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"Support to the Legislative Assembly in Liberia"

HANDBOOK ON LEGISLATION AND LAW DRAFTING FOR THE REPUBLIC OF LIBERIA

BY

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Introduction

After a long period of war Liberia hold democratic elections in October 2005; with no doubt a milestone on the way to a democratic and peaceful Liberia. The Liberians are longing for peace and put their hopes in the new Government. But peace is still fragile and President and Legislature are facing significant challenges: the stabilisation and rebuilding of the country, reconciliation, extensive economic and judicial reforms, fight against corruption to name only some of them. At the same time these challenges mean a unique chance and positive results may also serve as a model for other African states.

The Legislature, consisting of the House of Representatives and the Senate, will play an important role in post-war Liberia. In the past it has not been able to perform effectively its duties, such as representing the people, controlling the executive branch or making laws of good quality that achieve state purposes and at the same time are accepted and understood by the people. The development of a democratic state is impossible without a Legislature performing these vital functions on a reliable basis.

A democratic state is a state under the "rule of law". Rule of law is a regulator of government power and means equality before law and procedural and formal justice. Rule of law requires the supremacy of law as opposed to the supremacy of the government or any political party. It is evident that laws of good quality are needed to achieve this purpose.

The Handbook on Legislation and Law Drafting is addressed to anybody who is involved in the legislative process in Liberia. It is meant to give an idea about the general background of legislation, the legislative process in Liberia and the competences of the Liberian Legislature under the Constitution. It is also meant to serve as a manual of form and style to be used in the preparation of bills and other legislative proposals. The development of legislative proposals, respectively their policy background, is described to show the necessary stages of legislative decision making up to the preparation of the legislative text. The checklists contained in this Handbook are a practical tool for legislators and drafters. The Handbook is based on international standards, internationally recommended practises and generally accepted drafting principles and conventions. However, the samples and recommendations used in this manual, especially in Parts 3 to 6 should not be copied without careful consideration of their appropriateness for a particular legislative proposal and for the particular situation in Liberia. International principles can serve as a guideline and have been used in other countries with good results, but the ways to structure the legislative process and the laws are manifold and it is not possible to identify a single model given the great differences in national structures, legal systems, institutions and constitutional arrangements. In the end, Liberia has to develop its own legislative practise under consideration of internationally recognised standards for democratic states.

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By the time this Handbook was finished, the Legislature of Liberia found itself in the process of organizing and its infrastructure and equipment was poor. There were serious capacity deficiencies and very few members including the staff had any previous legislative experience. In the future, further efforts have to be made to strengthen the Legislature. With the assistance of the international community, a development plan may be set up including further training of legislators and their staff, establishment of a Drafting Service, preparation of common drafting rules as guidelines for the drafters, building up the infrastructure and other activities. For that reason, this Handbook should be updated on a regular basis to serve consistently as a practical tool for legislators and drafters in Liberia.

I would like to thank Dr. Heinz Jockers from EC/KAF and his team for their hospitality and their immense support in preparing this Handbook. I am also grateful to the members of the Legislature of Liberia for their kind co-operation.

Dr. Iris Breutz

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PART 1

GENERAL BACKGROUND OF LEGISLATION

Part 1

Chapter 1

General Background – Laws, Values and Policy

1. What is Law?

Law is a set of rules made and enforced by a State that regulates the conduct of the people within society and maintains social order. Law comes from the general will of the people and thus must be formulated and created in accordance with the will of the people.

In general, law reflects and promotes the moral, economic, social and political values of a society. That is why laws can differ between countries. As different societies might have different moral, social, political and economic values, the law can differ from country to country. For instance, laws in Islamic countries are different from those countries that are influenced mainly by Christianity. Laws in a country where most of the citizens are in the same ethnic group may be different in a country with different ethnic groups. But in any case, the values of society change, and as values change, so do the laws.

The law is not so much concerned with descriptions of habits, general occurrences or accepted behavioural standards, but rather with prescriptions of conduct or consequences. Prescription of conduct means certain defined conduct will not be permitted without a consequence of punishment or penalty (imposed by the State). For example: A person who kills another person commits murder. Such a person can be punished for the crime of murder or manslaughter. This is the punishment factor, imposed and carried out by the State that distinguishes legal rules (laws) from non-legal rules such as religious rules or house rules (which are not laws).

Traditional laws were usually passed on from one person to another, from generation to generation and were not written. In the 20th century, in fully developed democracy, law has become any generally abstract written norm. Since then, in democratic states using the separation-of-powers principle, laws are usually made and created by a parliament as the representative of the citizens according to a special procedure usually set down in the state's Constitution.

Laws are instruments for guiding social behaviour. They can stabilize social order (status quo), balance, temper and channel competing interests, may induce social changes (reform) and altogether integrate society by setting minimal standards and values. To reach these goals, norms must be realized in the political, social, economic and cultural context. Laws must have an impact to the outside world.

Thus, a law must be *enforced and implemented*. This means it must be made by those within the State who have the competence and the authority to make laws. It must be made in accordance with the proper legislative procedure and must be enforceable by the State (e.g. the courts).

Implementation means to apply norms to social situation (cases), to motivate people to obey the law either by voluntary compliance or by enforcing the law.

One may distinguish two basic functions of steering behaviour by laws: formation and application of laws. The separation-of-powers principle also reflects these functions: legislation on the one hand and executive power on the other as well as authoritative (courts) decisions in cases of controversial opinions about law and how the law has to be applied. The law generalizes and abstracts social reality and is a general abstract order. It is enacted without regard of a particular person or party, but compulsory for everybody and may affect everybody. Implementing the law means to regulate the individual case with its peculiarities. Application takes place without regard to individuals. The law in general, brings about distance, implementation lifts it. By distinguishing general law and individual application one can easily describe the third constitutional basic function: jurisdiction as an act of control, whether an individual regulation is in conformity with the law. Thus, jurisdiction is the (second) application of a law.

There are many different types of laws that govern a society, and many different levels of lawmaking. As we shall see in a later section, some of the different types include the Constitution, laws made by the national Legislature and rules and regulations by executive agencies. Laws are ranked according to their level of authority. The country's constitution is the highest ranking law and all other laws are subject to it and have to comply with it. When we use the term "law" in a general sense, we refer to the entire body of law recognized by the society, including the various types of laws.

2. What are Values?

As mentioned above, laws are generally based on the values in a society and as values are different from country to country, laws also vary between countries. Values are principles, ideas and norms that are generally accepted by a particular group as important concepts of right and wrong. There are different kinds of values regarding different aspects of life:

2.1. Social Values

Social values include the important concepts about the relationship between the members of society on a wide range of topics including, for example:

Marriage: Monogamy (having only one spouse at a time) may be a social value in society. Bigamy (having more than one spouse at the same time) might be an accepted value in a different society.

Inheritance: Usually a person has its possession, goods etc. at its disposal upon death and can state in its last will what will happen with the possession. However, there might be a generally accepted value that a person is responsible for his or her family and dependants. According to this value, a person should in his last will provide his or her family appropriately and sufficiently.

Minorities: Although it is generally accepted that the will of the majority of people should be followed, it is also accepted that the interests of minority groups must be protected.

Care for others: Responsibility for other people who could be affected by the way you are acting is common sense and a social value in itself. Thus we are expected to exercise a reasonable standard of care towards other people each day in different situations.

2.2. Moral Values

Moral values deal with fundamental questions of right and wrong. Morals are principles of conduct which are accepted in a society, or by a particular group of the society. Moral values are about what is good and bad, right and wrong, what to do and what not to do. For example, there is a moral value in most societies against killing other people. The protection of life is considered as a major principle of proper conduct towards others. Another example for a moral value is that one is not allowed to take away the possession and things that belong to other people without their permission. Or considering personal freedom as a major principle and moral value leads to the disapproval of slavery.

2.3. Economic Values

Economic values are about the accumulation, preservation, use and distribution of wealth and possession. For example, the right to own property, the protection of property, the right to sell products or crops to anybody and the freedom to run a business.

2.4. Political Values

Political values are about the relationship between individuals and the State, especially the government. The freedom of speech, for example, is a political value. Such is democracy or socialism or the concept of the separation of powers.

Many of our social, moral, economic and political values are reflected in traditions, habits, customs and behaviour that have grown and developed through time and use. But these values do not necessarily have to be reflected in legal rules, whereas sometimes they are. Different kinds of values are reflected in many kinds of laws. Example: Art. 5 of the Liberian Constitution states that the Republic shall "*preserve, protect and promote positive Liberian culture, ensuring that traditional values which are compatible with public policy and national progress are adopted and developed as an integral part of the growing needs of the Liberian society*".

3. What is Public Policy?

A policy is a plan of action for tackling issues and to achieve a specific goal. It is often initiated by the government, but may also be initiated by other parties whereas the government usually makes the final political decision.

In deciding on a plan of action there are usually several alternative options to choose from. Decision-makers decide which plan of action is the most suitable to achieve the goal under given circumstances. They make a policy decision.

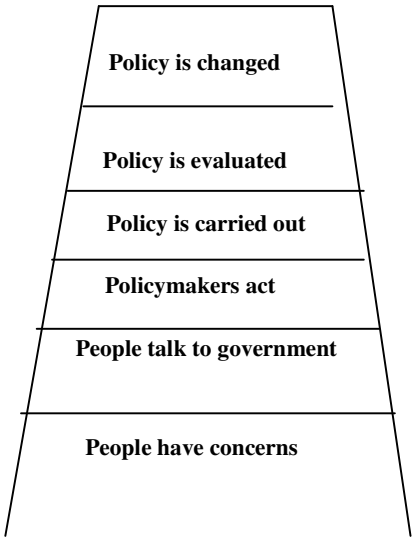
People in all walks of life make policy decisions every day. They create their own private policies. In contrast to a private policy, a public policy is a plan of action of the *government* to

achieve a specific goal. When government policymakers decide on a policy for the country, it becomes a public policy and everybody in the country must follow it in case it becomes law.

As with laws, there are many different kinds of public policymakers. If they are members of the Senate or the House of Representatives, the public policies they adopt become laws. If the policymakers are ministers of the executive branch, their public policies become rules or regulations. In other words, laws, rules and regulations are the same thing, they are products of the public policymaking process. The difference between laws and policy is that when we talk about laws we focus on a technical process - law is drafted, considered by the legislature and adopted. Public policy, however, focuses on the reasons behind the law. What goals are we trying to achieve through a law? Why? What is the best way to achieve the goals? What are the alternatives to a law? What do we need to know before we decide? How do we get this information? How will this policy effect other policies?

Legislators are policymakers whereas legislative drafters mainly focus on the technical aspects of writing laws. However, legislative drafters cannot perform their function successfully unless they understand the policies behind the laws they are drafting. Furthermore, they must understand the steps that generally are followed in the policymaking process.

The basic steps of government policy making can be compared to the rungs of a ladder. Each step is taken to lead to a policy decision. The following illustration shows each step in the policy ladder.



4. Hierarchy of Laws and Regulations

In most countries, written laws are the principle instruments to maintain social order and to regulate human behavior. The written law in each country has to be seen as a coherent whole. The written law of a nation is also called "*statutory law"*. Statutory law is defined as the written law (as opposed to oral or customary law) set down by a legislature or other governing authority such as the executive branch of government in response to a perceived need to clarify the functioning of government, improve civil order, answer a public need, to codify existing law, or for an individual or company to obtain special treatment. A *statute* is a formal, written law of a country or state, written and enacted by its legislative authority and – according to the Constitution - then be ratified by the highest executive in the government, and finally published. Typically, statutes command, prohibit or declare something. Statutes are also referred to as legislation.

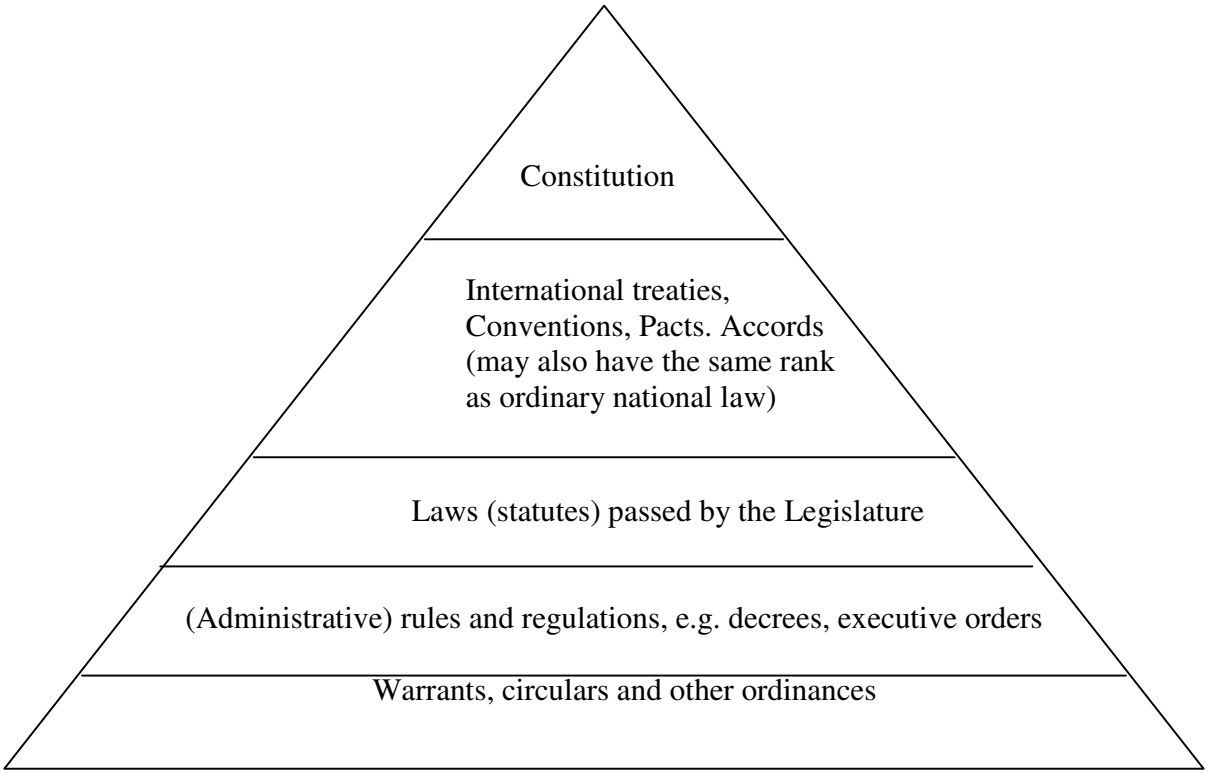
In many countries, published statutes are organized in topical arrangements called codes, such as the Civil Code or the Criminal Code.

In addition to the statutes passed by the national legislature, lower authorities or municipalities may also promulgate administrative regulations or municipal ordinances that have the force of law — the process of creating these administrative decrees are generally classified as rulemaking. While these enactments are subordinate to the law of the whole state or nation, they are nonetheless a part of the body of a jurisdiction's statutory law.

Thus, legal rules have all the force of law, but are not necessarily on the same level regarding their significance within the system of written law. A general overlook and synopsis of the law system in most democratic countries shows that there is a hierarchy of laws and regulations.

We can say that laws and regulations with the force of law have different ranks. One is higher or lower-ranked than the other according to a certain order and thus altogether form a pyramid reflecting the order. In principle, the lower-ranked legal acts must conform and be compatible with the higher-ranked and must not violate or contradict them. All laws and regulations that do not comply with this principle must be considered as inadmissible and invalid.

The hierarchy of judicial acts as shown below:


Constitution
International treaties,
Conventions, Pacts. Accords
(may also have the same rank
as ordinary national law)
Laws (statutes) passed by the Legislature
(Administrative) rules and regulations, e.g. decrees, executive orders
Warrants, circulars and other ordinances

4.1. The Constitution

The Constitution is the supreme law of the Republic of Liberia. All laws and decisions by the state institutions must be in strict conformity with the Constitution as stated in Art. 2:

> *"This Constitution is the supreme and fundamental law of Liberia and its provisions shall have binding force and effect on all authorities and persons throughout the Republic. Any laws, treaties, statutes, decrees, customs and regulations found to be inconsistent with it shall, to the extent of the inconsistency, be void and of no legal effect. The Supreme Court pursuant to its power of judicial review, is empowered to declare any inconsistent laws unconstitutional."*

All other laws and regulations in Liberia have to comply with the Constitution. If a legal rule conflicts with the provisions in the Constitution it shall have no legal effect. The Supreme Court has the competence to declare legal rules unconstitutional.

4.2 International Treaties

International treaties (also called Conventions, Pacts or Accords) are agreements reached between a State and another State (bilateral), between several States (multilateral) or between a State and another subject of International Law (for example an International Organization such as the United Nations). Each state decides individually what rank international treaties shall have in the system of law. In some countries there are of the same rank as the Constitution, whereas in other countries, they are inferior to the Constitution but superior to the national law. In Liberia, according to Art. 2 of the Constitution, treaties are below the Constitution in the hierarchy of laws. Any treaties found to be inconsistent with the Constitution shall, to the extent of the inconsistency be void and of no legal effect. But in order to become part of the national legal order, international treaties have to be approved and adopted by the Legislature. The President signs them on behalf of the State but the Legislature, the Senate and the House of Representatives, has to approve them according to Art. 34 of the Constitution:

> *"The Legislature shall have the power...to approve treaties, conventions and such other international agreements negotiated or signed on behalf of the Republic".*

However, relevant aspects of some International Treaties, Conventions and/or Pacts mainly related to human rights are already included in the Constitution and thus belong to the highest rank within the hierarchy of laws and regulations. For example, Liberia is a state party of the International Covenant of Civil and Political Rights. Most of the rights granted to individuals in that treaty are mentioned in Chapter III of the Constitution and therefore belong to the supreme and fundamental law of Liberia.

The law system of a country has to be seen as a coherent whole. It has to be avoided that laws conflict with each other, as this causes legal uncertainty. An example: In September 2005 Liberia became a state party to the Second Optional Protocol of the International Covenant of Civil and Political Rights aiming at the abolition of the death penalty. Liberia declared the abolition of death penalty for all crimes. The treaty became law in the country with immediate effect. Laws

passed by the Legislature that include the use of death penalty would contradict the obligation under international law, which is at the same time part of the national law.

4.3 Laws

The next rank is the law, defined as any legal provision made by a constitutional-law-giving body with due regard to the Constitution and enforced by the State. Each law is part of the national legal order and as such must be made by the Legislature according to the legislative procedure. When a law has passed the Legislature is might also be called "act" or "code".

Included are also so-called *"organic laws"*. Organic laws are the fundamental laws of a State or a nation that formally define and establish the organization and functioning of its government, especially the governmental bodies and institutions. The Liberian Constitution says in general terms that the Legislature has the power to make laws regarding the functioning of the government of the Republic:

> *Art. 34 h…The Legislature shall have the power…to make other laws which shall be necessary and proper for carrying out the foregoing powers, and all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof."*

Legal rules on the organization and functioning of, for example, the executive branch, the administration or ministries are organic laws that have to be adopted by the Legislature. The same goes for the organization of the administration of the counties.

In addition, there are so-called "*by-laws"*. By-laws are a set of rules and principles governing internal affairs of an organization in its operation. .

4.4 (Administrative) Rules and Regulations

One rank below ordinary laws are administrative rules and regulations that also may have legally binding effect for the citizen. Rule and regulations are not made by the Legislature but in most cases by the executive branch, provided that the Legislature has by law transferred the power to make such rules and regulations to the executive. This kind of rulemaking is also "delegated legislation" which will be discussed in more detail later on. Even the Judiciary has the competence to make rules, whereas these rules do not affect the citizens but the persons that work for or before the court. This competence is transferred to the Judiciary by the Constitution:

> *Art. 75…The Supreme Court shall from time to time make rules of court for the purpose of regulating the practise, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts. It shall prescribe such code of conduct for lawyers appearing before it and all other subordinate courts as may be necessary to facilitate the proper discharge of the court's functions. Such rules and code, however, shall not contravene to any statutory provisions or any provision of this Constitution."*

Art. 75 confirms that rules and regulations rank below the Constitution and the laws passed by the Legislature. Rules and regulations must comply with the laws and the Constitution to be void. If they are inconsistent with laws or the Constitution they shall - according to the hierarchy of laws - have no legal effect (see also Art. 2 of the Constitution).

The are various terms for rules and regulations depending on the specific habits in the country. A rule or regulation may be called

- "Decree". A decree is generally defined as an order by a head of state or government that has the force of law.

The word *decree* is often used as a derogative term for any authoritarian decision.

- "executive order". An executive order is an edict issued by a member of the executive branch of a government, usually the head of that branch. The term is mostly used by the United States Government. In other countries, similar edicts may be known as decrees, or orders-in-council.

4.5 Circulars, Warrants and other Ordinances

The lowest rank in the hierarchy consists of circulars, warrants and other legal instruments regarding mostly internal affairs of an organisation or department. These regulations must not be against other higher-ranked law or regulation.

Circular = Circular is an order of the government advising the enforcement of any law or regulation The head of the institution issuing the circular has to sign it. The circular usually provides internal instructions or guidelines for the respective ministry or governmental body.

Warrant = A warrant is a legal document signed by the governor of a county or a government representative in order to enforce laws, decrees, orders or other regulations. In principle, a warrant can only be issued within the scope of competence and duties of the respective governor. But a warrant can also be issued in order to regulate and implement municipal or provincial administration.

In law, a warrant can mean any authorization. Often a warrant of a particular person is required before certain administrative actions can take place. For example, before the United States Secretary of State may affix the Great Seal of the United States to letters patent, the President must give authorization by issuing a warrant.

The term "warrant" often refers to a specific type of authorization: a writ issued by a competent officer, usually a judge or magistrate, which commands an otherwise illegal act and affords the person executing the writ protection from damages if the act is performed.

Ordinance = An ordinance is an order, issued by a local authority of a county or district. They have the force of law restricted to the territory affected. But the local authority must have the competence to issue such ordinance. This competence is either transferred by a national law or the Constitution.

The ranking of each law does not influence its legal effect on the addressee. The ranking might have an effect on the law itself. This is the case when a lower-ranked law contravene the ones of higher rank.

5. Sources of Law in Liberia

Laws stem from different sources. In order to get a general idea and overview of the system of the written law one has not only to be aware of the different kinds of legal rules but also of the sources the laws and regulations come from.

In Liberia's present legal system the laws and regulations may derive from the following sources:

5.1 The Constitution and Amendments

The Constitution adopted on July 26th 1847 (the "Constitution") along with the 1986 Amendments is the supreme law of the Republic of Liberia. All other laws and legal rules must conform to the Constitution (see also above "Hierarchy of Laws and Regulations"), although the present Constitution contains many general statements which are subject to conflicting interpretation. Currently, there are no clear guidelines on how to interpret the Constitution. According to Art. 91 of the Constitution, the initiative to amend the Constitution may come from either two-thirds of the membership of both houses of the Legislature or a petition submitted to the Legislature by not fewer than 10.000 citizens (see also Part 2, Chapter 1, 1.2).

5.2 Legislative Enactments (Laws, Rules and Regulations)

Ordinary laws, rules and regulations in Liberia are the primary, although not the only source of law (for more details see above "Hierarchy of Laws").

5.3 Treaties and Conventions

Another source of law is international law set down in international treaties and/or conventions. If these treaties and conventions are binding for Liberia, they have to be ratified by both houses of the Legislature and signed by the President. Then they are recognized as enforceable part of the national law.

5.4 Customary Laws

In law, custom, or *customary law* consists of established patterns of behaviour that can be objectively verified within a particular social setting. The modern codification of civil law developed out of the *customs*, or *coutumes* of the middle ages, expressions of law that developed in particular communities and slowly collected and written down by local jurists. Such customs acquired the force of law when they became the undisputed rule by which certain entitlements (rights) or obligations were regulated between members of a community.

In international law, *customary law* refers to the *Law of Nations* or the legal norms that have developed through the customary exchanges between states over time, whether based on diplomacy or aggression. Essentially, legal obligations are believed to arise between states to carry out their affairs consistently with past accepted conduct. These customs can also change based on the acceptance or rejection by states of particular acts. Some principles of customary law have achieved the force of peremptory norms, which cannot be violated or altered except by a norm of comparable strength. These norms are said to gain their strength from universal acceptance, such as the prohibitions against genocide and slavery. Customary international law can be distinguished from treaty law, which consists of explicit agreements between nations to assume obligations. Many treaties, however, are attempts to codify pre-existing customary law.

Liberian customs or customary laws may in some cases be a basis for judicial decisions. Customs are a recognized source of law in Liberia as they are mentioned expressively in Art. 2 of the Constitution. The constitutional reference to Liberian customs and traditions (see Art. 5 of the Constitution) illustrates that Liberian customs and traditions regulate behaviour and thus serve as a source of law. The Law Governing the Hinterland of Liberia was still in effect by the time this Handbook was finished. It refers to native customary law and tribal traditions.

In many countries the tradition of conciliation and reconciliation is a custom and remains part of the judicial process. It actually starts in the villages. Many legal conflicts are first taken to the village chief or a local legal representative for reconciliation and mediation before they come to court.

According to Art. 65 of the Constitution the courts shall apply both statutory and customary laws in accordance with the standards enacted by the Legislature.

5.5. Court Precedents

One type of precedent is case law. It can serve as a source of law or at least help to interpret the law. This type of precedent is granted more or less weight in the deliberations of a court according to a number of factors. Most important is whether the precedent is "on point," that is, does it deal with a circumstance identical or very similar to the circumstance in the instant case? Second, when and where was the precedent decided? A recent decision in the same jurisdiction as the instant case will be given great weight. Next in descending order would be recent precedent in jurisdictions whose law is the same as local law. Least weight would be given to precedent which stems from dissimilar circumstances, older cases which have since been contradicted, or cases in jurisdictions which have dissimilar law.

Precedents viewed against passing time can serve to establish trends, thus indicating the next logical step in evolving interpretations of the law. For instance, if women have been enjoying greater and greater equality under the law, then the next legal decision on that subject may serve to bring still greater equality.

Although Liberian lawyers may refer to judicial precedents in court proceedings, courts are usually not bound by such precedents. But according to Art. 66 of the Constitution judgments of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of government. This means that judgments of the Supreme Court may serve as a source of law.

5.6. Compilation of Liberian Sources of Law

In order to perform their duties effectively members of the Legislature need to know all sources of law. They need to know the current law to amend it accurately and to determine what new laws are necessary. Therefore, an up-to-date compilation of all Liberian laws as well as judgments of the Supreme Court is most important. By the time, this Handbook was finished a system of consolidated laws did not exist in Liberia.

The following steps might be taken to provide the Legislature with an overview of Liberian laws:

- collection of all relevant statutes that are available
- organization and indexing of the statutes
- copying and compilation of the material available
- building up of a law archive, also electronically
- easy access for the Legislature to archive and respective electronic data
- especially trained staff to update the statutes regularly

Chapter 2

Function of Legislation

1. General Principles of Democratic Legislation

Legislation is on one hand used as an instrument for the solution of a socially relevant problem on the other hand it is an expression of political decisions. It has therefore been arranged as an ordered and formalized procedure that integrates expertise and political interests and enables the comprehensibility of decisions.

Legislation is a *governmental function* and one of the tasks of a State under the "rule of law". The constitutional state or the state under the "rule of law" is experienced by its citizens primarily as a state of laws. The legislative branch of a State is the main rule-making power and responsible for making laws.

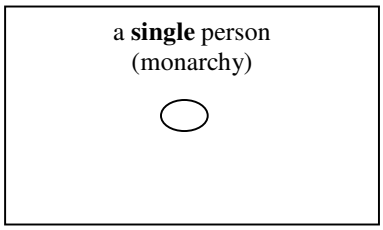
Legislative functions are

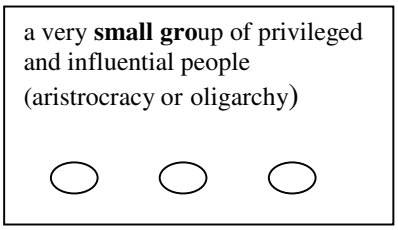
- the stabilization of people's behaviour,
- the steering of social development,
- giving legal effects to a State's policies,
- creating legal structures and
- thus controlling public affairs.

Any group or society has to solve its common problems. Therefore it has to make decisions and set up rules for all group members and control the execution of these decision and rules.

The question of how to organize such a process of decision making can be answered in different ways:

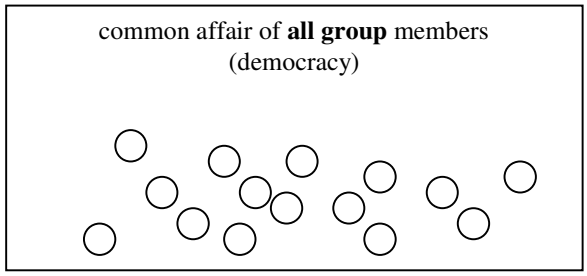
In some groups or societies the decisions are just made by





who rule and exercise their power over the members of society.

The decision making process in a democracy is a



In a society which is based on human rights and the rule of law, the most basic human right is the one of equality. This means that all human beings have the same value no matter of what ethnic, social or racial origin they are or what political or religious belief they have. When all members of a group or society deserve the same respect no one has higher value that could entitle him/her to rule and tell other group members what to do.

Democracy means that a society or group rules itself (self rule).

As to the decision making process self rule means pluralism. The voice and will of every individual member of the group or society has to be heard, every idea has to be considered and everyone can submit his/her proposal for a solution of common problems. This is especially important for minorities or smaller parts of society with different ideas. As decisions have to be made for the whole group (society) each decision has to take into account a minority's position as well.

Strictly speaking, democracy is a form of representative democracy where the political power of the government is moderated by a constitution which protects the rights and freedoms of individuals and minorities. The constitution therefore places constraints on the extent to which the will of the majority can be exercised. Usually, the executive and parliament are constitutionally subject to the rule of law. Institutional protection for specific minority rights limits the democratic power of the *majority* on specific issues and can not in itself resolve a conflict between the two groups.

