

Legislative Drafting Manual of Ethiopia

**Justice and Legal System Research Institute/Justice System Administration
Reform Program**

Addis Ababa

February 2008

Legislative Drafting Manual

Chapter 1

Introduction

This manual, which is the first of its kind in Ethiopia, is designed to provide drafters with the necessary minimum standards, rules, techniques, styles, and procedures of drafting legislations.

1. The Importance of this Manual

The following benefits are some of the main explanations necessitating the preparation of this Legislative Drafting Manual:-

- A well designed legislative drafting manual has the contribution of promoting uniformity in drafting style and ensuring the preparation of a law which is clear, simple, consistent, coherent and easy to understand and make use of. So that the ultimate beneficiaries of the law will find in a better position to understand and apply in terms of their rights and obligations.
- A legislative drafting work guided by a manual will result in a well drafted law that will succeed in properly translating the relevant policy into implementable law that will likely induce desired social, political and economic transformation of the country.
- Drafting guidelines in the form of manual has also the import of assisting drafters to avoid mistakes and to draft legislations faster and efficiently.
- What is more, it is not uncommon that laws are frequently amended partly due to deficiencies in drafting. Hence, establishing clear drafting techniques and procedures minimizes such deficiencies by enhancing the quality of legislative products.
- Corruption may be facilitated by contradictions, loopholes and fragmentations in legislations. Thus, it is the other significance of this drafting manual to avoid or minimize loopholes and contradictions in legislations, thereby minimizing the possibility of abusing laws.

2. Goal

Within the super goal of promoting rule of law, the manual has the goal of developing uniformity in Ethiopia's legislative drafting techniques styles and procedures, thereby ensuring the quality and effectiveness of legal texts for the social, economic and political development and transformation of Ethiopia.

3. Scope

This manual is basically concerned with primary legislations. Nevertheless, since it incorporates general drafting techniques, styles and procedures, the manual is also applicable in drafting regulations and decrees.

Territorially, the manual is intended to be consulted by (any) drafter(s) of federal and regional legislations.

Chapter 2

Legislative Drafting Procedures

2.1. Drafting Timetables

1. On top of enabling drafters to be guided by a clear program of action, timetables have the importance of:
 - a. enabling the government [example the Council of Ministers] to plan ahead for the approval of the drafts and for subsequent submission to parliament;
 - b. facilitating the planning of the work of the parliament; and
 - c. enabling concerned ministries to set internal work plans and to allocate the necessary resources accordingly.
2. Timetables shall be prepared by the institution initiating and supervising the drafting in consultation with the Drafter. And the drafter shall undertake the task strictly as per the timetable set.

3. If the concerned government institution does not set the time table, it shall be set by the drafter.
4. The time tabling shall take into account the following
 - a. the steps that need to be followed for that particular drafting and the time needed to complete each of the steps;
 - b. activity [ex. extent to which consultation with stakeholders will be used];
 - c. The length and complexity of the legislation;
 - d. The level of controversy of the issue involved;
 - e. The scope of the law's potential impact; and
 - f. The urgency of the law.
5. Besides, the timetabling calls for periodic reconsideration of the timetable example, in the light of difficulties encountered.

2.2. Impact Assessment

A Drafter need to assess the probable implication of the coming law on:

1. Various social strata
2. Different valued interests like:
 - Human rights,
 - Good governance,
 - Environmental protection, etc
3. National economy. Here,
 - the cost assessment can be done by or with the cooperation of concerned experts like economists.
 - When applicable, the cost assessment should be done at the initial stage of drafting or at a later stage before the draft is submitted to its concerned sponsor.
 - The law making organ may need to be supplied with information on expected budgetary cost for certain drafts. Hence, the cost analysis should indicate the financial impact of the law. Such information may be included either in the report or in the justification accompanying the draft or in a separate document.

2.3. Research

An overall research may be necessary before a drafter starts the actual task of drafting legislation. Such research may be conducted by:

1. The requesting Institution; or
2. Independent researchers employed by the requesting institution or the drafter's office; or
3. Research institutions, Universities, institutes, firms.

If the drafter is supplied with researches conducted by any of the above researchers and instructed to use those researches as a basis, the drafter need not involve in research activities in those researched areas. And s/he shall commence the drafting work. This does not, however, mean that the drafter will not conduct researches along with the drafting work. In fact, the drafter must, with the advancement of the drafting work, involve in research activities as every draft provision need to be backed by rationale. In this case, research work is an integral part of the drafter's task of drafting legislations.

Nevertheless, there might be situations where the above cited actors do not involve in conducting the research and a drafter may be *required* or *expected* to undertake the research herself/himself. Here, therefore, the drafter should note that s/he will be burdened with broader responsibilities, as s/he needs to get involved at an earlier stage before s/he starts writing the actual concrete clauses.

Basically, the drafter must bear in mind that s/he is the one:

- who shapes public policies and ideas into a textually rigid form that can be given legal effect; and
- Whose task is to help resolve a problem by legislative means.

So, her/his drafting shall be preceded by a thorough appraisal of the real problem, and proper understanding of the nature of policies to be implemented, which can be properly attained through *research*. From this perspective, a drafter should note that research work is an integral part of drafting legislations.

In connection with policies, the research work, shall address the following:-

1. the nature and scope of the policy sought to be implemented;
2. if there are any, other policies that have direct or indirect relationship with the policy sought to be implemented;
3. the possible options for giving effect to the policy;
4. whether the policy be realized through legislation rather than by non-legislative means;
5. whether the policy must be dealt with by primary legislation[proclamation] or secondary legislation[for example, regulation];

In connection with problems, the research work, shall address the following:-

1. Define the problem(s) correctly in terms of:
 - Nature
 - Scope
 - Frequency
 - Consequence [effect] of the problem, etc
2. Determine whether government action is justified to deal with the problem; because, sometimes, a problem may be effectively handled and resolved by other actors.
3. If government action is justified, identify the options for dealing with the problems-legislative or non-legislative options?
4. Study the likely benefits from each option in terms of:
 - Effectiveness,
 - Cost,
 - Gains, etc
5. If legislation is the preferable form of government action, make sure that the matter cannot be dealt with under existing law;
6. Identify whether the appropriate legislation is proclamation or regulation.

2.4. Decisions on Policy issues

A Drafter need to understand the policy intended to be implemented through legislation. To this end, he/she has to seek for and secure clarifications and decisions on any policy issue as it is the government that should decide on 'which of the possible policy options is to be preferred.

2.5. Drafting

2.5.1. Preparation of Outline

Drafting is an undertaking that needs meticulous preparation and painstaking effort. So to come up with a fairly good draft, if not with the best possible, the drafter should start his assignment by preparing the outline of the legislation. Such an outline will not necessarily be the final and unchangeable one. The drafter can revise it from time to time as s/he considers necessary.

The following can be the rules of thumb in preparing an outline

- Map out the overall skeleton of the draft;
- Give headings to each part in the outline;
- Leave spaces for missing bones that could occur at the initial stage.

2.5.2. Writing Explanatory Notes

The purpose of explanatory notes is to assist readers to understand the rationale behind each provision and interpret the proposed laws and to highlight the drafter's intention.

Content of the Explanatory note may include Introduction; Brief statement of the problem and the draft law's proposed solution; History of the general problem; Brief statement of the problem solving methodology; Description of the details of the draft's major provisions.

The explanatory note should not be a mere summary or description of the draft. It is generally preferable not to proceed provision-by-provision through the draft from

beginning to end; instead, it is better to identify important principles or elements in the legislation and then discuss each of those in turn, illustrating with examples from the practice; from foreign laws, in particular if these have influenced the drafting, and from the old law in case the draft intends to amend an existing law.

In preparing the explanatory note the drafter should:

- express the assumptions that are implicitly or explicitly made by the draft.
- not be too philosophical; it is not good to problematize a legal text.
- point out potential ambiguities or inconsistencies and suggest the intended meaning. You must of course strive to make the draft as unambiguous as possible. Such efforts of yours should not limit you from pointing out potential ambiguities in the draft, if any.
- Separate the explanation by title, chapter or section or part of the law being explained. Your audience should be able to easily relate your explanation/ with the relevant part of the draft. Usually commentaries are put by sections or chapters; and the passage can refer to particular provisions when necessary. You can refer to groups of provisions.

Put in a comparative tabular form the old law and the proposed amended or revised version of the provisions for ease of comparison, in case of amendments and revisions.

2.5.3. Consultation with stakeholders

Benefits of consultation include the following:

- It gives a better understanding of the nature of the problem or activities to be regulated
- It helps to gain early public reaction/input
- It helps to have more informed choices as to the appropriate mechanisms to address a problem or to give effect to the policy at hand; and particularly, it helps to determine whether legislation is the appropriate option.
- It helps to determine whether the better option is primary legislation or secondary legislation
- It makes the law making process more transparent to affected groups.

- It facilitates the collection of some categories of data needed;
- It may result in legal solutions more likely to encourage compliance;
- It may save the time during parliamentary process;

There are different ways of consultations, including: governmental consultations, non-governmental consultations, expert consultations, and consultations with the affected public.

Governmental consultations

- Make consultations with public authorities so that the law would take into account the wider Government interest.
- You may need to consult different ministries and governmental organs as opposed to one. Few legislative projects are of concern to one governmental body only.
- In the consultations collect reactions from the involved governmental bodies to initial position already taken by the in the draft.

