

# LEGISLATIVE ANALYSIS: A GUIDE FOR MEMBERS AND STAFF OF PARLIAMENT

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## ACKNOWLEDGEMENTS

The Southern African Parliamentary Support Trust (SAPST) is indebted to the following organisations and institutions for their role in making these guidelines possible:

- i. the British Embassy in Zimbabwe for providing the funding this review project. Without such funding, it would not have been possible to engage the consultant who carried out the process of reviewing the legislative analysis framework.
- ii. the State University of New York/Zimbabwe Centre for International Development (SUNY/CID). SUNY/CID administered the Strengthening of the Zimbabwe Parliament Project on behalf of the United States Agency for International Development (USAID). The programme ran from 2000-2008. During the currency of the project, the initial process towards the creation of a guideline on legislative analysis was made, resulting in a guide that was jointly produced with the Parliament of Zimbabwe. SAPST's work was made that much easier as it did not have to re-invent the wheel.
- iii. the Law Review Project of South Africa. The Project prepared the Good Law Checklist from which both SUNY and SAPST have extensively borrowed.
- iv. Parliament of Zimbabwe. The institution has been engaged in thoroughgoing reforms as a result of which civic society has been involved in the work of Parliament. Its co-operation has been outstanding.

## **1. INTRODUCTION**

Parliament, which consists of the Senate and the House of Assembly, is the supreme law-making body in Zimbabwe. Parliament alone has full or plenary power to make whatever laws it considers necessary for the Government of Zimbabwe. In making these laws, Parliament is restricted only by the Constitution, in particular by the Declaration of Rights which is contained in Chapter III of the Constitution.

This great law-making power carries with it a great responsibility: to ensure that the laws passed by Parliament are good laws which will be effective and will lead to good governance.

The guidelines in this booklet are meant to assist Members of Parliament, committee clerks, parliamentary researchers, the public and civic society in analysing proposed laws and Bills to ensure that, if passed, they will be good laws.

## **2. THE PURPOSE OF ANALYSING LEGISLATION**

Analysing legislation or proposed legislation means examining it in order to decide whether or not it is, or will be, good law. The analysis must take into account the following:

- the policy behind the legislation, to ensure that the policy has been well thought out and will benefit the country. Policies, it must be remembered, are solutions to problems, so an examination of the policy behind the legislation entails identifying the problem the policy is intended to solve;
- the effectiveness of the legislation: whether the legislation will give effect to the policy in the best possible way, i.e. whether it is the best way to solve the problem that gave rise to the policy;
- the impact of the legislation in terms of costs, benefits and risks;
- any side-effects which the legislation may have;
- whether the legislation will be enforceable;
- whether the legislation complies with the Constitution — because if it doesn't, it will be invalid and unenforceable; and
- whether the legislation will conform with the rule of law and with Zimbabwe's international obligations.

Members of Parliament (Senators and Members of the House of Assembly) need to know these things if they are to scrutinise Bills that are introduced into Parliament, and ensure that the legislation passed by Parliament is good law. A proper analysis of each Bill enables Members of Parliament to carry out their role:

1. It indicates to Members what action they should take (whether they should support or oppose the Bill) and what impact their action may have.
2. It allows Parliament to influence public policy.
3. It may mean that the Bill will be redrafted in simpler terms, allowing ordinary people to understand the law.
4. It ensures that laws which are passed by Parliament conform to the Declaration of Rights and are reasonably justifiable in a democratic society.
5. It ensures that laws passed by Parliament are effective in implementing government policies.

6. It allows portfolio committees and their chairpersons to make informed recommendations to Ministers and public officers, thereby influencing the contents of laws.

### 3. WHAT IS A GOOD LAW?

There is little point in analysing legislation or proposed legislation to see if it is good or bad, unless one has a reasonably clear idea of what a good law is.