"Democracy" means "Rule of the People". Liberia has committed itself to democracy:

Art. 1 of the Liberian Constitution:

"All power is inherent to the people. All free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness so require. In order to ensure democratic government which responds to the wishes of the governed, the people shall have the right at such period, and in such manner as provided for under this Constitution, to cause their public servants to leave office and to fill vacancies by regular elections and appointments."

Art. 1 clearly states that members of a democratic government shall govern the will of the people and represent the interests of the people and not their own interests.

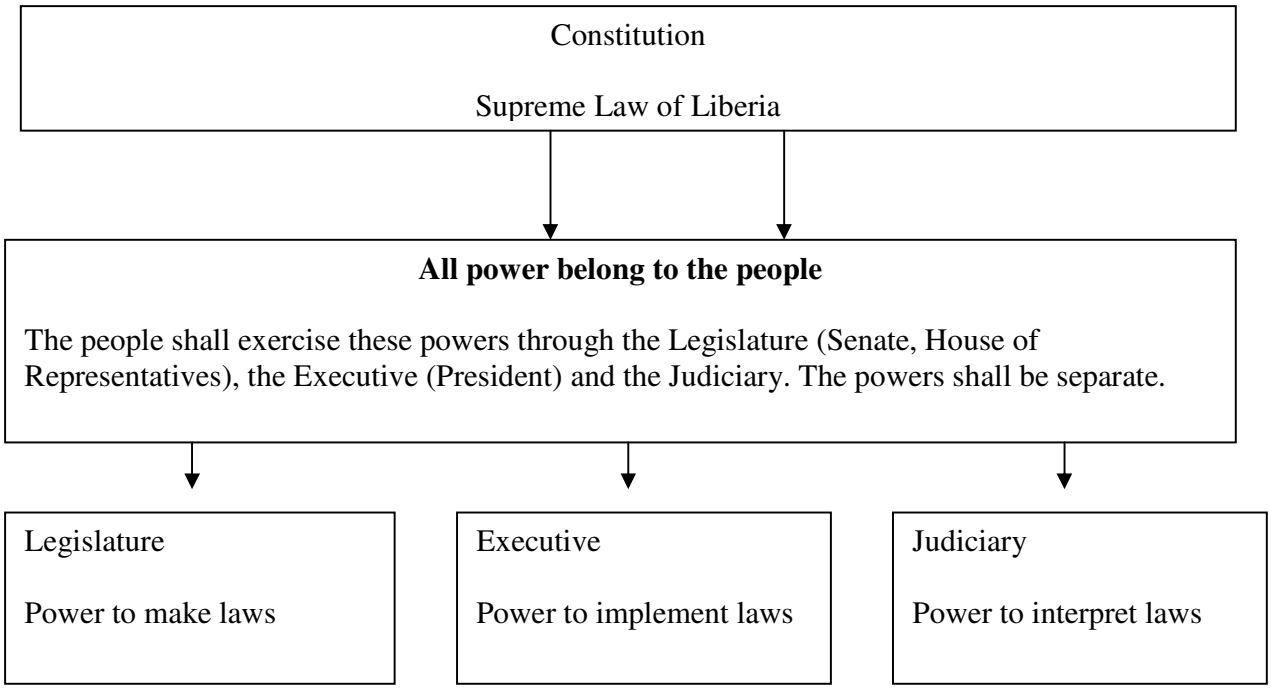
Liberia's system is a presidential democracy with a bicameral parliament. Nearly all presidential systems share the following features:

- the President is both head of state and head of government (see Art. 50 of the Constitution).
- the President has no formal relationship with the legislature. He is not a voting member nor can he introduce bills.
- the President has a fixed term of office (see Art. 50 of the Constitution)
- the executive branch is unipersonal. Members of the cabinet serve at the pleasure of the President and must carry out the policies of the executive and the legislative branches (see Art. 56 a of the Constitution).

2. Exercise of People's Power

2.1 Separation of Powers and Checks and Balances

The Liberian people are masters of their own country and destiny. All political power stems from the people. The most important power is to make decisions and set up rules. These rules and decisions need to be executed. The execution needs to be controlled. In order to avoid concentration and abuse of power the people's power is separated into three parts (= separation of powers):



Liberia has adopted this fundamental democratic principle in its Constitution:

Article 3 of the Constitution states:

> *"Liberia is a unitary sovereign state divided into counties for administrative purposes. The form of government is Republican with three separate coordinate branches: the Legislative, the Executive and Judiciary. Consistent with the principles of separation of powers and checks and balances, no person holding office in one of these branches shall hold office in or exercise any of the powers assigned to either of the other two branches except as otherwise provided in this Constitution; and no person holding office in one of the said branches shall serve on any autonomous public agency."*

The Liberian people exercise their power through the Legislature (the House of Representatives and the Senate), the President as the Executive and the Judiciary (courts). Through the Constitution people delegate their powers to their representatives in the bodies that comprise the government structure. The doctrine of separation of powers within a state has its roots in the 18th century and served the purpose to avoid absolutism. A separation of state powers had been first realized in England. The doctrine of separation of powers was described by Montesquieu in his book "De l'Esprit des lois"(1748). Each power comes from sovereignty.
The three state powers are meant to avoid abuse of power. Reciprocal control shall create a balance of power, which finally secures the protection and freedom of the individual. The separation of government powers is thought to establish a system of "**checks and balances**". By "**check"** we mean to limit or stop, by "**balance**" we mean keeping equality. This system is meant to ensure that no branch oversteps its powers. In order for the separation of powers to serve its purpose, no branch of government may encroach on the function of another branch. For instance, the President may not decide or influence the outcome of a court case. Deciding court cases is a function of the judicial branch, not the executive branch. Similarly, adopting laws is neither the function of the executive nor the judiciary - it is the function of the legislature.

2.2. The three State Powers of the Republic of Liberia

Let us have a look at the three branches provided by the Constitution of Liberia:

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Power of State	Legislature
Name of body that exercises the power	House of Representatives and the Senate
Composition of body	HoR: 64 members (according to the Electoral Reform Law approved Dec. 2004) Senate: 30 members
What are the powers exercised by the Legislative?	power to adopt laws (Art. 29,34), members of the Legislature may initiate (propose) Legislation

-	does not have judicial power, but constitutes courts inferior to the Supreme Court (Art. 34 sec. 2 a) and fixes penalties for matters of contempt of courts (Art. 74); the Senate needs to consent to the appointment of the Chief Justice and the Associate Justice of the Supreme Court and judges of subordinate courts
-	does not have executive power but the HoR has the exclusive power to prepare a bill of impeachment and the power to try all impeachments is vested solely in the Senate; the President needs the Senate's consent for the nomination of cabinet ministers, ambassadors and other officials (Art. 54); President shall report on the state of the Republic once a year (Art. 58); decides on the proclamation on state of emergency by the President (Art. 87 b), emergency powers of the President do not include the dissolution of the Legislature (Art. 87 a), prescribes a code of conduct for all public officials (Art. 90 c); may override President's veto on a law that has passed both houses
How are the bodies selected?	People elect members of the HoR and the Senate through elections that must be free, universal, equal, direct and by secret ballot
How do people exercise powers through these bodies?	Members of the two houses must represent the people (Art. 3); members serve nine years (Senators, Art. 45) and six years (Representatives, Art. 48). If people are dissatisfied with the members they can vote for new candidates at the next election.

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Power of State	Executive
Name of body that exercises the power	President (Art. 54)
Composition of body	President who nominates and appoints cabinet ministers and other officials (Art. 54)
What are the powers exercised by the Executive?	Power to operate the government in accordance with the Constitution and laws passed by the Legislature, conduct the foreign affairs and has the power to conclude treaties, conventions and similar international agreements (Art. 57); has no right to propose legislation, but may veto a law passed by the Legislature; has the power to proclaim and declare the state of emergency (Art. 86)
How are the bodies selected?	People elect the President through free, fair, equal, direct and universal elections by secret ballot
How do people exercise powers through these bodies?	President serve for a term of six years (Art. 50). If people are dissatisfied, they may not reelect the President but may vote for another candidate. The members of the cabinet and all other officials of the executive hold office at the pleasure of the President and are responsible to him. The President is responsible to the HoR and the Senate for overall government policy.

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Power of State	Judiciary
Name of the bodies that exercise these powers?	Supreme court and subordinate courts (Art. 65), Department of the Public Prosecutor
Composition of bodies	Judges and prosecutors
What are the powers exercised by the Judiciary?	Supreme Court and subordinate courts have the exclusive power to decide on legal disputes applying both statutory and customary laws in accordance with the standards enacted by the Legislature (Art. 65). Judgements of the Supreme Court shall be final and binding and shall not be subject to appeal or review by any other branch of Government. Supreme Court shall be final arbiter of constitutional issues and exercises final appellate

	jurisdiction in all cases as set out in Art. 66 of the Constitution. The Legislature is not allowed to make a law or create any exception that would deprive the Supreme Court of any of the powers granted in the Constitution.
How are the bodies selected?	Chief Justice and Associate Justice of the Supreme Court are appointed and commissioned by the President with the consent of the Senate (Art. 68), same as the judges of subordinate court of records (Art. 69).
How do people exercise powers through these bodies?	Constitution guarantees independence of the Judiciary. The courts have to apply the laws enacted by the Legislature. Decisions of the courts are not subject to review by another branch. The Legislature, elected by the people, constitutes subordinate and other courts according to Art. 34. The Chief Justice and Associates Justices of the Supreme Court as well as the judges of subordinate courts of record may be removed upon impeachment and conviction by the Legislature based on proved misconduct, or conviction in a court of law for treason, bribery or other infamous crimes (Art. 71).

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As we have seen, there are various provisions in the Constitution that function as checks and balances among the three branches. That is, one branch has powers that in some way limit or control the powers of another branch. **Not only do this provisions prevent one branch from becoming to powerful, but they also force the branches to work together.**

One specific example concerns the national budget. As a general rule, the power to decide how the state's money is spent is legislative in nature. In English, we refer to this power as the "power of the purse". The legislators, as the elected representatives of the people, have the competence to decide how much money will be spent for, e.g., health, education, national defense, public works etc. Usually, the legislature decides upon the national budget by adopting a budget law. But the power to actually spend the money is executive in nature.

Sometimes a state's Constitution creates independent bodies to exercise specific powers that are not given to one of the three branches.

Art. 89 establishes three independent bodies: the Civil Service Commission, the Elections Commission and the General Auditing Commission.

Art. 89..The following Autonomous Public Commissions are hereby established

A Civil Service Commission
B Elections Commission
C General Auditing Commission

The Legislature shall enact laws for the government of these Commissions and create other agencies as may be necessary for the effective operation of Government.

These commissions are not considered as branches of government, but are independent bodies with specific powers. The powers should be regulated clearly in the Constitution. This is not the case in the Liberian Constitution. The powers of the mentioned bodies are fixed in the respective laws. Autonomous agencies and commissions established under the Accra Peace Accord may

also be considered as independent bodies.

The **Liberian people** are also one element of checks and balances. The way that people serve as checks and balances is through election of their representatives. When people are not satisfied with the Legislature or the Executive they can elect a new President or vote for another party or candidate in the next election.

People's control over the judicial branch is less direct because the people of Liberia do not elect judges. Nevertheless, the people do retain some control over the judiciary through their elected representatives. The judges of the Supreme Court are appointed and commissioned by the President, but only with the consent of the Senate (Art. 68 of the Constitution). According to Art. 71 of the Constitution all judges may be removed upon impeachment and conviction by the Legislature based upon proved misconduct, gross breach of duty, inability to perform the functions of their office, or conviction in a court of law for treason, bribery or other infamous crimes (Art. 71 of the Constitution). Moreover, the Legislature of Liberia enacts laws relating to judges and the functioning of the judiciary. If people are dissatisfied with the way, the judiciary works, they can put pressure on the Legislature to amend those laws to correct the problems. Whenever a judge breaches the law the Legislature as representatives of the people may initiate an impeachment procedure. If the Legislature does not respond to the pressure of the people and the public opinion, the people can change the members of the Legislature in the next election.

This process may seem long and complicated, but it can be effective[1]. If people could easily and continuously change all parts of the government directly, the government would become unstable. An unstable government is weak and unable to really govern a country.

[1] In the United States, for example, Justices of the Supreme Court are nominated by the President with the consent of the Senate as in Liberia. Supreme Court Justices usually have a life-time appointment (in Liberia according to Art. 71 b of the Constitution Justices of the Supreme Court shall retire at the age of seventy), but may retire for personal reasons earlier. Usually, it is fairly easy to predict when a particular Justice will retire. During every presidential election campaign, the issue of the Supreme Court Justice appointment is a very big issue for many voters. They want to know who the candidate would appoint as Justices of the Supreme Court if he became President. Of course, the candidate does not name a specific person at that time but describes the type of Justice he would prefer. As voters know about the life-time appointments of Justices of the Supreme Court the candidates preference for the Justices could play an important role on the voter's decision.

PART 2

THE LEGISLATIVE PROCESS

Chapter 1

Description and Distribution of rule-making Power and normative Competences under the Constitution of Liberia

In Part 1 of this Handbook we have learned that the legislative branch of the Republic of Liberia has the power to make laws. The legislative branch of Liberia consists of the House of Representatives and the Senate.

1. The Legislature of Liberia

Chapter V of the Constitution establishes the Legislature.

> Art. 29: *The legislative power of the Republic shall be vested in the Legislature of Liberia which shall consist of two separate houses: A Senate and a House of Representatives, both of which must pass on all legislation. The enacting style shall be: It is enacted by the Senate and the House of Representatives of Liberia in Legislature assembled.*

1.1. Competences under the Constitution

The Legislature of Liberia has two main functions:

- representing the people of Liberia
- monitoring of the government's activities and
- lawmaking,

whereas in this Handbook we will focus on the lawmaking competence.

Lawmaking is the core competence of the Legislature. Each law supposed to have legal effect in Liberia has to be adopted by the Senate and the House of Representatives according to a certain procedure set up in the Constitution and the Standing Rules of both houses. The debate about and adoption of bills takes place in plenary sessions of the two houses as we will see later on. The laws adopted and approved by the Senate and the House of Representatives cover the supreme law, the Constitution, and other ordinary laws, also called statutes. In addition, both houses have to give their approval on the national budget and on international agreements and treaties that are supposed to have legal effect on a national level.

The Constitution transfers certain powers to the Legislature as follows:

Article 34
The Legislature shall have the power:

a. to create new counties and other political sub-division, and readjust existing county boundaries;
b. to provide for the security of the Republic;
c. to provide for the common defense, to declare war and authorize the Executive to conclude peace; to raise and support the Armed Forces of the Republic, and to make appropriations therefore provided that no appropriation of money for that use shall be for a longer term than on year; and to make rules for the governance of the Armed Forces of the Republic;
d. to levy taxes, duties, imports, exercise and other revenues, to borrow money, issue currency, mint coins, and to make appropriations for the fiscal governance of the Republic, subject to the following qualifications:

i. all revenue bills, whether subsidies, charges, imports, duties or taxes, and other financial bills, shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills. No other financial charge shall be established, fixed, laid or levied on any individual, community or locality under any pretext whatsoever except by the expressed consent of the individual, community or locality. In all such cases, a true and correct account of funds collected shall be made to the community or locality;

ii. no monies shall be drawn form the treasure except in consequence of appropriations made by legislative enactment and upon warrant of the President; and no coin shall be minted or national currency issued except by the expressed authority of the Legislature. An annual statement and account of the expenditure of all public monies shall be submitted by the office of the President to the Legislature and published once a year;

iii. no loans shall be raised by the Government on behalf of the Republic or guarantees given for any public institutions or authority otherwise than by or under the authority of a legislative enactment;

e. to constitute courts inferior to the Supreme Court, including circuit courts, claims courts and such courts with prescribed jurisdictional powers as may be deemed necessary for the proper administration of justice throughout the Republic;

f. to approve treaties, conventions and such other international agreements negotiated or signed on behalf of the Republic;

g. to regulate trade and commence between Liberia and other nations;

h. to establish laws for citizenship, naturalization and residence;

i. to enact the election laws;

k. to establish various categories of criminal offenses and provide for the punishment thereof;

l. to enact laws providing pension scheme for various categories of government officials and employees in accordance with age and tenure of service; and

m. to make other laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the Republic, or in any department or officer thereof.

In addition the Constitution "**assigns**" the Legislature **with certain legislative tasks** which means that the Legislature has the obligation to make certain laws under the Constitution, for example:

Art. 20.....*The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable.* ***The legislature*** *shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal.*

You can find the same obligations in Art. 21, 23 b, 27 c, and 84 of the Constitution.

The House of Representatives has the sole power to **prepare a bill of impeachment**, whereas the power to try all impeachments is granted to the Senate:

Art 43..The power to prepare a bill of impeachment is vested solely in the House of Representatives, and the power to try all impeachments is vested solely in the Senate. When the President, Vice-President or an Associate Justice is to be tried, the Chief Justice shall preside; when the Chief Justice or a judge of a subordinate court of record is to be tried, the President of the Senate shall preside. No person shall be impeached but by the concurrence of two-thirds of the total membership of the Senate. Judgments in such cases shall not extend beyond removal from office and disqualification to hold public office in the Republic; but the party may be tried at law for the same offence. The Legislature shall prescribe the procedure for impeachment proceedings which shall be in conformity with the requirements of due process of law.

Impeachment is the formal process of bringing charges of high crimes, misdemeanors or malfeasance against a public official of the state by the House of Representatives. After the House has impeached, the official is tried by the Senate and removed from office convicted. **The power to prepare bills of and try impeachment is one element of control of the executive by the legislative branch according to the principle of separation of powers.** The procedure of impeachment is regulated more detailed in Rule 52 of the Standing Rules of the Senate.

1.2. Amending the Constitution

The power to make laws includes the power to amend the Constitution itself. However, this power is limited in Chapter XII of the Constitution. Specifically, an amendment to the Constitution must be proposed as laid down in Art. 91 and 92 of the Constitution. Amendments to the Constitution must be approved by a two-third majority of the members of each house.

An amendment of the Constitution may be **initiated** by either

- the Legislature: a two-thirds majority of the membership of each House of the Legislature is required

or

- the people: a petition by not fewer than 10.000 citizens. The petition by the people need to be approved by two-thirds of the membership of both Houses of the Legislature.

Under the present Constitution the people vote in a referendum upon the proposed amendment. Therefore, the people must know about the proposed amendment to form an opinion. The whole process of changing the Constitution must be absolutely **transparent** to the people. In order to fulfil these requirements any proposed amendment has to be published in an official publication of the Legislature that is available to the people and through other information services of the Legislature (see more details under "Public Relations of the Legislature Part 2, Chapter 2, 13 of this Handbook). Art. 92 requires that proposed constitutional amendments accompanied by statements setting forth the reasons therefore shall be published in an "Official Gazette". The proposal to amend the Constitution also has to be included in the Journal of the Senate according to Rule 13 Standing Rules of the Senate and in the Journal of the House of Representatives according to Rule 12 Standing Rules of the House of Representatives. In order to meet the requirements of transparency and to let the public participate in legislation the public must have access to the Journals and to the Official Gazette[2]. The referendum must then be conducted by the Elections Commission not sooner than one year after the action of the legislature.

„*Chapter XII Amendments*

Article 91
This Constitution may be amended whenever a proposal by either (1) two-thirds of the membership of both Houses of the Legislature or (2) a petition submitted to the Legislature, by not fewer than 10,000 citizens which receives the concurrence of two-thirds of the membership of both Houses of the Legislature, is ratified by two-thirds of the registered voters, voting in a referendum conducted by the Elections Commission not sooner than one year after the action of the Legislature.

[2] By the time this Handbook was finished there was no properly kept Official Gazette in Liberia. The publication of new laws has mainly been done by the Foreign Office who lacked capacities for copying and distributing the publication.

Article 92
Proposed constitutional amendments shall be accompanied by statements setting forth the reasons therefore and shall be published in the Official Gazette and made known to the people through the information services of the Republic. If more than one proposed amendment is to be voted upon in a referendum they shall be submitted in such manner that the people may vote for or against them separately.

Article 93
The limitation of the Presidential term of office to two terms, each of six years duration, may be subject to amendment; provided that the amendment shall not become effective during the term of office of the encumbent President."

In most democratic systems certain aspects of the Constitution are not subject to amendments, especially revision or amendments affecting the system of liberal and pluralistic democracy. At present, there is no such restriction in the Liberian Constitution.

2. Delegated Legislation

The Constitution delegates to the legislative branch the exclusive power to make laws. Therefore, the Legislature may not delegating its lawmaking power to another branch. However, as we have seen in a previous section of this Handbook, there are different types of legal rules, one of which are executive rules and regulations made by the executive branch of the state.

How can the executive branch make rules and regulations that have legal effect when the lawmaking power is solely vested in the legislative branch? Briefly, the executive branch has that power and competence, because the legislative branch authorizes the executive branch to do so.

The Legislature adopts laws on many different subjects – such as labour and employment laws, taxation laws, laws to regulate business and commercial transactions, laws on land ownership and criminal laws. Members of the Legislature must carefully study the laws they enact and consult with experts on the subject. But legislators do not have the time or resources to consider every detail that is needed to make the law workable. Some subjects need more detailed study by experts. In other cases, the law needs to be flexible so that it does not have to be amended each time the situation changes.

So the Legislature decides to enact a law that establishes the policy and sets out standards to be followed by the executive branch in implementing the law. The law transfers authority to the executive branch to add details of implementation by adopting rules and regulations that comply with the policies and standards prescribed by the Legislature.

Example: There is a policy requiring a license for fishing. The Legislature adopts a law stating that a license for fishing is needed. In addition, this law empowers the ministry in charge to make regulations on the detailed prerequisites to be met to get a license. The law also sets out certain standards to be followed by the rulemaking ministry, for example, that the license should be granted only for one year etc.

This is called "delegated legislation" (sometimes referred to as "secondary legislation" or "subordinate legislation"). Delegated legislation are legal rules and regulations made by the executive branch under powers given to them by the legislative branch in order to implement and administer the requirements of the law. It has equal effect in the judiciary although ministers can be challenged in the courts on the grounds that specific pieces of delegated legislation are not properly based on powers given by acts.

Law-making powers may be conferred on a wide variety of bodies ranging from government departments through local authorities and public corporations to private associations. **But, in general, delegated legislation means the transfer of legislative power from the top (the national government) down to the provincial and local levels.**

Note: The transfer of legislative power from the Legislature to the Executive must be regulated in the Constitution!

In the hierarchy of laws executive rules and regulations rank below laws passed by the Legislature and below the Constitution. Therefore, delegated legislation must comply with the laws passed by the legislative branch. If there is any conflict, the higher ranking law prevails.

Delegated legislation plays an important part in the smooth running of the legislative branch and law as a whole. As mentioned before, the legislative branch cannot cope with the demand for new laws. Delegating the responsibility to another body takes the pressure off the legislators and allows the act to be passed faster. However, the instrument of delegated legislation should not be used by the Legislature to get rid of responsibility. Members of the Legislature should be aware of the fact that lawmaking is their responsibility in the first place.

Common purposes of delegated legislation include:

- *Adding scientific expertise.* For example, in the US, the Federal Food, Drug and Cosmetic Act outlaws the sale of adulterated or impure drugs. The act requires that the Department of Health and Human Services makes regulations establishing which laboratory tests to use to test the purity of each drug.
- *Adding implementation detail.* Legislation often delegates the details of implementing the law to the executing auhtorities.
- *Adding industry expertise.* For example, the U.S. Clean Air Act and Clean Water Act require the Environmental Protection Agency to determine the appropriate emissions control technologies on an industry-by-industry basis.
- *Adding flexibility.* More detailed regulations allow for more nuanced approaches to various conditions than a single legislative standard could. Moreover, regulations tend to be more easily changed as new data or technologies emerge.
- *Finding compromise.* In some cases, a divided legislature can reach an agreement on a compromise legislative standard, while each side holds out hope that the implementing regulations will be more favorable to its cause.

This type of legislation can be more specific, using technical knowledge from qualified individuals, creating a more thorough, detailed and smoother running piece of legislation.

Delegated legislation can also be put into place if problems arise with existing legislation, as it is not feasible to take into account every aspect and every future problem when creating the legislation.

There are discussions in several countries about the advantages and disadvantages of delegated legislation. Strong differences of view on whether there should be more use of delegated legislation or less exist. There are good arguments each way.

Advantages and disadvantages of delegated legislation:

Advantages:

- primary legislation will be kept uncluttered
- delegated legislation is not subject to the same constraints of the parliamentary time-table as is primary legislation and therefore there can be more time for consultation
- greater flexibility, because it does not involve the passing of a bill through the Senate and the House of Representatives, in up-dating the law to match changed circumstances and in correcting or amending it in the light of experience.
- strengthening local and administrative authorities in order to follow the track of decentralisation

Disadvantages:

- increased power given to Ministers
- lack of parliamentary time for scrutiny of delegated legislation and inadequate parliamentary scrutiny
- difficulty of campaigning against bills that include extensive delegation of powers and against draft orders etc.
- the danger of the drafters of bills thinking they could rely on regulations to put matters right if they were a flaw in the bill

It is difficult to lay down precise demarcation rules as political needs, content, legal import and urgency of each bill differ and one always has to consider the special political and legal situation in each particular country.

Delegated legislation is a way to make laws easier for the user to follow and it may help the Legislature to focus on the essential points, and on policy and principles, in its debates on bills. Above all there are advantages – for the Government and for those affected by legislation - in keeping the legislative process flexible so that the law can be kept as up-to-date as possible. If significant changes in the way the law is to work can only be made through an legal regulation by the Legislature, then, given the pressures on parliamentary time-table in many countries, such changes may have to wait a long time before a bill can be introduced. It is much easier to bring in amending legal instruments with less delay. Less rigidity in procedures and timing should also facilitate improved consultations. But delegated legislation should only be taken into account when the administration in a country is well structured and functioning. Furthermore, the rulemaking authorities must have the skills and competence to draft rules and regulations.

One can say that – whatever the approach to delegated legislation might be – it should never leave a law bare of everything except a framework of ministerial powers, with all real substance being left to ministerial regulations etc. The main principles of the legislation and its central provisions should be made by the Legislature. So it is recommended that the main provisions of a law should be set out in laws passed by the two houses. Then the details can be left to delegated legislation (if appropriate in the given case), provided that satisfactory procedures exist regarding the scrutiny of delegated legislation and that the publication of the parliamentary law is arranged.

3. Parties involved in the Legislative Process

There are several parties that can be involved in the legislative process either formally or informally. Formal involvement means either the right to initiate legislation or the power to make and adopt laws. Formal involvement is set up in the Constitution and other laws whereas the informal involvement is not.

As mentioned above, there is the right to initiate laws. According to Article 29 of the Constitution,

- the members of the Senate and
- the members of the House of Representatives

have the right to initiate legislation.

Rule 47, Sec. 2 of the Standing Rules of the Senate regulates that only Senators, who have already been qualified to hold office and not under suspension from office, shall sponsor or introduce legislation, such as bills and resolutions. The same rule is contained in Rule 33.2. Standing Rules of the House of Representatives.

Only the legislator is entitled to get the legislative procedure going. Legislation is mainly supposed to transform public policies into laws. But ideas for new laws can derive from a number of sources. Of course, the executive plays an important role in the legislative process in Liberia. New laws often begin when a ministry develops a new policy. So most of the proposals for new legislation is likely to come from the executive branch. But the Legislature itself may and must – if needed - develop legislative proposals or ideas. Suggestions may also com from, for example, a constituent, an interest group etc. But in any case, a member of the Senate or the House of Representatives is needed to support their legislative proposal, because only a member of the Senate may introduce a bill into the Senate and only a member of the House of Representatives may introduce a bill into the House of Representatives. So whoever has an idea for a new law and is not a member of one of the two houses must convince a legislator to support the legislative intent. In this case**, the member of the Legislature acts as a sponsor of a proposed legislation**. Other members may act as co-sponsors.

In addition Rule 47, Sec. 5 of the Standing Rules of the Senate states:

"All bills and resolutions, whether originating from the Executive Branch of Government, a member of the Senate, the President of Liberia, or of private nature, shall be sponsored as a matter of procedure by a member or members of the Senate."

This means that all proposed legislation has to be sponsored by Senate member(s) so that the Senate is able to debate the bill and vote on it. There is no such regulation in the Rules of the House of Representatives.

The right to initiate legislation must not be confused with the competence to make laws. This is the right to adopt, approve or disapprove proposed or laws or, in other words, to decide whether a proposed law will become an enforced law or not. According to the Constitution, the law-making competence is transferred to the House of Representatives and the Senate. But within the scope of delegated legislation (see above), the executive branch may also have legislative competence to adopt rules and regulations, although it does not have the right to initiate laws.

There may also be parties informally involved in the legislative process, for example **courts, political parties, civil organisations, the media and/or the citizens.** These parties do not have the formal right to initiate laws, but can give the impulse for the parties formally entitled to do so. The informally involved parties can draw the attention of those in power to defects in social reality or a lack of a specific regulatory instrument. The legislative authorities and those that have the right to initiate legislation should carefully listen and observe these possibly relevant impulses and initiate or make laws - if necessary - on behalf of the parties that gave the impulse. It is the duty of the representatives of the citizens to listen to the people and to react – if appropriate – with the development of a certain policy that then will be transformed into a law.

Part 2

Chapter 2
The Legislative Process

The following graphic gives a brief idea about the important steps of the legislative process. Each step will be described more detailed in this part of the Handbook.

1.

Idea Developed

A legislator decides to sponsor a bill at the suggestion of the executive branch, of a constituent, interest group, public official, or for other political needs. The legislator may ask other legislators in the same House to join as co-sponsors. According to Senate Rules all bills and resolutions, whether originating from the Executive Branch of Government, a member of the Senate, the President of Liberia, or of private nature, shall be sponsored as a matter of procedure by a member or members of the Senate.

2.

Bill Drafted

If the drafting is done by the Legislature, a research unit and drafting centre shall provide research and drafting assistance and prepares the bill in proper technical form. Legislative ideas may also reach the legislators in form of an already prepared draft. In any case, the sponsor of new legislation has to check and review the draft before its introduction.

3.

