with the powers provided in the principal legislation;
- (b) whether the subsidiary legislation is made by the appropriate authority or a person duly authorised;
- (c) whether the conditions or limitation imposed by the principal Act are met;
- (d) whether the constitutional provisions are complied with;
- (e) ensure compliance with other relevant legislation; and
- (f) consider matters of legislative drafting which including:
 - (i) drafting format or style and drafting requirements;
 - (ii) choice of language;
 - (iii) revocation of an existing legislation if any; and
 - (iv) advice on the findings, if necessary, through vetting.

9.10 Commencement of Subsidiary legislation

Parliamentary Draftsman must take into account that any subsidiary legislation made under the principal legislation, shall not come into

operation until the principal Act comes into operation, unless the subsidiary legislation is for bringing an Act into operation.

9.11 Amendment or Revocation of Subsidiary Legislation

A subsidiary legislation may at any time be amended or revoked. Just like in the case of a principal legislation, where a subsidiary legislation is to be amended or revoked, a Parliamentary Draftsman must ensure that necessary transitional or saving provisions are properly drafted to preserve matters which need to be preserved.

9.12 Parliamentary Control of Subsidiary legislation

The making of subsidiary legislation is the legislative powers delegated to Ministers or other statutory bodies by the Parliament through the principal legislation. Therefore the Parliament has the power to oversee or control the exercise of its powers as delegated.

Through its relevant Committee, the Parliament scrutinizes the subsidiary legislation to ensure compliance with the principal Act, the Constitution or other laws. Matters for consideration during deliberation by the Committee include:

- (a) complaints in the implementation of the subsidiary legislation;
- (b) whether the powers have been exercised properly by the person to whom such powers were delegated;
- (c) contravention or conflict of the provisions of a subsidiary legislation with the principal Act or other existing laws;
- (d) the retrospective effect of the subsidiary legislation, if any;
- (e) the drafting of the legislation is defective and does not convey the intended purpose;
- (f) whether the subsidiary legislation was made within the powers and authority provided; and
- (g) to advice or direct on the findings.

Through these findings and observations of the Committee, the Parliamentary Draftsman needs to be more efficient and vigilant on the issues of drafting so as to avoid unnecessary errors or omissions in the subsidiary legislation.

9.13 Rules of Statutory Interpretation

Generally, each legislation is subject to interpretation by courts of law in the process of determining the meaning and interpretation of a provision of the legislation for administration of justice. Such interpretation by courts is required when a doubt or dispute arises about the meaning of a provision of a legislation.

Therefore, a Parliamentary Draftsman who drafts the legislation must ensure there is no doubts as to the meaning of words used and must avoid any ambiguity which may subject the provision to negative interpretation through the operation of rules of interpretation.

In addition, a Parliamentary Draftsman needs to equip himself with the knowledge and application of rules of interpretation of legislation as follows:

(a) Literal Rule

This is known as the first rule of interpretation which takes precedence over the others. Under this rule the words and phrases in a legislation are given their ordinary and dictionary meanings. If a clear meaning is obtained through application of this rule, then there will be no need of further interpretation by the court.

(b) Golden Rule

The Golden Rule applies where the literal rule mode of interpretation results in inconsistency or ambiguity. Under this rule, the meaning of the words used in the legislation may be modified in order to avoid inconsistency or ambiguity. The Golden rule permits modification of

literal sense of the words used in the legislation where the literal sense would lead to inconsistency or ambiguity.

(c) Mischief Rule

This rule considers the basis of the legislation which is the intention of legislature. Under this rule, the court looks at the law generally and the mischief which the legislation has intended to cure.

(d) Purpose Approach also known as the modern approach

Under this rule of interpretation, the court emphasises on the intention of the legislature instead of the definition or mischief.

This rule takes into account the words used in the legislation, according to their ordinary meaning, the subject matter, the scope, purposes as well as the background of the legislation.