A good law is one which:

- **is constitutional.** If a law does not comply with the Constitution it cannot be a good law because it is not a law at all. It is void and legally it does not exist.
- **is effective.** When assessing how effective a law is or will be, certain fundamental points must be accepted:
  - The effectiveness of a law should not be judged by what it seeks to achieve, but by what it actually succeeds in achieving. For example, a medicine may be intended to cure a disease but if it does not actually do so it is ineffective, whatever the intention of its makers may have been.
  - No law will be completely effective. All we can hope for is that the law will be effective to a reasonable extent. What is reasonable depends on the seriousness of the problem that is being addressed by the law.
  - A law is not automatically effective. In order to be effective a law has to be obeyed. The effectiveness of a law depends to a large extent on how far the State is able and willing to enforce it, and how far people are able and willing to obey it.
  - Since laws have to be enforced and complied with, laws that are impossible to comply with should not be passed.
  - Laws come at a cost and so should not be resorted to for trivial reasons. This applies particularly to criminal laws.
  - Laws, like medicines, often have side effects. For example, a law imposing strict licensing requirements for businesses may discourage small enterprises and so reduce competition. The side effects of any law must be weighed against the value or importance of the goal being pursued.
  - There must be adequate resources to implement and enforce the law. The estimated costs of implementation and enforcement must have been budgeted for; there must be adequate manpower to staff whatever posts or offices are required by the law; and, if necessary, the police and other law enforcement agencies must be capable of enforcing it.
- **is clearly drafted.** The language of the law must be clear, objective and unambiguous and as simple as possible in the light of the law's subject-matter. There should be no internal conflicts or anomalies in the law.
- **complies with the rule of law**, which means:
  - it is legal, that is to say it has been made in accordance with some other law that allows it to be made. An Act of Parliament is legal if it has been validly passed by Parliament and its provisions are constitutional; a regulation or by-law is legal if it has been enacted in accordance with an enabling Act which allows such a regulation or by-law to be made.

- it is certain, that is to say it is reasonably easy for people who read it to establish what it means and what its effect will be. People who want to do something must be able to determine in advance whether or not the law allows them to do it. Hence any power to make regulations must be strictly limited: the purposes for which regulations may be made must be stated precisely and the limits within which the power may be exercised must be clearly defined. Discretionary power must be kept to a minimum, and the parameters for the exercise of any discretion must be stated.
- it is of general application. Laws must apply equally to all; no one must be above the law, and any exceptions to this rule must be rare and justified by special circumstances.
- it is not retrospective, i.e. it is not back-dated. A law is not certain if it can be changed retroactively; people cannot know what their rights are if the law converts what was lawful at the time it was done into something that is unlawful.
- **provides for due process**, which means that if the law allows a person to make decisions that affect the rights of others, then people affected by the decisions must be given:
  - timely notice of the decisions;
  - an opportunity to be heard and to express their views about the decisions;
  - access to information on which the decision will be based;
  - reasons for the decision, once it has been made;
  - a right to appeal against the decisions to an independent court or tribunal.

These rights, and others, are conferred by the Administrative Justice Act [*Chapter 10:28*], and no law should try to take them away.

- **takes account of the need for separation of powers**, which means that:
  - disputes and appeals are decided by the courts or by independent judicial officers, not by Ministers or public servants;
  - the law does not give extensive law-making power to the President or to a Minister;
  - Ministers and public servants are entrusted with implementing its provisions.
- has been enacted after:
  - **consultation with interested groups and parties**, and
  - **an independent and accurate assessment of its impact**.

If a law has been enacted without prior consultation, it is most unlikely to achieve its purpose. And if there has not been a careful assessment of its probable impact, there will be no way to assess, in advance, whether it will be capable of being implemented, what the costs of its implementation will be, or whether it will have unforeseen side-effects.

- **provides mechanisms for monitoring its effectiveness**. Ideally, there should be mechanisms enabling Parliament to assess, on a continuous or regular basis, whether the law is achieving its objectives.

These are the basic requirements for a good law. If a law does not comply with them, it will be defective.

## **4. HOW PARLIAMENT MAKES LAWS**

Before we deal with the way in which legislation should be analysed, it will be helpful to indicate briefly how legislation is passed by Parliament.

### **4.1 Bills**

A draft Act of Parliament, before it has been enacted by the legislature, is called a Bill.

#### **4.1.1 Government Bills**

Almost all Bills are prepared by the Government, with or without input from the private sector; they are introduced into Parliament by Ministers and are called Government Bills.

#### **4.1.2 Private Members' Bills**

It is possible for private Members of Parliament (“backbenchers”) to prepare and introduce Bills into Parliament, and these Bills are called “Private Members’ Bills”. Very few Private Members’ Bills have been introduced since Independence in 1980.

#### **4.1.3 Private Bills**

There is a third type of Bill, called a Private Bill, which deals with matters of interest to a particular person or group of persons; these Bills can only be introduced into Parliament after a petition has been presented and public hearings have been held. No Private Bills have been introduced into Parliament since 1971.