Bill Introduced

A member who wishes to introduce a bill shall announce such in session and give the bill to the Senate Secretary (Senate) or Chief Clerk (HoR). The bill is included in the Journal. The next day, at least the title of the bill is read aloud. This is known as the first reading for presentation and distribution of the bill. The bill shall get printed and distributed.

4.

Committee Reference

The President of the Senate or the Speaker of the HoR usually refers the bill to one or more committees for review, but may send the bill directly to the second reading in order to speed its consideration.

5.

Committee Action

When scheduled by the chair, the committee considers the bill at a meeting open to the public. The committee may report the bill to the House as is, with amendments, or by a substitute bill. If not considered or reported, the bill remains in committee.

6.

Second Reading

When the bill is reported to the floor (or referred directly without committee review), its title is read aloud for the second reading. The bill is eligible for amendment on the floor. After the bill is given a third reading, the House must vote to return it to the second reading for any further amendments.

7. 

Third Reading
When scheduled by the President or Speaker, the bill is given a third reading and considered on the floor. The bill may not go through the second and third reading on the same day, except by an emergency vote of 3/4 of the members. When read for the third time the bill must not be amended or debated.

8. 

House Vote
The bill passes when approved by a majority of the authorized members and is sent to the other House. If a final vote is not taken, the bill may be considered at another time or may be returned to a committee by a vote of the House.

9. 

Second House
The bill is delivered to the second House where it goes through the same process. If the second House amends the bill, it is returned to the first House for a vote on the changes. A bill receives final legislative approval when it passes both Houses in identical form.

10. 

President's Action
After final passage, the bill is sent to the President. The President may sign it, conditionally veto it (returning it for changes) or veto it absolutely.

11. 

Law
A bill becomes law upon the President's signature or after 20 days if no action is taken. If vetoed, a bill may become law if the Legislature overrides the veto by a 2/3 vote. A law takes effect on the day specified in its text or, if unspecified, according to the Constitution (there currently is no provision in the Liberian Constitution regulating the effective date of laws.

Publication
The law must be published immediately after adoption in a publication like the Official Gazette (there is currently no such thing like a properly kept Official Gazette in Liberia; its establishment is highly recommended)

1. Introduction of a Bill and Reference

The legislative work of the House of Representatives or the Senate is initiated by the introduction of a proposal in one of four principal forms: the bill, the joint resolution, the concurrent resolution, and the simple resolution.

Bills: A bill is the form used for most legislation, whether permanent or temporary, general or special, public or private. The term “bill” is commonly defined as a proposed law introduced in the Senate or the House of Representatives. A bill originating in the House of Representatives is usually designated by the letters "H.R.", signifying "House of Representatives", followed by a number that it retains throughout all its parliamentary stages. Bills are presented to the President for action when approved in identical form by both the House of Representatives and the Senate. Note: Whenever the word “bill” is used in the Standing Rules of the House of Representatives, it shall include constitutional amendments and resolutions (see Rules 34 “Bill Defined” of the Standing Rules of the House of Representatives). "Public bills" deal with general questions and become public laws if approved by the two houses and signed by the President. "Private bills" deal with individual matters such as claims against the government, immigration and naturalization cases, land titles, etc., and become private laws if approved and signed.

Resolution: A measure used by the House or the Senate (a measure used by both would be a *joint resolution*) to take an action that would affect only its own members, such as appointing a committee of its members, or expressing an opinion or sentiment on a matter of public interest.

Joint resolution: A measure used for proposing constitutional amendments, creating interim committees, giving direction to a state agency, expressing legislative approval of action taken by someone else, or authorizing a kind of temporary action to be taken. A joint resolution may also authorize expenditures out of the legislative expense appropriations. Joint resolutions may originate either in the House of Representatives or in the Senate. There is little practical difference between a bill and a joint resolution. Both are subject to the same procedure, except for a joint resolution proposing an amendment to the Constitution. A joint resolution originating in the House of Representatives is designated "H.J.Res." followed by its individual number. Joint resolutions become law in the same manner as bills.

Concurrent resolutions: A measure affecting actions or procedures of both houses of the Legislature. A concurrent resolution is used to express sympathy, commendation, or to commemorate the dead. A concurrent resolution originating in the House of Representatives is designated "H.Con.Res." followed by its individual number. On approval by both the House of Representatives and Senate, they are signed by the Clerk of the House and the Secretary of the Senate. They are not presented to the President for action.

Simple resolution*:* A matter concerning the operation of either the House of Representatives or Senate alone is initiated by a simple resolution. A resolution affecting the House of Representatives is designated "H.Res." followed by its number. They are not presented to the President for action.

Let us have a look at the necessary formal steps to lay a proposed legislation before the Legislature, which means to **introduce the bill** in one or both houses. It has to be considered that

only a Representative can introduce legislation into the House of Representatives (see also Rule 29 of the Standing Rules of the NTLA), only a Senator in the Senate. As mentioned above, the supporters of legislative proposals have to find one or more sponsors in one or both houses to assume responsibility for the bill and accomplish its introduction.[3]

Senators having bills to present

- shall deliver them to the Secretary of the Senate (Rule 47, Sec. 1 Standing Rules of the Senate)
- whenever a bill or resolution shall be offered by a Senator, its introduction, if objected to, shall be postponed for one day (Rule 35, Sec. 1 Standing Rules of the Senate).

- All bills and resolutions shall be signed at the back thereof by the primary sponsor or sponsors of the legislation to be accepted for introduction on the floor of the Senate. If there are co-sponsors at the time of the introduction of the said legislation, a list of the names of the co-sponsors shall be reflected at the back of the document without their signatures (Rule 47, Sec. 3 Standing Rules of the Senate)
- In the introduction is one request of another party or Senator the member of the Senate may wish to add the words "by request" on the bill. This shall include bills of the administration and the executive (Rule 47, Sec. 4 Standing Rules of the Senate)

Members of the House of Representatives who intend to present (which means to introduce) a bill or resolution

- shall deliver them to the Chief Clerk of the House (Rule 33.1 Standing Rules HoR)
- shall announce in session that he/she wishes to present a bill or resolution the day before the bill or resolution is to be presented and
- shall at such time deliver a copy of the caption to the Chief Clerk to be included in the day's journal (Rule 35 Standing Rules of the HoR). The sponsor's name and signature should be on the copy. It is also possible to add remarks of the sponsor.

Note: One days notice at least shall be given at least of an intended motion to bring in a bill.

[3] *Note: To expedite that drafting and bill production process, it can be considered to establish deadlines for requesting and producing drafts in the House and Senate Standing Rules. Example: According to the Rules of the House and the Senate in the USA state agencies that propose legislation must have a legislative sponsor and submit the drafting request to the Legislative Council on or before November 15 preceding the regular legislative session. Senate bills must be submitted to Legislative Council for drafting on or before the eighth day of the regular session and delivered to their sponsors on or before the 15th day of the session. House bills must be requested on or before the 15th day of the regular session and delivered to their sponsors on or before the 22nd day of session. In addition, House Rules limit the number of bills that can be introduced after the second day of the regular session to seven per legislator, which forces most drafting for House members to take place before the session begins. There are also deadlines for introducing bills. Members may introduce bills in the Senate during the first 22 days of a regular session and during the first ten days of a special session. A bill may be introduced in the House of Representatives during the first 29 days of a regular session and during the first ten days of a special session. After these deadlines, bills, resolutions and memorials can be introduced only with the permission of the respective Rules Committee, with only a few exceptions*

After introduction of the bill the Speaker of the House of Representatives/President or Presiding Officer of the Senate **refers it to the appropriate House standing committee** for consideration. Each chamber has a set of standing committees. Each standing committee in each chamber is given jurisdiction on different matters.

The Senate operates for normal business by and through so-called leadership committees (Rule 20, Sec. 1 A Standing Rules of the Senate), regular standing committees (Rule 20, Sec. 1 B) and special committees created on a case-by-case basis to perform ad hoc assignments (Rule 20, Sec. 1 C). Rule 21 if the Standing Rules of the Senate describes the functions and jurisdiction of each committee and states that "all proposed legislation, messages, petitions and memorials" relating to the work of the committee shall be referred to it.

Similarly, the House of Representatives has established statutory and standing committees (Rule 19 Standing Rules HoR). Rule 20 Standing Rules HoR describes the function and jurisdiction of each committee and requires reference of all proposed legislation, messages, petitions and memorials relating to the work of the committee.

Bills are normally referred to whichever of the numerous House committees has jurisdiction under House rules of that subject matter. The decision of reference is usually made by the Speaker of the HoR/the President or Presiding Officer of the Senate and shall be recorded in the journal. When bills fall within the jurisdiction of more than one committee, the Speaker/President of the Senate may decide to which committee the bill will be referred to. When the Speaker's or President's ruling is not accepted, this may lead to a decision by the House itself. A rule in the Standing Rules of the House of Representatives of the USA says that the Speaker shall refer bills in such a way that as far as may be each committee that has jurisdiction over any provision of a bill will have responsibility for considering and reporting on that provision. This may be accomplished, it is suggested, by having committees consider legislation concurrently or successively, or by dividing up the bill, or by creating a special ad hoc committee with members drawn from the various standing committees interested in the measure. Thus it is guaranteed that the expertise of all relevant committees is available when discussing a bill in the committee stage. When a proposed legislation falls within the jurisdiction of two or more committees, these committees may consider the proposed legislation jointly. In this context, Rule 36, Sec. 1 of the Standing Rules of the Senate regulates that in case of reference of a proposed legislation to two ore more committees jointly these committees must also report jointly. That means, although two or more committees have considered the proposed legislation, only one report shall be submitted by these committees. It is essential, however, that the joint report contains the findings and recommendations of each committee separately. Each committee must work and vote on the legislation separately. On the other hand, Rule 36, Sec. 2 of the Standing Rules of the Senate states that a motion to refer any proposed legislation to two ore more committees sequentially shall indicate the order of referral, or specify the portion of the proposed legislation or matter to be considered by the committees and the committee shall exercise jurisdiction only as to the specified item or items.

The Standing Rules of the HoR are less detailed concerning the committee reference procedure. Rule 24.1 says that each Standing Committee, including any special committee, shall have the power to inspect, examine, inquire into, and pass upon one report at each session on all matters within its jurisdiction and to hold such hearing and investigation, which the committee find

necessary. This indicates, however, that also in the House of Representatives two ore more committees may work on the same proposed legislation either concurrently or successively.

In general, we can say that the Speaker/President has several options of reference to committees:

- he/she may designate a committee of primary jurisdiction (except where he/she determines that extraordinary circumstances justify review by more than one committee as though primary);

- he/she may refer the bill to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

- he /she may refer portions of the bill reflecting different subjects and jurisdictions to one or more additional committees;

- he/she may refer the bill to a special, ad hoc committee appointed by the Speaker/President with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

- he/she may subject a referral to appropriate time limitations; and

- he/shemay make such other provision as may be considered appropriate.

After introduction and reference the bill should be given a number and sent to the members of the staff of the Chief Clerk/Secretary of the Senate to get printed. It is important that immediately after its introduction and presentation, the bill is included in the Journal and distributed to all members of the House. As soon as technical means and respective equipment are available the Engrossing Clerk shall get enough printed copies of the bill, so that copies are available the next morning in the House and Senate document rooms.

2. First Reading

In most democratic systems it is required by the Constitution that to be enacted a bill must be "read at length on three different session days" on the floor of both the House and the Senate on three different days. This requirement is intended to provide time for legislators to become informed about the details of the bills and to allow for public reaction and response to legislative proposals before they are enacted. These formal "readings" are called *first, second and third reading*, and each reading triggers a separate action in the progression of a measure through each house. In the Liberian system the requirement of readings can be find in Rule 35, Sec. 2 of the Standing Rules of the Senate and in Rule 38.2 of the Standing Rules of the HoR:

Rule 35, Sec. 2 Standing Rules of the Senate: "*Every bill and resolution shall receive three readings previous to its passage, which readings shall be on three different legislative days, unless the Senate by two-thirds vote suspend this Rule."*

Rule 38.2 of the Standing Rules of the HoR: "*Every bill shall be read at length on three different session days. No bill shall become law unless it has been so read."*

There are special provisions in the Standing Rules of the Senate concerning the reading of bills and resolutions:

Rule 35, Sec. 3: "*No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee. Bills and Resolutions introduced on leave, and Bills and Resolutions from the House of Representatives shall be read once or may be twice on the same day, if not objected, for reference, but shall not be considered on the day nor debated, except for reference unless by two-thirds vote."*

Sec. 4: "*Every Bill and Resolution reported from a Committee, not having previously being read, shall be read once, and twice if not objected to on the same day and placed on the calendar in the order in which the same may be reported. Every and Joint Resolution introduced on leave, and every Bill and Resolution from the House of Representatives which shall receive a first and second reading without been referred to a committee shall, if there is no objection to further proceeding thereon, be placed on the calendar."*

On first reading in the House, the bill is presented:

- The legislator has introduced the bill as described above.
- The bill has been put in the day's journal and
- at least the title has been read aloud in session

⇒ **The bill is then presented and first read.**

After that, the members are given an opening for objections. If none be made, the Speaker/President or Presiding Officer usually puts the question, whether the bill shall be read a second time or first be referred to committees. A debate on that issue may take place, then the Speaker/President or Presiding Officer decides.

Note: A bill cannot be amended on the first reading!

Rule 38.3 of the Standing Rules of the HoR regulates the first hearing as follows:

"*Bills shall be read for the first time in order of presentation. Action on a bill after reading for the first time shall be taken immediately unless the House moves to take a recess; it shall be in order to move to have the House continue in session in order to take action on such bill."*

Although the Standing Rules of the Senate do not say so expressively, the first reading of a bill in the Senate means its presentation according to the above mentioned procedure.

After first reading the bill shall get printed or typed and has to be made available to the public and to the members of the house. The Speaker/President or Presiding Officer may thereafter have the bill second read at any time before its consideration by the whole chamber. Or the

Speaker/President or Presiding Officer may assign the bill to the appropriate committees for consideration. In both houses third reading is a formal voting process and is discussed more fully below. The Standing Rules allow either house to suspend the requirements of reading on three different days ion the vote of at least two-thirds of the members of the house (see Rule Rule 35, Sec. 2 and 58 Standing Rules of the Senate and Rule 39 Standing Rules of the HoR).

It is important to note that reference to the committees after first reading is not compulsory. The Speaker/President may send the bill directly to the second reading.

3. Committee Stage

The Legislature is involved with such a large number of matters involving complex and technical subjects that it would by simply overwhelmed if it tried to conduct all of its business as a full body. Consequently, each house assigns its members to various standing committees to consider the details of various matters. As mentioned before, the Rules 20 and 21 Standing Rules of the Senate and Rules 19 up to 22 of the Standing Rules HoR establish the committees of the two houses.

The committee stage is probably the most important stage as to the fate of the bill. Once a measure has been referred to a committee, the committee chairperson has broad discretion over the measure's fate. If a bill is not heard in committee after referral, it usually means that the legislation will not progress further in the process although the sponsor may have other options to pursue, such as a motion to "discharge" the committee or amend the measure onto an active bill somewhere else in the process.

It is at the committee stage that **the bill receives detailed scrutiny**. Committees usually meet according to a fixed schedule, mostly on the same day each week during the regular session. Sometimes additional meetings are necessary to accommodate an extraordinary number of bill assignments or to hear bills of special importance. Usually, a bill is considered in more than one meeting. Depending on the importance and the complexity of the matter several meetings might be necessary for the committee to decide on the bill.

Rule 25 of the Standing Rules of the Senate requires committees to fix regular meeting days, whereas the chairperson may call additional meetings whenever such is deemed necessary, and shall call special meetings upon the request of one-third of the members of the committee.

The Standing Rules of the HoR do not expressively require the establishment of fixed regular meetings days, although it is best practice to do so. It might be considered to amend the Rules of the HoR to that respect.

The **committee powers** are regulated in the Rules of each House:

> **Rule 26 Standing Rules of the Senate**: *Each standing committee shall be authorized and empowered to:*
>
> *1. Hold hearings at such times and places as it may deem advisable, whether or not the Senate is in session, and report its findings to the Senate after such hearings;*

2. Require by subpoena or otherwise the attendance of witnesses and the production of books, papers, correspondence, documents and other similar materials;

3. Compel, subject to constitutional limitations, and take the the testimony of witnesses; and

4. Make expenditures not in excess of any amount which may be specially authorizes by the Senate.

Rule 25 Standing Rules HoR:

Each Standing Committee of the House including any sub-committees is authorized to hold such hearings, to sit and act at such times and placing during sessions, recesses and adjourned periods of the House to require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers and documents as required. Each committee may make investigations into any matter within its jurisdiction, may report such hearings as may be heard by it. The expenses of the committee shall be paid from the funds set aside for that purpose, and the Speaker shall approve the vouchers.

According to the Rules, the committees are required to maintain legislative oversight with respect to the matters under their jurisdiction (see Rule 20 of the Standing Rules of the HoR).

Rule 28 of the Standing Rules of the Senate: *"To assist the Senate in appraising the administration of the laws and in developing such amendments or related legislations as it may deem necessary, each committee of the Senate shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject of which is within the jurisdiction of such committee, and for that purpose shall study all pertinent reports and data submitted to the Senate by the agencies in the Executive Branch of the Government."*

In most states, the Standing Rules of both houses require that committees **adopt rules governing the procedure of the committee**. There are no such provisions in the Rules of the Senate and the HoR. However, special committee rules should be considered. Committee rules structure committee proceedings, make them more transparent and avoid arbitrariness in the conduct of committee work.

3.1. Committee Meetings

Note: The Standing Rules of the Senate and the HoR regulate that hearings of the committees shall be open to the public but do not require the same for regular committee meetings. It is highly recommended to include public access to regular committee meetings in the Rules. According to democratic standards, committee meetings shall be open to the public with exceptions that shall be regulated in the Rules. Also, each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof shall be open to the public, including to radio and television.

It is also important to note that there might be legitimate reasons for limiting public access to committee meetings. Meetings of committees may be closed to the public in order to provide a private forum that encourages representatives from different political parties to negotiate and compromise. However, limitations need to be narrowly crafted, without limiting the accountability of members of their constituents for particular votes or actions. The Rules may therefore contain limited exceptions to that principle. For example, when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, would tend to defame, degrade, or incriminate any person, or otherwise would violate a law or rule of the House.

A written public notice for each regular or special committee meeting and an agenda listing bills, memorials, resolutions and other matters to be considered should be distributed to each member of the committee and the Chief Clerk/Secretary of the House prior to the committee meeting.

In order to make the committee action transparent, the notices and agendas should also be available in public locations, as well as the Internet, and should be available to the public on request. No other measure may be discussed at the meeting without the unanimous consent of all committee members. All members of the Legislature should have access to committee meetings. Before and between meetings concerning a proposed legislation committee members may informally consult with experts, interest groups, government officials or other parties to get an idea of what the bill is about and what the possible effect of the new law would be. Depending on the matter, the committee may also formally invite experts or representatives of interest groups or other parties to a meeting. In this case, the meeting will be a public hearing which will be described later in this chapter.

The committee convenes at the scheduled meeting time and place. The chairman shall preside over the committee, but without the right to vote, except in the event of a tie vote. At the beginning of the meeting the chairman shall call the committee to order (Rule 25, Sec. 2 Standing Rules of the Senate) and usually announces any changes to the printed agenda, as allowed by the adopted rules, including:

- whether any legislation is to be "held". A measure may be held for a number of reasons, including technical problems, apparent lack of support, not enough meeting time to hear the bill or ongoing negotiations among interested parties that will affect the bill's content

- whether any bills are to be assigned to a subcommittee

In most states, the normal procedure for considering each measure begins with

- an explanation of the bill or other measures including its features and other background information > The member who is assigned with the explanation should prepare a fact sheet or bill summary!

- In the first meeting on a proposed legislation a general debate on the bill may take place. The members of the committee may in general discuss the basic problems of the proposed law and the political positions. After this has been done, the discussion of a bill usually gets more detailed and concrete. The Chairman calls up each provision contained in the bill separately. After each call the members of the committee have the opportunity to comment on the provision, to present their opinion, to propose amendments or to formally move to amend the bill. **This is the time and place where the bill is thoroughly discussed and debated.** In case experts from the government are present, the committee members can ask them specific questions as to the effect the proposed law may have or other questions of interest.

Note: The committee stage is important for the fate of the bill. The task of the committee members is

- to discuss the bill in its original form under all possible aspects, voting on the bill
- to gather information on the subject
- consult with experts, interest groups, officials and other affected parties
- to discuss and decide by vote whether the bill shall remain in its original form or whether amendments are necessary, what amendments?
- and finally, to report the bill with all approved amendments to the House. Remember that the decision and report of the committees is an important basis for the members of the House to form an opinion about how to vote upon the bill!!

Expert knowledge should be at hand when committees need it to understand new legislation. The following steps could contribute to a better cooperation between committees and experts/civil society:

- providing access to experts; a list of local experts for the various committee areas; experts could work on a contractual basis for the committees and produce expert studies on request
- a list of CSO's and organisations able and willing to testify before committees
- establishment of CSO/legislature partnerships

Rule 25, Sec. 3 of the Standing Rules of the Senate and Rule 24.2 Standing Rules of the HoR demand that each committee shall **keep a complete record of all committee proceedings** and activities. A copy of thereof has to be filed with the Secretary of the Senate/Chief Clerk. The chairperson of the committee shall second a member of his/her person staff to attend each meeting of the committee for the purpose of recording the actions thereof, including the vote on every issue determined before the committee. Records of committee proceedings shall be kept in separate and distinct from the chairperson's office records. Such records shall revert to the Senate/HoR as its property and all members shall have access to same.

3.2 Public Hearings

If the bill is of **sufficient importance**, the committee may set a date for **public hearings**. The purposes of hearings may vary widely depending on the measure and the aims of the legislators.

If well organized by the chairman and staff to that end, they can serve as a valuable means for investigating problems, for gathering information, for opening up the dialogue between parliamentarians and experts and affected parties and for testing the proposal's impact on the public. The committee may hear interest groups, affected parties, experts, officials, cabinet officers or other persons or bodies that have in interest or an concern regarding the proposed legislation. Whoever is interested and wants to testify in the public hearing should have the possibility to do so.

Positive effects of public hearings:

- help legislators to better understand the issue
- they contribute to the transparency of legislative work
- may enhance the credibility of the Legislature
- bill may proceed quicker in the legislative process after the public had the opportunity to present views on the new law > greater acceptance of the new law
- information gathered through public hearings may be useful to solve problems connected with the new law before its enactment

The chairman of each committee is required to make public announcement of the date, place, and subject matter of any hearing prior to the commencement of that hearing (the deadline for prior notice should be regulated in the House Rules). Public announcements should be published in an official House Record as soon as possible after an announcement is made and are often noted by the media. Personal notice of the hearing, usually in the form of a letter, is sometimes sent to relevant individuals, organizations, and government departments and agencies.

Rule 24.6 Standing Rules of the HoR and Rule 25, Sec. 8 Standing Rules of the Senate require that **all hearings** conducted by standing committees or their sub-committees **shall be opened to the public**, except such matters will lead to the disclosure of confidential or secret information, information harmful to the national defense, society and security of the state and in the covert conduct of Liberia's foreign relations, as well as the proceeding of any executive session. This is one important element of a **democratic legislative process** as democracy means **transparency**.

The hearing starts in the way an ordinary committee meeting does (see 3.1.). On public hearings an official reporter is present to record the testimony of the present witnesses. After the introductory statement, the first **witness** is called. If the sponsor of the bill is present, the chairperson may invite the sponsor to begin the testimony on the bill. In general, members who wish to be heard sometimes testify first out of courtesy and due to the limitations on their time. Other persons who wish to testify and are present (e.g. cabinet officers and high-ranking government officials, as well as interested private individuals) may also present their reasons for opposing or supporting the bill. **All persons are eligible to testify, to inform, advocate, oppose or state any concern related to legislation being considered by the committee.**

According to Rule 25, Sec. 7 Standing Rules of the Senate and Rule 24.5 Standing Rules of the HoR each committee shall, as far as practicable, require all of the witnesses appearing before it to **file in advance written statements of their proposed testimony and to limit oral presentation to brief summaries of testimony.** The staff of each committee shall prepare digest of such statements for the use of committee members.

Rule 24.5 Standing Rules HoR*: "Each such committee shall, as far as practicable, require all witnesses swearing before it to file in advance written statements of their proposed testimony and to limit oral presentation to brief summaries of testimony. The staff of each committee shall prepare digest of such statements for the use of committee members."*

Rule 25, Sec. 7 Standing Rules of the Senate: "*Any committee requires witnesses appearing before it to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of the written testimony. The chairperson of the committee shall prepare digests of such statements for the use of committee members."*

Note: Minority party members of the committee shall be entitled to call witnesses of their own to testify on a measure during at least one additional day of a hearing.

Committees may adopt rules regulating a limited time for interrogating present witnesses.[4]

A **transcript of the testimony** taken at a public hearing shall be made available for inspection in the office of the clerk of the committee. Frequently, the complete transcript is printed and distributed widely by the committee.

When all public testimony has concluded, the work on the bill begins. A script of the hearings shall be made available. The legislators meet, with or without preliminary caucusing (for more details on the caucus see below) with staff persons and sometimes with representatives of governmental departments, sometimes also with representatives of private interest groups. The bill and any amendments will be discussed. As far as a member of the committee has proposed an amendment of the bill, the committee decides whether to "report the bill out" (which means reporting it to the House) at this stage or whether further meetings are necessary.

Note: A written transcript of each committee meeting be it with or without public hearing shall be taken and made available to the public through the information services of the Legislature (for more details see "13. Public Relations of the Legislature")

3.3. Vote and Reports

When all amendments have been considered and either rejected or adopted and other committee discussion and debate on a bill is over, and if the chairperson is willing to proceed with a *vote*, one of the members of the committee, usually the vice-chairperson, moves that the bill (as amended, if the committee members have adopted proposed amendments) be returned to the full house with a "do pass" recommendation. At this point there may be some parliamentary

[4] see House Rules in the USA e.g., where each member of the committee is provided only five minutes in the interrogation of each witness until each member of the committee who desires to question a witness has had an opportunity to do so. In addition, a committee may adopt a rule or motion to permit committee members to question a witness for a specified period not longer than one hour. Committee staff may also be permitted to question a witness for a specified period not longer than one hour.

manouevring, but eventually the chairman calls for a vote of the committee members. Each member has the option to vote "yes" or "no" or vote "present" for an abstention. A majority of the members of the committee shall constitute a quorum. If there is a quorum, a majority of that quorum present for the vote is required to advance the bill. If there is no quorum at a regular or special meeting, the chairperson shall promptly report same to the Senate/the House, along with a list of absent members and the Senate/the House shall take such measures as it deems appropriate (Rule 25, Sec. 5 Standing Rules of the Senate and Rule 24.4 Standing Rules of the HoR).

A vote of committee members is taken to determine whether the committee will report the bill

- favourably
- adversely,
- or without recommendation (see also Rule 27, Sec. 2 Standing Rules of the Senate)

If the committee votes to report the bill favourably to the House, it may report the bill without amendments or may introduce and report a "clean bill". Committees may authorize the chairman to postpone votes in certain circumstances. If the committee has approved extensive amendments, the committee may decide to report the original bill with one "amendment in the nature of a substitute" consisting of all the amendments previously adopted, or may report a new bill incorporating those amendments, commonly known as a clean bill. The new bill is introduced (usually by the chairman of the committee), and, after referral back to the committee, is reported favourably to the House by the committee.

After that, committee staff prepares and distributes written minutes of the meeting and the report of all bills considered, including a record of all roll call votes. If the committee votes to report the bill to the House, the committee staff writes a committee report. The report describes the purpose and scope of the bill and the reasons for its recommended approval or rejection. In addition, all amendments to the bills that were adopted by the committee are printed and distributed but are not yet incorporated into the bill. Committee-adopted amendments are kept separate from the bill until they are adopted by the whole chamber. Reports of standing committees are read on the floor as they are received.

If at the time of approval of a bill by a committee a member of the committee gives notice of an intention to file supplemental, minority, or additional views, that member should be entitled to do

so within a limited time that shall be regulated in the House Rules.[5] Those views that are timely filed must be included in the report on the bill. Normally, committee reports must be filed while the House is in session unless unanimous consent is obtained from the House to file at a later time or the committee is awaiting additional views. The report should be assigned a report number upon its filing and is sent to the respective office for printing or typing.[6]

The report number should be printed on the bill.

Note: Committee reports are perhaps the most valuable single element of the legislative history of a law. They may be used by the courts, executive departments, and the public as a source of information regarding the purpose and meaning of the law. Committee reports must be signed by all committee members!

Contents of Reports

The report of a committee on a measure that has been forwarded by the committee to the House shall include:

- Purpose of the bill (why has the bill been introduced? What are the reasons for recommended approval or rejection?)

- If applicable: what amendments have been suggested and approved by the committee? Why?

- the committee's oversight findings and recommendations (what is the result of the work in the committee, what is the opinion of the committee members, what do the committee members recommend?)

- if available prior to the filing of the report a cost estimate and comparison (which costs would be incurred in carrying out that bill or joint resolution in the fiscal year reported?)

- a statement of general performance goals and objectives (what shall the new law achieve?)

- With respect to each record vote by a committee, the total number of votes cast for, and the total number of votes cast against any public measure or matter or amendment thereto and the names of those voting for and against, must be included in the committee report.

- In addition, each report of a committee on a public bill or public joint resolution shall contain a statement citing the specific powers granted to the Legislature in the Constitution to enact the law proposed by the bill or joint resolution.

[5] For example not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays unless the House is in session on those days) in which to file those views with the clerk of the committee.

[6] House reports are usually given a prefix-designator that indicates the number of the Legislature. For example, the first House report in the 2nd Legislature is numbered 2-1.

All committee reports shall be in writing. Rule 27, Sec. 1 of the Standing Rules of the Senate contains the exception that, upon leave from the Senate, due to the urgency of the matter involved, there may be an oral report. All written reports shall be circulated among the Senators/Representatives at least one day before the day when the report is to be heard.