Mode of Consultation

- The consultation should be made by sending the draft to the concerned ministries with request of comment.
- Do not send such a request to all governmental bodies. This may lead to fruitless work by organs with no connection with the bill, and may cause problems of co-ordination and delay when so many potential respondents are involved.
- But where the substantial involvement of many governmental bodies is foreseen, it is advisable to organize a joint consultation in a meeting, so that all major interests are party to the policy development from the start.

Non – Governmental consultation

- Involve as many concerned participants as possible; There is always a risk that smaller interest groups or less organized interests may be overlooked, or that the process is not truly or fully representative, giving rise to criticisms as to its legitimacy.

- To be most effective, design the consultations to produce useful information which can contribute to the further development of the draft.
- Develop a procedure that would enable those consulted to offer experience, special knowledge and relevant data.
- For the above reason provide participants with a clear statement of objectives of the proposals, and your current thinking on the nature of the problem, the method or methods for its resolution and the likely impact of the draft.
- But beware that the precise nature of the information provided will depend in part on the purpose of the consultation. If you are using consultation as a mode of checking whether a new scheme is complete and or workable, it may be sensible to circulate the draft bill, with a series of precise questions. In practice, this form of consultation is the one most widely used.
- Do not hold consultation if it is not appropriate for reasons, e.g. of confidentiality, national security or another such public interest, or because the matters are based on essentially political considerations.

Mode of consultation

- Use written correspondences if the number of participants is small.
- Hold seminars, workshops etc. if the consultation involves many stakeholders.

Expert Consultation

- Select the appropriate experts (academicians, practitioners and researchers) on the areas the draft is concerned
- Lawyers are not the only experts; so involve experts of other disciplines

Example: Engineers, if the draft is on construction; physicians if the draft is on say medical malpractice

Mode of Consultation

- Beware that the expert consultation should not be a forum for debate on abstract theoretical issues; so try to properly direct the consultation

- In areas where there is likely to be significant legislative activity or where complex legislation is required, appoint/get appointed an advisory committee of outside experts.
- Organize the consultation in a meeting, seminar or workshop form; exchange of correspondences is not useful in expert consultations

Public Consultation

- Where the law will have wide ranging consequences affecting substantial sections of the population, a general invitation to the public may be necessary.
- Here the drafter may employ appropriate modes of consultation. But due care must be taken not to expose the stage for unnecessary issues and unexpected abuses.

2.5.4. Reporting

The manner of reporting may be contractually regulated between the drafter and the authority that commissioned the drafting or in the Terms of Reference. In the absence of such, the drafter shall report to the sponsor when he completes each of the intermediate drafts until the final draft is accepted.

2.6. Documentation

In the course of drafting legislations, Drafters are expected to organize and file all the relevant communicable materials such as texts, video, audio, etc. It should be documented in such a way that the client institution can understand the whole process of the drafting, the procedures followed, the references used in the drafting etc.

Chapter 3

Legislative Drafting Techniques

3.1. Structure of Laws

3.1.1. General

A law should be in a solemn and standard form for the sake of easy reference, precise interpretation and implementation, expedited drafting, etc... So, normally a law with a solemn form will have Title, Name of the Enacting Institution, Citation(s), Recitals comprising of the Statement of Reasons, Enacting Terms divided into various articles and sections, Place & Date of Adoption, and finally Signature(s).

Having the above general points into consideration, a drafter in Ethiopia is highly recommended to follow the following guidelines while drafting a law.

3.1.2. Title

- a. The Title of a law should be short and descriptive. Usually, the “Title” of a law should contain the following basic elements:-

- i. **Name of the Enacting Institution;**

The enacting institution is usually identified by phrases like “of the Parliament”, “of the Council of Ministers”, etc...

- ii. **Type of the law;**

As to whether the law is Proclamation, Regulation, Directive, etc... should be indicated in the title.

- iii. **Official serial number;**

Usually, official serial of the law should be preceded by the contraction “No.”.

- iv. **Year of adoption;**

The year of adoption should be indicated in the title in figure following the official serial number and preceded by a slash “/”.

v. **Brief description of the subject matter of the law.**

- The “title” should also give a precise, complete, but at the same time a succinct description of the subject matter of the law.
- Depending on the situation, the subject matter is usually introduced by phrases like “Concerning”, “On”, “Fixing”, “Increasing”, “Extending”, “Amending”, etc....
- A drafter should always try to balance between two conflicting interests; namely, the need for the title to give a clear idea about the content of the law, and the need for the title to be as brief as possible. It is not advisable to give precise details about the subject matter of the law.

EXAMPLE:-A good example to demonstrate a Title containing all the above five elements is the following:-

*“Investment Incentives and Investment Areas Reserved for Domestic Investors **Council of Ministers Regulations** No. 84/2003.”*

- b. Exceptionally, however, the Title of a law may not contain some of the above elements. For example, the Titles of Proclamations in Ethiopia do not usually contain the name of the enacting institution in them.

EXAMPLE:-A good example to demonstrate a Title of a Proclamation without containing the name of the enacting institution is the following:-

*“Trade Practice **Proclamation** No. 329/2003.”*

Since this omission in our Proclamations is a significant one that needs immediate correction, a drafter is strongly advised to indicate the name of the enacting institution (i.e. the House of Peoples’ Representatives) in the Title part.

EXAMPLE:- The above cited Proclamation could have been drafted as follows:-

“Trade Practice Proclamation No. 329/2003 of the House of Peoples’ Representatives”

3.1.3. Preamble

Preamble is statement of reasons that justify the enactment of the law. It usually sets out relevant points of fact or of law followed by the conclusion that the measures provided in the enacting terms of the law should therefore be adopted. Sometimes, preamble may also refer to consultations made with some regulatory bodies, special concerned committees, etc...

- a. Each part of a Preamble or Recitals normally begins with the word “Whereas”, and ends with semi-colon.
- b. When formulating preamble or recitals, proper care should be taken to ensure that they:-
 - i. Should constitute genuine statement of reasons, not the legal basis nor the wording of a provision already cited as a legal basis;
 - ii. Should not simply refer to reasons given for another law;
 - iii. Should relate to the substantive provisions of the law at hand; and
 - iv. Should not give individual reasons for each provision except in the case of some special provisions having special importance or which can not be covered or addressed by the general philosophy. For example, the following special provisions need to be given special attention while formulating preamble:-
 - Derogations;
 - Departures from general scheme of rules;
 - Exceptions to the General Principles (e.g. Retroactive Provisions);
 - Provisions prejudicial to certain interested group of the society.
- c. The order of the preamble or the recitals should correspond as far as possible the order of the provisions for which the recitals stand.

EXAMPLE:-An example to demonstrate the above points will be the following Preamble (Recital) of Labor Proclamation No. 377/03:-

“WHEREAS, it is essential to ensure that worker-employer relations are governed by the basic principles of rights and obligations with a view to enabling workers and employers to maintain industrial peace and work in the spirit of harmony and cooperation towards the all-round development of our country;

WHEREAS, it has been found necessary to guarantee the right of workers and employers to form their respective associations and to engage, through their lawful elected representatives, in collective bargaining, as well as to lay down the procedure for the expeditious settlement of Labor disputes, which arise between workers and employers;

WHEREAS, it necessary to strengthen and define by law the powers and duties of the organ charged with the responsibility of inspecting, in accordance with the law, labor administration, particularly labor conditions, occupational safety, health and work environment;

WHEREAS, it has been found necessary to revise the existing Labor Law providing for the basic principles which govern worker- employer relations and for labor conditions taking in to account the political, economic, and social policies of the Government and in conformity with the international conventions and other legal commitments to which Ethiopia is a party with a view to translating into practice the objectives referred to above;”

d. If we analyze the above quoted preamble/recitals in line with the above discussed points we can observe the following features:-

- The 1st recital is a general one, without referring to any specific part of the law;
- On the other hand, the 2nd and the 3rd recitals give reasons for the necessity of specific parts of the law;
- The 4th recital gives reason as to why the existing Labor Law needs to be amended.

In view of the above discussed justifications for inclusion of recitals for individual provisions, it can be noted that there is no special reason justifying the incorporation of individual recitals under 2nd and 3rd paragraphs. These recitals could have been drafted in a very general way without referring specifically to these individual parts of the law.

3.1.4. Citation and Enacting Clause

3.1.4.1. Citation

- a. Citations are references to the legal basis or legal provisions under which the enacting institution is empowered to enact that law. As to their place and form, they normally appear with the name of the enacting institution and the Enacting Clause, and they are alternatively expressed with phrases like “having regard to”, “in accordance with”, “pursuant to”, etc... followed by the relevant legal provision.
- b. If there is more than one legal basis to be cited in the citation part, then they should be made in their hierarchical and historical order.
- c. However, in case of numerous legal basis to be cited, the drafter can use either of the following methods to avoid citing an inordinate number of legal basis:-
 - i. **Citation by Correspondence**:-This method can be used in case of horizontal laws laying down identical rules for a number of different areas. In this method, only one provision is to be cited with the addition of a phrase “...and to the corresponding provisions of the other Law on.....”

The use of this method should be restricted only to the following instances:-

- The simplification must save the drafter from citing significant number of provisions;
- Any one familiar with the field must be easily able to locate the corresponding provisions referred to; and
- The laws referred to in the simplified citation must be easily identifiable.

