

# Designing Laws for **Clarity,** **Compliance** and *Dispute* *Prevention*

---

**PRESENTER**

**Onorius J. Njole**

*Chief Parliamentary Draftsman*

**DATE · VENUE**

**20 May 2026**

*AICC, Arusha*

**STATE ATTORNEYS' TRAINING · 2026**

# Learning Objectives

- 
- 01** Principles of clear and effective legislative drafting

---

  - 02** Legal certainty and enforceability of laws

---

  - 03** Aligning legislation with policy and regulatory objectives

---

  - 04** Dispute prevention through legislative drafting

---

  - 05** Common drafting challenges and practical solutions

THE OFFICE OF CHIEF PARLIAMENTARY DRAFTSMAN

## ***THE OCPD MANDATE***

The OCPD is a semi-autonomous, operating within the structure of the office of the Attorney General. Under the *Office of the Attorney General (Discharge of Duties) Act, Cap. 268*, the OCPD is charged with facilitating and carrying out matters relevant to legislative drafting in Tanzania.

Beyond legislative drafting, the Office issues legal opinions on all matters touching legislative drafting such as constitutional issues, procedural matters, and interpretation of legislative instruments.

### THREE CORE FUNCTIONS

---

#### 01 Drafting

Bills and all subsidiary legislation.

---

#### 02 Revision

The Revised Edition.

---

#### 03 Translation

English-Kiswahili

---

# THREE LEVELS OF RISK

## LEVEL 01 · REGULATORY

### Law & Behaviour

Legislation's primary role is to guide behaviour so that litigation becomes unnecessary. Ambiguous law does not merely fail to prevent disputes; it actively generates them.

## LEVEL 02 · INSTITUTIONAL

### The Cost to State

A substantial share of Government litigation arises from instruments that did not clearly express what Government intended and that courts must therefore interpret and often against intent.

## LEVEL 03 · CONSTITUTIONAL

### Law & Subjects

A person cannot exercise a right they cannot understand, comply with a duty they cannot identify, or challenge a decision whose legal basis is inaccessible to them.

THE OFFICE OF CHIEF PARLIAMENTARY DRAFTSMAN

***"The cost of clarity is borne once. The cost of ambiguity is borne repeatedly."***

## TWELVE STAGES BETWEEN POLICY AND LAW.

### FROM POLICY TO CABINET

---

01 Policy Formulation

---

02 Cabinet Approval

---

03 Drafting Instructions

---

04 Technical Drafting by the CPD

### FROM GAZETTE TO PARLIAMENT

---

01 Gazette Publication

---

02 First Reading

---

03 Standing Committee & Stakeholders

---

04 Second Reading

### FROM BILL TO LAW

---

01 Committee of the Whole House

---

02 Third Reading & Passing

---

03 Presidential Assent

---

04 Gazette Publication as Law

# Legislative Drafting Is Not Legal Writing.

Legislative drafting is a technical discipline with its own rules. It demands legal precision over style.

## Intensive Research

Command the entire legal environment before a single provision is written.

- i. Constitutional framework
- ii. Existing statutory framework
- iii. International agreements and treaties
- iv. Judicial interpretation of related instruments
- v. Regulatory and administrative practice
- vi. The policy as formally approved

## Forward & Backward Reasoning

Every provision is a legal proposition. Reason in two directions at once.

**Forward** — who and what falls within scope? What is required? What happens at the margins?

**Backward** — with all reasonable readings, does it achieve the goal? Could a court read it otherwise? Could a party exploit it?

# *Key Principles of Quality Drafting*

➤ *Precision in Operative Words*

➤ *Coherence*

➤ *Plain Language*

➤ *The Enforceability Test*

# Principle 1 • *Precision*

Every operative word carries one legal function. Inconsistent use undermines legal certainty.

WORD	LEGAL FUNCTION	COMMON MISUSE	EFFECT
<b>shall</b>	Mandatory obligation	used when discretion is intended	Creates a duty where none was meant
<b>may</b>	Discretionary power	used when the obligation is mandatory	Creates discretion where none was intended
<b>means</b>	Exhaustive definition	used where an open or inclusive definition is intended	Unlisted items are unintentionally excluded
<b>includes</b>	Extends a clause or definition	used where an exhaustive or itemized list was intended	Definition becomes broader than intended

# Principle 2 • *Coherence*

## Structure Rules

- One subject → one action → one legal consequence
- Active voice.
- Use enumeration (a)(b)(c) where multiple elements are listed
- If a provision requires more than two readings to understand, it requires redrafting.

### BEFORE

*"A licence shall be issued by the Authority."*

### AFTER

**"The Authority shall issue a licence."**

# Principle 3 · *Plain Language*

---

## Plain Language Is Not Simple Language

- Use the shortest sentence that carries the complete legal meaning.
- Technical terms are permitted, but every one must be defined.

### **BEFORE**

*"Any person who, having been duly licensed under the provisions of this Act and who has not, within the period prescribed, complied with all the conditions of the licence, shall be liable to a fine."*

### **AFTER**

*"A licensee who fails to comply with a condition of the licence within the prescribed period commits an offence and shall be liable to a fine not exceeding.."*

# Principle 4 • *The Enforceability Test*

Every obligation must pass four tests otherwise unenforceable in practice.

ELEMENT	THE QUESTION	IF MISSING
<b>Identifiable Actor</b>	Who bears the obligation?	Any person can argue it applies to someone else
<b>Defined action (right/duty)</b>	What exactly must be done or not done?	The obligation is void for vagueness
<b>Clear Trigger</b>	What event or condition activates the obligation?	Timing and jurisdiction become contested
<b>Available Remedy</b>	What happens when the obligation is breached?	The right exists on paper only

# Policy Translation in Practice

Before drafting any provision, interrogate the policy on six questions:

**WHAT**

which conduct is required, prohibited, or permitted?