Minority reports: Any member or members in disagreement with the report may refuse to sign the report, and submit a minority report by announcing to the Senate/the House at the time the majority report is submitted that he/she intends to submit a minority report in writing with the Secretary of the Senate/the Chief Clerk of the House within one day thereafter. The minority report shall be made part of the business on the President's/Speakers's desk for the following Senate/House day. The minority report is regulated in Rule 27, Sec. 3 of the Standing Rules of the Senate. There is no equivalent in the HoR Rules but as the possibility to submit minority reports is democratic standard it must also be possible in committee proceedings of the HoR.

3.4. Filing of Reports

According to Rule 27, Sec. 2 Standing Rules of the Senate and Rule 24.11 Standing Rules of the HoR, measures approved by a committee must be reported by the chairman promptly after approval It should be regulated in the House Rules that, if the chairman does not report a measure, a majority of the members of the committee may file a written request with the clerk of the committee for the reporting of the measure. When the request is filed, the clerk must immediately notify the chairman of the committee of the filing of the request, and the report on the measure must be filed within a fixed period of time regulated in the House Rules.[7]

3.5. Availability of Reports and Hearings

It is of great importance that committee reports and minutes of committee hearings are made available to the public and to all members of the House before the bill is considered by the House in second and third reading. Remember that not all members of the House, especially when they are not a committee member, had the time and opportunity to occupy themselves with the content of the bill. But all members have to debate and discuss the bill during the second reading and all members have to vote upon the bill during the third reading. So they must know about the bill's content and the work of the committee.

The House Rules may regulate that a measure or matter reported by a committee may not be considered in the House after a certain period of time in order to give the members enough time to read the report (in the USA for example, the House Rules say that a bill reported by a committee may not be considered in the House until the third calendar day - excluding Saturdays, Sundays, and legal holidays unless the House is in session on those days - on which the report of that committee on that measure has been available to the Members of the House). Such a regulation in the House Rules may be subject to certain exceptions including resolutions providing for certain privileged matters and measures declaring war or other national emergency.

If hearings were held on a measure or matter so reported, the committee is required to make

[7] For example seven calendar days (excluding days on which the House is not in session) after the day on which the request is filed.

every reasonable effort to have those hearings printed and available for distribution to the Members of the House prior to the consideration of the measure in the House.

Rule 36, Sec. 3 Standing Rules of the Senate: *"Any measure, matter or bill reported by any Senate Standing Committee, a Special Committee or a joint committee of the Legislature shall not be considered in the Senate unless the report of that committee upon that measure, matter or bill has been distributed or made available to the Senators prior to the day of the regular session. This procedure may be waived or shall not apply in the event of a declaration of war or declaration of national emergency by the Legislature."*

3.6. Sub-committees

A committee chairperson may appoint a sub-committee, composed of members of the full standing committee, and refer one or more of the committee's bills or other measures to the sub-committee.

There are two primary reasons for referring a measure to a sub-committee:

- The bill before the full committee may require changes that are too complicated or detailed to be conveniently accomplished in a full committee hearing. A smaller sub-committee allows for informal and direct discussion and debate over the fine points and details.

- Another reason for a sub-committee is that the committee chairperson may oppose a measure but wants to avoid criticism for not hearing it at all. The chairperson may assign the measure to a sub-committee with the informal understanding that it will not be reported back to the full committee, effectively "burying" it in the subcommittee.

Any sub-committee may meet at any time on the call of the sub-committee chairman, if the meetings are announced on the floor of the House or the Senate in open sessions prior to that meeting. A sub-committee, without distributing a written agenda, may consider any matter assigned to it by the chairman of the standing committee.

3.7. Committee on (Budget), Ways, Means and Finance

Rule 20.6 Standing Rules of the HoR establishes the Committee on Ways, Means and Finance (also called "Appropriations Committee" in other countries). In the Senate this committee is called Committee on Budget, Ways, Means and Finance. This committee has to consider all bills that contain an appropriation of public money. It determines whether sufficient funds are available to cover the appropriations described in the bill. Most bills that have to be considered by the Committee on (Budget), Ways, Means and Finance are also considered by other committees as assigned by the Speaker/President. Bills consisting entirely of appropriations requests are referred solely to the Committee on (Budget), Ways, Means and Finance.

A committee like the Committee on (Budget), Ways, Means and Finance has to keep an accounting of projected revenues that will be available for appropriation each fiscal year and the amount of appropriation requests contained in the various bills. Because usually requested amounts exceed the available funds, the Committee on (Budget), Ways, Means and Finance, and especially its chairperson must be willing to cut the amounts requested and incur the disappointment and displeasure of those receiving nothing or less than they expected.

4. Caucus

Part of the committee stage is the so-called caucus. Caucuses provide the members of the same political party in each house with a forum for discussing and, if possible, achieving party consensus on legislation and other issues as well as pursuing common legislative objectives. Since it is impossible for the legislators to attend all standing committee meetings, they may know little or nothing of many bills until they are brought to caucus. Meetings of the caucuses are usually conducted to review legislation that has cleared the assigned committees but before consideration and formal debate by the full chamber. The caucus whip normally presides at the caucus meeting, and legislative staff and sponsors explain the measures and answer questions. The legislation is not formally debated or voted in a caucus, but the reaction of caucus members may reveal the level of support or opposition the sponsor may find on the floor. It is at this time when members of the caucus discuss possible floor amendments that may be offered during floor debate. Bills are usually discussed simultaneously at majority and minority caucus meetings so that they can proceed to the floor expeditiously. Bills that make it to caucus can either go forward in the legislative process ("get out of caucus") or are tabled for further research or discussion at a later date.

5. Amendments

Amendments are the additions, deletions or modifications to bills or other measures proposed by a legislator or a committee.

Amendments may be proposed and adopted in a standing committee, the whole chamber or a so-called conference committee (for “conference committee” see also Par. 8 of this Chapter). Legislators generally amend bills because they are in favour of much of the bill's consent, but they disapprove of a portion or portions of a bill or believe important language has been or should been omitted. An amendment may strengthen or weaken a bill or only correct technical flaws. A bill may even get entirely changed by an amendment that proposes a new version of the bill ("strike everything” amendment).

In democratic legislative proceedings it is rare for any bill to pass through the legislative process in its original form. The original form of a bill reflects only the intent and understanding of the sponsor, the drafter and anyone else who happened to be involved in producing the bill as it was introduced. However, once introduced into the public domain, a measure becomes subject to intense scrutiny. If legislation proceeds at all, it is always almost modified or amended to satisfy the desires and concerns of other legislators, the President, members of the general public and special interest groups. Introducing a bill automatically subjects it to the amendment process.

Standing committees may also adopt rules addressing the advance circulation of amendments to committee members, and the chairman may disallow an amendment that does not comply with the rule, may without objection accept the amendment or may postpone action on the measure until adequate notice has been given.

A so called "strike everything after the enacting clause" amendment proposes to delete the entire text of the existing bill and substitute new language, essentially making it a completely different bill, possibly on an entire different subject. Because of the drastic effect of a strike everything amendment, legislative rules normally set out extended posting and notice requirements beyond those for other amendments.

6. Getting to the Floor

We have been considering the committee stage in relation to the bill. But if it is to become law, the bill must somehow be laid before the chambers themselves to be voted on and approved by the membership as a whole. How the bill may be gotten to the floor in each chamber will be described next:

The problem of securing floor consideration has two main aspects:

- By what means, if any, can a bill be brought before the chamber if the committee fails to report it out?
- By what means is chamber consideration be assured if the committee to which the bill is referred does in fact report it out?

6.1. Getting a Bill out of Committee

In order to secure that bills are not "buried" in the committees, Standing Rules shall establish efficient procedures to get a bill to the floor. Rule 29 of the Standing Rules of the HoR provides interested members with the possibility to file a **petition to discharge the committee from consideration of a bill** that has been in its possession for 30 days or more:

"29.1. If a Bill or Confirmation report has been before a Standing Committee for thirty (30) days, any Member of the Assembly may issue a notification to discharge same."

29.2. Having issued said notification the Chief Clerk shall prepare a discharge petition for Members to sign. On the second session day after the issuance of the notification, the Chief Clerk shall read the list of all Assembly Members who signed the petition. If a simple majority is obtained in favor of the discharged petition, the Speaker shall assign the Bill or Confirmation Report on the next session day following reading of the list."

Another possible course of action, so-called **suspension of the rules procedure**, requires recognition by the Speaker/President of the Senate and a two-thirds vote. See Rule 58 of the Standing Rules of the Senate and Rule 39 of the Standing Rules of the HoR

HoR: "39.1 None of the stated rules on the passage of bills constituting the House shall be suspended except by two-thirds vote consent of the present."

Senate: "58, Sec. 1 None of the stated rules constituting the SenateRules shall be suspended except:

(a) By two-thirds consent of the members of the Senate
…."

In practise, suspension seems not to be used to bypass the committee process. On the one hand, the committee system may loose its viability if it were circumvented more than rarely. On the other hand, the life and death importance of the committee phase for any bill becomes even more obvious. **Thus, in order to hold up democratic principles in the legislative process it is very important that committee members do not abuse their position for own interests and irrelevant reasons. It is the responsibility of the legislators to fulfil their mandate as representatives of the people rather than following own interests. The committee is obliged to carry out its job and assigned tasks immediately and without unfounded delay.** Otherwise the committee and its members might get discharged.

6.2 Securing Floor Consideration for reported Bills in the House

Consider now the second aspect of the problem of getting a bill to the floor - that is, the securing of chamber consideration for a bill that is reported out of committee. For that purpose bills have **to be put on the House/Senate Calendar for consideration.** The calendar and agendas for plenary sessions have to be made available to all members.

7. Floor Debate/Second Reading

The democratic tradition demands that bills be given consideration by the entire membership usually with adequate opportunity for debate and the proposing of amendments.

This is the stage in the legislative process when the **full chamber has the opportunity to debate and amend bills.** The purpose of the second reading in the House or the Senate is to allow all members of the entire body a more complete discussion of bills and the proposal and discussion of amendments.

The second reading is a section-by-section reading during which time germane amendments may be offered to a section when it is read. Amendments are adopted or rejected by vote. See also Rule 38.5 of the Standing Rules of the HoR and Rule and Rule 35, Sec. 3 Standing Rules of the Senate:

HoR: *"38.5 Bills read for the second time shall be subject to amendment. House bills adopted on second readings shall be ordered engrossed."*

Senate "35, Sec. 3 *"No Bill or Resolution shall be committed or amended until it shall have been twice read…."*

The second reading of a bill has to be put on the agenda for the day of session. So the members know which bill is to be read that special day. In case one or more members intend to file a motion for an amendment they have the opportunity to give the Speaker/President prior notice of their motion.

The procedure of a second reading may take place according to regular order of business as regulated in the Rules.

- Speaker/President opens the session and when it comes to the call for bills, the second reading of the bill listed on the agenda takes place
- Speaker/President reads the recommendations/reports of the committee(s)
- Proposed amendments are announced (see also below "Floor Amendments")
- Debate on the bill and its proposed amendments begins

Any member may speak after first being recognized by the chairman. A legislator indicates a desire to speak by standing up or raising his hand.

If there are amendments to the bill that were favourably reported out of standing committees, these amendments must also be approved during the plenary session. It is important to note that although a committee amendment has already been approved by the standing committee in which the bill was heard before it reached Senate/House, that amendment is not yet considered to be incorporated into or a part of the bill until it is considered separately and adopted or rejected by the members of the House/Senate.

7.1. Floor Amendments

Amendments that are first proposed during the proceedings of the whole chamber and that have not previously been reported from standing committees are called "floor amendments". Members have the opportunity to amend bills that were not assigned to the committees of which they are members. Rule 17, Sec. 6 of the Standing Rules of the Senate states that the Senator may move to amend a bill; provided however, that a proposed amendment shall not be in order if it relates to a different subject or is intended to accomplish a different purpose or requires a title essentially different from the original title of the bill which it proposes to amend. The same is applicable in the House, despite it is not expressively regulated in the House Rules. Opponents of a bill often

use this opportunity to present floor amendments to offer alternatives to portions of the bill or to "send a message" regarding areas of dissatisfaction with a bill.

A floor amendment may amend the printed bill or may be an amendment to an amendment. Floor amendments are adopted or rejected in the same manner as committee amendments; each amendment is considered separately and is debated and accepted or rejected by vote during second reading.

7.2 Engrossing

A bill that has been adopted on second reading reported is forwarded to the Engrossing Clerk for engrossing. Rule 9.2 of the Standing Rules of the HoR says, that the Engrossing Clerk shall properly engross all bills and other documents. This means that all amendments that were adopted by the House/Senate are now incorporated into the bill. The engrossed bill is reprinted. From this point forward, a bill and its adopted amendments are considered as a whole and any further actions on the bill will refer to the engrossed bill. A bill is always engrossed before third reading. See also Rule 38.5 of the Standing Rules of the HoR

"38.5. ...House bills adopted on second reading shall be ordered engrossed."

Note: In case no amendments of the bill have been proposed or amendments have been rejected by vote, the third reading - the formal voting process - may directly follow the second reading.

8. Third Reading

Once a bill has been engrossed, the President/Speaker usually places the bill on the calendar for third reading. In both the House and the Senate, third reading is a formal voting process.

The third reading of bills is one of the regular orders of business of the House or the Senate. When this portion of the daily calendar is reached, the President or Speaker requests that each bill be read for third and final time.

Once the title of a bill has been read, voting on the bill occurs according to the voting procedure laid down in Rule 17 of the Standing Rules of the HoR and Rule 31 of the Standing Rules of the Senate. It has laid down as a general rule that on third reading no debate is allowed and no amendments may be proposed, unless a two-thirds vote or by unanimous consent of the members. Neither the Standing Rules of the Senate nor of the HoR prohibits amendments on third reading expressively, but it has to be considered that usually third reading is a formal voting process with no debate and no amendments to be proposed. Members, however, might be allowed to "explain" their votes. Most bills require the support of a majority of the members of a chamber in order to pass, except those which, by law, need a two-third majority vote. The Senate of Liberia requires a quorum of two-thirds of the entire membership in the case of enactments of bills and resolutions (Rule 10, Sec. 1 Standing Rules of the Senate) whereas Sec. 2 of Rule 1o states that the Senate shalle be presumed to always have a quorum unless a roll call is demanded by a Senator and the count indicates otherwise.

Rule 17.2 requires any member who has a personal or private interest in any bill or question before the House shall disclose same; if disclosure is determined by the House to be a conflict of interest, he/she shall recuse himself/herself from voting.

After a bill has been passed on third reading, the Speaker/President usually will sign it. Before transmission to the Executive the Enrolling Clerk of the House/Senate shall make a correct copy in handwriting of all bills which have originated in the House/Senate and which have been passed by the House/the Senate and shall see that such copy is put in the Archives of the House/Senate. According to Rule 9.3 of the Standing Rules of the HoR the Enrolling Clerk shall prepare or cause to be prepared the official copies provided therefrom. He shall ensure that the Legislative Drafting Service verifies the official copy before processing it to the Executive Committee for transmittal to the President. He shall also call the Roll of the members (and staff) of the House and, together with the Typist, be responsible for preparing documents.

After that the bill is ready for transmittal to the President which shall be done by the Committee on the Executive of both Houses

9. Second House Consideration

Art. 29 of the Constitution states that **both the Senate and the House of Representatives must pass on all legislation in Liberia.** Thus, a bill passed by the chamber in which it originated, has to be send to the second chamber where it is required to go through the entire process all over again. The bill will be referred by the Speaker or President to standing committees for hearings, discussion and proposal of amendment, it will probably be discussed in the majority and minority caucuses and it will be debated and possibly amended during the second reading and move on to third reading. That is, of course, if everything moves along smoothly for the bill. During any of these stages in the second house the bill may be amended, be held or fail to pass as was also the case when the bill was being considered in its house of origin.

It is not uncommon for a bill to be amended in the second house of consideration, thus causing the version of the bill that passes out of the second house to be different from the version that passed out of its house of origin. Sometimes amendments made in the second house are relatively insignificant while at other times dramatic changes are made. For a bill to pass the Legislature of Liberia and be transmitted to the President (see below), however, the House and the Senate must first **agree on the exact same version of the bill**.

When legislation is returned from the second house in a different form, two actions may be employed to reconcile the House or Senate versions:

- The chamber of origin may concur with and accept the amendments made by the second house or

- the chamber of origin may refuse to concur and request that a *conference committee* be appointed

In the case of concurrence, the bill is delivered to the caucuses for discussion and then proceeds to final passage.

In the case of refusal to concur, most parliamentary democracies establish by the Constitution or the House Rules a body that is becoming active in this case and is authorized to deliberate on the bill. This body is often called **conference committee**. If the house of origin refuses to agree with the version of the bill of the second house, it may request the appointment of a conference committee. The Speaker/President of the Senate then appoints members of a conference committee and notifies the other presiding officer to appoint conference committee members from that chamber. The task of the conference committee is to negotiate a version of the bill agreed upon by both houses. It attempts to find a solution and to reconcile the two versions of the bill. The organization and functioning of a body like the conference committee has to be established by law (Constitution or House Rules).

Normally, separate individual committees are created for each bill requiring conference resolution of differences. Conference committees are made up of an equal number of members from both the House and the Senate. A conference committee is not a joint committee but a joint meeting of two committees. The required quorum is a majority of each of the two committees, and each of the committees vote separately. Particularly, during the waning hours of a session, conference committees may become informal proceedings, but their meetings are open to the public and the public testimony may be allowed. There are two types of conference committees:

- a simple conference committee must limit its actions to only those areas where differences exist between the House and the Senate versions of a bill and may only remove language from those versions or choose one or the other version

- a free conference committee may consider entirely new provisions in addition to the provisions in the House and Senate versions, but it may not adopt a "strike everything" amendment, and the adopted amendments must be constitutional and germane to the bill.

If no agreement is reached reconciling the House and Senate versions of a bill, the Speaker/President may discharge the conference committee and accept an earlier version of the bill or else the bill fails in conference and moves no further in process. If an agreement is reached, the conferees issue a conference committee report that is drafted in a manner similar to an amendment, referencing an engrossed version of the bill. Occasionally, some members of a conference committee may oppose the conference agreement and issue a minority report.

The Standing Rules of the Senate deal with the reports of conference committees as follows:

<u>Rule 37 Report of Conference Committtee</u>

Sec. 1: The presentation of reports of committee of conference shall always be in order, except when the journal is being read or adopted or a question of order or a motion to adjourn is pending, and when received the question of proceeding to the consideration of the report, if raised, shall be immediately put, and shall be determined without debate.

Sec. 2: Conference shall not insert in their report matter not committed to them by either House, nor shall they strike from the Bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the Bill, a point of

order may be made against the report, and if the point of order is sustained, the report shall be rejected or recommitted to the committee of conference.

Sec. 3 (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of subjects in disagreement.

Sec. 3 (b) In any case in which the conferees violate section 3 (a), the conference report shall be subject to a point of order."

When the conference committee report is signed, it, together with any minority reports, is delivered to the Speaker/President who refer the bill with the reports to the different caucuses. After caucus discussion, the conference report is considered and adopted or rejected by the second house (the house that did not originate the bill) and then by the house of origin. Once the identical conference report is adopted by both houses, the conference amendments are engrossed into the bill and a "conference engrossed" version of the bill is printed containing all of the adopted amendments, and the bill is placed on the calendars of both houses for final passage. If either house rejects the conference report, the leadership must decide whether to direct the conference committees to reconvene and try again or abandon the effort and allow the bill to die.

10. Final Passage and Transmission to President

If the house of origin concurs in the amendments to a bill adopted by the second house, it proceeds to final passage in the house of origin.

If the bill has been to conference committee and both houses have adopted the conference committee report, the bill is ready for final passage in both houses. In this process the house of origin conduct a roll call vote on the final version of a bill and, if it passes, transmits the bill to the second house for a similar roll call vote. If approved by the second house on final passage, the second house returns the bill to the house of origin.

When all of the voters have been taken on a bill and the President and Speaker have signed it and all other administrative actions are completed, the bill is transmitted to the President. According to the Constitution bills are sent to the President and require the President's approval to become law. Simple and concurrent resolutions and memorials usually do not require the President's approval but have to be filed by the body in charge as a matter of public record or be handled according to instructions.

11. President's Approval

Art. 35 of the Constitution says:

"Each bill or resolution which shall have passed both Houses of the Legislature shall, before it becomes law, be laid before the President for his approval. If he grants approval, it shall become law. If the President does not approve such bill or resolution, he shall return it, with his

objections, to the House in which it originated. In so doing, the President may disapprove of the entire bill or resolution or any item or items thereof. This veto may be overridden by the repassage of such bill, resolution or item thereof by a veto of two-thirds of the members in each House, in which case it shall become law. If the President does not return the bill or resolution within twenty days after the same shall have been laid before him it shall become law in like manner as if he had signed it, unless the Legislature by adjournment prevents its return.

No bill or resolution shall embrace more than one subject which shall be expressed in its title."

The President must act on the bill in one of the following ways:

- approve the bill by signing it → the bill becomes law
- no return of the bill within twenty days after it has been laid before him → the bill becomes law
- veto the bill by returning it to the house of origin with his objections → the bill does not become law

In case, the President objects the bill and returns it to the house of its origin, the members of each House have to decide again on the fate of the bill. It is important to note that due to the principle of separation of powers the Legislature is not bound by the President's veto. Thus, despite the repassage of the bill by the President, his veto may be overridden by a veto of two-thirds of the members of each House. In this case the bill shall become law.

- President's veto overridden by two-thirds of the members in each house → bill becomes law

- President's veto not overridden by two-thirds of the members of each house → bill does not become law.

12. Publication and Announcement

12.1. Publication of Laws

One of the important steps in the enactment of a valid law is that it shall be made known to the people who are to be bound by it. There would be no justice if the state were to hold its people responsible for their conduct before it made known to them the unlawfulness of such behaviour. In practice, laws are published immediately upon their enactment so that the public will be aware of them. There is no transparency in the legislative process if there is no official publication of new laws and/or resolutions. Because of its importance the obligation to publish legislation in the Official Gazette of a state shall be contained in the Constitution like in most democratic states. The Official Gazette is just mentioned in Art. 92 of the Liberian Constitution (amendments of the Constitution). An Official Gazette which contains all new, amended and/or repealed laws must therefore exist and being updated on a regular basis. Publication of all laws and resolutions passed or adopted by each session of the Legislature could also be done in a publication to be known as the "Laws of the Republic of Liberia". Public access to the Official Gazette or any other publication has to be ensured. In addition, the information service of the Legislature such as

the press office should be in charge of informing the citizens about new legislation. Distribution in remote and rural areas has to be taken into account.

12.2. Recommendations for regulating the Publication of Legislation

The publication procedure has to be regulated by law[8]. There has to be one specific publication for all laws and resolutions passed and adopted by the Legislature. The following checklist may be useful to create regulations on the publication of legislation. When preparing such regulations in the future the following questions may serve as an orientation as to the content of such regulation:

- Is there an official journal (e.g. Official Gazette) in which the authentic official text of legislation, including bills, are published?
- Do regulations require all legislation, primary and secondary, to be published in this journal immediately after it is made?
- Do regulations stipulate that all primary legislation and secondary legislation must be republished in annual volumes? Do annual volumes exist?
- Has a central registry, or a registration system, been established for registering all primary and secondary legislation to permit a complete archive to be created and maintained?
- If an electronic database of legislation is provided by government, or is under consideration:
  - have steps been taken to ensure that it contains legislation in a form that can guaranteed by the state as authentic and
  - will lawyers, judges and the public be permitted to have on-line access, as well as government officials?

- Do regulations require that a consolidation of legislation (containing all the law in force on the date of publication) is to be prepared and published at regular intervals?
- Are there arrangements by which any legislation that has been substantially amended can be reprinted in a consolidated form that is authentic?
- Is there a requirement to publish, at regular intervals, an official, up-to-date index of the legislation currently in force that indicates also, where, when and how earlier legislation has been amended?
- Is every ministry required to maintain a complete collection of current legislation relating to matters within its competence?
- Does every ministry and the legislature have ready access to a complete collection of all legislation in force? In particular, do all drafters typically have access to a full set of legislation?
- Are complete collections of current legislation kept in centers to which members of the legal profession and the public have ready access? Are sufficient funds made available to enable these collections generally to be well maintained?
- Has government established, or charged, any body or bodies with the responsibility of: a) keeping the state of the current legislation under review (e.g. with a view to bringing forward proposals for repealing legislation that is obsolete or no longer effective), and b)

[8] By the time this Handbook the Foreign Office was in charge for the publication of new laws. Although, the Foreihn Office lacked capacities for copying and distributing the publication and for keeping it properly.

preparing and publishing, at regular intervals, consolidations of the legislation currently in force?
- Do regulations stipulate a timescale for printing bills after approval by government or initiation by members of parliament and prior to being introduced into parliament?
- Do regulations stipulate how soon legislation is to be officially published after it is made or enacted, and any exceptional circumstances in which it may come into force before it is published?

13. Public Relations of the Legislature

It is essential for a democracy to make legislative activities known to and accessible for the public. The more disclosed the Legislature works the less it is trusted by the people which leads to incredibility and legislators may not be re-elected. The Legislature represents the people so that the people should know about the work of their representatives and be able to participate. But openness and transparency also contributes to the functioning of a democracy, because it leads to greater acceptance of legislative actions. So each Legislature should have a press office dealing with public relation matters. Public relations work could, among others, include:

- a website to inform the people about the Legislature, its members including bios, house and committee schedules, proposed legislation, bill status, public hearings of committees, committee notes and committee reports etc.
- legislative newspaper
- information material for the media
- TV and Radio coverage of plenary sessions
- Visitor information center in the Legislature

PART 3

POLICY BACKGROUND OF NEW LEGISLATION

Part 3

Policy Background of New Legislation - From the legislative impulse to the drafting of a bill

1. General

In principle, law drafting has two stages:

- the policy development

and

- preparation of the legislative text to give effect to the policy adopted.

It has turned out as best practice to work with **checklists.** Checklists are helpful to ensure that all relevant aspects of policy development and the drafting of a new law have been considered. Part 3 and Part 4 of this Handbook provide checklists that have been used in other countries with good results.

In this part of the Handbook we will focus on the first stage, the policy development and background of a new law. At this first stage, key decisions are needed on such matters as:

⇒ which of the possible policy options is to be preferred

⇒ whether this option should be realised through legislation, rather than by non-legislative means;

⇒ which authorities should put the legislation into effect, and

⇒ what is the basic approach to be adopted in the legislation, and what legal and administrative instruments are necessary to put that approach into effect and make it workable.

Decisions on questions such as these should be provided before effective work can be done on the legislative text. Providing them is properly the task of policy makers, who are experts in the particular subject matter.

Before the actual drafting starts the legislative drafters as well as the legislators who propose new legislation have to know everything about the purpose and the background of the new law. They have to investigate social reality and existing law and have to do some preliminary research necessary to create new laws of good quality. Certain legislative techniques exists that cover all the relevant subjects regarding the preparation of a new law. This process cannot be regarded as consisting of single watertight compartments: they are better regarded as recognisable areas of

the process as a whole. Process from the first to the last stage is usually neither smooth not regular, and frequently it is necessary to return to an earlier stage and try again.

Therefore this part of the Handbook addresses not only legislative drafters, but all persons who are involved with the legislative process.

Whether the drafting be done in a private interest group, or an executive agency, in the House of Representatives or the Senate, the problems of transforming an inchoate idea (virtually all ideas for legislation are more or less inchoate at the outset) into a sound well-thought-out statutory provision are generally the same.

Note: A draftsman should be familiar with the subject matter of the legislative proposal before him and should try to clarify, both at the start and as the job proceeds, the tenor and reach of the policies he is expected to embody in the bill.

Kerchonan wrote in "*The Legislative Process*" (The Foundation Press, New York 1981):

"*Early in the proceedings, the draftsman should master the existing law and the experience of the jurisdiction which are pertinent to his proposal, just as an architect should study the site on which he must build. This is essential so that what he drafts can fit smoothly and workably with related laws. As far as he can he needs to search the laws and experience of other jurisdictions against the possibility that others have dealt successfully or unsuccessfully with the same problem. In this way he can profit from practical lessons learned elsewhere. At some point of his work he must come to grips with often difficult base questions such as these: Is legislation the best route to resolution of the problem at hand? Or is resort to the judicial or administrative process more appropriate? Or should the matter be left to private arrangements? Would better enforcement of existing law solve the issue? If legislation seems the best course, how much territory should the bill cover? The answer may vary, for example, with the state of existing law, with the opposition or support anticipated, with judicial attitudes towards the subject involved. And how detailed should the draft be? Greater generality will increase flexibility, leave more to the courts or other interpreters; detail may assure stricter compliance but can lead to rigidity in the face of change or unforeseen circumstance. Among the sanctions available, which should be chosen to make the legislation most effective to the problem posed? Should the choice be the establishment of an administrative agency, licensing, civil penalties, criminal penalties, damage suits, punitive damages, injunctions or some other of the many weapons in the legislative arsenal? And throughout his work the draftsman should constantly keep in view the need to square his work with the commands of the Constitution and other law of higher authority than the one he is preparing. With all this in mind, one must recognize, of course that some time pressures or needs for political accommodation or both may - more often than one would wish - prevent a draftsman from doing his job with the thoroughness and precision it deserves.*"

2. Identify the Issue and the Objectives, Formulate the Legislative Goal

The **legislative impulse** can derive from a number of sources. Ideas can and do spring from

- the executive branch
- the need of implementation of a certain policy,
- a request by the Parliament, Senators or Representatives themselves,
- coalition agreements between the parties supporting the Government,
- an instruction issued by the President (whereas the Legislature is not obliged to "rubberstamp" legislative instructions by the Government)
- suggestions made by those working with legal provisions (particularly business associations, trade unions, consumer associations),
- suggestions made by scientists or research institutes, court rulings, particularly rulings of the Constitutional Court,
- implementation of international obligations,
- response to unforeseen events such as environmental disasters, media reports
- and others.