- ii. **Citation by Reference:**-This method of citation can be used in case of amending a law where the law to be amended contains a large number of citations. In such case, rather than citing specifically all provisions on which the law to be amended was based, the drafter can simply refer in general terms to “the provisions cited in the citation to the law to be amended.

Again, in this method, its use should be restricted only to the following instances:-

- The simplification must save the drafter from citing considerable number of provisions; and
 - It should not be used in case of laws that are to be referred also in turn refer to other laws.
- d. When the law to be cited contains within one article a paragraph on the purpose of future measures to be taken and another paragraph giving power to act a law, then it is the latter paragraph only that should be cited.
 - e. Some guidelines for Citation of Legal Basis for Amendment(s) of a Law:
 - i. Normally, when the law is to be amended, then the same empowering provision cited in the initial law should be cited as a basis for the amendment.
 - ii. Under normal circumstances, the law that is to be amended will not be the legal basis for its amendment and thus should not be cited in the amending law.
 - iii. However, exceptionally, some laws contain a provision empowering the enacting institution to “revise”, “amend”, or “adopt” certain rules, amounts, lists, technical provisions, etc...so as to accommodate some objective changes in the legal, economic situation, or in technical progress. In such cases, the legal basis for the revision, the amendment or for the adoption is the law to be revised itself and thus same should be cited in the citation part.
 - iv. When the law to be amended has more than one legal basis, then only the one specific to the provisions to be amended should be cited if the previous citation can be individualized.

3.1.4.2. Ordinary References

Where a legislation is to be referred to in another, the title should be given in full or in particular if the reference is in the title or if the other legislation has already been cited in a short form.

References in title

Where the title of a legislation is referred to in the title of another legislation:

- where both laws are enacted by the same institution, the name of the institution should not be repeated;
- the date is omitted;
- no reference is made to the Official Gazette in which it was published; and
- no mention is made of any amending acts.

The act referred to may be cited not by its full title but by a short form with a concise description of the subject matter.

3.1.4.2. Enacting Clause

The Enacting Clause is usually expressed by one of the following phrases:-

- “....Has issued this.....”
- “....Has adopted this.....”
- “....Be enacted by the.....”
- “....It is hereby proclaimed as follows...’

While the above first three expressions, being drafted in the active form, presuppose that the enacting institution should be also mentioned together with these enacting clauses, the last one, however, is expressed in the passive form, and thus no need to mention the name of the enacting institution with it.

Almost all current proclamations being proclaimed by the House of Peoples’ Representatives are being drafted in the 4th style without explicitly mentioning the House of Peoples’ Representatives as the enacting institution. So, unless the

person reading one of our proclamations is aware of the enabling provision(s) cited in the citation part, he/she can not simply know that the enacting institution of the proclamation is, of course, the House of Peoples' Representatives.

Therefore, given the above loophole in our drafting trend, it is highly recommended to draft the enacting clause in our proclamations, too, in the active form as follows:-

*“NOW, THEREFORE, in accordance with, **the House of Peoples' Representatives** has hereby proclaimed as follows:”*

3.1.5. Body of Laws

3.1.5.1. Typical Divisions and Organization of Laws

- a. Laws are normally divided by articles, which are usually called the “basic units” of a law. Each article may also be again sub-divided in to either numbered or un-numbered paragraphs, sub-paragraphs, points, indents, or sentences.
- b. On the other hand, articles may also be re-grouped in higher sub-divisions such as Parts, Titles, Chapters, Sections, and Sub-Sections. However, a drafter should note that articles need not be grouped in higher divisions like Parts, Titles, Chapters, etc...unless such re-grouping (division) is justified by the diversity of the subject matter, the number of articles, for need of clarity, or for ease of consultation. So, the drafter should first determine the existence of either of these justifications before proceeding and re-grouping the articles in to a higher leveled division.
- c. In Ethiopian drafting culture there is no such type of standard designation and in our laws we can find different types of designations by using cardinal numbers either in words, or in roman figures, or in Arabic figures. For example, we can see the division of Labor Proclamation No. 377/03 in to Parts, Chapters, Sections, and Sub-Sections, all being designated by cardinal numbers in words while in some other laws (e.g. in our Civil Code higher divisions are designated differently).

In view of the above irregularity in our drafting trend and in order to ensure uniformity, the following Order, Designation and Symbols of the divisions/sections are recommended:-

Designation of Divisions of Law	Symbol(s) for the Division(s)
Part (s)*	Part One, Part Two, etc...
Title(s)	Title One, Title Two, etc...
Chapter(s)	Chapter One, Chapter Two, etc...
Section(s)	Section One, Section Two, etc...

***NOTE:-**For bigger compilation of laws such as Codes a drafter can use even a higher division to be labeled as “Book”.

Therefore, a drafter is highly recommended to adopt the above standardized and conventional way of designation.

- d. As a rule, all Parts, Titles, Chapters, Sections, Sub-Sections, and Articles should have their own titles that must be in line with the legislative intent of each particular division or provision.
- e. In drafting Articles, a drafter should take into consideration the following points:-
 - i. Provisions not directly related to each other should not be drafted in the same article.
 - ii. As an exception to the rule that directly related provisions should be drafted together in one article, if the provisions are too numerous, then it is advisable to split the text in to separate articles.
 - iii. In spite of the fact that the articles are re-grouped into higher divisions (i.e. Parts, Titles, Chapters, etc...), they should be however numbered consecutively.
- f. Sub-divisions of Articles into paragraphs or sub-paragraphs is suggested to be as follows:-

Article-X: “Title”

1. xxxxxxxxxxxxxxxx

(a)yyyyyyyyyyyyyyyy

(i)zzzzzzzzzzzzzzzzzz

EXAMPLE: (From Excise Tax Proclamation No. 307/2002, Art. 6)

“6. Payment of Excise Tax

1. The Excise tax shall be paid in the time prescribed under sub-article (20 of this Article:

(a) in respect of goods produced locally by the producer.”

g. Given the existing drafting style, the following order and arrangement of a law is recommended for legislative drafting in Ethiopia:-

- i. Title
- ii. Preamble (Recital)
- iii. Citation & Enacting Clause
- iv. Short-title
- v. Definitions
- vi. Scope, Exceptions, Exclusions
- vii. Substantive Provisions
- viii. Administrative & Procedural Provisions
- ix. Penalties & Sanctions
- x. Repeals
- xi. Transitional Provisions (Saving Clause)
- xii. Effective Date
- xiii. Closing Formula

A drafter should avoid an organization that requires an understanding of a later section in order to understand an earlier section of a law.

EXAMPLE:-Article 190 of Labor Proclamation No 377/2003 (Repealing Clause) should have come before Article-188 (Transitional Clause).

3.1.5.2. Short-Title

- a. “Short-title” is a title to be given for a law for the sake of convenient reference or citation. So, short-title should be by nature short, accurate, and unique.
- b. One rule of short-title is to avoid adding the year of adoption in it as it does not add anything to identify the law. The exception to this rule is in case of a successor law, we need to add the year in the short-title as it will help to distinguish it from the previous law.
- c. Usually, short-titles are drafted by using the expression “...may be known and cited as...” or “...shall be known and may be cited as...” However, in both phrases, the phrase “shall be known” or “may be known” does not add anything to the title, and thus a drafter is advised to avoid using it.
- d. In Ethiopian drafting style, one can not distinguish between the Title of a law and the Short-title of same law; they are always one and the same. In view of the above nature of Short-title, one can conclude that Short-title in Ethiopian law does not have any purpose at all since the Title itself can replace it. So, to change this unnecessary trend and to give Short-title its meaningful purpose, then it is hereby recommended to use Short-title by omitting Serial Number, Year of Adoption, and the name of the Enacting Institution as follows:

EXAMPLES (1) For the Title “*Investment Incentives and Investment*

Areas Reserved for Domestic Investors Council of Ministers Regulations No. 84/2003”, its title can be shortened as:-

“Investment Incentives Regulation”

(2) For the Title “*Trade Practice Proclamation* No. 329/2003”, its title can be shortened as:-

“Trade Practice Proclamation”

3.1.5.3. Definitions

The purpose of “definition” in any part of the law is to achieve clarity and consistency and thereby to avoid unnecessary repetition of long phrases in the law. Thus, in formulating “definition” for words or terms in the law, a drafter should take care of the following important rules or points:-

- a. It is recommended that a drafter introduces the definition section/part as follows:-

“The definitions in this section apply throughout this....unless the context clearly requires otherwise.”

- b. Once a term is defined in the definition part, then same definition should be used for that term throughout the law.
- c. The “Definition” should not contain the word/the term to be defined.
- d. A drafter will have the following different types of options to define terms/words:-

- **Exhaustive Definition** defines words/terms by using the word “means”.
- **Inclusive Definition (or Partial Definition)** defines words/terms by using the word “includes”.

EXAMPLE: (From Commercial Registration & Business Licensing Proc. No. 67/1997, Art. 2(12))

“Manufacturing activity’ includes any formulation, alteration, assembling and prefabrication activity carried on by an industry.”

- **Definition by Exclusion** is used when the term/word to be defined is well and wider, but when there is something to be excluded from its definition. The word “excludes” is used in this type of definition.
- In using these types of definitions, it is important to note the following important points:-
 - i. Use the word “means” instead of “shall mean”.
 - ii. Use the word “means” even if the word/term to be defined is plural.