These rules of interpretation through which the courts determine the fate of the provisions of the legislation, require the Parliamentary Draftsman to observe the same to ensure that he crafts a precise, clear, comprehensive and undisputable provision which is devoid of any ambiguity.

PART TEN

REVISION OF LAWS

10.0 INTRODUCTION

Revision of laws refers to the editorial process of preparing a revised edition of the statutes. The process entails compiling and updating the Statute Book to include all laws passed by Parliament, incorporation of all amendments to existing laws, consolidation of laws, repeal of obsolete enactments and to rectify printing, clerical and typographical errors in the existing laws. It is aimed at presenting the law in its correct form at any given time thus facilitating implementation of the principles of the rule of law. The object of a Revised Edition of the laws is to make available in set of volume all the statute laws.

10.1 Authority to Conduct Revision of Laws

The process of conducting revision of laws is governed by the Laws Revision Act, Cap 4. The Act vests in the Chief Parliamentary Draftsman powers of preparing the Revised Edition of laws. Law Revision may be conducted in respect of a specific law or the whole Statute Book. The date of commencement of revised laws shall be, for a specific law, the date appointed by the Attorney General and for Statute Book, the date proclaimed by the President.

10.2 Law Revision Process

Subject to the provisions of the Laws Revision Act, Cap 4, the process of revising laws entails the following activities-

- (a) identification of laws by finding all the laws by starting as back as to the last revised edition as the starting point;
- (b) research on the legislation so as to identify all amendments effected in the legislation;
- (c) identify other amendments to other legislation which has affected the legislation;

- (d) study the legislation to identify conflicting provisions, if any, or conflicting laws;
- (e) substitution of unnecessary words or phrases without changing the intended meaning;
- (f) preparation of index of Acts: create a working Index of the current law by putting in commencement dates, amendments, subsidiary legislation made under the Act;
- (g) formation and adoption of standards and uniformity. For the purpose of maintaining uniformity, the Chief Parliamentary Draftsman directs the standards to be adopted during the revision of laws;
- (h) inserting or adding amendment. The Law Reviser will insert or add the amendment Acts and Government Notices to the appropriate provisions of the amended legislation;
- (i) prepare explanatory note into the footnote in respect of certain amendments;
- (j) identification of redundant laws, or expiry laws for repeal by the National Assembly;
- (k) identifying the laws for consolidation;
- (l) deleting repealed, expired or spent provisions;
- (m) correct all grammatical, typographical and other similar errors without necessarily affecting the meaning of the Act;
- (n) effecting editorial powers. The editorial powers of Chief Parliamentary Draftsman are enshrined in section 8 of the Laws Revision Act;
- (o) proof reading. After inserting amendments, proof reading is conducted for the purpose of ensuring that the amendments that are inserted in appropriate provisions to ensure proper references to the provisions of the Act and references to other Acts;
- (p) standardise the format of the legislation so as to maintain uniform format;
- (q) Compilation of all revised laws in a Statute Book and assign chapter numbers;

- (r) prepare a list of identified laws to be repealed or amended together with explanatory notes;
- (s) provision of advice and recommendations to the Attorney General for repeal or amendment of identified laws;
- (t) publication of the revised edition. In case of a revision of the Statute Book, the revised edition shall be published in a book form which includes all principal and subsidiary legislation as provided for under the Law of Revision Act. It is also published with an index of Acts and must bear a chapter number and the year in which the Revision was made.

10.3 Role of a Parliamentary Draftsman in law revision

In view of the revision activities stipulated above, the role of a Parliamentary Draftsman in law revision includes:

- (a) to advise the government and recommend for repeal of all legislation which are not useful and advise, where necessary, for substitution of such laws;
- (b) advise on the laws which require such amendment, eg. amendment of penalties which are outdated etc.; and
- (c) advise on the consolidation of laws.

In the process, a Parliamentary Draftsman needs to apply skills and drafting knowledge to ensure revision of laws does not extend to amendment of the legislation.