Before starting the writing of a draft, it is important to **determine the objective of the proposed legislation. The first task of the lawmaker is to understand what he is about.** Patently, it is vital for him to gain a thorough and complete understanding of the purpose of the legislation that he is intended to propose and/or to draft. He must be certain of the defects and problems intended to be remedied. To gain this necessary understanding may require time, patience and great care, but a problem analysis is essential. It is the lawmaker´s duty to start with investigating social reality, for only legislation that originates from reality is destined to return to reality.

The problem analysis is based on observation of conflicts, deficiencies etc. in the area to be regulated. In order to accomplish proper and effective regulations the draftsman or the legislative body has to identify the important characteristics of the matter which motivated or will be regulated by the act. In doing so, it is necessary to identify powerful external factors, economic, cultural, social or psychological, that usually influence people's behaviour in the situation. It is not sufficient to conclude that there is a problem or issue that needs to be addressed; the lawmaker must also now why the situation needs to be addressed and how severe the need is to address the issue and how often the issue arises.

At this very early stage prior to the decision whether regulation is at all necessary **consultation** should be carried out to gain a thorough understanding of the matter. The consultation procedure at this stage is more an informal one. As we will see later the means of consultation is essential throughout the whole legislative process. It is not possible to generally specify the parties to be consulted. To analyse the problem and to get an overview of the area or issue to be regulated respective government sectors as well as public and/or private interest groups may be consulted to take into consideration the views of various stakeholders.

To make sure that you have thought about all relevant questions connected with the legislative

proposal you may use the following checklist:

Checklist: Identification of the issue and objectives/Formulating the legislative goal

- Who is calling for action and what is the issue you want to address? √
- What specific problem is to be solved by the proposed legislation? √
- What reasons are given? √
- What is the content of the legislative impulse? √
- How does this compare with the present position as to the facts and the law? √
- Which facts are subject to the need of regulation? √
- Which facts have to be investigated, which parallel facts are known?
- What difficulties, obstacles, resistance or conflicts occur in the area of regulation and what are the causes? √
- Who is affected and how many actual cases are there requiring a solution? √
- What external factors are influencing people's behaviour? √

    - Do people understand and acknowledge that there is an issue?
    - Do they understand and acknowledge their contribution?
    - Do they understand and accept the government's objectives?
    - Do they understand and accept the way you want them to behave?
    - Are they capable of behaving that way?
    - What economic, cultural, social or psychological factors are involved?
    - Can the government or other bodies adequately monitor the solution?

- Formulate the legislative goal √
- Are they prescriptions by the impulse generator, the jurisdiction? √
- Are there alternative goals? √
- if yes, are the alternatives goals compatible with the legislative goal? √
- is there a discrepancy to the current policy? √

3. Identify legal problems

3.1 Preliminary notes

After determination of the objective and some preliminary research, it is recommended to make preliminary notes that outline the problem, describe the need for a new law and summarize your findings at that point. The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude and explaining why it has arisen

3.2 Examine and compare existing Law

The other phase of the research stage is to consider the legal surrounding of the proposed measure. Do keep in mind that all laws have to be seen as a whole that altogether form the legal system. They must not conflict with each other. What is allowed by one law must not be prohibited by another law. The following questions should be asked:

> Is the proposal constitutional? Make sure that the proposal is generally within the grant of legislative powers in the constitution, and that there are no specific constitutional limits on the proposal.

> If the proposal is constitutional, what is the current state of the law? Will the new proposal fit in well? Will it conflict with other provisions that will require amendment? Will potential danger areas be affected?

3.2.1. Existing law

Prior to the decision whether regulation is necessary one has to examine whether the outlined problem is already regulated by existing laws and/or regulations or not. It is important to **avoid double regulation**, which is superfluous and may have a negative impact on the credibility of laws in general.

- Laws dealing with similar matters must be studied.
- Because the courts will construe all such laws together, it is desirable to achieve as much consistency of language as possible.
- It should be examined if and how administrative officers have been interpreted and implemented related laws.
- Another question is whether there are judicial decisions that might have an impact upon the proposed legislation.
- You should also check if terms used in the proposal have already been defined in other laws. Check whether you can repeat that language.

3.2.2 Potential Danger Areas

In the pre-drafting process the legislator has to decide whether a legislative impulse shall result in a legislative initiative in form of a draft bill. He has to decide whether he wants to act as a "sponsor" of the new law and whether he will introduce it in the House. The decision-makers in this pre-drafting stage have the position of responsibility; their familiarity with law as a whole enables them to see a legislative proposal in a wider and more balanced context. It is the ability to see the legislative proposals against the background of the whole structure of the law which gives the decision-makers within the legislative bodies both an advantage and a special responsibility, which is great in certain areas of potential danger. So the legislators either have to study existing law and potential danger areas or they have to consult legal experts to gain that understanding.

Areas of potential danger have also be taken into account when instructing the draftsman. The responsible legislative authority as well as the draftsman himself have a clear duty to society to see that the freedom of the individual is interfered with no more than is absolutely demanded to achieve the desired purpose. For example: If the new law contains a discretionary power and the exercise of or the failure to exercise this power may harm or disadvantage a person, the new law should provide affected persons with a right of appeal. Of course, legislation within these areas is often necessary, but great care is required. According to Thornton (*Legislative Drafting, London, 1987*) proposals of the following kind may fall within this category of potential danger areas:

- Proposals affecting personal rights: All legislative proposals that affect fundamental human rights granted in the Constitution should be handled with great care: for example proposals enabling detention or restriction without trial or deportation; proposals which affect personal status or might render a person stateless; proposals which do not safeguard the positions of persons engaged in a trade, profession or activity when it is first regulated by statute; proposals depriving a person of recourse to the courts of the land or infringing the rules of natural justice; proposals affecting freedom of speech, or discussion or public meetings; proposals of discriminatory nature on grounds of race, religion, sex or any other grounds; proposals interfering with electoral rights; proposals that would intrude on personal privacy.

- Proposals affecting private property rights:
  in particular, proposals which would grant a right of entry upon private property; a power to search private property; a power to seize, detain or forfeit private property; a power of using private property; proposals which would interfere with the provisions of existing contracts or detract from rights or privileges enjoyed under existing written law.

- Proposals for retrospective legislation: A retrospective law is a law that retroactively changes the legal consequences of acts committed or the legal status of facts and relationships that existed prior to the enactment of the law. What was legal before becomes illegal. In reference to criminal law, it may criminalize actions that were legal when committed; or to aggravate a crime by bringing it into a more severe category than it was at the time it was committed; or to change or increase the punishment prescribed for a crime, such as by adding new penalties or extending terms; or to alter the rules of evidence in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted. On the other hand, a

retrospective law may decriminalize certain acts or alleviate possible punishments (for example by replacing the death sentence by life-long imprisonment) retroactively.

A hypothetical example: someone committed a high-profile, brutal murder, but the public thinks the existing laws will not punish the murderer severely enough; so the legislature enact laws that will more severely punish those who have committed the crime of murder ensuring that *this specific murderer* will get a prison sentence longer than that prescribed at the time he committed the crime. Generally speaking, retrospective laws are seen as a violation of the rule of law as it applies in a free and democratic society. Most common law jurisdictions do not permit retroactive legislation or permit it under certain circumstances.

- Proposals offending against the comity of nations or public international law: for example expropriation without compensation of the property of foreign nationals or the removal of diplomatic privileges; a proposal to legislate in breach of a treaty or other international arrangements.

- Proposals of doubtful territorial or constitutional competence; proposals which are unnecessarily bureaucratic, proposals affecting interests of other Government departments or public bodies, proposals affecting prerogative powers.

Note: It is not suggested that legislation on the above subjects is wrong in principle. It is necessary, however, to proceed with caution and to have regard to the rights of the person affected and include where necessary transitional provisions and other safeguards, rights of appeal and compensation provisions.

4. Give a Prognosis: The possible Effects of the new Law

Meanwhile it is considered as best practise to evaluate legislation. **Evaluation of a law means examining the effects of legislation.** Evaluation of a law can take place before and after its formal enactment. Evaluation before the new law becomes effective is called prospective or ex ante evaluation. Evaluation after a law has already been effective is called retrospective or ex post evaluation. In the phase of legislative decision-making you should try to evaluate the proposed legislation as to its possible effects. The purpose of ex ante evaluation is to ensure that those who take the final decisions have to hand all the relevant information and high quality advice. A prognosis may help to get an insight into the possible or potential effects of planned legislation. It enables better and more easily understandable laws. Assessment of the impacts of a law plays a significant role in improving the regulatory environment. It can be an effective tool for modern, evidence-based policy making. It provides a framework for the consideration of the range of options available for handling policy problems and the advantages and disadvantages associated with each. It does not replace the need for a political decision - rather, it provides in a structured manner some of the information essential to a good policy development process and a well-informed final decision. This can include not only the impacts on business, but also on the environment, on social exclusion and specific social groups, the administration as such and on regions - the full range of sustainable development issues. It also provides an opportunity for working with external bodies, interest groups, business representatives and representatives of

civil society such as NGO's, to consider how the policy might be designed.

You may find out in advance whether the new law is at all necessary; you will be able to develop alternative provisions and assess them as to their likely impacts (effects, burdens, social developments), compare the alternatives and determine their usefulness in order to discover the most appropriate instrument to achieve the legislative goal.

A well-done prognosis should include the following steps:

- all possible alternative solutions are considered
- a cost estimation is carried out
- appropriate consultation is undertaken.

A check on whether these steps have been carried out correctly is therefore desirable. In its simplest form this evaluation consists of a checklist where all the steps required in the process can be ticked off. Whatever form it takes, the results of this evaluation should form part of the dossier supplied to the decision-makers. Let us start with exploring the alternatives:

4.1. Assess possible Alternatives

All parties involved in the legislative process should be obliged to scrutinise new regulations in terms of their necessity, effectiveness and intelligibility. These issues have to be addressed at various stages of the drafting process.

The examination of possible alternatives to achieve the legislative goal cannot be carried out without expert knowledge and consultations. So the use of expert and policy knowledge in the area of regulation is advisable. In order to assess the consequences of alternatives external experts and stakeholders are to be consulted and included in the ex ante evaluation process.

4.1.1 Is Action at all necessary?

The first question is whether action is at all necessary. So one of the earliest steps should be some assessment of the current situation – in other words: the advantages and disadvantages of doing nothing. Governmental action in form of regulation is one of the main ways of implementing public policy. However, for the public authorities, regulation is not necessarily the best way of solving a given problem nor is it the only way. On the contrary, excessive use of regulation damages its credibility and effectiveness. Legislation must not seek to regulate what are obvious or unsuitable subjects or fields where sufficient legislation already exists. If a state tries to legislate every time a problem arises or appears to arise it will unnecessarily reduce the space for free initiative, increase legislative inflation and the number of documents and thus the ineffectiveness of legal rules.

Not acting when facing a given problem may be necessary and should be considered as being a possible alternative. It is a way of placing confidence in existing regulations whilst avoiding implementing a solution too early which might turn out to be untimely. The question is what will

happen if nothing is done, for example the problem is

- likely become more acute
- remain unchanged
- solve itself with the passage of time without state intervention. With what results?

4.1.2 Is a Law needed?

After you have come to the conclusion that action is necessary questions concerning the appropriate way of action arise. The first step of this stage is to consider whether further new laws are in fact necessary or whether the desired results might not be achieved by other either private or public instruments, administrative means or under existing legislation. This means: You have to look for alternatives.

The alternatives should be studied prior to the decision process. It is the lawmaker's duty to consider a broad spectrum of means and methods. The question is whether there are other instruments that are capable of achieving the goal and which instrument would address the problem or risk most effectively. The following listed instruments describe just an election of many possible alternatives addressing a given problem:

Incentive mechanisms: These may be in the form of information campaigns to make citizens and companies aware of their rights and obligations. They may also be in the form of educational or preventative campaigns intended to have an effect on behaviour enabling the effective implementation of regulations which are known but have not been put into practise. Lastly they may also be financial incentives (bonuses or surcharges) encouraging people to change their behaviour.

Self regulation: This instrument of regulation is unique to the private sector. In the form of quality standards, certification, codes of conduct (for example the Code of Conduct for the Press), groups of economic players can seek to improve their technical quality and/or their commercial performance. This form of regulation can contribute to the general interest by the simple benefits (price, safety etc.) that it provides for the customer. It may also include wider interests (for example by taking into account the demands of environmental protection associations). In as much as user satisfaction can be achieved using this method, the public authorities do not need to intervene in the domain covered by self-regulation.

Contractual policies: Contractual regulation can link public authorities to players in the private sector (companies, associations, individuals). These can be financial rewards given in return to for complying with quality standards (for example environmental protection) or activities contributing to the public service (particularly in the social domain). Finally this form of regulation can involve private sector players. The conclusion of a contract establishing rules common to partners with different interests shows that some of the objectives which are characteristic of regulation (the general interest) have begun to be taken into account without the

automatic intervention of the public authority.

Mechanisms to ensure the assumption of responsibility: For the implementation of public policies it may be desirable to introduce mechanisms guaranteeing that, even in the absence of regulation, the players involved effectively assume their responsibilities and fulfil their obligations. Setting up for example compulsory insurance systems provides a non-contentious guarantee that risks will be taken care of by a third party. Legal or arbitration procedures are also a way of applying civil or criminal law sanctions where these responsibilities have not been met.

Improving existing regulation: In some cases, the implementation of new regulations is the result of not applying existing regulations. It is worth studying the methods which would enable the rules either be implemented effectively (by resolving the specific problems which prevent them from being applied) or revised (in particular by periodically revising regulations).

When you have found out that there is no alternative to regulation you have to find the most appropriate legal instrument. In general, a **law or statute** is only needed when **the matter is so important and significant that it should be handled by parliament only.** The question is whether the matters to be regulated leave no alternative to legislation or whether the problem can be solved sufficiently by other instruments. It should be examined if the matter is so significant that it should be handled on a national level or can, for example, the counties or other authorities handle the matter more effectively provided that they have the authority to do so (see above "subordinate and delegated legislation").

In Part 1 of this Handbook we have learned that there are different legal instruments. There are laws but also administrative rules and regulations. The choice of legal instruments depends on what is to be accomplished. It might be the best solution for the problem to be regulated to adopt a new law passed by the Legislature. Then everything is regulated in that law. But given the special situation it might also be recommended to handle the problem by rules made by the administrative authorities. For more details, see also below section 4 "Co-Regulation".

4.2. Are Sunset-, Review- or Sunrise-Clauses practicable?

Sunset and review clauses are in fact no alternatives to a law or a regulation but a way to improve the quality of laws. In case the lawmaker - after having checked the alternatives - comes to the conclusion that a new law is necessary he should examine whether the application of sunset and/or review clauses is appropriate.

Sunsetting is when a new piece of regulation is time-limited and actually expires, in whole or in part, after a fixed period. This is written into the legal provisions in the form of a so called "sunset clause".

A variant is where the piece of regulation contains a review clause. These are requirements in regulations for reviews to be conducted within a certain period, and can be seen as a weaker form of sunsetting. Unlike sunsetting, in this case a rule will continue unless action is taken to remove it. English laws, for example, include the following final stipulation:

Example*: "The minister shall carry out a review of the operation and effectiveness of the*

Act as soon as it is practical after the expiration of five years from its commencement and, in the course of that review, the minister shall consider and have regard to,
- the effectiveness
- the need for continuation of the functions of the law
- such other matters as appear to the minister to be relevant.
The minister shall prepare a report based on the review and shall as soon as practicable cause the report to be law before the Parliament."

Another variant is a political commitment to review the actual effect of regulation in practise. This can have a similar effect and can be less democratic, though it would generally be considered only to bind the government that made it.

The advantage of sunset or review clauses is that they force the administration and Parliament to look anew at the necessity for a particular regulation. If adopted systematically for all new regulation, they would ensure a rolling review of regulation, with the opportunity of weeding out or streamlining provisions that are no longer needed.

A significant disadvantage of the widespread use of sunset or review clauses is that this is very expensive in terms of legislative time. Although sunset or review clauses may be a good way of forcing an allocation of legislative time to be made for the purposes of review, it is impractical to think that the whole body of regulation could simply be allowed to disappear and have to be re-enacted. In addition, combined with pressure on legislative time, the presence of a sunset clause can be misused to obstruct progress. A further disadvantage is that, in some circumstances, sunset (and to a lesser extent review) clauses could increase uncertainty and thus have an adverse effect on the investment climate and/or on individuals´ confidence in the protection afforded them by regulation.

But it is always a noteworthy suggestion to keep the term of validity of laws flexible and the instrument of trial-period is increasingly being used. Laws should have their trial-period built in from the outset, however, and periodic check-ups are usually necessary. **Although, the blanket use of sunset or review clauses, or their use in certain areas such as fundamental rights, is not appropriate**. However, it is possible to identify some areas for regulation where a presumption in favour of sunset or review clauses could be appropriate, subject to a case-by-case rebuttal. These could include:

- Regulation introduced at short notice in response to a crisis – this may not benefit from as much detailed prior research as usual and may well be created as a precautionary measure;
- Regulation more generally introduced based on a precautionary motive – where further expert work would provide a firmer basis for revised regulation in the future;
- "State of the Art" regulation – where technology or market conditions are specified in areas subject to rapid development
- Legislative pilot projects
- Regulations which conferred rights on the state (as opposed to citizens or business)

Sunrise-clause:.

A relatively new legislative method is the instruction of sunrise clauses. A sunrise clause in laws allows for:

- Enshrining some essential element of a party's political program in the settlement and as a central feature of the future dispensation;
- Deferring implementation temporarily in the interests of creating the conditions for transition; and
- Letting both sides claim advantage from the measure, the one in the short-term and the other in the long-term.

In South Africa the political settlement provided for a **sunrise clause** on democratically-elected local governments. It has been applied to the constitutional drafting process in South Africa. The final constitution of the Republic of South Africa needed a long preparation of several years, but the constitutional process in some provinces – for example KwaZulu Natal – was finished more quickly. Since it was at the beginning not yet finally clear how far the area of authority of the central state would go, some provinces laid out their expected areas of authority in a far-reaching manner, but took account of possible restrictions of these areas of authority by the national constitution. Some legislative and administration areas of authority, for instance in the areas of security and economics, have initially been defined as areas of provincial authority, but with a provision for possible restrictions by the constitution. That is done by a sunrise clause:

> Example*: "Any provisions of this constitution subject to Subsection Two, including the allocation of power and functions, which is not consistent with the Constitution of the Republic, shall have no force and effect. The chapter shall remain in force until such time as the constitution is replaced by a constitution as envisaged."*

4.3. Cost-Benefit-Analysis (What will a new Law cost?)

In order to decide whether a new law is the right instrument to implement public policy or to solve a social problem the legislator has to have a look at the possible costs of a new law and weigh the costs up against the benefits of the law. It is not always easy to estimate the benefits and costs of a proposed legislation. But even the simple process of asking the right questions in order to prepare for the cost-benefit-analysis can add value and may help to learn more about possible advantages and disadvantages of the legislative proposal.

But in either way you should try to examine if there is an acceptable cost-benefit relationship. It has to be worked out how high the costs likely will be for the addressees of the new regulation, for the state or for other parties affected. Firstly, you should find out if there are reliable cost estimates from impartial sources available.

If possible, the cost should be estimated or at least be roughly indicated as to their nature (what

kind of costs?) and extent. This is also meant to be done regarding the estimated extra-costs and expenditures for the Government, the economy, the counties and/or other local authorities. It also has to be asked whether the people or parties affected by the new regulation can be reasonably expected to bear the additional costs.

Whilst estimating the financial benefits and costs of a policy proposal may be relatively straightforward, estimating benefits for some non-monetary goods is more difficult and can be sensitive. For example: How to put a value on human life or a forest or how to estimate the benefit of a policy that prevents corruption within the police or the government or a better education? There are techniques that can be employed to assess such "non-marketed" goods, such as calculating peoples' willingness to pay for certain things or observing peoples' behaviour in connection with the problem area. In order to get more information about the likely costs and benefits of the proposed legislation your prognosis should include expert opinions, hearings and evaluation of petitions, literature, jurisdiction, questionnaires as well as empirical inquiries.

The forgoing remarks show that for a profound cost-benefit-analysis the legislators need technical and expert support and other available information. Regarding the present situation in Liberia, it may be difficult for the legislators to estimate the costs of a new law due to a lack of available information, technical and expert support. As Liberia finds itself in the process of democratisation, it is too much to expect that Liberian legislators apply modern legislative techniques used by countries with a long democratic history. But as mentioned, even if – at present - it is not possible to carry out a profound cost-benefit-analysis, legislators should at least make themselves aware of the techniques that are concerned as best practise regarding modern legislation. Even asking the right questions helps to learn about the advantage or disadvantage of a new law.

5. Consultation[9]

To gain a proper understanding of the proposed legislation and to be able to estimate the consequences thoroughly, consultation of external bodies and interest groups should be undertaken. Consultation with the affected groups and organisations, economic actors and civil society is essential to ensure high quality regulation and to increase people's confidence in legislation. It makes the democratic decision-making process more open and transparent, which is crucial for a democratic system. Consultation should be understood as an interaction between the legislature and parties that are likely to be affected by or interested in the regulation in question. As legislators represent the will of the people, they should know about the concerns of the people before they adopt new laws.

The consultation process should be regarded as a means towards **open governance**. The ways to structure consultation are manifold, it is therefore not possible to identify a single model. You may consult only a single source or many of them. Depending on the importance of the issue you may initiate conferences or establish committees. Whatever procedure is chosen, the aim should be to ensure that in each case all relevant parties are consulted in an adequate and appropriate way.

[9] See also Mandelkern Group on Better Regulation Final Report

The possibility of participation as such can ensure better quality of regulation. At the same time consultation leads to democratic legitimacy of regulation (through the possibility of people being able to take part in the public debate) and is likely to create more confidence in the end result and in the institutions which deliver regulation. Consultation can lead to broad public support because it can explain the reasons why regulation is necessary. It can help to ensure for example a balance between rights and the need for protection or to ensure a balance between different interests.

Note: Consultation is important throughout the legislative process. In order to make the decision-making process efficient consultation should be done *prior to the introduction of the proposal in the House* in order to adjust the proposal in accordance with the results of the consultation. There is no specific point of time for consultation. Ideally, consultation starts as early as possible in the decision-making process and continue - as far as possible - throughout. Consultation might take place in a more informal way at the very beginning and could end in a formal consultation procedure after the new regulation has been drafted before its introduction to the legislative bodies.

Major aims and advantages of consultation are:

- the improvement of the proposed text
- examining whether the new regulation is suitable to address the problem or the policy
- verifying that the new law can be expected to work in practise
- checking that new regulation is coherent with existing regulation and that the end result is effective in the widest sense
- consultation may show unintended consequences of the regulation and it can contribute to a higher level of compliance
- legislators know the positions of the parties affected by the new law, which is of great importance for the legislator's decision concerning the adoption or rejection of the new law

Participation in a consultation process should therefore not only be considered as a possibility to express protest but should be seen by consulted parties as an instrument to shape regulation policies.

5.1. Consultation Procedure

There is no specific procedure for carrying out consultation. The following steps may be helpful:

- Prepare a list of all parties that have to be consulted and try to figure out when and how the consultation should take place!

- Is a written correspondence sufficient or is a meeting with the parties to be consulted necessary?

- Is it appropriate to organize a conference with all consulted parties or should they be consulted separately?

- When you carry out consultation, it is generally helpful to provide the consulted parties with some *explanatory notes* including background information on the proposed effect of the new law for the economy, the citizen, business, environment etc.

- Involvement of the affected parties in the assessment of economic and administrative implications will often be helpful.

- Give the consulted parties enough time to respond! The deadline for the consultation must be set according to the prevailing circumstances, but efficient time should be given for the parties to give an adequate response. Keep in mind that some parties, when consulted, may need to obtain statements from subordinated institutions, which have expert knowledge.

5.2. Consulted Parties

It is not possible to generally specify the parties to be consulted. But as a general rule, **everybody who is likely to be affected by regulation** on a practical level, or on a more general level as to the principles or ideals, should be consulted or should have the possibility of submitting reactions. In any event it is better to consult too many rather than too few. In general consulted parties may involve:

- users
- stakeholders
- experts
- NGO's
- departments or central agencies that will have a role to play regarding the new law
- departments that have relevant expertise in the area affected by the proposed legislation (such as the Department of Justice for, e.g human rights issues, Department of the Environment for environmental impacts or Department of Industry for market issues).

It is generally best practise to carry out a consultation on the broadest possible basis, thus enabling interested or affected parties to make comments. Internet based consultation is also recommended. It is important to develop a structure that ensures consultation of all relevant parties in an adequate and appropriate way. In cases where there is no real choice for the legislator as to some parts of the new law, this should be made clear to those consulted. A quick regulation procedure should not be carried out at the price of making it impossible for the interested and affected parties to comment on the proposed law. Complying with the principles of **transparency and democratic openness** is an important goal in itself. Besides, an intensive consultation procedure will often imply that subsequent consideration and adoption of the law may proceed more rapidly because many questions and problems are discussed and eventually solved at an early stage of the lawmaking procedure.

In discussing broader or more fundamental subjects consultation may in addition to other more

traditional ways be carried out as a **public hearing or conference** with attendance of representative organisations, experts, press etc.

In case of more extensive legal reforms or regulation concerning important principles, new regulation may at initial stages be prepared **by preparatory committees or commissions or working groups.** In these cases affected parties should be represented on the committee. A preparatory committee may furthermore invite relevant organisations or individual experts to present their views directly to the committee.

The comments made by the consulted parties are highly valuable to the legislators in forming an opinion. These comments and/or a summary of the comments should in appropriate form be forwarded to the legislators at the same time as the introduction of the proposed act. When you are a drafter and carried out consultation before drafting you should make available a summary of the comments of the consulted parties to the legislators. The same applies when you are the sponsor of the proposed new law and introduce it in the House.

If amendments are made to a proposed law that has already been introduced, the timeframe which applies to the reading of the proposal, will frequently constitute an obstacle to consultations. If amendments are not of far-reaching importance, omitting renewed consultation is not usually a problem. The question of consultation should however be considered in each individual case. Even though the hearing cannot be as extensive as when a hearing is conducted before the introduction of the proposed legislative act, possible ways to involve the parties, which are particularly affected by an amendment, may be considered.

Practical difficulties: Research studies[10] have shown that the assessment of the possible effects of new legislation is facing various practical difficulties. The first practical difficulty to overcome is simple awareness of the need to undertake such an assessment amongst policy officials. This can be tackled through appropriate publicity (internal within the administration or, if appropriate, externally too) and training.

A lack of staff resources, equipment and expertise to carry out the assessment of the impacts of a new law in the Legislature as well as the executive branch is a key practical difficulty in Liberia by the time this Handbook was finished. This can be overcome partly through the availability of expertise, the improvement of the infrastructure of the Legislature and training but needs political commitment and support as well as backing at senior levels to overcome fully. The size of the public administration overall is also relevant – smaller administrations generally find it more difficult to find the resources than larger ones. Another factor given is the paucity of good quality data on benefits and costs, including the difficulty of estimating the value of non-marketed goods (e.g. environmental degradation or damage to human health). Whilst this will indeed affect the overall quality of the assessment – which can only be as good as the inputted data – it is not a sufficient argument for not carrying out any assessment at all. Use of error estimation and ranges (rather than single figures) for benefits and costs can help, as can the input from consultation with stakeholders and intelligent use of available data, consultants and academic expertise. Seeking input from a wide range of stakeholders can help avoid the kind of bias otherwise possible from vested interests.

[10] see Mandelkern Group on Better Regulation, Final Report 2001

The second is cultural resistance. Here, "cultural" is meant in its broadest sense. It encompasses administrative and legal arrangements that militate against easy acceptance of the more crosscutting, horizontal nature of the assessment of impacts process, which might include strong traditions or laws of independence of ministerial action and restrictions on inter-ministerial co-ordination or on external consultation. It also includes the reaction sometimes encountered with some policy officials that they know best how to do their job and have the clearest understanding of what is best for the country or the policy area. They are therefore often reluctant to accept and make positive use of the assessment of effects tool, resulting in an approach that sees this tool as an unnecessary bureaucratic burden to be completed as late and with as little effort as possible. Changing this kind of cultural resistance takes time, especially if it is underpinned by legal arrangements. It needs to be given strong political support and addressed at all levels – desk officer, middle and senior management and high level political leadership. Education as to the usefulness of the tool in assisting the policy process is vital – policy officials need to see what is "in it for them" in using the system. But there must also be a credible deterrent element – if the process is not completed properly (timing and quality), the progress of the policy can be delayed, halted completely or challenged subsequently.

Political pressures: Some see the necessary assessment of the effects of new legislation as an excuse to impose a business-focused, deregulatory agenda on policy makers. For an assessment done well, this is absolutely not the case. Rather, the assessment of effects simply sets out the information in a clear and concise way to inform – not control – the political decision. This point needs to be stressed as appropriate and real efforts need to be made to ensure that both benefits and costs are included in the assessment. Another possible problem is the political pressure to do something – anything – now, irrespective of a proper assessment. It is not always possible to overcome this and it can lead those policy officials undertaking the assessment of the effects of new laws to question its usefulness, but development of a good assessment system is likely to reduce the incidence of this reaction as the need for good assessment becomes commonly understood and supported. A further situation can be where the main political decision has already been taken (perhaps in a government programme or party manifesto). In these cases there can be a reluctance to undertake assessment of the implementation options available. However, almost always details remain to be resolved where an assessment can play an important role in informing, in a very explicit manner, those taking the decisions on the details about the trade-offs that they are making. Finally, there is often the perception that doing an assessment of the possible effects of a new law takes too much time and delays the policy development process to an unacceptable degree. However, when the assessment of the effects of new legislation is an integrated part of the process, any delays in the earlier stages are minimised and often outweighed by time and cost savings later in the process where the greater defensibility of the policy solutions and the increased buy-in by stakeholders are important.