- iii. Never use ambiguous expressions like “means and includes” simultaneously.
- e. Avoid a “definition” that states the obvious, i.e. do not give dictionary meanings of words/terms.
- f. Avoid drafting definitions that are stuffed with substantive law, i.e. do not place substantive provisions in the definition section.
- g. Avoid definition by reference from other laws such as higher status laws, for example in the case of some definitions in our Regulations.

EXAMPLE:-“Cooperative society” means an entity that has got a definition referred to under Article 2(2) of the Proclamation.

- h. As a rule “definitions” part should be placed in a place where it is to be easily found. However, Sections, Chapters, Titles, and Parts may have their own “definition” part, and if a definition applies to only one section of the law, then it is appropriate to incorporate that definition in that particular section, not in the general definition section.
- i. Definitional sections and sub-sections should set forth definitions in alphabetical order so as to facilitate easy reference of a particular definition.
- j. Avoid using a definition that conflicts with accepted usage.

3.1.5.4. Enacting Terms

Enacting Terms are the legislative part of the law that gives effect to the legislator’s intent to regulate a certain matter. Enacting Terms set forth new rules intended to be laid down by the legislature, and they must be self-contained, i.e. without the need to have explanatory notes, or referring to the title or preamble for their understanding.

The following parts of this section will briefly introduce the drafter with the different types of these provisions.

a. Scope of Application Clause

This clause is where the drafter shall clearly defines the scope of application of the draft law at hand. Usually and logically, this clause shall come immediately after the “definitions” section.

There can be the following two types of approaches for the drafter to apply depending on the situation:-

- i. **Defining Scope by Inclusion:-** this is when the drafter defines the scope of application of the law by listing down the areas where the law shall apply. This can be used when the areas of the law to be governed by the law are very limited and can be exhaustively listed down.

EXAMPLE: (From Customs Clearing Agents Regulations No. 108/2004)

“This Regulation shall be applicable on all Customs Agents.”

- ii. **Defining Scope by Exclusion:-** this is when the drafter opts to define the scope of application by listing down those areas where the law shall not be applicable. This formula can be used when the law generally applies to a certain generally defined area/circumstance but there are areas where it can not be applicable.

EXAMPLE:- (From the repealed Urban Lands Lease Holding Proclamation No 80/930)

“3. Scope of Application

This Proclamation shall not be applicable to urban lands previously utilized for building dwelling houses”.

b. Exception and Proviso Clauses

Limitations on the enforceability of provisions of a law can be classified as follows:-

- i. **Exception Clause:** Such clause restricts the law to a particular case; and if possible, a drafter is advised to draft it as an individual provision.

EXAMPLE:- “However, this section or provision shall not apply to applicants for admission to any campus of the University of.....for the academic year.....”

- ii. **Proviso:-**Such clause removes special cases from the general application of the law, and provides for them specially, usually having been drafted within the body of a section/provision, being introduced by the word “provided” after a semi-colon.

EXAMPLE:- (from Commercial Registration & Business Licensing Proc. No. 67/1997, Article3(3))

“3. Without prejudice to the provisions of sub-article (2) of this Article, the provisions of this Proclamation relating to registration shall apply to those business persons referred to in the same sub-article (2), provided that they have permanent working places.”

c. Substantive Provisions

- i. The substance of a law sets forth rights, duties, powers, privileges, and immunities of persons to be benefited or regulated.
- ii. These substantive provisions of a law shall be drafted as prescriptions, prohibitions, or regulations, or combination of any of these forms of rules.
- iii. A drafter has better flexibility of drafting and arranging the provisions falling under this nature.

d. Administrative and Procedural Provisions

- i. Procedural provisions usually follow the substantive provisions or rules, and their purpose is to provide for the administrative or procedural aspects of the law, i.e. to provide some rules or procedures as to how the substantive provisions are to be implemented.
- ii. Normally, these provisions will address one or all of the following aspects:

- Time and/or procedures of applications;
- Persons or organs responsible for the implementation of the law;
- Applicable Forms to be used;
- Period of limitation;
- Dispute settlement procedures;
- Etc...

e. Penalty and Sanctions Clause

- i. A drafter who drafts criminal statutes, either in or out of the Criminal Code should be thoroughly familiar with the style and contents of the Criminal Code and the Sentencing provisions therein.
- ii. Good drafting style requires a drafter to specify both the class and the penalty for any crime/offense the drafter creates outside the Criminal Code. So, the drafter should as far as possible use the categories of offenses already established in the Criminal Code.
- iii. With the purpose to create some uniformity between the sentencing authorities for crimes/offenses found in the Criminal Code and those found outside the Criminal Code, a drafter should conform the penalty to that in the sentencing provisions of the Criminal code. A good drafting technique to achieve this purpose will be as follows:-

“...is guilty of a.....degree offense, and shall be sentenced in accordance with Article(s)of the Criminal Code.”

- iv. When drafting outside the Criminal Code, if the drafter wants to provide a different penalty than that specified in the Criminal Code, the recommended style is to provide a penalty ceiling up to which the judge can sentence. A standard penalty clause for this purpose will be as follows:-

“...shall be punished by a fine of not more than.....or by imprisonment for a definite term not exceeding.....period, or both.”

In the above type of provision, avoid using the expression “or to both such fine and imprisonment in the discretion of the judge” because the phrase “or both” express the same thing in a much simpler way.

- v. One important consideration for a drafter of criminal penalties is whether the penalty fits the crime.
- vi. Arrangement wise, a penalty relating to only one section should be placed in that section, whereas a penalty pertaining to several sections or to an entire law should be put in a separate section.
- vii. For crimes/offenses of corporate bodies outside the Penal Code, the same rules shall apply as for natural persons.
- viii. A law may have both criminal and civil (administrative) penalties, and civil penalties are placed in the same position in a law as criminal penalties.
- ix. When drafting civil (administrative) penalties, the drafter should specify the amount of the penalty, and as to how the administrative agency may enforce compliance. The drafter should also incorporate the procedures for protesting and appealing, including the provision of a hearing and appeal to a state court.
- x. When imposing penalties is the sole purpose of the draft law, it is a good drafting practice to mention in the Title that the law provides penalties, particularly when criminal penalties are incorporated in the draft.

EXAMPLE: “A Proclamation Providing for Criminal and
Civil Penalties...”

f. Amending Provisions

Please refer to Chapter 7 of this Manual regarding this topic.

g. Repealing Clause

- i. To repeal a law is to revoke or abrogate it so that it will cease to have any effect.

- ii. When repeal of existing provisions is required by a new law of same status, then the repeal should be effected by an article in the new law rather than by a separate law.
- iii. However, if the new law has the sole purpose of repealing without substituting the law to be repealed, then in such exceptional situation the repeal can be made by a separate law, and in such event the drafter should give adequate ground and reasons for the repeal in the recital of the repealing law, and the title should also indicate the purpose of this law by using phrases like: "...Repealing....", "....to Repeal....", etc...
- iv. A drafter should make repeals by express and precise terms because repeal of earlier law(s) should not have to be implied from the mere fact that they are inconsistent with the new law as this will open for dispute.

EXAMPLE: Good example from Labor Proclamation No. 377/03 (Article 190)

"The Labor Proclamation No. 42/1993 (as amended) is hereby repealed."

Avoid repealing by mere expression of "*all earlier laws (or provisions) inconsistent with this Proclamation/Regulation are repealed.*"

EXAMPLE: (From Sugar Industry Development Fund Establishment Proclamation No. 415/2004)

"8. Inapplicable Laws

No law, regulation, directive or practice shall have effect with respect to matters provided for in this Proclamation in so far as it is found to be contradictory/ inconsistent with this Proclamation."

- v. Though repealing a law tacitly repeals all its amendments, when the law to be repealed was amended, the drafter is, however, advised to cite the law with a phrase "as amended" in bracket so as to avoid any doubt.

EXAMPLE:- See the example under item g(iv), above.

- vi. Repealing provision should not be stated to be subject to any Transitional provisions provided in the repealing law since Transitional provisions constitute an exception from the final repeal of the repealed law.
- vii. Arrangement wise, repealing provisions should be placed among the final provisions before Transitional provisions and Effective Date provisions.
- viii. When drafting a repealing provision or a repealing law, a drafter shall take all the necessary precautions to check whether there are other laws, wherein this repealed law was referred, and if there are so to clearly provide for the effect of this repeal regarding these laws.

h. Transitional Provisions (Saving Clause)

- i. Transitional provisions (Saving Clause) regulate the change over from an existing set of rules to a new one so as to preserve certain rights, duties, or privileges that might otherwise be destroyed by the draft law containing an amendment or repeal of existing provisions of a law. These provisions make it possible for the law to take effect with minimum disruption of existing expectations and liabilities.
- ii. Since formulating this clause is an essential step in drafting process, the drafter shall determine the effect of the new law on existing rights, liabilities, and proceedings, or should obtain formal policy decision from the requester if the matter needs so.
- iii. So, a drafter should draft saving clauses or transitional provisions that are necessary to provide appropriate rules governing such matters, and to achieve this goal.

EXAMPLES: (1) “This Proclamation does not apply to Litigations already pending.”

(2) Example from Labor Proclamation No. 377/03 (Art. 188(4))

“Labor Disputes pending before any authority competent to settle labor dispute prior to the coming in to force of this Proclamation shall be settled in accordance with the law and procedure which were in force before this Proclamation came in to force.”