10.4 Consultations

A Parliamentary Draftsman performing law revision activities may, whenever necessary, in search of information or clarity maintain consultations with senior or experienced Parliamentary Draftsman within the Office of the Attorney General and relevant State Attorney from the Ministry responsible for the revised law in question.

10.5 Commencement of Revised Laws

Subject to the Law Revision Act the revised laws shall come into force on the date of publication or such other date as may be appointed upon proclamation in terms of the Law Revision Act.

10.6 Amendment or Repeal of a Legislation

In the performance of his functions regarding revision of laws, a Parliamentary Draftsman shall not have power to amend or repeal a legislation.

Subject to the provisions of the Law Revision Act, where a Parliamentary Draftsman, in the process of revision finds that there is a need for repeal, alternation affecting the context of a provision or amendment of an Act, the Chief Parliamentary Draftsman shall advise the Attorney General on the preparation of the relevant Bill for consideration by the National Assembly.

10.7 Conflict between Revised Law and Existing Laws

Parliamentary Draftsman should note that, where there is the conflict between the Revised Law and the existing laws or amendment thereof, the existing law or such amendment which was passed by the Parliament shall take precedence over the Revised Law.

PART ELEVEN

TRANSLATION OF LAWS

11.0 INTRODUCTION

Translation of laws refers to transformation of the legislation from the language of enactment to another language. When translating laws, it is essential to ensure the use of proper terminology, specific style and correct grammar. The translation should be exact and unambiguous and should convey the original meaning of the text.

11.1 Factors to Consider During Translation

The process of translating legislation, must be led by a Parliamentary Draftsman who is conversant with both English and Kiswahili languages so as to conform to principles governing legislative drafting. In translating a legislation, a Parliamentary Draftsman must take into account the following-

(a) The law to be translated must be revised

It is prudent to translate a legislation that has been revised so as to ensure that the translated version accommodates all amendments effected in the original version. This makes the translated version clear and saves time and costs involved in the translation exercise;

(b) The law must be translated the way it is

Translation does not cure or correct any error or mistake made in the original text. It is not an alternative to amendment hence no amendment should be effected during translation;

However, where in the course of translation it is desirable that amendment be effected in certain provisions of the translated law, the Chief Parliamentary Draftsman shall advise the Attorney General on the matter for preparation of the relevant amending Bill;

(c) Translation must maintain legislative drafting principles

Translated version of the legislation is basically a legislation and for that matter, the translation exercise should not derogate from key principles governing drafting;

(d) Literal, contextual and conceptual translation

Generally, it is recommended that legislation should be translated literally, except where literal translation disorts the meaning of a particular provision. Where an intended meaning cannot be achieved through literal translation, then contextual or conceptual translation may be used;

(e) Use of words in the particular Act as used in other Acts with similar meaning and context

In translating a legislation, consistency in the use of words of like meaning already translated in other legislation should be maintained so as to avoid having different translations of same words used in the same context;

(f) Maintainance of original format or style

In translation, a Parliamentary Draftsman must maintain the style and format of a translated law as it is, as changing the arrangement may result in unnecessary ambiguities and confusion. However, a Parliamentary Draftsman may rearrange the definition section so as to have all the definitions in the alphabetical order;

(g) Rules of grammar

A Parliamentary Draftsman, in the process of translation, must conform to the rules of grammar of a given language, regarding the forms of words as used in the language and their arrangement in a sentence;

(h) Proofreading

After translation, a Parliamentary Draftsman must proofread the translated law to ensure proper use of words and grammar and to effect such other corrections as may be required.

11.2 Publication and Commencement of Translated Laws

A translated law shall be published in the *Gazette* and such publication shall signify the date of commencement of the translated law.

11.3 Management of Conflicts

If there is any conflict in the meaning or construction between the translated law and the original version, the original version which was passed by the Parliament shall take precedence over the translated version of the law.