Annex 1 to Part 3

The following checklist summarizes the important aspects to be considered throughout the legislative process, e.g., before drafting a new law, when revising the draft, before introducing a new legislation in the House or when discussing a new law in Parliament or in the committees. The checklist can always be used to determine the necessity, effectiveness and comprehensibility of legal measures. The answers to all these questions, no matter how and when they are obtained, are important for the work of the law drafter. Indeed, if they are not provided in the course of the policy development, law drafters may have to ask for them or attempt to provide them themselves in the course of drafting:

Checklist for Regulatory Decision-Making

1. Is the risk or problem being addressed by the new law clearly stated?

The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen.

2. Is there a legal basis for the new law? Does it comply with constitutional and existing law?

Legislative processes should be structured so that all legislative decisions rigorously respect the "rule of law", that is, responsibility should be explicit for ensuring that all laws are authorised by higher-level laws (according to the hierarchy of laws) and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.
constitutional compliance: does the new law comply with constitutional requirements in general and with specific provisions (e.g. human rights or citizen rights)
compliance with existing law, legal structures and procedures? To what extent does existing law must be repealed and/or amended because of the new law? Is there a need for transitional provisions to ensure legal continuity between the new law and existing law?

3. Is a new law needed? What are the **alternatives to a new law**?

Legislators should carry out, early in the legislative process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

3.1 What has the analysis of the problem shown?
3.2. What generally suitable instruments are available making it possible to achieve the legislative goal either completely or partly with reasonable concessions (possible

alternatives: more effective application of existing laws, public relations work, working arrangements, investments, incentives, encouragement of support for self-help of a kind that can reasonably expected of those concerned; clarification by courts)

4. Why have the alternatives to a new law not been selected or why should an alternative be selected?

5. Have you assessed the impacts on affected parties, both advantages and disadvantages?

6. Have all interested parties had the opportunity to present their views? Who has been consulted, when and how? What are the results of consultation so far?

Laws should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected persons, interest groups or other levels of government.

7. Is there an acceptable cost-benefit relationship? (if possible to tell)

Legislators should estimate the total expected costs and benefits of each legislative proposal and of feasible alternatives, and should make the estimates available in accessible format to decision makers. The costs of government action should be justified by its benefits before action is taken

- How high are the costs likely to be for those for whom the provision is intended, or for other persons affected?
- Can those for whom the provision is intended bear the additional costs?
- How high are the extra costs and expenditure likely to be for the Government, counties and other local authorities?
- What possibilities are there to cover the extra costs?

8. Is the distribution of effects across society transparent?

Legislators should make transparent the distribution of regulatory costs and benefits across social groups.

9. How will compliance be achieved?

Legislators should assess the incentives and the institutions through which the law will take effect and should design responsive implementation strategies that make the best use of them.

It is evident that most are key policy questions that should properly be settled before any legislation is prepared (e.g. questions 1, 7 and 9). In some cases, the question can be asked at either stage (e.g. questions 6 and 8). Furthermore, a question, although considered as the policy making stage, may sometimes have to be asked again at the drafting stage as the detailed scheme in the text emerges.

PART 4

HOW TO WRITE DRAFT LAWS

The key policy decisions described in Part 3 of this Handbook must now be converted into legal text, though detailed expert policy and legal inputs on substantive matters will continue to be required. Legal skills are necessary to turn the policy and administrative requirements into practicable, effective and clear legal rules. Within the Legislature of Liberia the drafting of a bill will usually be done by a special service unit, the **Legislative Drafting Service** who is mentioned in some provisions of the Standing Rules of the HoR (see for example Rule 9.2). Althoug, by the time this Handbook was finished a Drafting Service was not in place. It is recommended, however, to include the establishment of a Drafting Service in a development plan for the Legislature. The executive may have own drafting departments within the ministries. It is important, however, that law drafting, be it done in the legislature or the executive, is consistent and follows common rules that have to be adopted.

It has to be stressed that law drafting is a very technical matter and an expert legal skill. Therefore, a special training for drafters should be provided to ensure laws of good qualities. The training should aim at the drafting of laws taken into account the structure of Liberian laws, format and style of laws, the language etc. The trained drafting person should then be organized in a special service unit as mentioned above.

In general, legislative drafters may be assigned with different tasks:

- either drafters from the Legislative Drafting Service draft the law with or without drafting instructions (for drafting instructions see Part 5 of this Handbook) or

- a draft already exists and is examined by the Legislative Drafting Service.

In the first case, the bill drafting process usually begins with the drafter obtaining the objectives for a legislative proposal from either the legislator who is sponsoring the bill or from the legislator's authorized agent. The drafter then puts the sponsor's request into proper form, style and legal terminology and fits the proposal into the framework of existing law. As we have seen, the drafter reviews provisions of the Constitution, existing law, court decisions and other relevant sources and advises the legislator of any known problems or conflicts.

The Drafting Service prepares the bill only on request. It delivers the bill to the sponsor for review. The decision-making process as to the contents of a bill and the introduction of it rests with the legislator.

Records and files of the Drafting Service shall be maintained on a confidential basis. The staff of the Drafting Service is not allowed to discuss or disclose the existence or substance of any person on file in the office with anyone other than the staff, the person making the request or the sponsor's authorized agent unless the request for a bill or research stipulates that the request and results need not to be held confidential and may be disclosed to others.

Part 4

Chapter 1

Recommendations for Law Drafting Organisation

The improvement of lawmaking includes the effective organization of the law drafting, particularly the training of drafters and the streamlining of the drafting process based on common guidelines to be applied by all drafters and legislators involved in the drafting process. The organisation of the drafting process, including adequate staffing, is the crucial basis for the production of good laws. In addition, it has proven to be important to undertake a variety of verifications during both the policy development process (see Part 3 of this Handbook) and drafting process.

Common guidelines for drafting laws in Liberia should be gathered together in a single instrument (directive, handbook etc.) and be used by all drafters.

Guidelines may contain:

- description of standard procedures and standard requirements as to from, format, style of drafting, e.g. provision of a title, structure of laws, opening and closing formula, positioning of special provisions (e.g. those relating to enforcement, repeal or amendments of other legislation, transitional provisions); layout and printing style, terminology, definitions, language

- a parliamentary, judicial or autonomous body (e.g. a special service for law drafting) should be in charge for formulating and updating these procedures and requirements and ensuring that standards are followed by the drafters

- development and use of regulatory checklists (as contained in this Handbook)

- a single body in the parliament or the executive may be specifically charged with the oversight of the regulatory framework and/or with coordinating the programme of drafting activities being undertaken by the Legislature or the ministries

- law drafting is an expert legal skill; special training for drafters is recommended

- each governmental body responsible for preparing legislation must have access to a sufficient number of experienced law drafters

- drafting competence should be formally assessed on a regular basis

- those who have limited experience in drafting shall be supervised by the more

experienced

- the quality of law drafters are to be monitored either by a senior official or a body in charge, drafts should be checked for flaws before they are considered as complete; the use of checklists may be used for revision of drafts

- the body in charge for legislative drafting shall research the experience of other countries in the systematic use of drafting checks

- use of computer technology for the drafting process should be developed

- an official (electronic) database of legislation should be developed to which drafters can have on-line access in order to search for laws

- compliance of the draft law with constitutional and existing law

By the time this Handbook was finished it was too early to create guidelines for law drafting organization as the main focus was on obtaining basic equipment and supplies, on building up an infrastructure and on enhancing management that will help the Legislature to function at a basic level. As soon as the this level is reached and the Legislature has made progress in its development, guidelines on law drafting shall be created and may be further developed on a regular basis.

Part 4

Chapter 2

General Principles

The regulation of law, a principle which imposes behaviour norms, must fulfil certain demands:

It must be clear, precise, coherent and as simple as possible!

Its application and the legal security of the people depend upon this. Ambiguity and contradictions in the text of a law makes people unsure, so that the law may be misunderstood. But the people are usually the subject of a law. For that reason they have to be able to comprehend its meaning and content.

A lot has been written about the "art of creating laws" and there is no common guideline equally applicable to legal practises of all countries. Neither the legislative method nor the way of writing draft laws can be universally applied. It depends on the diversity of the legal cultures as well as on the characteristics of the various languages.

The following general principles are internationally considered as best practise and should be kept in mind when making laws[11]:

Necessity: This principle demands that, before putting a new policy into effect, the public authorities assess whether or not it is necessary to introduce new regulations in order to do this. This would for example involve comparing the relative effectiveness and legitimacy of several instruments of public action (regulation, but also the provision of information for users, financial incentives and contracts between public authorities and economic and social partners) in the light of the aims they wish to achieve.

Proportionality: Any regulation must strike a balance between the advantages that it provides and the constraints it imposes. The various instruments of regulation (primary and secondary regulation, framework directives, co-regulation etc.) enable the public authorities to take action in different ways, depending on the aims they wish to achieve. It is the responsibility of the Government, when selecting from the regulatory instruments available to it, to identify those which are most proportionate to the aims they wish to achieve.

Transparency: In order to improve the quality of regulation by being more effective in identifying unforeseen effects and taking the points of view of the parties directly concerned into consideration, the drafting of legislation should not be confined within the narrow bounds of the public administration bodies. Participation by and consultation with all parties who are interested or involved prior to the drafting stage is the first requirement of the principle of transparency. This participation should itself satisfy the transparency criteria. It should be organised in such a

[11] see Mandelkern Group on Better Regulation Final Report 2001

way as to facilitate broadly based and equitable access to the consultations, the constituent elements of which should be made public.
Accountability: The authorities responsible for regulation should give consideration to the question of its applicability. All parties involved should be able to clearly identify the authorities that originated the policies and the regulation applying to them. Where appropriate, they should be able to inform them of difficulties with the implementation of policies or regulation, so that they can be amended.

Accessibility: Consistent, comprehensible regulation, which is accessible to those to whom it is addressed, is essential if it is to be implemented properly. Consideration should be given to accessibility with every piece of regulation, but this should also be done as a general principle so that users are provided with a consistent body of regulations. The principle of accessibility may demand a particular effort of communication on the part of the public authorities involved, for example targeted at those persons who, because of their situation, have difficulty in asserting their rights.

Simplicity: The aim should be to make any regulation simple to use and to understand, as this is an essential prerequisite if citizens are to make effective use of the rights granted to them – regulation should be as detailed as necessary and as simple as possible. Simplicity in regulation is also a major source of savings both for enterprises and the intermediary agencies to which it applies and for the public administrations themselves. The principle of simplicity demands active efforts to combat excessive detail from the very start of the regulation drafting process and when existing texts are revised.

When it comes to the preparation of the legislative text, it has to be taken into account that new laws are characterized by a **structural concept** and by a **rational structure.**

1. Research before Drafting

Before drafting the drafter should be certain about what he intends to prescribe. Therefore before starting to write the draft law, he should have gathered **information** and done some **preliminary research** as set out more detailed in Part 3 of this Handbook. The research results and all relevant information should be at hand when making a drafting concept. **Discuss all the important aspects with the legislator who is asking for your service!**

When you are in the position of a legislative drafter, it is important for you to fully understand the drafting request made by an official. So ask questions freely to be sure of your assignment. The initial questions may take the following direction:

> What are the broad legislative concerns of the persons that ask for your services? Why do they want a new law? Who is calling for action? You might just get the results to be achieved such as “I want to increase the fines for boat owners who carry more passengers than permitted by law”. Or, the information you get may be very general and unspecified, such as “I want to figure a way to improve boat safety, but I don’t want to make it impossible for boat owners to continue to operate.” Whatever the approach is, ask for

proposed solutions and related problems. Are there observed solutions for similar problems in other jurisdictions that may help?

> What specific problem is to be solved by the proposed legislation?

> What reasons are given? What information has been given to you to suggest that a real problem exists? Equally important, where does that information come from – lobbyists, constituents, NGO's, International Organizations, donors, an executive agency, the court, private citizens, public or private interest groups or personal observation? If not from personal observation, are there persons whom you as a drafter may contact to better understand the nature and scope of the problem?

> What is the purpose of intervention?

> How does this compare with the present position as to the facts and the law? Are there other draft laws currently under consideration that may have an impact on the draft that you are preparing? Has the Legislature considered the same matters in past years – and with what types of proposals? Why were these proposals not adopted?

> What defects have been identified? What is the nature of the problem? Are there studies or facts that are being used available? Have other critical considerations in assessing the problem been omitted?

> How will the law affect people? Are they likely to accept the law's objectives, oppose them, or ignore them? Do people understand that there is a problem?

In the phase of the information gathering process, it is important to be sensitive to the confidentiality of the matter. Inquiries to interest groups or administrative officials must be made in a way that does not identify the public official who is asking for the draft and that does not stir up a negative response while the official is considering the legislative initiative. This is an important and often difficult responsibility. The drafter might be blamed if information gets out too early and causes negative reaction about the proposal.

On the other hand, if the drafter asks questions carefully, the questions may help to test out the reaction of people to the official's ideas without revealing his interests. It is important to establish this nature of relationship with each official for whom you are drafting. It is also important to understand the nature of the official's relationship with interest groups that will support or oppose the proposed legislation. So you will know how to approach these groups when asking questions.

After you have finalised your researches and prognosis you should meet with the legislator who has asked for your services and discuss with him the results of your researches. You are attempting to help the legislator or the person who requires your drafting services meet the policy objectives. Your understanding of the legislator or person who wants you to draft and of the legislative goals allows you to give these persons the best advice possible. They then decide how to proceed. Before you start the drafting you should, from your previous researches and from meetings with your mandatory, know what the right legislative instrument is. Your job is to make sure that the proposal complies with technical requirements for laws, that will be described in the next part of this Handbook

2. Make a Concept

It is recommended to make a concept before the drafting starts. A concept makes the actual drafting work easier. The concept should consider the following aspects:

⇒ What is the normative content of the new law = for example, granting of rights, abolition of rights/obligations, rules governing behaviour, containing inducements, conferring jurisdictions etc.?

⇒ Who is the addressee of the new law = for example, everybody, citizens of the State, certain persons/legal persons, constitutional bodies, authorities, courts, business and enterprises, associations etc.

⇒ What is the objective of the new law = for example subsidy, procedure, distribution of tasks

⇒ Is the law self-executing or just a normative framework that leaves execution to other bodies

⇒ Does the law confer any powers on persons or bodies who will be executing and applying the new law?

The abovementioned criteria are closely connected with the question whether the new law should be detailed or general. Should the law regulate all details or is it preferable to enact legislation limited to statement of principles? In other words: Should the drafter work towards a relatively high level of generality or keep close to the details and facts? The question of the degree of detail requires a differentiated answer. It may depend on whether the law in question belongs to private or public law, constitutional or administrative law etc. The decision may also be influenced by the addressees of the new law.

As a drafter is not supposed to make political decisions he must discuss all these aspects with the legislator who is asking for the draft. The legislator and the drafter must start with obtaining a clear idea of the normative content.

If the proposed legislation does not amend existing laws it is the most effective way to prepare in form of a heading a statement of the basic objectives, the addressees and principles to be contained in the legislation and then a statement of the principle means and methods intended to achieve those objectives and principles.

Example:

Basic objective: *Increasing traffic safety*
Addressee: *drivers and passengers*
Instruments to achieve the objectives: an obligation to fasten seat belt when driving a vehicle, fine in case of infringement

At this early stage it is important to consider whether the structure of the legislation is likely to benefit from a formal division into parts.

The next stage is to develop the statements of headings by taking each topic and planning the number and content of clauses considered necessary to deal with that topic adequately. This development process will certainly prove incomplete and subject to modification but it is nonetheless valuable. No drafting should yet be attempted but a note should be used to describe each proposed clause.

After each topic is developed in this way, the drafter has a picture of the range of the norm. He can then turn his attention to the design of the structure of the draft.

3. Check the Draft

Each draft must be checked carefully before it will be introduced in the one of the houses. The revision of drafts may take place according to a procedure regulated in the above mentioned guidelines for the organization of law drafting.

3.1. Use checklists

Checklists may be helpful to ensure that all relevant aspects have been considered. Checklists as contained in Annex 1 to Part 3 and Annex 7 to Part 4 of this Handbook provide a practical tool for all those in charge of setting up or revising the drafting process. These checklists aim to assist both staff responsible for reviewing and organising the drafting process and drafting personnel to enhance their awareness of the different aspects of good law drafting.

3.2. **Specific Verification of Draft Laws**

Specific verifications of draft laws must be made to improve the quality of laws as a legal instrument that contains clear, consistent, comprehensible and enforceable law with respect to constitutional compliance and compliance with existing law and the legal system of Liberia. Recommendations are included in the checklist contained in Annex 7 to this Part 4 of the Handbook.

Part 4

Chapter 3

The Structure of Laws

1. Structure of the Text

Note: The following may not be considered as binding for the Liberian law drafting practise. In the end, each country has to develop its own practise of making laws. Chapter 3 and 4 of this part of the Handbook shall therefore be considered as suggestions on how laws (chapter 3) and bills (chapter 4) may be structured.

All draft laws must follow a certain structure and a certain order of provisions.

There are many options to arrange and number a law, whereas each jurisdiction develops its own standards. If we look at existing laws in Liberia, for example the Electoral Reform Law approved in 2004, we find the following structure: parts, chapter, section, subsection, subdivision and items

- Chapters with Arabic numerals (= *Chapter 1*), the chapters are divided into
- sections with Arabic numerals (= *Section 6*)
- subsections numbered with the number of the section, followed by a period, followed by the number of the subsection
- subdivision (lower case italic letter in parentheses)
- item (lower case Roman numeral in parentheses)

Following this structure a law in Liberia may be arranged as follows:

Part I – (heading)
Chapter 1 (heading)
Section 1……
1.1 = subsection……
1.2 …….
(a) = subdivision……..
(b)……..
(i) = item…….
(ii)…….

Other possibilities to structure a law exists and can be found in other countries. Finally, each country develops its own practise. The arrangement of a law starts also with part and chapter, whereas chapters might also be divided into articles.

Various structures of a law are possible. The structure also depends on the length of the text. A relatively complicated law with a lot of provisions might have more subdivisions than a law with a short text. But in either way: Start with dividing a text into parts, then chapters and subdivide the chapters, either into sections and subsections or into articles and their subdivisions. If the text is not that long you might start with a division into chapter and leave out the parts. It might be helpful to standardize the law drafting in Liberia by issuing common guidelines on the structure of laws and regulations.

2. Chapters

The **first chapter** of the draft law usually contains the general provisions, the objective of the law, its scope and definitions. The objective and the scope of the draft law shall be included in the first sections or articles of the chapter, depending on whether the subdivisions of a chapter are called "section" or "article".

The **second and following** chapters shall contain the details of the provisions to be implemented. If necessary, the details of the provisions shall be divided into separate parts.

Example: The following fictitious Criminal Code shows how a law may be structured:

Part I- Crimes

Chapter 1 – General Provisions

1. Definitions

…….

2. Principals

2.1. Whoever commits an offense against Country X or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
2.2. Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against Country X, is punishable as a principal.

3……..
4……..

Chapter 2 - Assault

5……
6…….

Part II – Criminal Procedure
Chapter 1…….

Some remarks regarding special chapters in a law:

The chapter **"penalties**", if applicable, include penalties and other sanctions in case of infringement of the respective law. It must become clear which penalty or sanction follows which prohibited conduct or behaviour. If the sanction or penalty is related to a specific section or article, it is necessary to refer to that section or article.

The chapter "**transitional provisions**", if applicable, fixes a certain period of time in which the implementation of the new law has to be carried out in order to replace an old law. The abrogation of the old law must also be mentioned in this chapter.

The chapter "**concluding provisions**" usually contains one or two sections, one of which shall stipulate that "any provisions contrary to the law are abrogated" and another one stipulating that "this law is declared to be in force with immediate effect". The latter is only necessary when the law in question is considered to be urgent.

3. Sections

Sections or articles shall be in numeric order, starting with article or section one through to the last of the draft law. After the number of the section there has to be a point (.).

Chapters usually have titles. Sections also may have titles, whereas subsections usually have no titles.

Part 4

Chapter 4

A Bill and its Parts

1. The Structure of a Bill

A bill is commonly defined as a proposed law introduced in the Senate or the House of Representatives and identified with a number. As a drafter you have to keep in mind that law drafting is a very technical matter. A drafter has to know how a bill is normally structured and the way its parts is ordered.

The structure of a bill refers to its arrangement into different parts, the name of each part and their order and similar issues. Each jurisdiction decides on the form of its laws and resolutions, whereas the structure of laws do not differ significantly.

Some specific requirements may be imposed by the Constitution. The legislative body may adopt other requirements, either by enacting laws or internal legislative drafting rules. The Constitution of Liberia has relatively few requirements for the form and structure of laws. Art. 29 prescribes the enacting style of legislation as follows:

> "*It is enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled.*"

Rule 36.1 of the Standing Rules of the HoR says in more general terms that

> "*every bill shall be drafted in proper form and shall express clearly any substantive charges in the law, such it is intended to affect. A bill defying or repealing any provision of any statutes or consist of materials which should be added to the Code shall be so framed as to amend the Code in the appropriate place and manner.*"

Rule 37.1 of the Standing Rules of the HoR requires:

> *"Every bill shall bear a concise title which shall fairly describe the subject matter of the proposed statute."*

The following is one suggested order of arrangement of a standard bill. Not all of the single points are applicable in each case. We will discuss each of this item more detailed later on:

→ Introductory and identifying information
→ Title

→ Standard enacting clause
→ Definitions that apply to the entire bill – if applicable
→ Creation of an agency or office – if applicable
→ Body of the bill – Arrange substantive provisions in order of importance or in a logical sequence.
→ Prohibitions and penalties
→ Administrative and procedural provisions
→ Amendments to other laws to make the law comply with the proposed legislation
→ Transitional provisions
→ Effective date (and expiration date, if any)

On the next page you will find a sample for a bill. An explanation of each part of the bill follows the sample:

Bill Format (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

BILL TITLE; TYPE THE TITLE HERE; CAPITALIZE EACH LETTER; PHRASES ARE SEPARATED BY SEMICOLONS; TITLE ENDS WITH A PERIOD.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. SECTION HEADING (SHORT TITLE) .

Write the text of the section here.

1.1(subsection)…..(you can also number the subsection with capitalized letters "A". "B" and so on instead of "1.1.", "1.2" etc.)
1.2…….

(a) paragraph (if you number the subsection with capital letters, use numbers 1., 2., etc. for the paragraph)
(b)

(i) subparagraph (if you number the subsection with capital letters, use (a), (b) etc. for subparagraphs)
(ii)

Sec. 2 SECTION HEADING SHORT TITLE UNDERSCORED OR CAPILATIZED

(Date, Signature)

1.1 **Reference title**

Usually, in the upper right-hand corner of each bill, resolution or memorial is the reference title. It is used to give a brief idea of the nature of the bill and to aid in indexing, but it is not part of the substantive law of the bill. You will not find the reference title in the enacted law. The reference title is limited to a few words. Keep it short! Words and phrases used in the reference title are separated by a semicolon. Only proper nouns are capitalized. Do not begin a reference title with a number. Only use identical reference titles if identical bills are drafted. The reference title must be an accurate and inclusive description of the contents of the measure and shall NOT reflect political, promotional or advocacy considerations.

1.2. Introducing Body and Legislative Session Designation

The words in the upper left portion designate the legislative body, session of the legislature and year in which the bill is presented.

1.3. Bill Number and Sponsor

The letters "S.B._____" or " (for a Senate bill) H.B._____" (for a HoR bill) and the phrase "introduced by_____" indicate the legislative body in which the bill will be introduced and the name or names of the sponsors and co-sponsors. On introduction, the blanks are filled in by House or Senate staff who assign a number to the bill and enter the name or names of the sponsors or c-sponsors.

1.4. Bill Title

A title is in most countries a constitutional requirement of every bill and has a significant legal effect. In Liberia the title requirement is not found in the Constitution but in Rule 33 of the Standing Rules NTLA. A title need to be a complete description or index of the substantive law in the bill, but it must not be misleading. It must state the subject of the legislation with sufficient clarity to enable persons reading the title to know what to expect in the body of the act.

1.4.1 Order of a Title

The bill title is usually completely capitalized and begins with the phrase "AN ACT". This is followed immediately by:

- A listing of all changes to existing provisions (e.g. amendments, repeals and additions to statutory sections). The order of the list usually follows the order that these amendments, repeals and additions appear in the bill itself, but the drafter may group statutory according to the treatment (e.g., all amended sections would be listed in the bill title together as would all repealed sections and added sections).

- "BLENDING MULTIPLE ENACTMENTS", if applicable. This phrase is only used if the bill combines a statute having multiple versions and make no substantive changes to the

previously enacted language.

- "MAKING AN APPROPRIATION" if the bill contains an appropriation. If the bill has as its sole purpose the appropriation of monies, it should state that the bill is making an appropriation, name the agency receiving the appropriation and briefly state the purpose of the appropriation. For example: "MAKING AN APPROPRIATION TO THE DEPARTMENT OF LAW FOR THE PRESERVATION OF RECORDS". If a bill contains more than one appropriation the bill title must reflect this by stating ""MAKING APPROPRIATIONS".

- "RELATING TO…..". This should be a single phrase containing a general statement of the single subject of a bill. Since this is a statement of a subject, do not use a verb, if possible (Use "RELATING TO SCHOOL BOARD ELECTIONS" rather than "RELATING TO ELECTION OF SCHOOL BOARDS"). There is no limit to the length of the "relating to" clause except that it should be a single, briefly, comprehensive statement.

- "PROVIDING FOR CONDITIONAL ENACTMENT " if the bill contains any conditional enactments.

Each phrase in the bill title is separated by a semicolon. The bill title ends with a period. The title should be carefully reviewed to determine that it covers everything in the bill. The title should state the general subject of the bill and not index its content in minute detail. The broad strategy is stated first, followed by the more specific categories in descending order, separated by semicolons. By custom, as shown above, most bills state the broad category as "RELATING TO…".The general exceptions to the "relating to" custom are simple appropriation bills and simple repeal bills.

Whether to write the title before or after the draft is a personal preference. Some drafters find it helpful to draft a working title first as means of focusing on the purpose and design of the bill; others prefer to wait until the bill is written. Either way, the title must be checked against the bill to ensure the two agree. There are different methods to draft the title. Some drafters keep the title very general by just using the "relating to…" phrase, even when the bill is intended to amend, repeal and enact certain provisions. For example, the title is "RELATING TO TRAFFIC SAFETY" and is meant to include amendments and/or repeals of other provisions. Other drafters go more into detail and include in the title sections that amend or repeal existing law. The proper order in the title then is "ARE" for **A**mending, **R**epealing and **E**nacting, the so-called catch-all phrase. This phrase, or the appropriate parts of it, goes after the substantive language of the title and before "MAKING AN APPROPRIATION" or "DECLARING AN EMERGENCY".

1.4.2. Title Format

If a bill amends, repeals or adds statutory text, the title may contain the following appropriate phrases:

- AMENDING SECTION(S) (name of the law to be amended)

- AMENDING PART 1 (name of the law to be amended) BY ADDING CHAPTER

- AMENDING PART 2 CHAPTER 3 (name of the law to be amended) BY ADDING SECTION
- AMENDING PART 3, CHAPTER 4, SECTION 1 (name of the law to be amended) BY ADDING SECTION (if the law is divided into parts, chapters, articles and sections)
- REPEALING SECTION(S) (name of the law)
- REPEALING PART___CHAPTER___(name of the law)
- REPEALING PART___CHAPTER___SECTION___(name of the law)

Examples:

***

AN ACT

RELATING TO TRAFFIC SAFETY; CREATING THE TRAFFIC SAFETY COMMISSION; DEFINING ITS POWERS AND DUTIES; CREATING A FUND; PROVIDING FOR LOANS AND GRANTS FROM THE FUND; MAKING AN APPROPRIATION

***

AN ACT

RELATING TO PROPERTY TAXATION; ESTABLISHING A METHOD OF DETERMINING TAXABLE VALUE FOR PERSONAL PROPERTY LOCATED IN THE RESIDENCE OF THE OWNER

***

AN ACT

REALTING TO RAILROADS; PROVIDING FOR THE ADOPTION OF THE CUMBERS; REPEALING THE COMPACT PREVIOUSLY ADOPTED; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY

If a bill contains any combination of amending, repealing and enacting, and the drafter wants to note that, the following technique may be used in order to avoid leaving out a section in the title that appears in the text. The drafter recites only those actions contained in the bill; he would not write “amending, repealing, enacting” if the bill only amends and repeals, for example.

AN ACT

RELATING TO HEALTH INSURANCE; EXTENDING COVERAGE TO CERTAIN SERVICES; PROVIDING CERTAIN EXCLUSIONS FROM COVERAGE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE INSURANCE COMPENSATION ACT

1.5 Enacting Clause

The enacting clause is mandatory in bills and placed immediately after the title, and the text is prescribed by the Constitution. A bill without the enacting clause is invalid. According to Art. 29 of the Constitution the enacting clause is:

"It is enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled."

As the bill has not yet passed the Legislature, the draft bill shall have the following enacting clause:

"Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled."

Omission of the enacting clause or failure to use the prescribed wording may render the bill defective, invalidating it if the defect is not corrected by amendment prior to passage.

1.6 Bill Section Numbering and Section Headings

All bills are divided into sections even if there is only one section. The first bill section is numbered as "Section 1." Subsequent bill sections are numbered with the abbreviation "Sec.__".

1.7 The Body of a Bill

The following parts comprises the "body" of the bill. A bill may contain any number of provisions, or parts, as long as they all relate to the single subject expressed in the title. With the exception of the main provisions that carry out the purpose expressed in the title, none of the other parts are mandatory; however, if they are used, they are each contained in a separate section. The body of a bill contains the substance of the enactment.

1.7.1 Short Title

A short title defines a specific, discrete, cohesive body of law. If a draft of original legislation meets that description, it is useful to give it a short title for reference purposes. A short title is a drafter's tool and must be short to be worthwhile. It is a reference, not an exhaustive and long explanation of what the act does.

Short title consist of a section number and a descriptive section heading that usually is underscored. Short titles usually do not constitute part of the law and may be changed. One piece of legislation may have a number of distinct parts, each having its own short title; thus the *same* bill may be assigned a number of short titles. Conversely, a number of different bills may be given the *same* short title. As a bill passes through the legislative process, often short titles assigned to it are dropped, added or changed as the content of the bill is amended, so that some short titles apply only to certain version(s) of a bill (that is, a bill at a certain stage of the legislative process). Examples of bill versions are: *Introduced in the House* (or Senate); *Reported in the House* (or Senate); *Passed by the House* (or Senate); *Enrolled* (or *As Enacted*). It is important that the drafter revises the short title to reflect any changes in the statutory text.