From economy of words point of view, the 1st example is brief conveying the same message as the 2nd example, and therefore a drafter is recommended to use the style as used in the 1st example, above.

- iv. **Grandfather Clause**:-This is a special type of Saving Clause, usually used to ensure that persons lawfully engaged in a particular activity do not have to comply with certain provisions of the new law.

EXAMPLE: - “The licensing provisions of Article.....of this Proclamation, regarding testing, education, experience, etc...,will not apply to current legal practitioners, who are already practicing obtaining official license.”

- v. Arrangement wise, Transitional Provisions (Saving Clauses) should be logically placed after the repealing or amending provisions.

i. **Effective Date Clause**

- i. Distinction shall be made between entry into force and application of a law since they do not necessarily coincide. The date of application may be set before or after that of entry in to force of the law, for example, in cases of Retroactive or Deferred application of law(s).

a. **Retroactive Application Date**

- Exceptionally and subject to requirements stemming from the principle of legal certainty and the Constitution, a law may have retroactive effect.
- In our drafting practice, there is no such distinction between the two dates as discussed above.

EXAMPLE:

“68. Effective Date

This Proclamation shall come in to force as of the 23rd day of January, 2003.” (*Note: the law is publicized on July 24, 2003.*)

- So, during drafting the Retroactive Effective Date clause, the drafter should adopt the following style of drafting:-

“This Proclamation shall enter in to force on....., but it shall be applicable effective from.....”

b. Deferred Application Date

- This method will be applied when it becomes necessary to defer the application of a law until a latter date than that of its entry in to force.
- When it is necessary to defer the application of only part of a law, then the drafter should clearly specify the provisions concerned.
- The style of drafting Deferred Date of Application can be as demonstrated in the example for Retroactive Date of Application, except in case of only some deferred provisions of the law, in which case the drafter can use the following model:-

Example:- Art. 66 of Value Added Proc .No. 285/2002 reads “This Proclamation shall come into force as of the 1st day of January, 2003.”
The law was promulgated on 4th of July, 2002.

- EXAMPLE:- (From Census Commission Establishment Proclamation No. 180/1999, Art. 20)

“20. Transitory Provision

Notwithstanding the provisions of Article 18 (1) of this Proclamation, Proclamation No. 32/1992 shall remain applicable until such time that the Secretariat is properly organized.”

- ii. Date of entry in to force must be set on a specific date or on a date by reference to the date of the publication of the law.

- Date of entry in to force must not be in the past.

- No law may enter in to force before the date for the entry into force of the law on which it is based.

iii. Common expressions used to indicate the beginning period of a law are as follows:

- "... Shall be applicable effective from..."
- "...shall be effective with effect from..."
- "...shall take effect on..."
- "...shall have effect from..."
- "...shall enter into force on..."

As a good drafter, avoid expression like "...shall be effective after..." since this will cause confusion.

iv. **Drop-Dead Provisions**

- Sometimes, the legislature may wish to enact a law for a limited period of time due to various reasons. In such cases, the drafter can use the following recommended type of drafting style:-

"This Proclamation shall take effect on...., and it shall be repealed as of.....".

- These drop-dead provisions can also be used for temporary amendments to laws. The effect of using these drop-dead provisions in amendment will drop-dead on a specified date and the law reverts to its pre-existing form.

"This Amendment law shall take effect on...., provided that on.....this Amendment shall be automatically repealed and Section.....of.....is re-enacted in the form it read on the day before this amendment."

j. **Closing Formula**

In the Ethiopian context, a closing part of a law consists of Place of Issuance, Date of Issuance, and Signature (Name) of the Signatory of the Law per Constitutional requirement.

Thus, the closing formula of Ethiopian laws should look like the following:-

“Done at (place), this....day of200_.” followed by the name and full title of the President holding office at the time of adoption of the law.

3.1.5.5. Annexes and Schedules

- i. Annexes and Schedules are material that can not be incorporated in the actual enacting terms of the law, but is to be appended thereto due to their voluminous or their technical nature.

EXAMPLES: Technical Rules for Custom Officers, Doctors, etc..., Formats to be used, Lists of Products, Tables of Figures, Plans & Drawings, etc...

- ii. While annexing some materials to the law, the drafter shall make clear reference in the appropriate part of the enacting terms to the link between those provisions and the annex(s) by using phrases such as “listed in the Annex/Schedule” or “set out in the Annex/Schedule”.

EXAMPLE: - (From Excise Tax Proclamation No. 307/2002, Article 40

“4. Rate of Excise Tax

The Excise tax shall be paid on goods mentioned under the Schedule attached to this Proclamation.”

- iii. The word “Annex” or “Schedule” must appear at the beginning of the appended material.
- iv. When there is more than annex or schedule, then the drafter must number them and order them according to their order of reference in the enacting terms.
- v. In our drafting practice, Appendix and Schedule are used invariably. But, the drafter is recommended to distinguish between the two by using Appendix only for mere lists of items whereas by using Schedule for tabulated items, prices, etc....

3.1.5.6. Provisions to be omitted

i. Provisions with No Legal Import

A drafter should not incorporate in the draft law such provisions which have no legislative function, which for example merely:-

- Make Recommendations,
- Announce Intentions,
- State Facts,
- Provide explanation or comment on the text, or
- State reasons for the text.

ii. Superfluous Provisions

A drafter should avoid provisions which merely

- Reproduce or restate or paraphrase binding provisions of a higher status law; or
- Declare binding provisions of a higher status law to be still binding.

EXAMPLE: (From Investment Incentives Regulation No. 84/2003)

“12. Penalty

Any investor who acts contrary to Article 11 of these Regulations shall be punishable in accordance with Article 73 of the Re-establishment and Modernization of Customs Authority Proc. No. 60/1997.”

iii. Provisions Relating to Individuals

A drafter should not include in the law such provisions which relate to neither to natural nor to legal persons specified by name (e.g. in case of appointment by name).

3.2. Substantive Content of Laws

3.2.1. Consistency with Policy Objectives

3.2.1.1. Addressing to Specific Policy Objective

A drafter should always check whether the policy objective(s) of requester body are clearly and properly addressed in the draft law.

There might be various ways of ensuring this important issue, but the following mechanisms are highly recommended for a drafter to follow:-

- iv. **Verification:** a drafter should verify the content of the draft in line with the overall policy objective(s) given to him/her from the requester at the initial stage of the draft.
- v. **Report to Requester to Obtain Formal Feedback:** this step also helps the drafter to find out whether an important aspect of policy objective is missed or not.
- vi. **Proper Consultation with the Requester:** after passing through the above steps, the drafter should also prepare a sort of consultation forum with the requester (preferably with the policy makers) on the contents of the draft, and the discussion should be properly recorded to become part of the documentation.

3.2.1.2. Compliance to Other Policy Objectives

A drafter is also responsible to make sure that the draft law is not in conflict with other existing national policies; to this end the following important steps should be adhered to:-

- i. **Verification:** a drafter must verify the content of the draft in line with other policies related to the subject matter of the draft law.
- ii. **Consultation with Concerned Regulatory Bodies:** a drafter should further make proper consultation with all concerned regulatory bodies that

are concerned or will be affected by these other policies or by the policy direction of the new draft law.

3.2.2. Constitutional Compliance

- a. One means of determining the quality of legislative drafting in Ethiopian context should be the consistency or compliance of the draft law(s) with the provisions and requirements of the Constitution of the FDRE.
- b. The mechanism for a drafter in Ethiopia to check such consistency or compliance is **verification** of the content of the draft law(s) in line with the provisions or requirements of the Constitution of the FDRE.
- c. So, a drafter, before finalizing the draft, shall always check and verify that the provisions of the draft law are not in conflict with the Constitution of FDRE, in particular with the provisions which guarantee rights and freedoms.
- d. A drafter shall, after completing the **verification** process, duly fill the “**Compatibility Certificate**” format, attached herewith, so as to provide appropriate information regarding the degree of compatibility with the FDRE Constitution. A drafter must state in this **Compatibility Certificate** whether the draft is fully compatible with the Constitution, and if not to what extent it is incompatible together with the reasons for such partial compatibility. This Certificate must be attached with the draft law at every stage of its consultation, including the approval process before enacted.
- e. Apart from the drafter, other institutions in Ethiopia (e.g. the Legal Research Institute, the Council of Ministers, the Legal Committee of the House of Peoples’ Representatives, the House of Peoples’ Representatives itself, etc..) should also **verify** the constitutional compliance of a draft law before it is approved and becomes law.

3.2.3. Consistency with Other Laws

3.2.3.1. Consistency with Domestic Laws

- a. A drafter shall first ensure that the policy proposals and the policy options for the draft law(s) are consistent with the provisions and requirements of existing law(s) and existing legal structures.
- b. Subsequently, the drafter must also **verify** the consistency of each draft text of particular law(s) in line with the existing law(s), legal structures, and procedures. During this process of verification, the drafter must:-
 - i. Check that the provisions of the draft law are not in conflict with some higher level of law, i.e. Secondary legislation (e.g. Regulation) is consistent with Primary legislation (e.g. Proclamation), which it intends to implement.
 - ii. Check that every provision in the draft is in fact needed and not superfluous by some existing law(s).
 - iii. Check that the concepts and the legislative approach of the draft law(s) are consistent with existing law(s), legal structures, and procedures.
 - iv. Ascertain all the provisions of existing law that must be repealed or amended as a consequence of the draft law are properly dealt with and that all transitional provisions are included that are necessary to ensure legal continuity.
- c. If a draft is not being prepared by a group of lawyers, a drafter is highly recommended to consult with other lawyers only among the general legislative drafting team, who can maintain the confidentiality of the draft, so as to cross check if there is no any oversight of important legal framework to be addressed.