PART TWELVE

MISCELLANEOUS MATTERS

12.0 DRAFTING OF RESOLUTION DOCUMENTS

Article 63 (e) of the Constitution, empowers the National Assembly, among other things, to ratify all treaties and agreements to which the United Republic is a party and the provisions which require ratification. The National Assembly ratifies treaties and agreements by resolution in terms of the procedures for ratification as clearly prescribed for under paragraphs 107 to 112 of the Parliamentary Standing Orders.

Under the said procedure the matter for ratification is submitted to the relevant Parliamentary Committee for deliberations, prior to its submission to the National Assembly for discussion and ratification. Throughout the process, ratification of treaties and agreements requires a properly drafted Resolution document (Azimio la Bunge) which provides for various issues regarding the subject matter intended for ratification.

It is the responsibility of the Chief Parliamentary Draftsman to ensure that all resolution documents are properly drafted by the Parliamentary Draftsman and are submitted to the National Assembly for ratification process.

In drafting resolution documents, a Parliamentary Draftsman must take into account the following:

- (a) the proper name or title of the treaty or agreement;
- (b) where necessary, the names or list of countries which are parties to the treaty or agreement in question;
- (c) membership status of the United Republic;
- (d) the background of the subject matter of the treaty or agreement for ratification;
- (e) global, regional or national challenges or problems to be addressed by the treaty or agreement;

- (f) major issues contained in the treaty or agreement for consideration or discussion prior to ratification;
- (g) benefits, advantages or gains to be obtained upon ratification of the treaty or agreement;
- (h) disadvantages of the treaty or agreement in question;
- (i) costs to be incurred in the process of implementation or if there is any other financial implication;
- (j) conditions and terms for implementation of the treaty or agreement;
- (k) legal implications involved upon ratification; and
- (l) such other relevant information as may be necessary to justify the ratification of the treaty or agreement.

For proper drafting of a Resolution document the Parliamentary Draftsman is required to have a copy of the treaty or agreement. Such copies contain various terms and conditions which need to be observed, the background information indicating the genesis of the treaty or agreement, and such other relevant information on the matter.

These documents can be obtained from the Ministry responsible for the treaty or agreement to be ratified. Therefore, the Parliamentary Draftsman whenever necessary, must prepare the Resolution documents in consultation with State Attorneys and other responsible officials in the responsible Ministry.

12.1 REPORT WRITING

Due to the nature of their functions, Parliamentary Draftsmen attend various meetings in the course of the legislative processes. During such meetings various legislative issues are raised and discussed. In certain cases positions on the matters are established during the meetings regarding the measures or action to be taken.

After the meetings, a Parliamentary Draftsman is obliged to prepare a report on what transpired during the meetings for information and official

record keeping. The Parliamentary Draftsman must ensure that the report from the meeting contains the following:

- (a) brief facts and background of the subject matter of the meeting;
- (b) legal or legislative issues or problems raised and discussed during the meeting;
- (c) conclusion or recommendations of the meeting regarding the way forward on the subject matter of the meeting;
- (d) analysis of laws relevant to the subject matter of the meeting or issues raised; and
- (e) recommendation of the meeting or legal opinion on the matter.

In making recommendation or opinion, the Parliamentary Draftsman may, where necessary, provide options and recommend the best option to be considered by the Office of the Attorney General whether immediately or in the near future.

In addition, the Parliamentary Draftsman, while finalising preparation of the report, must ensure that the report is in good flow in terms of its contents or issues discussed, straight forward and clearly understandable. Therefore, the Parliamentary Draftsman is required to proofread and edit the report to avoid unnecessary typographical errors and spelling mistakes.

12.2 CONFIDENTIALITY

Subject to the Standing Orders for Public Service, all public servants handling Government documents or accessing Government information are required to keep such information confidential. In the course of performance of their legislative functions, a Parliamentary Draftsman handles various confidential files and documents and accesses confidential instructions or information which require to be kept as secret. Therefore, a Parliamentary Draftsman is obliged to observe confidentiality in handling various Government documents and

information to avoid any leakage of such documents or information to unauthorised persons.