Example for a short title: Section 1. This act shall be cited as the "Elections Law of the Republic of Liberia".

In some instances, a draft may contain a new act and also amend sections of existing law or enact sections of law that do not belong within the short titled act. In that case, the section of the bill that is not covered by the short title must be specified.

Example: Section 1. Section 1 through 8 of this act may be cited as the "Liability Act"

The test of whether a short title is inclusive or exclusive as to the other sections in the bill is whether the other sections will be put together or not. If a bill contains a short titled act and provisions such as repeal, appropriation and effective date sections that are put together with the act itself, it is not necessary to enumerate the sections under the short title. Given our above example, the short title section is then written as "This act may be cited as "Liability Act" **NOT** "Sections 1 through 8 of this act may be cited as…" . Whereas, if the bill contains a short titled act and other new or amending substantive provisions that are not put together, the short title will be written as "Sections 1 through 8 of this act may be cited as…".

1.7.2 Amending existing law

When amending an existing law or a section thereof, revision or amendment must not be done by mere reference to the title of such act, but the act or section as amended shall be set forth and

published at full length. This requires that a bill contain the entire section of law if any change is made to that law even if the change appears in only one subsection or paragraph.

The following illustrates how amendments to existing law are introduced into the body of a bill:

Section 1. Section 1.2, New Elections Law 1986 is amended to read:

Section 1.2 (heading of the section)
(a) (full text as amended)

Adding new law sections:

If a bill adds a new section to an existing law the text of the entire section is usually shown in UPPERCASE. The section heading appears in lowercase.

The following illustrates how a new section is introduced into the body of a bill:

Sec. 4 Chapter 3, LawXY, is amended by adding section 15, to read :

Sec. 15: heading of section
15.1……TEXT IN FULL LENGTH

New law sections that are part of a new chapters are introduced as follows:

Sec. 4 Law XY, is amended by adding chapter 10, to read:

CHAPTER 10
Heading of the chapter

Section 1. General Provisions
1.1—Definitions
IN THIS CHAPTER….

Repeals

The language of repealed existing law is not set out in the body of a bill. If all of the sections in a chapter are repealed and are not replaced by new sections the article itself should be repealed instead of the individual sections.

1.7.3 Definitions

Part of the bill may be definitions. A definition section is used when terms need defining or when it is desirable to substitute a single word or a long phrase that has to be used many times. For more details regarding definitions in a bill, see below Chapter 4 “Definitions”.

1.7.4 Main Provisions

The drafter constructs the main provisions of the bill to implement the intent of the requester, always keeping in mind the prohibition against bills embracing more than one subject. The design of the main provisions is the most flexible of all parts of the bill and depends entirely upon the bill’s purpose. The main provisions of a new law may be structured as shown above in Part 4 Chapter 2 of this Handbook.

1.8 Germaneness

In some countries the Constitution requires that the subjects in any one bill be “germane” to a single subject and prescribes general requirements concerning the title of a bill, whereas every act shall embrace only one subject and matters properly connected with it. The subject shall be expressed in the title. Some Constitutions even say that if any subject is contained in an act but is not expressed in the title, such act shall be void. “Germaneness” means that a bill only addresses one subject and related matters and all changes made by the bill to the law and all changes made by amendments to the bill must be relevant and appropriate to that subject. There is no such provision in the Liberian Constitution but nevertheless it is considered as best practise that bills only deal with one subject and related matters, that has to be expressed in the title. Drafters should pay attention to that point when drafting.

Part 4

Chapter 5

Common Drafting Recommendations

This chapter contains recommendations for certain aspects of a proposed law. For practical reasons the issues are ordered alphabetically. Please note, that the following are only examples and must be modified to fit the requirements of the specific legislation:

1. Amendments

Amendments vary as to form and style depending on whether they are House or Senate amendments, committee amendments, floor amendments or amendments to amendments. Here are some general recommendations for the drafting of an amending bill:

As titles may be amended according to the amended text, end amendments with "Amend title to conform".

If there are identical changes on a single bill page, you can list them in one instruction, if there are no intervening amendments. For example:

Page 3, lines 4, 7, 8 and 11, strike "director"
Line 12, after the first "the" insert "Deputy"
Lines 14, 19 and 32, strike "director"

Mark new language to be added to existing law, e.g., by using capitol letters.

Example:

Page 1, between lines 3 and 4, insert:

"C. THE DIRECTOR SHALL…."

Sample of amending law (changing the text of an existing section of a law)

Reference title: ballot boxes for elections

Republic of Liberia
(Chamber of origin)
(Legislature)
(Session)
(Year)

___B.____

Introduced by_____

AN ACT

AMENDING NEW ELECTIONS LAW 1986; SECTION 4.2; RELATING TO BALLOT BOXES

Be it enacted by the Legislature of the Republic of Liberia:

Section 1. New Elections Law 1986, section 4.2 is amended to read:

Sec. 4.2. Ballot Boxes

"EACH POLLING PLACE SHALL BE PROVIDED WITH TRANSPARENT BALLOT BOX OR BOXES, WHICH CAN BE SEALED."

2. Appropriations

Appropriation of public money is usually made by a law. Art. 34 d (ii) of the Liberian Constitution states that "*no monies from the public treasure except in consequence of appropriation* ***made by legislative enactment*** *and upon warrant of the President*;…. Therefore, appropriation bills must also be drafted.

2.1 Requirements

In general an appropriation of public monies should contain the following in the following order:

- an amount of monies
- a source of the monies
- a fiscal year of applicability
- a recipient (either a fund or a state agency)

- a purpose

The drafter can usually place these requirements in a single sentence.

2.2. Categories

There are usually four categories of appropriation bills

- the general appropriation bill
- separate appropriation bills
- incidental appropriation bills
- supplemental appropriation bills

The general appropriation bill contains numerous appropriations for the different departments of the state, state institutions, public schools and interest on the public debt. Note: The general appropriation bill is usually effective the day the President signs it but, by its terms, is applicable for the next fiscal year. If a bill other than the general appropriation bill combines unrelated appropriations the whole bill shall be invalid.

Separate appropriation bills contain only an appropriation and information incidental to that appropriation. They may be for new programs. Note: Separate appropriations usually go into effect on the general effective date unless the bill contains an emergency clause.

Sample:

Section 1. Appropriation: (describe purpose here)

The sum of….is appropriated from the state general fund in fiscal year 200…200 to the Ministry of Agriculture to defray the cost of controlling insects in rural areas.

Incidental appropriation bills are those that include an appropriation section to fund an activity that is required by the law sections in the same bill. Note: Incidental appropriation bills have the same effective date as the entire bill.

Sample:

Section 3. Appropriation
The sum of….is appropriated from the state general fund in fiscal year 200…200 to the Elections Commission for the purposed provided in this act.

Supplemental appropriation bills are for the support and maintenance of an existing agency for an ongoing and previously funded program. A supplemental appropriation is a specific appropriation and may not contain statutory law.

Sample:

Section 1. Supplemental appropriation : (describe purpose here)

In addition to the appropriation made by Law XY, chapter…, section…, the sum of…is appropriated from the state general fund to the department of transportation to purchase furnishings and equipment.

3. Creation of an Agency, Office or Commission

If the law creates new government offices and agencies, certain general administrative provisions should be included.

The drafter should consider the following:

- Establish the agency or commission by giving it a name and specify its purpose.
- Membership and Qualifications: Include the number of members and the required qualifications of the members.
- Appointing authority: Who appoints the members? Specify how the members are appointed and the terms of appointment.
- Establish the head of the agency and provide the method of appointment. You should also provide for co-chairpersons or for the rotation of chairpersons.
- Meetings: The drafter may wish to include language that prescribes the number or frequency of meetings, in case a commission or committee is created. Some committees allow the chairperson and a majority of committee members to call meetings. Some committees also prescribe the location of meetings (see for example the Standing Rules of the House).
- Specify the power and duties of the new agency or commission. Use a list, if necessary. Note: In most situations, especially when establishing a commission, the drafter must include language stating that the commission "*shall submit a report of its findings and recommendations to the President, the President of the Senate and the Speaker of the House of Representatives on or before* (insert month, day and year*) and shall provide a copy of this report to the Secretary of State and the Director of the State Archives*."
- Delegate administrative rulemaking authority, if appropriate.
- Duration: If the committee, agency or commission is temporary the drafter must include a delay repeal section for the law or the relevant bill sections. This date should be a certain time after the final report, if any, due to allow the agency or commission to complete unfinished work and to give the legislature an opportunity to extend the committee, commission or agency before its enabling legislation is repealed.

Sample:

Section…<u>Delayed repeal; reversion</u>

This act is repealed and the commission established by it terminates on June 30, 2006, at which time any unexpected or unencumbered monies standing to the credit of the commission revert to the state general fund.

- Appropriations: The drafter may include an incidental appropriation section at the end of the bill to fund the agency's operation (see above "Appropriation")

- Legislators as board members; restrictions: If a legislator is made a member of a committee that has executive powers, (e.g., the power to carry out legislative policy) the drafter should be certain that the appointment does not violate the separation of powers doctrine found in Art. 3 of the Liberian Constitution.

Delegation of rulemaking power: The following language authorizes a state agency to make rules pursuant to the administrative procedure act, passed by the Legislature:

Example: *"The (name of the agency) may adopt rules pursuant to Chapter 1, section 6 to carry out its functions under this act."*

4. Effective Date

Generally, people think of an effective date of a law as the date that a proposed law becomes an actual law. But there are two aspects to be taken into account. First, there is the date a law becomes a law. A proposed law becomes a law when the steps required by the Constitution have been completed (the legislative process). The second aspect is the date that the provisions of a law become effective to regulate conduct, which means become effective for the addressees of the new law. These dates are not always the same – a proposed law becomes a law because it has been adopted by both Houses of the Legislature, but the provisions of the law are not effective until a later "effective date".

A law must say when it takes effect and it should say so in a very clear and understandable way. Citizens affected by the law should know when the law is effective. Typically, the effective date of a law is contained in its last section. This sections begins with the words:

"This law shall take effect on……".

The Constitution may specify the effective date of laws. This is the case in many jurisdictions. Some Constitutions say that a new law shall take effect *immediately* after its publication or on a date determined in terms of the new law, other Constitutions set a certain time line for the effective date (e.g. 15 days after its publication). The Liberian Constitution does not contain a provision regulating the effective date of a new law. It is important however, that a new law takes no effect before it has been published because before publication the people have no possibility to know about the new law. There might be different effective dates for urgent and non-urgent laws. In principle, the effective dates shall be mentioned in the Constitution whereas this provision in the Constitution might provide the possibility that the effective date is determined in the new law

itself.

5. Notwithstanding Clauses

To state an exception to existing law, the drafter may introduce language with "*notwithstanding any other law"*, "*notwithstanding any law to the contrary*" , "*notwithstanding any statute to the contrary"* or "*notwithstanding any other statute*". Do not say "notwithstanding any other law to the contrary. Whenever possible the drafter should find those statutes that conflict with the new provision and refer to them specifically or conform them with the new provision. An accumulation of "notwithstanding" clauses can result in a series of overlapping laws superseding each other.

6. Penalties; civil and criminal

Penalty provisions need to be drafted with great care. The need for a penalty provision depends on the nature of the bill. Existing laws should be checked carefully to determine whether a penalty already exists for the particular offense or action.

Penalties may be criminal or civil or both. A civil penalty may be imposed by a public officer or agency, it may give an injured person a cause of action against the offender or it may suspend or revoke a license or permit to business.

6.1 Fines versus Penalties

For drafting purposes it is important to note the distinction between penalties and fines if the legislative intent is to impose monetary sanctions as a result of prohibited activity. In most jurisdictions, it is acknowledged that the term "fine" must always be used in the context of criminal activity.

The following are two examples of civil penalty provisions:

"After a hearing, the board may impose a civil penalty of not more than…against a licensee who knowingly violates this chapter. The board shall deposit, pursuant to section…, penalties collected pursuant to this section in the …..fund.

"The board may revoke or suspend the license of a dentist who permits a dental hygienist who is operating under the dentist's supervision to perform an operation other than as permitted under this section."

The following are examples for criminal penalty provisions:

Subsection 2.9 of the New Elections law 1986, as amended by the Electoral Reform Law:

"…; to punish for contempt for any obstruction or disobedience of its orders in an amount not less than the Liberian Dollar equivalent of two thousand five hundred US Dollars (..) no more than the Liberian Dollar equivalent of fifty thousand US Dollars (..) in the case of a political

party…"

6.2 Criminal Offenses; Penalties

Criminal offenses are usually divided into felonies, misdemeanors and petty crimes. Any drafter who expects to draft criminal statutes, either in or out of the Criminal Code, should be thoroughly familiar with the style and contents of the Criminal Law of Liberia.

7. Repeal of other Laws

If a law repeals another law entirely, or repeals certain provisions of another law, the repealing language should be very specific and clear.

Example:

REFERENCE TITLE Logging

Republic of Liberia

(Chamber of Origin)

(Legislature)

(Session)

(Year) ____.B.____

Introduced by_____-

AN ACT

REPEALING SECTIONS 4.2 THROUGH TO 4.7, LAW ON THE PROTECTION OF THE ENVIRONMENT; RELATING TO LOGGING

Be it enacted by the Legislature of the Republic of Liberia:

Section 1. Repeal

Sections 4.2 through to 4.7 of the LAW ON THE PROTECTION OF THE ENVIRONMENT are repealed.

8. Saving Clauses

A saving clause preserves rights and duties that have already matured and proceedings that have already begun. Since a repeal could otherwise destroy rights or obligations, the saving clause must be tailored to the needs of the particular case.

It is usually unnecessary to include a saving clause because of the general principle that laws are not allowed to have a retroactive effect. Nevertheless, a saving clause, brings about more clarity.

The following are examples of saving clauses affecting civil and criminal legislation:

"Sec.___Saving Clause

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act."

"Sec.____Saving Clause

This act does not affect any device made by a will executed before the effective date of this act."

"Sec.____Saving Clause

This act does not apply to any offense committed before the effective date of this act. Any such offense is punishable as provided by the statute in force at the time the offense was committed."

9. Sunset Provisions

Sunset provisions are used to limit the period of time the law is effective. They are used when the Legislature wants the law to be effective for only a certain period of time.

For example, if the Legislature intends to grant a special tax exemption for foreign investors for two years, and the law should go out of effect after these two years, the Legislature will include a sunset provision.

Example:

"This act shall expire on October 1, 2006"

10. Transitional Provisions

When a new law takes effect, it is not always possible to implement these provisions immediately. Transitional provisions allow the new provisions to be phased in. Designate transitional provisions as a separate section, placed just before the effective date section.

Below is an example of transitional provisions where a new law replaces an old law, but some of the provisions are simply restatements of the old law:

Example for Transitional Provisions:

Section 44. Transitional Provisions

44.1. Section 20 restates, without substantive change, laws enacted before April 24, 1999, that were replaced by section 20. Section 20 shall not be interpreted as making a substantive change in the laws replaced.

44.2. An order, rule or regulation in effect under a law replaced by section 20 continues in effect under the corresponding provision enacted by this act until repealed, amended or superseded.

44.3. An action taken or an offense committed under a law replaced by section 20 is deemed to have been taken or committed under the corresponding provision enacted by this law.

Part 4

Chapter 6

General Instructions as to Form and Style

1. General Drafting Rules

A law must follow certain essential demands: it must be **clear, precise, coherent and as simple as possible.** The language used by the legislator is simply the vehicle which transports and carries the rules produced by him. The language also expresses the legislator's will. Any imbalance between the intended meaning of the law and its expression causes uncertainty. The drafting of norms can only be based on a **clear language**. The behaviour which is supposed to be produced by the law has to be clearly expressed, whether it is an obligation, prohibition, permission or simple authorization. Consequently, such wording would make use only of relatively few verbs, such as, for example, "to have to", "to be able to", "to be allowed to" or "to prohibit". The subject of these rules can either be expressed by words from the standard language or by specific legal terminology. However, every word can conceal various different realities.

In fact every juristic norm depends upon the global problem of wording, which demands

- a suitable terminology,
- an adequate sentence structure,
- a logical order in the ideas and
- a coherent structure in expression.

The terminology could be listed in dictionaries. In laws and regulations, extremely lengthy sentences, interminable articles, badly-structured texts, overhasty drafting and above all texts which are too voluminous must simply be excluded.

Language: Language and style of a law cannot be standardized. Both language and style of the legislator show a great variety depending on text type (the constitution, laws, decrees, administrative regulations etc.), depending on the relevant subject and depending on the social or professional environment which they are aimed at. Every standardization or unification in the wording of laws would separate the law from the reality which it has to adapt to, would perhaps make it useless. It is difficult to determine how a unified legal language, which would be of course desirable, should be.

The quality of normative texts depends largely on the vocabulary used in them. For reasons of comprehensibility it is important to give the legal texts a structure and wording which is understood by the people rather than to produce a chaotic confusion of legal regulations. This

demands a logical construction of ideas and systematic process from the general to the particular.

Furthermore, the text of a law must also show communicative qualities. Legal rules are meant for the users and must therefore be completely accessible to them. They must be understandable for every man; where the opposite is the case, they would be misunderstood. It is important to know how the "legal jargon" can be understood by the public. The writer of laws can be considered as the transmitter of the legal message which should be adapted to the standard "normal" language. Although, since it is a legal matter, it has to be more precise and it also cannot avoid or leave out legal considerations. So the question arises whether the law should be written in the normal language or whether one should use special terminology. As long as the standard language is adequate, it should be preferred for reasons of convenience and clarity. However, the law requires specific concepts which can only be expressed in its own technical terminology. Incidentally, the juristic terminology also contains words taken from the normal language which have acquired a particular legal meaning completely different from the normal use (for example "absence", "possession", "privilege", "servitude").

The draftsman would not communicate the text of a law properly if he would only use the normal standard language or only juristic terminology. The legislator must express himself so that he can be understood by everybody. So normal language is preferred, when adequate, but whenever it is necessary he should – in his endeavour for clarity, precision and accuracy – use the resources of the technical language. Providing that he does not carry this to extremes, he himself can include certain indispensable definitions in the text.

- **use only necessary words**

It is generally acknowledged that the elimination of unnecessary words enhances the readability and understanding of what is written. This principle has its greatest importance and significance in the drafting of legislation and rules. Legislation or a rule has a large audience, many of whom are not known in advance, is effective for an unlimited time, is designed to reflect the intent of a group of persons who may never see it in its final version, and governs the conduct of and is interpreted by others who had no role in its drafting.

Courts will endeavour to give effect to every word of legislation or a rule. The presumption is that the legislative body chose each word with great care and would not have included a word unless it intended the word to have some effect. This being the case, the directive to eliminate unnecessary words rises from a mere principle of good writing to an imperative in legislative or rule drafting. Each word in legislation adds or substracts from the meaning of other words used. Each word invites those who must interpret the legislation, particularly courts, to engage in statutory construction to find legislative intent, when none exists (if the word is truly a surplus).

Sequence: Sequence should be logical:

- the general should precede the particular
- the main principles should be positioned before the administrative provisions
- the permanent should appear before the temporary
- the more important before the less important

Use of schedules: The use of schedules can make a substantial contribution to effective communication by clearing away procedural and other distinct groups of provisions to schedules in order to present the main provisions of the law more prominently. Care must be taken with the selection of material that may suitably be placed in a schedule, but no great difficulty will be encountered if the purpose of scheduling is kept in mind. Only matters of a subsidiary or consequential nature are suitable (for example: procedural provisions for an appeal or transitional and savings provisions).

No combination of distinct and different matters: A further point relevant to the design of a law is the rule that distinct and different matters should not be combined in one law. Although a proposed law may cover a broad spectrum and perhaps may require consequential amendments to a considerable number of other laws, the nature of its subject-matter should give it a fundamental coherence. For example: Although ships and motor-cars are both means of transport, the connection is too little to support the combination of provisions as to each in one Transport Law. In such a case it is much more convenient to have separate laws. It is of still greater importance not to include in one law matters which have no connection at all with one another. One exception to the rule is a draft which picks up a number of miscellaneous minor amendments of a technical and non-controversial nature. Miscellaneous repeals of obsolete laws may be treated in the same way.

Composition: The composition stage of the drafting process is itself a process of development. Usually the completion of the first draft marks only the beginning. Each draft is developed and is discussed with its sponsors, a succession of revised drafts is necessary. During the process of developing a draft, the draftsman has to read a draft over and over again, check, for example, cross-references again or check the use of defined terms or go back to the drafting instructions and check compliance with them. To avoid errors, which sooner or later will become apparent, the draftsman must cultivate as far as possible a detached attitude towards his draft. He must be willing to invite criticism of his draft and - if necessary - discipline himself to accept it.

No firm rules can be laid down postulating the number of **revisions** that are necessary or prescribing any other fixed procedure for the development of a draft. All that can be said is that there is a need for each draft produced to be subjected to searching scrutiny and that this scrutiny and the resulting redrafting and polishing leads to a number of revisions being produced until the draftsman feels that he cannot improve the product.

First of all the draftsman will **concentrate on essential matters of substance** rather than form to give effect accurately to his drafting constructions.

As work proceeds, the structure becomes more tout and increasing attention is paid to the relationship of each provision to its fellows and the role of each as part of a coherent whole. As the draft develops there is a shift of emphasis from the prime object of accurately achieving the legislative intention to the subsidiary but important object of achieving that intention with the greatest degree of simplicity possible.

Cross-reference to other legal regulations can also be an efficient method in the coordination of texts. The advantage of using cross-references is that the new law is not too voluminous since it refers to another which is necessarily higher in the hierarchy, at the same level or lower, with the aim of applying the rule which is referred to the particular field which is regulated by the text

containing the cross-reference. The cross-reference can refer to a whole group of rules which are defined according to their subject or to the material concerned, or it can refer to the whole body of a particular text which is defined according to its title and the date or simply to an article or to exactly defined lines. But it has to be considered that the reader does not get a complete knowledge of regulations for which it is valid. The user has to be aware of this problem, otherwise he will be confronted with difficulties in the legibility of the law.

To meet the aim of **clarity, brevity, precision, coherence, consistence, simplicity and certainty** the following drafting rules should be considered (some of these rules will be explained in the next section of this chapter):

> **use words with a precise legal meaning**
> **do not use unnecessary legalese or redundant legal phrases**
> **do not use slang, abbreviations or acronyms**
> **keep sentences as brief as possible by limiting them to a single thought**
> **keep new statutory sections as brief as possible**
> **use sections divisions to break down lengthy statutes into understandable units**
> **use a list to describe multiple duties or actions**
> **use "shall" only to impose a duty to act**
> **use "may" to grant discretion or authority to act**
> **use present tense**
> **use the active voice**
> **avoid using pronouns**
> **when amending existing law use the most current version**
> **avoid using brackets and footnotes**
> **do not underline words in the text but use round letters**
the written size of the title of the law or regulation must be bigger than that of the chapters, parts or subparts
> **be consistent**
> **arrange words carefully**
> **tabulate to simplify**
> **use precise language**
> **be coherent**
> **be clear, certain, simple and brief**

2. Amending Law

The design of amending legislation depends on which technique of amendment is followed. Three courses of action are generally open:

- A:The amending law may amend the principal law directly by deletions, substitutions and insertions. For all practical purposes an amending law of this type loses its separate identity or enactment.

- B: The new law may repeal and replace the old – consolidating new provisions and re-enacted unamended old provisions.

- C: The new law may stand separately on enactment but may be expressed to be construed and perhaps cited as one with the law it amends.

Political considerations as well as technical considerations are relevant to the choice of which technique is to be adopted in a particular case. Where the content of the legislation is sensitive politically, the draftsman must be prepared to be flexible and should consult before beginning the draft. In the absence of special considerations, method A and B are preferable to method C. The implementation of a legislative proposal may require the amendment of more than one law. In such a case each law can be amended by a separate amending law, but if the proposal has one single purpose it is convenient and results in an economic use of parliamentary time if the various laws are amended in one draft. The design of a draft amending more than one law must ensure that the amendments and their respective commencement provisions are not assembled and presented in a jumble. Amendments to different laws should be presented in separate Parts. If the amendments are both minor and numerous, it may be desirable to present them in a schedule.

3. Format and Style Recommendations in Alphabetical Order

The following are general drafting recommendations. Single topics are explained and arranged in alphabetical order:

Active Voice

Use the active voice in drafting. The active voice is more direct and less subject to misinterpretation than the passive voice. It may not always be clear on whom a duty is imposed or a power or privilege conferred when the passive voice is used. The verb form is passive if it consists of a form of the verb "to be" and the past participle of another. To avoid the passive voice do not use the words "shall be". Example:

⇒ The notices shall be mailed by the secretary. (passive)
⇒ The secretary shall mail the notices. (active)

Definitions

Definitions are used for brevity and clarity. They make it possible to avoid the repetition of lengthy expressions, such as the title of a statute or the name of an organization, and eliminate ambiguity where the defined term is intended to have a narrower or broader meaning than the one provided by dictionaries or the one customarily assigned to it.

Definitions should be used sparingly, and only when dictionary definitions are inadequate. Since words have the same meaning in legislation as they have in ordinary language, the definitions included in laws must not simply repeat the content of a dictionary. Drafters should avoid defining terms which do not depart from their ordinary meaning. However, in laws of many sections, it is quite probable that the reader may forget that certain words are defined, especially if there are many definitions. For this reason, you should only define terms if their ordinary meaning is unclear or overly broad, or if some technical meaning is intended. Despite these drawbacks, defined terms can have some advantages. They can be used to avoid the repetition of information each time a complex idea is mentioned. The details of the idea can be put into a definition so that the defined term will express them each time it is used. This may also simplify the drafting of the provisions that use the term, rather than loading them down with details. For example "license" nay be defined to avoid the repetition of "a license to fish on recreational basis issued under section 3". When this sort of definition is introduced, be careful to choose a defined term that is appropriate to convey the contents of its definition.

Use a definition

⇒ if a word has different meanings
⇒ if a word is used in a broader or more narrow sense as commonly known
⇒ to avoid repetition of a long phrase or name

For writing definitions use either the verb "**means**" or "**includes".** These verbs are used to for different approaches:

⇒ The word "mean" is used to express a comprehensive or complete meaning of a term. Everything that is not mentioned in the definition is excluded.

⇒ Use the word "includes" to express a meaning in addition to the commonly known meaning of the word.

⇒ When you write a definition using the word "include", do not use the phrase "includes but is not limited to" since this phrase is redundant.

⇒ Use "shall not include" to exclude meanings from a definition.

⇒ Avoid using the defined word in its definition.

⇒ Do not write substantive provisions or artificial concepts into definitions. For example, do not define motor vehicle license by including substantive requirements for obtaining a license. The specific license requirements are substantive provisions and should be included in a section that deals with these requirements.

⇒ Place general definitions at the beginning of the bill. Arrange definitions in alphabetical order and number them, if there are more than one. If a law has several chapters or sections and the term to be defined is only used in one chapter or section, put the definition in that chapter or section and begin the list of definitions with one of the following phrases:

Article 43. In this chapter "vehicle" means….
Article 88. In this section "vehicle" means

When laws are divided into parts, care should be taken to ensure that definitions are not confined to one part if they are intended to apply to other parts or to the law as a whole. In that case the definitions should be placed at the beginning of the law.

⇒ Use the defined term consistently.

Before a term is defined in a law, all other laws and regulations dealing with the same subject matter should be consulted to ensure, where possible, consistency in the use of the term.

A term used in a law may be defined by reference to a definition in another law. The disadvantage of defining a term in this matter is that the user of the law will have to read the other law. However, the advantage is that the definition does not have to be amended each time the term in the enactment referred to is amended, if consistency between the two is desired.

Form of definitions

A general definition section that applies to the law as a whole usually appears in Section 1 of the law and should have the following format (example):

1. The definitions in this section apply in this Act.

"aerosol" means any non-refillable receptable that

(a) is made of metal, glass or plastic
(b) contains a gas that is compressed, liquefied or dissolved under pressure; and
(c) is fitted with a self-closing release device

"agricultural product" includes honey.

"bus" means a vehicle having an designated seating capacity of more than 10, but does not include a trailer.

"Minister" means the Minister of Finance

If the definition section contains only one definition, the introduction is omitted. Example:

1. In this Act, "Minister" means the Minister of Finance.

A defined term is placed inside quotation marks. It is capitalized only if that is how it will appear throughout the law.

Gender-Neutral Terms

New legislation should be drafted in "gender-neutral" terms and should avoid using the masculine pronoun. However, in some cases this might result in confusion, awkward sentence structure or improper grammar, and in those cases the drafter may use a gender specific pronoun. A drafter may also amend existing statutory text to use gender-neutral terms at the drafter's option. In any case, the use of gender-neutral terms should be consistent with the following principles:

The principle should be that words of the masculine gender include the feminine and the neuter and the words of the feminine gender include the masculine and the neuter. This provides all the legal authority necessary for the statutes to apply to males and females alike (unless, of course, there is some biological basis for exclusivity as, for example, statutes relating to pregnancy or paternity litigation). Gender-neutral drafting efforts should not carry or produce an implication that gender specific text is biased, exclusive or otherwise defective.

- Gender neutrality should not call attention to itself through the use of contrived terms or awkward sentence structure. Select replacement terminology with care. "Police officer" may be a satisfactory replacement for "policeman", but "military officer" is not the equivalent of "serviceman".
- When amending existing statutory text, the drafter may make incidental changes to enact gender-neutral terms.

The following example illustrates the proper way to avoid a personal pronoun:

"*A person shall not claim to be qualified to provide hearing services if that person is not certified by the board. If the department denies an application for certification, the applicant or the applicant's designee may personally appear before the board chairman to object to the board's ruling."*

Lists, Format

The drafter should use a list to set out related elements such as definitions, powers, duties, restrictions, examples and conditions.