3.2.3.2. Consistency with International Law

All the above guidelines can also be used for International Law as applicable, and specifically however, a drafter is strongly advised to ascertain that the provisions of the draft are consistent with International instruments.

Mainly, a drafter is required to make sure that the draft is not inconsistent with:

- International agreements ratified by Ethiopia; and
- Other International Instruments adopted by Ethiopia.

Chapter 4

Linguistic Usage and style

4.1. Linguistic Usage

Laws should be written in a simple and clear language and direct style, using complete sentences and phrased for the common reader as well as for the political or legal expert. Language is the instrument by which the intent of the legislature is externalized and reaches the subjects of the law. The proper use of language is imperative in order to impart the message as intended by the maker. The drafter should use this tool of communication prudently and carefully so that the law says what the maker means. Various tips, guidelines and rules are available for drafters to enable them achieve the above goal.

To this end drafters are required to abide by the following rules throughout the drafting process.

Use Clear Language

- a. Use language which is understandable
 - Use words and phrases that can be easily and uniformly understood
 - It is advisable to avoid such phrases as due care, good faith, reasonable period, undue influence, unconscionableness , etc
 - Instead, use expressions that can convey your message with exactness

a. Write for your audience

- Make sure that the message is understandable not only by its administrator but also by the lay person
- Put yourself in your audience's shoes and then write for your audience; including the
 - General public
 - Specific interest groups
 - Administrators
 - Lawyers

c. Limits of clarity

Beware that extreme clarity may not necessarily be best instrument of justice. To the extent possible avoid mechanical rules and formalities, or reduce them to the minimum. Mechanical rules always suffer the risk of over-inclusion and under-inclusion in respect to their subjects.

Define your subject matter

- Clearly define your subject matter and ensure that all points are covered. Do not mix subject matters.
- Examine the subject matter of the law and decide if it would be clearer as a single set of comprehensive subjects, or if they should be broken down into smaller, more specific sets of laws. Considering the audience or audiences of the law may also help you determine when and how to divide laws. You should consider separating subject matters if it would help readers to more easily find the information that applies to them.
- Do not mix authorities. Laws made by one law-making authority should not be combined with laws made by another law –making authority unless the two authorities are jointly making it that cannot be made by either one separately.

Write for an individual

Whatever part of your audience you are focusing on, if you write for an individual, you have to

- Carefully analyze what you want the individual to do
- Clearly assign responsibilities and requirements
- Provide all the information the individual requires

Use natural word order

There is a natural word order and flow to speech. The natural word order is: **Subject- verb -direct object -indirect object**

Try to follow this natural word order when writing. For example, you would not say “she gave to him the book” (indirect object and direct object are reversed), so do not write that way.

Example: write: “A person must file an application with the Registrar.” (Subject, verb, direct object, adverbial phrase)

Don't write: “A person must file with registrar an application.”

Example: write: “An applicant may ask the Minister to waive the 10 days waiting period.” Or ‘An applicant may request that the Minister waive the 10 day waiting period.’

Don't write: “An applicant may request to waive the 10 day waiting period the Minister.”

Put modifiers near the word that they modify. A modifier is a word or group of words that tells more about another word's meaning.

Example” Write: “A trailer or semi-**trailer** that has **one axle** and is equipped with electric or hydraulic brakes”

Don't write: “A trailer or semi-**trailer** equipped with electric or hydraulic brakes having **one axle**”

If you have too many phrases interrupting the subject-verb-object order, you should break the sentence up.

Avoid turning verbs into nouns (nominalization)

Many verbs have related nouns – you can decide or make a decision, complain or make a complaint, know or have knowledge of. A writing that uses verbs is briefer, clearer and more direct.

Conciseness

- Omit needless language.
- If a word has the same meaning as a phrase, use the word.
- Use the shortest sentence that conveys the intended meaning.

Specificity

Except when political authorities require otherwise, drafters always should strive for a high degree of specificity. If legislations are drafted in terms which are wide and general this is likely to give rise to different interpretations and inevitable challenges.

Word Choice: General

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general:

- never use a long word if a short one will do;
- if it is possible to omit a word and preserve the desired meaning, always omit it; and
- never use a foreign phrase, a scientific word, or a jargon word if there is an everyday English equivalent.

Use vocabulary adapted to the reader

Drafters should adapt their vocabulary to their anticipated audience –and not only to judges and lawyers and follow the following rules:

- Do not 'legalese'

E.g. 'such', 'said', 'herein above', 'herein after' and the like.

- Do not use arcane, obscure, uncommon, or foreign words. Use technical terms only where the context requires it. Do not use 'bureaucratese' (e.g. acronyms)
- avoid use of "*mutatis mutandis*"

Unwilling to repeat a set of instructions including the precise changes necessary make them fit a new case , a lazy drafter merely write that the already stated rules apply to new case *mutatis mutandis*.

A typical example is Art.6 of Property Mortgaged and pledged with proclamation No.97/1998 which makes 55 provisions of the Civil Procedure Code applicable to the new and peculiar subject matter.

- d. avoid use of a deeming provision. (--- deemed to be----)

A drafter can always reach the same result by using an inclusive word and defining the inclusive word in the body of the law. Alternatively, a drafter can state the matter directly.

Avoid vague words

Drafters should use vague words only if they have no other choice. *Reasonable, fair, in the public interest* are some of the vague terms.

Avoid ambiguous words

Drafter should take ultimate care to avoid words, terms or phrases having two or more meanings.

Use of particular words

- In general, avoid use of "said" and "such." ("Said" may be used to refer to a previously cited statute.). Instead, use "the" if the reference is unambiguous. Otherwise, use "this," "that", "these" or "those".
- "Shall" and "may"

1. A duty, obligation, or condition precedent is best expressed by "Shall".

2. Use “shall” if the verb it qualifies is in the active voice. Example: The aggrieved party shall file (active verb in active voice) the application.”
3. Use “may” to confer a power, privilege, or right.

Examples “the applicant may demand (power) an extension of time.”

“The applicant may appeal (right the decision.)”

4. Use “shall not” to express a prohibition. Don’t use “may not” This phrase has proved confusing for most non lawyers, if not for lawyers in Ethiopia. It is often believed to be stronger than “shall not”. Avoid it any way during drafting.

Compare the use of this term in the following provisions

Arts.348 (4) and 350(3) and of the Commercial Code

“The general manager is an employee of the company and **may not** be a director.”

“Directors **may not** be appointed for more than three years”

Use “which” to introduce a non restrictive clause.

Example: “An applicant shall sign the application, which need not be verified.”

Use “that” to introduce a restrictive clause modifying the nearest antecedent.

Example: “An applicant may apply to renew a license that has been revoked.”

Avoid “the provisions of”

Instead of the words “*in accordance with the provisions of this section,*” say “*under this section.*”

Cover the entire domain

Drafters should ensure that the words or terms they employ cover the entire domain they intend to cover.

Use consistent language

Drafters should rigidly use the same word for the same thing.

A drafter should never use a different word to mean the same thing nor the same word to mean a different thing.

Ensure consistency between/ among related provisions throughout the draft.

Note the use of “bond” and “debentures” in Arts. 498 ff. and 432 of the Commercial Code to refer to the same thing.

Avoid redundant words

Drafters should not use the combination of words that merely mean the same thing. A typical example is the term ‘null and void.’

Adopt words used in companion statutes

When a drafter drafts a law whose subject matter closely touches that of another law or laws, he should think several times before using in the new law different words than earlier law used for the same concept. That ensures consistency and doesn't present needless confusion.

Look at the Amharic equivalent of the term trader in the Commercial Code (Art. 5), and Commercial Registration and Business Licensing Proc no 687997 (Art.2 (2)). (See also Trade Practice Proc. No. 329/2003 (Art. 2(10)))

Avoid ambiguous modifiers

Drafters should have no doubt about exactly what a modifier modifies. Beware of modifiers preceding or following a series. It is advisable to place an adverb or adjective as close as possible to the verb or the noun to which it applies and if necessary repeating it.

A very good example is the possible confusion arising from the use of the clause “used for a minimum of two years” in Art. 7(1)(a) of the Amharic and English versions Turn Over Tax Proc. No. 308/2002.

Use ‘and’ and ‘or’ scrupulously

In using ‘and’ or ‘or’, the basic rule is: use ‘and’ to indicate the conjunctive; use ‘or’ to indicate the disjunctive. However, difficulty arises because frequently use of the two terms overlap in which case careful scrutiny of the two words is essential. Drafters should consciously assess whether a law’s meaning requires a disjunctive a conjunctive or an overlap make sure that the law’s words make the meaning is clear

A classic example is Art. 63 of the Criminal Procedure Code:-

“Whosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is a possibility that the person in respect of whom the offence committed dying. “

Keep sentences short

Research has shown that sentences longer than eleven words begin to cause difficulty to people as much as eight years education. For drafting, a reasonable rule of thumbs limits sentences to somewhat more words than that –say, four or five lines or about 40 to 50 words. Drafters should consider ways of breaking any sentences longer than that into a series of shorter sentences.