12.3 SELF DEVELOPMENT

Besides formal training in legislative drafting or drafting guidance provided under this Manual, a Parliamentary Draftsman must strive to develop himself in various aspect of legislative drafting so as to build up his personal capacity in legislative drafting. The eagerness to learn more on new things in legislative drafting will enable the Parliamentary Draftsman to acquire more knowledge on the drafting skills and techniques, and to know the manner in which the said skills and techniques can be properly and efficiently applied.

Self development initiatives may require a Parliamentary Draftsman to-

- (a) study books, handouts, journals and articles on legislative drafting;
- (b) study or read the Standing Orders and other legislation which provides for legislative procedures and processes;
- (c) study the Interpretation of Laws Act, Cap. 1 and the Constitution to ensure observance during preparation of legislation;
- (d) study the enacted legislation in search for better precedents or standard provisions;
- (e) initiate and do legislative drafting exercises in various scenarios; and
- (f) maintain consultation with senior or experienced persons in legislative drafting.

In other words, Parliamentary Draftsman must take necessary measures to engage personal initiatives and efforts to ensure his personal growth as a competent and efficient Parliamentary Draftsman in the noble profession of legislative drafting.

SCHEDULE

(Made under Part Nine Para. 9.5)

GOVERNMENT NOTICE No..... published on

.....

(insert title of the Act)

(insert title of the Regulations)

(insert enabling provision(s))

Arrangement of Regulations (always set in italics)

Regulation Title

PART I

PRELIMINARY PROVISIONS

1. Citation (it contains the citation and commencement, if the Regulations intend to specify a date other than the principally provided under section 37 of the Interpretation of Laws Act, that subsidiary legislation comes into operation on the specified date) (insert year).
2. Application (indicate the extent of application if any).
3. Interpretation.

PART II

(Insert title which reflects the intended Regulations)

4.
5.

PART III

GENERAL PROVISIONS

6. Offences and penalties, if any
7. Revocation and savings, if any

SCHEDULE(S)

(insert schedule(s) if any, showing clearly the enabling provision of the schedule)

(place of signing)
empowered to sign)
(insert date)

(insert name of person
(Status/authority)

(a)in the case of Rules:

GOVERNMENT NOTICE No.....
.....

published on

(insert title of the Act)

(insert title of the Rules)

(insert enabling provision(s)

Arrangement of Rules (always set in italics)

Rule Title

PART I

PRELIMINARY PROVISIONS

1. Citation (it contains the citation and commencement, if the Rules intend to specify a date other than the principally provided under section 37 of the Interpretation of Laws Act, that subsidiary legislation comes into operation on the specified date) (insert year).
2. Application (indicate the extent of application, if any).
3. Interpretation

PART II

(Insert title which reflect the intended Rules)

4.
5.

PART III

GENERAL PROVISIONS

6. Offences and penalties, if any
7. Revocation and savings, if any

SCHEDULE(S)

(insert schedule(s) if any, showing clearly the enabling provision of
the schedule)

(place of signing)
empowered to sign)
(insert date)

(insert name of person
(Status/authority)

(b) Orders, Notices, Proclamations and Declarations are always
structured with few provisions as follows:

GOVERNMENT NOTICE No..... published on
.....

(insert title of the Act)

(insert title of the Order, Notice, Proclamation or Declaration)

(insert enabling provision(s))

1. citation of the Order, Notice, Proclamation or Declaration (it contains the citation and commencement, if the Order, Notice, Proclamation or Declaration intends to specify a date other than the principally provided under section 37 of the Interpretation of Laws Act, that subsidiary legislation comes into operation on the specified date) (insert year).
2. Application (indicate the extent of application, if any).
3. Interpretation (if any need arise).
4. Provision setting the intended order.

SCHEDULE(S))

(insert if any and its enabling provision)

(place of signing)
empowered to sign)
(insert date)

(insert name of person
(Status/authority)



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