Punctuation

A properly drafted bill requires little punctuation. Short simple sentences avoid the need for excessive punctuation, facilitate amendment and reduce the possibility of misinterpretation. The following rules are designed to promote uniformity in punctuation:

The period

The period indicates the end of a sentence; it is therefore placed at the end of each sentence in a section or subsection. Its use is governed by ordinary rules of grammar.

Colons

The colon has an annunciatory function and is generally used in an enumeration introduced by the words "the following.." or "...as (that) follow(s).."

Example:

> *19.2. The following methods of signalling may be used to send signals to fishing vessels:*
>
> > *(a) flag signalling using alphabetical flags;*
> > *....*

The colon is used at the end of amending clauses (except amending clauses that simply repeal a provision).

Examples:

> *1. Section 5 of the ABC Regulations is replaced by the following:*
>
> *but*

2. Subsection 16 of the Regulations is replaced.

Semicolons

The semicolon is generally used at the end of every paragraph (except the last).

Example:

12.....

(a).....;
(b).....; and
(c).....

In orders in council and other executive orders that contain "whereas" clauses, the semicolon is used at the end of each of these clauses.

Example:

Whereas.....;
whereas.....;
and whereas....;
therefore.....

Commas

Commas should be used sparingly but are appropriate in the following instances:

⇒ To separate the items in a series, as in "the governor, the director, the attorney general and the secretary of state . . . ."
Note: The comma is omitted before the conjunction "and" or "or" within a series of words, phrases or clauses.

⇒ To set off dates, as in "Beginning on July 1, 2002, the director shall . . . ."

⇒ To set off clauses that describe a subject *already identified* but not clauses that identify the subject (such as "The director who is appointed pursuant to..shall . . . .").

⇒ Before "except that" if what follows is a complete sentence.

Use of Modifiers

To avoid ambiguity the drafter must be careful to modify only the words the drafter intends to modify. For example, *"an unmarried student, parent or pregnant woman"* is ambiguous since it is not clear what "*unmarried"* modifies. Similarly, *"a licensee may hunt moose, deer or ducks that are not on the endangered species list"* is ambiguous. In the first example, the drafter should write either "*a parent, a pregnant woman or an unmarried student*" or "*an unmarried person who is a student, a parent or a pregnant woman"*, depending on the legislation's intent. In the second

example, if the drafter intends the modifier to apply to all of theseanimals, the drafter should use the following format:

A licensee may hunt any of the following if the animal is not on the endangered species list:
1. Moose.
2. Deer.
3. Ducks.

But if the drafter intends to modify only one of these terms, the drafter should state *"a* licensee may hunt ducks that are not on the endangered species list, moose and deer".

Use of Synonyms

In drafting legislative measures use short, simple words. Do not use synonyms. Use the same word, if the same meaning is intended. Law drafting requires uniformity as a price for precision in communicating. The creative writing style of varying terminology to provide more reader appeal is not appropriate for drafting.

Use of the Present Tense

In drafting use the present tense since a law speaks as of the time that it is read. *"A person who drives recklessly"* not *"A person who shall drive recklessly*". Words in the present tense include the future as well as the present. Do not use "*shall*" to convey future meaning. Since laws are generally prospective in application those unfamiliar with drafting often incorrectly deem it necessary to use future tense in writing proposed legal texts. However, a law speaks as of the time it is being read, not merely as of the time it was enacted. In addition, present tense is more readily understood.

Use of "amount" and "number"

"*Amount*" is used to refer to something as a mass (a certain amount of money).
"*Number*" is used to refer to individual items (a large number of plants).

Use of "fewer" and "less"

"*Less*" is used to refer to something that is considered as a mass. "*Fewer*" is used to refer to individual items.

"*Less*" applies to quantity, size and measurement. "*Fewer*" applies to number and counting.
Since "*fewer*" applies to number, in making numerical comparisons, use "*fewer*", not
"*less*": *"If there are fewer applicants in the current fiscal year than in the preceding fiscal year…"*

Frequently the ideas of quantity and number are indistinguishable, and either "less" or "fewer" is acceptable: "If the employee works *less (or) fewer* than one hundred days a year . . ."

Use of “assure”, “ensure” and “insure”

*"*Assure*" means to make certain or to try to increase another’s confidence. "*Ensure*" means to make certain or guarantee. "*Insure*" means to indemnify or procure insurance for something.*

Use of “farther” and “further”

"Farther" indicates distance. "*Further"* indicates time, quantity or degree.

Use of “funds” and “monies”

"*Funds*" is roughly synonymous with *"accounts*". Use "*funds*" if referring to assets that are set apart for a specific objective or on deposit on which checks or drafts can be drawn. Use "*monies*" if referring to cash or sums of money. For example, the legislature appropriates monies from the state general fund to state agencies.

Use of “if”, “where” and “when”

Use "*if*" not "*where*" or *"when*" to introduce a hypothetical situation unless the place or time is relevant.

Use of “shall” and “may”

"*Shall*" is properly used to indicate that something is mandatory. Use "*shall*" to prescribe a rule of conduct, rather than to declare a legal result. Don’t say *"the equipment shall remain the property of the Republic of Liberia*". Instead use: "*The equipment remains ...*". Avoid using "*shall*" to confer a right as with "*the director shall receive compensation*". Instead use "*the director’s compensation is*" or "*the director is eligible to receive compensation*".

Note: "*Shall*" not literally imposes a duty not to act. The drafter also may use "*must*" to indicate the imperative ("*The report must include*" rather than "*The report shall include*") and to describe a condition precedent or a qualification ("*An applicant must be at least eighteen years of age")*

"*May"* is permissive and confers a privilege or power. Normally the use of "*may*" implies discretion or permission. Use "*may*" when giving the officer or agency the option of acting or not acting.

Use of “such”

Do not use the word "*such*" as a demonstrative adjective to point to someone or something previously referred to. The use of "*such"* in this way is awkward and contrived and often causes confusion. Use words such as "*that", "the", "these", "those", "them*" and "*it*". For example, say

"*and that person may apply...*". Do not say "*and such person may apply ...* ". "*Such*" may be used with "*as*" to list examples ("*items such as office supplies*").

Use of "person" and "individual"

Use "*person*" if you want to apply a law to human *and* nonhuman entities. Use "*person*" if you want a law to apply only to humans and it is clear from the context that the law cannot apply to nonhuman entities. For example, use "*person*" if the law relates to marriage. Only use "*individual*" if you want to limit the law to humans and this application is otherwise not apparent from the context.

WORDS AND PHRASES TO AVOID

Do not use the following words and phrases:

aforesaid
aforementioned
before-mentioned
duly
herein
hereinabove
hereinafter
hereunder
in no event
same (as a substitute for it, he, him, etc.)
said
shall be
thereof
thereto
therewith
to wit
whatsoever
whensoever
wheresoever

Do not use:	**Use instead:**
accord	***give***
adequate number of	***enough***
administrative penalty	***civil penalty***
afforded	***given***
and/or	***a or b, or both,***
any and all	***all***
as long as	***if***
at the place	***where***
at the time	***when***
attorney's fees	***attorney fees***
by and with	***by***
commence	***begin***
complete	***finish***
consequence	***result***
constitute and appoint	a***ppoint***
crisis situation	***crisis***
do and perform	***do***
during such time as	***while***
each and every	***each***
emergency situation	***emergency***

evidence, documentary or otherwise	***evidence***
expend	***spend***
fail, refuse and neglect	***fail***
for the purpose of	***to***
forthwith	***promptly,immediately***
full and complete	***full***
give consideration to	***consider***
greater than (when referring to quantity)	***more than***
however or provided	***if [or] unless [or] state the condition***
he or she	***he, the, applicant, etc.***
hold himself out	***claim (or purport) to be***
if any person shall violate	***a person who violates***
if it shall appear that	***if it appears***
if it shall be necessary	***if it is necessary***
in accordance with	***according to [or] pursuant to [or] under***
in the event that, in the case of	***if***
in the preceding section	***in section (insert number)***
inc.	***incorporated***
in its discretion may	***may***
includes, but is not limited to,	***includes***
in lieu of	***instead of [or] in place of***
is applicable	***applies***
is defined and shall be construed	***means***
is null and void	***void***
is ordered and directed to	***shall***
is required to	***shall***
it is his duty to	***shall***
it shall be lawful	***may***
it shall be unlawful	***it is unlawful***
lay member	***public member***
less	***minus***
make application	***apply***
make inquiry	***inquire***
man-made	***artificial***
not (less) (fewer) than	***at least***
not-for-profit	***nonprofit***
not to exceed	***not more than***
nothing in this section shall be construed to	***this section does not***
notwithstanding any other provision of law to the contrary	***notwithstanding any other statute [or] notwithstanding any other law [or] notwithstanding any law to the contrary***
on and after June 30, 1994	***June 30, 1994 if noon is intended; from and after June 30 if midnight is intended***

order, adjudge and decree	***order***
over the age of sixteen	***at least seventeen years of age***
part and portion	***part***
per centum [or] percent	***per cent***
per annum	***a year***
practical	***practicable***
prior to	***before***
provide assistance to	***assist***
provided, however	***if [or] except [or] unless [or] specifically state the condition***
set forth	***state***
shall be	***is [or] are***
shall be in full force and effect	***is effective***
shall have the right	**may**
so long as	***if***
sole and exclusive	***sole***
a statement setting forth	***state***
subsequent to	***after***
terms and conditions	***conditions***
through	**until**
the same is hereby	***is***
under the provisions of	***under***
upon	***on***
up to	***not more than***
utilize	***use***
verified statement	***notarized statement***
with reference to	***about***
when	***if***
wherein	***in which***

ANNEX 1

Bill Format (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

TYPE THE TITLE HERE; CAPITALIZE EACH LETTER; PHRASES ARE SEPARATED BY SEMICOLONS; TITLE ENDS WITH A PERIOD.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. SECTION HEADING (SHORT TITLE) UNDERSCORED OR CAPLITALIZED.

Write the text of the section here.

1.1(subsection)…..(you can also number the subsection with capitalized letters "A". "B" and so on instead of "1.1.", "1.2" etc.)
1.2…….

(a) paragraph (if you number the subsection with capital letters, use numbers 1., 2., etc. for the paragraph)
(b)

(i) subparagraph (if you number the subsection with capital letters, use (a), (b) etc. for subparagraphs)
(ii)

Sec. 2 SECTION HEADING SHORT TITLE UNDERSCORED OR CAPILATIZED

Text of the section

Sec. 3 …….

(Date, Signature)

ANNEX 2

Bill Enacting New Material (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING PUBLIC DANCING ONM TROLLEY CARS WITHOUT A PERMIT; DECLARING AN EMERGENCY.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. PUBLIC DANCING—PERMIT: Public dancing on trolley cars operating within the limits of a municipality is prohibited unless a permit is first obtained from the municipality.

Sec. 2. EMERGENCY: It is necessary for the public peace, health and safety that this act take effect immediately.

(Date, Signature)

ANNEX 3

Bill Amending Existing Law (Sample):

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

RELATING TO THE STATE MINE INSPECTOR; REMOVING THE RESIDENCY REQUIREMENT; PRVODING FOR BOND AND SALARY.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. Section 2.5 Law YX is amended to read:

"Section 2.5. STATE MINE INSPECTOR—BOND—SALARY.

The state mine inspector shall give bond to the state in the sum of one hundred dollar. The state mine inspector shall receive as compensation for his service one thousand dollar a year."

ANNEX 4

New Material in Amendatory Act (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

RELATING TO THE PRESERVATION OF WAR RELICS; AUTHORIZING THE WAR MUSEUM BOARD TO PURCHASE RELICS.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. Section 2. Law XY is amended to read:

"Sec.2 CREATION OF STATE WAR MUSEUM:
The state war museum is created as an institution of the state for the preservation of relics of the various American wars, police actions and Indian conflicts."

Sec. 2 (NEW MATERIAL) PURCHASE AUTHORIZED:

The board of trustees of the state war museum may use appropriations to purchase relics determined to be of historical significance.

ANNEX 5

Bill Repealing Law (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

REPEALING SECTION 3 LAW XY, WHICH AUTHORIZES THE HIRING OF A CLERK TO SERVE THE COUNTY SCHOOL SUPERINTENDENT AND THE COUNTY SCHOOL BORAD.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. REPEAL:

Section 3 of Law XY is repealed.

ANNEX 6

Combination of Sections (Sample)

REFERENCE TITLE…

Republic of Liberia
(Introducing House)
(Legislature)
(Session)
(Year)

__.B.____

Introduced by (name of sponsor)

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR REGISTRATION OF CERTAIN QUALIFIED VOTERS; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE ELECTION CODE 1978; MAKING AN APPROPRIATION.

Be it enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature assembled:

Section 1. Section 4 Election Code 1978 is amended to read:

"Section 4. QUALIFIED ELECTOR..
'Qualified elector' means any person who

4.1. is eighteen years of age;
4.2. has resided in the state twelve months, has resided in the county ninety days and has resided in the precinct in which he offers to vote thirty days next preceding the election; and

4.3. is otherwise qualified pursuant to the United States Constitution."

Sec.2. Section 5 Election Code 1978 is repealed and a new Section 5 Election Code 1978 is enacted to read:

"Section 5. (NEW MATERIAL) QUALIFICATION FOR REGISTRATION:

Any person who will be a qualified elector at the date of the next ensuing election shall be permitted to register and become a voter."

Sec. 3. A new section of the Election Code 1978, Section 8 Election Code 1978, is enacted to read:

"Section 8. (NEW MATERIAL) REGISTRATION DECLARED PERMANENT:

The registration of a qualified elector is permanent for all purposes during the life of the person unless his affidavit of registration is cancelled for any cause specified in Section 2 Election Code 1978."

Sec. 4. TEMPORARY PROVISION –RECOMPILATION.—Section 7.8 Election Code 1978 is recompiled as Section 7.6 Election Code 1978.

Sec. 5 APPROPRIATION.—xxx dollars is appropriated from the general fund to the secretary of state for expenditure in fiscal years 2005 and 2006 to defray additional costs incurred in the registration of new voters. Any unexpected or unencumbered balance remaining at the end of the fiscal year 2006 shall revert to the general fund.

Sec. 6. REPEAL.—Section 11.2 through 11.5 Election Code 1978 are repealed.

ANNEX 7

Checklist for Drafters

To check the draft you use **the Checklist included in Part 3, Annex 1** of this Handbook and add the following questions:

1. **Is the new law clear, consistent, comprehensible and accessible to users?**

- Drafters and legislators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of legal rules are as clear as possible.

- Will the new provision be understood and accepted b y the average citizen?

- Is the draft free of unnecessary statements of objectives or planning descriptions?

2. **Does the scope of the provision need to be as wide as intended?**

- Can a restriction be placed on the depth and the extent of regulation by couching it in broader terms (typification, generalization, indeterminate legal concepts, general clauses, scope for discretion)

- Can details, including foreseeable amendments, be incorporated in administrative regulations?

3. **What provisions will be affected by the planned provision? Can they be dropped?**

4. **Can the length of the period for which it is to remain in force be limited?**

- Is the provision only required for a limited and foreseeable period of time?

- Is it possible to justify a time-limited "experimental provision"?

5. **Is the provision unbureaucratic and understandable?**

6. **Is the provision practicable?**

- Can the chosen provisions be followed directly? Do they hold out the prospect that the number of individual acts necessary to implement the law will be as small as possible?

- What authorities or other bodies should execute the provision?

- What conflicts of interest are to be expected among executing authorities?

- Will those authorities be given the necessary room for manoeuvre?

- What is their opinion on the clarity of the legislative aim to be achieved by the provision and on the task of execution?

- Has the proposed provision prior been tested with the participation of the executing authorities?

    - If not, why?
    - If yes, with what results?

PART 5

HOW TO GIVE DRAFTING INSTRUCTIONS

How to give Drafting Instructions

It might be necessary and helpful to give drafting instructions. When you have policy responsibility for the subject and ask for the services of a drafter, you or the person in charge may need to produce drafting instructions as a basis for the drafting service. Giving drafting instructions should be considered, for example, when the law or amendments to be made are legally complex, require complex drafting or when the legislative has a limited time frame to implement a policy.

Many of the steps in preparing drafting instructions are the same as preparing a draft of a bill. The process cannot begin until you have developed a clear, detailed policy. From this policy, you will develop either your draft or a set of drafting instructions that will make it possible for the work to begin.

Here are some guidelines:

- Start with a clear, detailed policy.
- Set out the main themes (rules) of the policy.
- Set out ideas logically – which sometimes means in chronological order or according to the sequence of events.
- Begin with the general, then move to the particular.
- State the most important first, the least important last.
- Set out the general rule clearly before moving on to the exceptions.
- Ensure that, for each element of the policy, you have answered the following questions: Who? When? Where? How?
- Note that WHY? belongs to analysis of a proposed law not in the law itself.
- Keep it simple – use short, uncomplicated phrases.

1. Giving Instructions for Drafting[12]

1.1.
Explain the reasons for the legislative proposal, e.g., the problem the intended legislation is supposed to solve or benefits which it is intended to confer. Set out the principal objectives of the proposed legislation, and how the objectives are to be achieved by legislation.

1.2.
Mention any public response which has already been obtained in respect of the proposals, including consultation, but do not comment on or weigh the responses, just let the addressee of the drafting instruction know what the views were.

1.3.
Try to tell the drafter what the present state of the law is regarding the subject.

1.4.
It is sometimes advisable that before preparing drafting instructions, instructing officials should have a meeting with the law drafter to establish a relationship and find out anything the drafter needs to know and be guided by the drafter's advice.

2. Contents of the Instructions

2.1.
Drafting instructions should contain sufficient background information to enable the drafter to understand the problem or initiative. They should state how the problem has arisen and why the legislative solution is being proposed. This includes all issues the legislation is intended to deal with. Proposed legislation often has a history which contributes to the solution proposed by the instructing department.

2.2.
The principal objectives of the legislation should be clearly and fully stated. It is helpful for the drafter to know the purpose of the legislation and for the instructing department to think through its precise purpose, so that the drafter properly understands what the legislation is intended to achieve.

2.3.
The instructions should include an accurate and comprehensive description, in straightforward and simple language, of how the objectives of the legislation will be achieved. The instructions should provide a picture of how the legislation will actually work, describing the machinery envisaged and the necessary powers and duties.

2.4.
If the draft legislation is to be the subject of a consultative process, the instructions should describe the nature of it and the projected timeframe.

[12] See Wilson, John F. Giving Drafting Instructions

2.5.
Mention all relevant information touching upon the legislation. The instructions should include information about the availability of all relevant legal opinions and legal research. Also relevant court decisions, or an indication of their availability, and legislation in other jurisdictions that might provide assistance.

2.6.
The instructions should mention any laws or regulations to be repealed. Also any transitional or savings provisions needed to deal with issues arising as a result of the repeal of one law and the enactment of new law.

2.7.
The instructions should state the proposed timeframe i.e. the date for coming into force of all or part of the legislation, or information about how the law is to come into force.

2.8.
The instructions should include information about relevant background material, for example -

⇒ reports of committees, law reform bodies, or the like, on which the proposals are based;
⇒ discussion documents, texts or articles;
⇒ whether other departments and agencies are affected by the proposals.
⇒ areas of concern on which the advice of the law drafter is requested;

2.9.
State clearly any unresolved issues which have a bearing upon the matters that are to be included in the legislation, accompanied by any opinion, legal or otherwise, and the views of the sponsor on the opinion.

2.10.
Include suggestions as to the penalties to be imposed for infringement of the provisions of the legislation.

3. Format of Drafting Instructions

The following shows how drafting instructions might be structured:

Proposed Legislation:…….

Sponsor::……

Department/Ministry contact officer (if applicable:…..

Date of Cabinet approval in principle (Copy to be attached):…..

Main objectives of the proposed legislation:…..

Practical implications of the proposals:…..

Unresolved issues:…..

Legal advice received:…..

Level of penalties (if any):…..

Acts to be amended or repealed:…..

Transitional or saving provisions:…..

Proposed commencement date:…..

Other Departments consulted:…..

Other matters (including relevant background information, reports, etc):…..

Proposed timetable.....

PART 6

EVALUATION OF BILLS AND LAWS

PART 6

Evaluation of Bills and Laws

1. General

Evaluation is the analysis and assessment of the effect of legislation. Nowadays, in most democratic countries, the evaluation of legislation plays a significant role in the legislative process. Evaluation takes place before the enactment of a law and after it, so that we have to distinguish between an **ex ante or prospective evaluation** (**before enactment**) and an **ex post or retrospective evaluation (after enactment**).

In order to examine the quality of laws they have to be evaluated. Otherwise the Legislature and the Government do not know whether the laws they are adopting and executing are of good quality, workable and followed by the people. Evaluation is intended to bridge the gap between the legislative action and reality. It provides the legislator with information and knowledge about possible relations between legislative action and the behaviour and situations that can be observed in social reality. But is has to be taken into account that it is impossible to definitely prove the impacts of a law on society, particularly before the enactment of a new law. But in the first place evaluation shall strengthen the legislator's sensibility for the link between social reality and legislation. The legislative bodies base their actions mainly on assumptions. Evaluation shall not and cannot prove that these assumptions are right or wrong. But it is essential to improve the legislator's knowledge and assumptions about the effects of legislation.

From a legal or juridical point of view, the improvement of our knowledge about the effects of legislative action may give a new sense and a new importance to general legal or constitutional principles such as the principle of equality before the law, the protection against arbitrariness and, in particular, the principle of proportionality.

Last but not least, we should not underestimate the political dimension of evaluations. On the one hand, they strengthen the legislator's responsibility for the results of its decisions and improve, in this way, the democratic functions of the political institutions. As a matter of fact, the gap between the legislative goals or intentions and the results really achieved may give impulses for the necessary adaption of legal norms; but it may also procure arrangements for a critical examination of the political institutions.

2. Evaluation Criteria

There are three criteria of evaluation: effectiveness, efficacy and efficiency. These aspects are particularly important in the law-making process. The three criteria may be described as follows:

Effectiveness: Effectiveness means the extent to which the observable attitudes and behaviours of the addressees of legislation (individuals, enterprises, public officials in charge of the implementation or enforcement of legislation) correspond to the attitudes and behaviours prescribed by the legislator in the law: Is the norm respected or implemented? And is the law the reason for the behaviour of the people or not?

Efficacy: Efficacy means the extent to which legislative action achieves its goal. Do what extent does the law achieves its goal? This point is particularly interesting from a political point of view and it shows how important it is to clearly define the goals of legislative decisions. Without the definition of the legislative goal it is impossible to assess the efficacy of the legislation. This does not mean that the goals have to be explicitly mentioned in the law itself. They may also be expressed in a report accompanying a legislative proposal or formulated during the parliamentary debate. Without such a politically "authorised" definition of the goals, evaluators have to define themselves what they consider to be the relevant goals of a particular legislation.

Efficiency: Efficiency means the relation between the "costs" and the "benefits" of legislative action. These words have to be used in a broader sense. "Costs" in this context do not only mean money and the financial consequences resulting from the compliance with the implementation of legal norms, they take also into account immaterial elements, such as psychological or emotional aspects, and even all negative effects caused by a particular legislation. "Benefits" refer mainly to the goals of a particular legislative action: all effects which are compatible with these goals can be considered as benefits. Evaluating the efficiency of a legislation means therefore considering, on the one hand, its costs and on the other hand the extent to which its goals are achieved.

3. How to Evaluate Laws

It is impossible to list and describe all tools and methods that exist regarding evaluation procedures, because they are too numerous. But more important: the methods, tools and techniques to be applied to evaluate the effects of legislation depend heavily on the particularities of the specific case and the specific criteria that are to be considered. In the following the most common methods and tools for the evaluation of a law before and after its enactment shall be mentioned. All these tools and methods can be applied separately or in combination.

3.1. Prospective Evaluation (before the Law is adopted and enacted):

Prospective evaluations are made before taking formal legislative decisions in order to have a better insight into the possible or potential effects of planned legislation. They may help to find the right instrument to solve the given problem.

Prospective evaluators have to address the problem as a whole, beginning with the parties affected and ending with the expected costs. They may face the following questions that are also

part of the checklist included in Part 3 Annex 1 of this Handbook:

- Who is affected when and where?
- What are the future needs, costs and consequences?
- What has the analysis of the problem shown?
- How can the legislative goal be reached without a new law? (including, for example, measures to ensure the effective application of existing provisions, public relations work, working arrangements, investments, incentives, encouragement of support for self-help of a kind that can reasonably expected of those concerned; clarification by courts)
- How high are the costs likely to be for those for whom the provision is intended, or for other persons affected?
- Can those for whom the provision is intended be reasonably expected to bear the additional costs?
- How high are the extra costs and expenditure likely to be for the Government, counties and local authorities?
- What possibilities are there to cover the extra costs?
- What instruments are most favourable if one gives special consideration of the following criteria:

    - demands and burdens on the private citizen and industry
    - public costs (state, counties, local auhtorities etc.)
    - effect on existing norms and proposed programs
    - side-effects, consequences

To answer these questions prospective evaluations usually rely on

- practical tests
- demonstration programs
- simultations
- forecasting
- expert interviews
- review of literature
- expert and stakeholders discussions

Note: This requires time, money and the supply with literature, experts and other resources. The present situation in Liberia makes it hardly possible to undertake a proper evaluation of a new law before its enactment. But legislators and drafters have to keep in mind that even asking the right questions might contribute to the quality of laws. The questions make legislators sensitive for the problems connected with new legislation. At the beginning of a democratisation process in a country it is just important to know about the method of evaluation and the reasons for it.[13]

[13] For a good example of prospective evaluation see: United States General Accounting Office, Prospective Evaluation Methods: The Prospective Evaluation Synthesis, 1990 (online www.gao.gov/special.pubs/pe10110.pdf)

3.2. Retrospective Evaluation (after the Law has been adopted and enacted)

Evaluation of a law after its enactment (retrospective or ex post evaluation) is acknowledged as best practise in the field of legislation. Due to great differences in national structures, legal systems and institutional arrangements, it is not possible to provide this Handbook with a common method of ex post evaluation. As Liberia's legislative system shall be reformed on its way to a democratic state one has to wait what methods of evaluation might be the most appropriate according to the Liberian situation. Nevertheless some suggestions can be made taking into account the practises that are used in other states with good results. Other approaches are always available and there is still room to apply ones that are tailormade for certain situations.

Ex post evaluation can contribute significantly to the effective review of existing regulation. Done well, it provides clear information on the effectiveness, the efficacy and the efficiency of the regulation, disclosing weaknesses and other shortages, enabling the review to decide what action, if any, to take. It shows the success of existing provisions, the extent of goal attainment, additional consequences and impacts of a legal provision, clarifies the approaches for its improvement and, if necessary, justifies its amendment, its replacement by a new version or its repeal.

An ex post evaluation should be carried out when general reviews of existing legislation takes place. The time when ex post evaluation should take place may be decided on when the new regulation is being prepared and can in appropriate circumstances be included in the legal text. This may, for example, be particularly appropriate where there is considerable uncertainty about the risks being addressed by the regulation. In other circumstances, the appropriate time for an ex post evaluation may be decided upon later. It is, in any case, essential that the time of evaluation be chosen so that the effects of the regulation can be measured, or new information about the circumstances of the regulation can be incorporated in the review. When a regulation has been in force for a while it should also be possible to measure any changes in the behaviour of those affected by the regulation.

Typical questions for an ex post evaluation are:

- Have the goals been achieved with the current provisions?
- Which side effects have appeared and are these considerable?
- To what extent have burdens and relief developed?
- Has the provision proven itself as practicable and will it be observed and obeyed?
- Does a need for repeal or amendment exist?

After the fundamental decision to carry out an ex-post evaluation, the *test criteria* must first be established. The test criteria contain the fields that have to be investigated when answering the above questions. To answer these questions one have to look at the following topics:

- Degree of goal attainment
- cost development
- cost-benefit effects
- acceptability of the provision
- practicability and subsidiary impacts

In order to get information about these relevant fields, interviews among the affected groups might be carried out and observations of social reality may be helpful. As a legislator, you always have to keep an ear and eye out! Observe the developments in society and try to link certain changes in the behaviour and conduct of people to the respective law.
It is obvious that carrying out an ex post evaluation also needs time, money and personal resources that might not be available. And even an ex post evaluation cannot give absolute certainty about causal connections between the implementation of a new law and changes in the behaviour of the people. But it sharpens at least the legislators sensibility for the crucial aspects of legislative activity and they may, to some extent, reduce uncertainty and contribute in this way to improve the substantial quality of legislation. Due to practical reasons, the establishment of sophisticated tools and techniques for an ex post evaluation of laws is not the most important task for legislators when the legal system of a country has to be rebuilt like in Liberia. Therefore, the purpose of this Handbook is to give an idea of what evaluation of legislation is in principle and to show that a law has to be put in relation to social reality in order to examine its quality.

4. Institutionalisation of Evaluation

To some extent evaluation has been institutionalised. As for the form of institutionalisation we have to distinguish between procedural and organisational measures.

Procedural measures: are for example evaluation clauses (obligation to make prospective and/or retrospective evaluations) or obligations to produce periodic reports. A particular form is the so-called "sunset legislation" propagated for some time especially in some States of the USA. Sunset laws are limited in time and they can only be renewed on the basis of a report confirming their necessity and appropriateness.

Organisational measures: concern the creation of special organs and services responsible for the evaluation of legislation. Such organs or services may be created within the different ministries (decentralised solution), in one particular ministry (centralised solution), within the parliamentary services or as autonomous bodies (e.g. audit office or courts). They may evaluate themselves the effects of legislation or commission external specialists.

The advantages of institutionalisation are obvious. Institutionalisation of evaluation makes it easier to take into account methodological aspects and requirements already in the stage of preparation of the legislation, it guarantees that the necessary financial and personal resources are available when needed; it favours an optimal synchronisation of the evaluation with the legislative decision-making process and optimises in this way the integration of the results of an evaluation in this process; it may facilitate the collaboration of the administrative bodies responsible for the implementation of legislation and in particular the access to or the availability of relevant data; it may lead to an impartial, more objective approach; and, finally, it gives greater legitimacy and therefore more political weight to the results of evaluations.