Example: Look at the long sentences of several provisions of Value Added Tax Proclamation No. 285/ 2002, to be specific Art. 34.

Tense.

Use the present tense. Because the law speaks in the present, and each law is designed to give a rule for the continuing present;

It includes the future as well as the present;

It is a simple and natural form of expression; and

It avoids the culture of compound verbs and clearly conveys the current standard practice.

If you need to express a time relationship in laws

- Use the past tense for an event that has occurred or will occur before the effective date of the law or for an event that will necessarily have occurred before another event described
- Use the future tense for an event that is conditional on a prior one or that will occur after another event.

Mood.

Use the indicative mood. The drafter should avoid using the false imperative. The word "shall" should not be used to state a legal result or fact.

Voice

Whenever possible, draft in the active voice instead of the passive.

Writing in the active voice ensures that you clearly identify who is responsible for what actions. It answers the questions 'who'? and 'by whom'? What makes a sentence active or passive is the relationship between the verb and the subject of a sentence. The subject performs the action in a sentence written in the active voice. In the passive voice, the subject is acted upon. Sentences that use the active voice are stronger, shorter, easier to read and more effective in communicating the message.

Examples:

Active: The board may appoint a secretary. (Art.348 (5) Com. Code)

Passive: A general manager shall be appointed by the board. (Art.348 (3) Com. Code)

The passive voice may be useful

- If the 'doer' of the action is not known, or is obvious
- If the action is performed as a result of another force (e.g. by law, by time)
- If there is more than one 'doer' of the action, listed at the end of the provision
- If you want to focus attention on the receiver (person or object) of the action.

Only use the passive voice if you are consciously doing so for one of these reasons.

Number

Use the singular instead of the plural when possible. The singular includes the plural.

Gender

Whenever possible laws should be drafted using gender-neutral terms. A drafter should not use gender-based pronouns.

There are two easy methods that the drafter may employ to avoid using gender-based pronouns. The first method omits the use of the pronoun. The second method is to repeat the noun instead of the pronoun.

Pronouns

Nouns are used in preference to pronouns even if the noun must be repeated, especially when a lack of clarity otherwise might result. When a pronoun is used, the drafter should check to see that there is no question as to the antecedent of the pronoun.

Use a pronoun only if its antecedent (the word for which the pronoun stands) is unmistakable. A pronoun must agree with its antecedent in number and person.

Use a plural pronoun when the antecedent consists of two nouns joined by "and" and a singular pronoun when the antecedent consists of two singular nouns joined by "or" or "nor". When "or" or "nor" joins a singular noun and a plural noun, a pronoun should agree in number with the nearer noun. However, strict application of this rule can distort meaning, so it is usually best to try to make the construction plural.

Use tabulations freely

To disentangle complexity, reduce wordiness and enhance easy understanding, drafters should use tabulation.

1. Lists

A drafter frequently must include in a single sentence a large set of similar items subject to similar treatment. In such a case the drafter should bear in mind the following three rules:

- a. All items tabulated must have common characteristics, as nouns, verbs or sentences.
- b. The tabulation helps readers to understand the list largely by its layout; a space between the line containing the dash or semi-colon, the intended margins for the items listed and single spacing the items' subordinate relationship to the introductory words.
- c. The reader must be able to read a comprehensible sentence, the introductory words and each of the items in the list.

2. Sentences

To turn inherently complex ideas into understandable sentences, drafters everywhere rely on tabulations. A tabulation of a sentence builds on the rules for tabulating a list. To distinguish it from a simple list, a tabulated sentence invariably contains text material that not only proceeds but also follows a list.

The rules that apply to a tabulated list apply to a tabulated sentence with one addition: the text material that precedes it must make sense when read with each individual item in the list.

The Draft Criminal Procedure code (Art. 68) employs tabulation to do away with the interpretation problem in Art. 63 of the Code:

“Notwithstanding article 67 bails shall not be allowed where:-

1. The offence is punishable with rigorous imprisonment for not less than ten years the person on whom the offence was committed has died or is going to die ;or

2. The offence is punishable with death penalty “

Draft in the positive

Whenever practicable, drafters must draft in the positive, not the negative.

Bad Example: Criminal Procedure Code Article 63(1) which reads ‘*---the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years --*’

Put the most important concept at the end of a sentence

In laws the most important concepts belongs at the end of the sentence. By definition that implies that subordinate clauses that state the circumstances under which a rule will apply, usually don't belong at the end of the sentence. Frequently, drafters find it convenient to place them at the very beginning of the sentence; but not invariably. If possible a drafter should try to avoid placing adjectival and other subordinate clauses between subject and verb and object.

Avoid incorporation by reference

A drafter should, whenever possible, avoid repeating by cross-reference material from another statute. This incorporation of material merely by reference requires

that a person reading the law must scramble to find the law referred to. The drafter should repeat in the new law the material in the old law.

Make correct internal reference

- A convention holds that a sub article that refers to another sub article without mentioning another article refers to a sub-article of the same section. So if one sub-article refers to another sub-article of the same article, it need not mention the article number.
- Very frequently one article of a law states a general rule, providing an exception to that rule in another article or sub-article. In that case, both in the general rule and in the exception the drafter should call attention to the other article.

Enumeration of Particulars

There are two major canons of statutory construction that relate to the effect of using general words or phrases in association with particular words. These are commonly referred to as “*expressio unius*” and “*ejusdem generis*.”

a. Expressio Unius.

The maxim “*expressio unius est exclusio alterius*” means that specifying one person or thing implies the exclusion of other persons or things; the presumption is that omissions are intended.

The drafter must analyze carefully the situation to which the statutory language may later be applied. The maxim as applied by the courts may also affect the completeness with which the drafter must describe the situation.

b. Eiusdem Generis.

The maxim “*ejusdem generis*” means that general words following an enumeration of particular persons or things apply only to persons or things of the same general character as the enumerated items. This maxim is based on the reasonable

assumption that a drafter will not enumerate items if the drafter intends general words to have their unrestricted meaning.

c. Clear Intent.

- The drafter must consider carefully whether an enumeration of particulars is necessary.
- If a provision is to apply to a class as a whole, it is generally safer if the class is named in general terms rather than in particulars, even when the particulars would be preceded or followed by general language.
- When it is necessary to list them, the drafter must indicate whether the enumeration is exclusive or illustrative. If merely illustrative, a drafter may want to use phrases such as “including, but not limited to.”
- Sometimes particulars can be enumerated that are being excluded from a class expressed in general terms. Other times the class may be named in general terms and those additional particulars that are in doubt as being included in the class may be listed, making it clear that the particulars listed are not exclusive of others that are included within the general class.

Provisos

- Provisos are clauses introduced by "provided, however", "provided that", "provided further", and "provided always"; they should be avoided to the extent possible. If a drafter uses a proviso, s/he has to comply with the requirements set under 3.1.5.4b of the manual.
- The word 'provided', when used in a legislative enactment, may create a condition, limitation, or exception to the law itself, or it may be used merely as a conjunction meaning 'and' or 'before', and as to what sense the word was used must be determined from the context of the legislation. Introduce an exception or limitation with "except that", "but", or "however" or, better yet, simply start a new sentence.
- If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

The Legislative Sentence

The simplest legislative sentence consists of a legal subject and a legal action. These two parts together constitute the rule. In more complicated forms, the legislative sentence also may contain exceptions, conditions and cases.

a. The Legal Subject

- The legal subject identifies the **person** who is required or permitted to do something or prohibited from doing something.
- A **thing** cannot possess a right or be subject to a liability. However, there are times when stating the persons who constitute the legal subject would require extensive repetition or would result in awkward arrangement. In these instances, if the persons are definite, even though by implication, a thing as the subject of the sentence may be used.
- The legal subject must be used precisely to be sure that the rule confers rights or imposes duties on all of the persons whom the requester intends to obligate or benefit, and no others.

b. The Legal Action

The legal action describes the particular act that a person is required or permitted to do or prohibited from doing. The legal action should stay close to its subject.

- If the rule (legal subject plus action) is permissive, that is, confers a right, privilege or power that is to be exercised at the will of the legal subject, the word “may” is used in the legal action.
- If the rule is imperative, that is, imposes a duty or liability on the legal subject, the words “shall” is used. “Shall” should never be used to express future action in stating the legal action.
- “May” or “shall” must never be used in any part of the rule except in the legal action.

c. The Case

The extent or application of a legal rule can be limited by stating the case in which it operates; i.e the case sets out the state of facts upon which the rule is to operate.

Generally, the case should be stated at the beginning of the legislative sentence. The reader has immediate notice that the law is limited in application, and is informed promptly whether the rule deals with a state of facts in which the reader is interested.

d. The Condition

Sometimes the legal rule applies only upon the fulfillment of stipulated conditions. Ordinarily, “if,” “until” or “unless” introduces the condition.

The logical position for a condition is directly after the statement of the case. Since the rule is suspended until the condition is fulfilled, the condition should be placed before the rule. If there are several conditions, they can be listed in the chronological order in which they are to be performed or occur.

e. The Exception

An exception is used to exempt from the application of the law some matter that otherwise would be within the scope of the rule. An exception is introduced by “except,” but care must be exercised that all of those items following the word “except” are intended to be governed by it.