**WHO**

which persons or classes are regulated or protected?

**WHEN**

what event triggers the obligation? What are the time limits?

**HOW**

by what procedure must the conduct be performed?

**WHAT IF**

what is the consequence of non-compliance?

**WHAT ELSE**

does this conflict with existing law? What must be amended or repealed?

*Policy is flexible by design. Legislation cannot be.*

# PRACTICAL EXAMPLES

POLICY EXPRESSION	LEGISLATIVE TRANSLATION REQUIRED
<i>"We will regulate digital financial services."</i>	Define: regulated activity + regulated persons + regulatory authority + licensing trigger + penalty for non-compliance
<i>"Protect workers' rights."</i>	Specify: which workers + which rights + applicable standard + enforcement forum + available remedy + limitation period
<i>"Strengthen anti-corruption measures."</i>	Identify: offence + actus reus + mental element + burden of proof + relationship to existing offences
<i>"Promote local content."</i>	Define: local content threshold + regulated sectors + measurement methodology + reporting obligation

# COMMON DRAFTING CHALLENGES

---

01

## Advisory Gaps

State Attorney engaged post-instruction, after policy positions are fixed. Legal risk assessment is reduced to formality.

02

## Policy Translation Constraints

Drafting instructions that are aspirational, internally inconsistent, or silent on essential elements.

03

## Absence of Enforcement Mechanism

Obligations created without an enforcing authority, conferred powers, or a remedy. The obligation is legally inert.

## COMMON DRAFTING CHALLENGES

---

04

### **Ultra Vires Subsidiary Legislation**

Regulations made in excess of the enabling power. Void to the extent of the excess and exposed to judicial review.

05

### **Inter-Agency Legislative Conflict**

Concurrent instruments from different ministries imposing inconsistent obligations on similar subjects. Conflict is litigated at the State's expense.

06

### **Unconstitutional Provisions**

Provisions infringing constitutional rights proceed despite legal advice to the contrary. Constitutional litigation follows.

# PROPOSED SOLUTIONS

---

- 01** Engage LO/ SA/ PD at policy inception to avoid implementation constraints.
- 02** Refine defective drafting instructions at appropriate level. An instrument cannot achieve certainty that its underlying policy does not possess.
- 03** Verify the enforcing authority is designated, the power is conferred, the procedure is prescribed, and a remedy is available.
- 04** Measure every regulation against its enabling provision. What the parent Act does not authorise, the regulation cannot create.
- 05** Map every instrument touching the same regulatory space. Harmonise or provide an explicit savings clause before consultation closes.
- 06** Advise on constitutionality at the earliest opportunity.

Case Spotlight ·

*The petitioner challenged multiple provisions of the Access to Information Act on the ground that they were unclear, vague, ambiguous and capable of multiple interpretations.*

***William Benjamin Kahale v Attorney General***  
***Misc. Civil Cause No. 23 of 2019 · [2020] TZHC***  
***2896***

*Every hour a court spends determining what a provision means is an hour diverted from determining what the facts establish.*

**Case Spotlight ·**

*The dispute turned on the meaning of a single provision. The High Court found ambiguity and inconsistency in the English version of section 25(2) of the Constitutional Review Act, and was compelled to read the entire instrument to arrive at a defensible interpretation. Significant time and litigation costs were incurred.*

# ***Saed Kubenea v Attorney General Misc. Civil Cause No. 28 of 2014***

***Clarity is the most cost-effective legal risk management mechanism available to the State.***

# A Practitioner's Checklist

*The enemy of effective law is not complexity. It is unnecessary complexity.*

#	HALLMARK	WHAT TO VERIFY
01	<b>Constitutional Conformity</b>	Every provision measured against the Constitution and in strict conformity
02	<b>Precision</b>	Operative words (shall/may/must/includes/means) used consistently throughout
03	<b>Interpretation Clause</b>	All critical terms defined; ambiguity anticipated; definitions internally consistent
04	<b>Internal Consistency</b>	No contradictions; every cross-reference accurate; parent-subsidary relationship correct
05	<b>Coherence</b>	General to specific; substantive to procedural; reader can navigate without a guide
06	<b>Policy Alignment</b>	Every provision demonstrably serves and achieves its stated policy purpose
07	<b>Enforceability</b>	Every obligation has: identifiable actor, defined standard, clear trigger, available remedy
08	<b>Time Factor</b>	Instrument anticipates application over time; transitional provisions included where needed
09	<b>Clarity and Accessibility</b>	Meaning is clear and legally equivalent in both English and Kiswahili

*The test of legislative quality is not whether a provision can be defended in court  
it is whether going to court was necessary at all.*

---

#### FIVE TAKEAWAYS

- 01** Operative words carry fixed legal functions. Mixing them creates the ambiguity courts will translate possibly to your disadvantage.
- 02** Every obligation must carry an identifiable actor, defined action, clear trigger, and available remedy.
- 03** Policy must be fully interrogated before drafting begins. Vague policy produces defective law.
- 04** Common drafting defects are predictable. They are also preventable.
- 05** Clarity is not a stylistic preference. It is a legal and constitutional obligation.

***THANK YOU!!***

---

The Office of Chief Parliamentary Draftsman (OCPD)  
PSSSF Kambarage Tower, 10th & 11th Floors  
1 Kambarage Street  
P.O Box 438  
info@ocpd.go.tz  
www.ocpd.go.tz  
DODOMA