An exception may be used to incorporate by reference exemptions that have been stated in other provisions to avoid an overly complex sentence.

- If certain persons are to be excluded from the operation of the rule, the language of the legal subject must be adjusted.
- If limitations on time, place, manner or circumstance in the operation of the rule are to be made, the language of the legal action must be adjusted.
- If dispensing with particular conditions is desired, the statement of the condition must be qualified.
- All other limitations on the application of the rule are placed in the case.

4.2 Rules of Style

1. CAPITALIZATION

Capitalize the initial letters of:

- Proper names.
- Derivatives of proper names used with a proper meaning.
- Common nouns or adjectives forming an essential part of a proper name.
- The full official title of an officer or agency at the state level,
- Months and days of the week.
- The first word in a sentence, the first word following a colon and the first word in an enumeration or schedule paragraphed after a colon.
- Headings of articles

Capitalize all letters of:

- Headings of Chapters and Titles in laws

2. ABBREVIATIONS AND ACRONYMS

Use abbreviations and acronyms sparingly, and only if they have been defined.

3. NUMBERS AND FIGURES

Express numbers in figures, not in words. Exceptions:

- Cardinal and ordinal numbers less than 10 are expressed as words (six, sixth). However, all numbers in connected groups should be in figures if any number in the group, standing alone, would be in figures (1, 2, 3, 15 or 1st, 2nd, 15th).
- Numbers beginning a sentence are expressed in words. At the beginning of tabulated items, figures may be used.
- Fractions. Spell out fractions for amounts less than one, using a hyphen between the words (one-half, three-fifths, two-thirds). Use figures to express precise amounts greater than one, using a hyphen between the whole number and the fraction (2-2/5, 33-1/3).

- Percent is expressed by the word “per cent.” The symbol “%” may be used in tables. Use a zero before the decimal point for percentages less than one (such as “0.08”), to avoid computer coding problems.

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4. DATES

Express dates as follows: February 2008

February 13, 2008

5. Mathematical Computation

In expressing a mathematical computation, the drafter either may choose a mathematical formula to express the computation or may use words to express the computation, but should prefer which ever is easier to understand. A good example of the latter is Article 39 of the Labor law.

6. PUNCTUATION

Good drafting requires the barest minimum of punctuation. No more punctuation should be used than is necessary for clarity. Sentences must be constructed so that their meaning does not depend on punctuation. The following rules are designed to promote uniformity in punctuation:

7. Colons

Use a colon to introduce a series of dependent subdivisions or to introduce subdivisions of a definition section

8. Commas

Use commas

- Between words in series. But the comma is omitted before the conjunction within a series of words, phrases or clauses.
- In numerals of 1,000 or more.

- Use commas to set off the year of a date when month, day and year are given. Do not use commas when only month and year are given.

9. Period

- The period should be used as frequently as possible. The comma or semicolon can and should be avoided.
- For example, “men, women and children”; not “men, women, and children.” The subject of a sentence is never separated from its verb by a single comma. The “all or nothing” rule: A single comma is not used in a parenthetical phrase or clause.

10. Semicolon

A semicolon is used except after the last item. If a sentence consists of two clauses, either of which requires a comma, a semicolon is used to separate the two clauses. However, in such circumstances it is preferable to use two sentences. If a sentence consists of two independent clauses connected by a conjunction, a comma is used before the conjunction.

11. Apostrophe

- The apostrophe shows possessiveness of nouns and indefinite pronouns. The apostrophe is omitted if the proper name of an entity omits it, e.g., Veterans Administration. Possessive personal pronouns (its, their) never take an apostrophe.
- An apostrophe is properly used in measure of time and space in the genitive form, e.g., two weeks’ pay. Since drafting is formal expression, apostrophes for contractions, as reflecting speech patterns, are not used.

12. Quotation marks

For purposes of consistency, periods and commas are placed inside quotation marks. Other punctuation marks should be placed inside quotation marks only if the punctuation marks are part of the matter quoted. Exception: In writing

amendments to bills, no punctuation marks are placed inside the quotation marks unless they are a part of the text of the amendment.

13. Parentheses

Material in parentheses should be avoided in the text of a bill because the use may be confused with brackets indicating material to be deleted. Usually it is possible to substitute commas for parentheses; if not, perhaps the sentence needs to be rephrased or split.

14. Brackets

- Brackets [] indicate the deletion of material by amendment and are used for no other purpose in legislative drafting.
- To indicate blank lines in a form prescribed by statute, underscoring is used rather than dots or dashes.

15. Citation

Articles should be cited simply as Article 1(a), Civil Code/ family law,

Chapter 5

Drafting Amendments

The drafting of amendments to laws is an important activity requiring the same or, if not, a greater degree of care than is used in drafting a legislation. It is noted that many of the defects in laws came about through failure to exercise care in writing amendments to an otherwise properly drawn statute. In drafting an amendment to a law, the entire law must be checked to make sure that the amendment is consistent with the remainder of the bill, including its title. The amendment must be consistent with existing laws. If an inconsistency is discovered, the drafter must make the necessary adjustments. Adding a new section to a bill by amendment requires the same care as adding it to the original draft.

The drafting of an amendment to an existing law passes through the same steps and the process as a new legislation and is thus made subject to the rules applicable to the drafting of a new law. However, taking into account the peculiarities of amendments the following guidelines are introduced to respond to those unique features of drafting an amendment.

1. Rules

1. Clarity and conciseness: There is more than one way to write an amendment correctly. The way that makes the wanted changes most clearly and uses the fewest words should be used.
2. Wording: Always use clear and simple wording in amendments.
3. Order of amendments: Amendments must be written in the same order as the page and line numbers to which they are addressed appear in the law, starting at the beginning of the law and progressing to its end.
4. Check that changes made by amendment are reflected in the title, if necessary. These changes include the insertion or removal of all amended or repealed section numbers (listed in numerical order) and related descriptive language.
5. Amend entire words, not portions of words (e.g., to change spelling or capitalization).
6. Check amendment language for clarity, spelling, punctuation, outlining, style, and consistency with the rest of the law.
7. Make sure that new internal references in the amendment are accurate.
8. Check the entire law for any references to terms, figures, or dates that are being changed or provisions that are being deleted, i.e., the amendment appears in all appropriate places.
9. Check that new definitions are in alphabetical order and that they are used and used consistently.
10. If section numbers are changed, check the entire legislation for internal references to those sections.
11. If an amendment causes reoutlining:
 - (a) check that section's outline and recheck subsection references in that section;

(b) search the entire law for internal references to the former subsection numbers of the reoutlined section; and

(c) check the online internal reference list unless the provision being amended is a new section.

1.12 If additional sections are being repealed, be sure to check that both the title and repealer section reflect the amendment and check the internal reference list and amend any sections affected.

1.13 Check that a termination provision does not terminate a repealer section. A repealer section may not be terminated.

1.14 Amendment done by inserting a new article should be accomplished by numbering the new provision as say 12A rather than disorder the whole legislation.

2. Substitute law

If the proposed amendment is very extensive, it may be easier to rewrite the entire law. This is called a substitute law. If the amendment is relevant to the title and subject matter of the original law and is so extensive that a standard amendment would be long and difficult to comprehend, the law may be amended by striking all of the law following the enacting clause and substituting an entirely new law.

Chapter 6

The Drafter's Ethical Responsibilities

Confidentiality

Subject to the principles of transparency in the performance of his/her duties a drafter shall:

- Keep confidential matters that are likely to jeopardize public or government interest, peace and security of the country;

- Unless released by the instructing government officials, maintain the nature and evidence of their drafts and reports confidential until they formally submit them to the legislator;
- Not reveal the confidences and secrets of a legislator or the government body /requesting the drafting/ without their consent;
- Keep confidential information concerning who has actually requested the legislation, and what alternatives were considered and rejected during the drafting process;

There might be situations where the requester of the legislation will authorize a drafter to discuss the matter with any one the drafter feels might have information necessary to prepare the draft. In such cases the drafter is at liberty to do so, unless, of course, such acts would jeopardize public or government interest, peace and security of the country.

Loyalty

A drafter owes a duty of loyalty to the *requesting institution* and the Constitution of Federal Democratic Republic of Ethiopia.

In connection with the Scope of the Drafter's Responsibilities:

- As a participant in the law-making process, the drafter shall employ technical skills required to draft a competent and clear and implementable law;
- The drafter has also the responsibility for the draft's substantive content; and
- The drafter shall exercise independent professional judgment and render honest advice to the requesting institution or the legislator. In rendering advice, the drafter may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the issue at hand.

Declining Drafting Instructions

A drafter may decline to draft laws that apparently contravene/violate the Constitution of the Country.

Annex

COMPATIBILITY CERTIFICATE

(To Be Duly Filled By The Drafter)

<p>1. Title of Draft Law _____</p>
<p>2. Requesting Institution _____</p>
<p>3. Drafting Person/Institution _____</p>
<p>4. Constitutional Provisions, Other Domestic Laws, International Laws Relevant to the Draft Law</p> <p>_____</p> <p>_____</p>
<p>5. Possible Compatibility Issues to be Raised on Draft Law Related to Above Laws</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>6. Compatibility of the Draft to these Laws</p> <p>_____</p> <p>_____</p> <p>_____</p>

7. Non-Compatibility of the Draft & Justifications for Same

Signature_____ Date_____