Because Private Members’ Bills and Private Bills are so rare, we shall deal here only with the procedure for passing Government Bills. The procedure for passing Private Members’ Bills, however, is substantially the same.

### **4.2 Preliminary Processes in the Preparation of Bills**

Government Bills usually originate long before they are presented to Parliament and must undergo certain processes within Government before they are published in the *Gazette*.

The first step is for a Government Ministry to formulate ideas which are to be embodied in a Bill. The Ministry should consult interested parties both inside and outside the Government and should try to embody in the Bill such of the views put forward during those consultations as seem useful and workable and consistent with Government policy.

Having developed its ideas for a Bill, the Ministry puts forward its proposals in a written memorandum of principles setting out the nature of the proposed legislation, the reasons for it and its anticipated effects. This memorandum is circulated throughout the Government and the Minister or his Permanent Secretary presents it to the Cabinet Committee on Legislation, which is chaired by the Minister of Justice, Legal and Parliamentary Affairs and consists of various Ministers appointed to the Committee by the President. If the Committee approves the principles of the proposed legislation, it authorises the Minister concerned to approach the Attorney-General’s office to get the principles drafted into a Bill. Once a draft has been

prepared to the satisfaction of the responsible Ministry, it is circulated to all other Ministries for their comments and then submitted to the Cabinet Committee on Legislation. If the Committee approves the draft, the Committee's chairperson reports it to Cabinet at its next meeting. And if the Cabinet approves the draft Bill, the Attorney-General's Office is instructed to send the draft to Parliament for printing. Parliament, it should be noted, is responsible for printing all Bills.

When printed, every Bill is published in the Government *Gazette*.

## **4.3 Procedure in Parliament**

### **4.3.1 Consideration by portfolio committees**

The procedure after Bills are published in the *Gazette* is laid down by the Constitution and Parliament's Standing Rules and Orders, which require that in general a Bill should not be presented to Parliament earlier than fourteen days after it has been published. For constitutional bills the period between publication in the Government *Gazette* and introduction is a minimum of thirty days. In the interim, the published Bill is referred to the portfolio committee that monitors the functions of the Ministry concerned. The portfolio committee may hold public hearings to allow interest groups and members of the public to contribute their ideas on the Bill.

### **4.3.2 Introduction of Bills**

Bills must be passed by both the House of Assembly and the Senate before they can become Acts of Parliament, but they may be presented first in either House (though most Bills are first presented in the House of Assembly). The procedure for passing Bills in both Houses is essentially the same.

### **4.3.3 First Reading**

Before the First Reading, the Minister responsible for the Bill gives notice to the House (or the Senate) of his or her intention to present the Bill. On the appointed day the Minister moves the motion that the Bill be read for the first time. If the motion is not rejected, the Speaker (or President of the Senate) directs the clerk to read the Long Title of the Bill. This is the formal introduction of the Bill, and no debate takes place at this stage. The Bill is then referred to the Parliamentary Legal Committee to determine whether, if enacted, the Bill would contravene the Declaration of Rights or any other provision of the Constitution. Such referral is not done in respect of constitutional bills.

### **4.3.4 Report by Parliamentary Legal Committee**

If the Parliamentary Legal Committee issues an Adverse Report on the Bill (i.e. if the Committee reports that, in its opinion, the Bill would contravene the Declaration of Rights or any other provision of the Constitution) the Adverse Report must be presented for adoption to the House (or the Senate, if the Bill was first introduced there). At the beginning of the debate on the Adverse Report, the Minister may withdraw the Bill or agree to amend it at the Committee Stage to bring it into conformity with the Declaration of Rights and Constitution. On the other hand, if the Minister does not agree with the Adverse Report, he or she must seek to have the House or the Senate override the Report. If the House (or the

Senate) votes not to adopt the Adverse Report, or if no Adverse Report was issued in relation to the Bill, the Bill may proceed to the next stage.

#### **4.3.5 Second Reading**

At the Second Reading Stage, the Minister gives a speech explaining the principles of the Bill. The chairperson of the relevant parliamentary portfolio committee then presents the committee's report on the Bill, and the House (or the Senate) proceeds to debate the Bill. The individual clauses of the Bill cannot be debated, only its general principles. At the conclusion of the debate, if the House or Senate votes in favour of the Bill it is read a second time (that is, the Speaker or President of the Senate directs the clerk to read the short title of the Bill).

Any proposed amendments to the Bill which are to be considered at the next (Committee) stage must be notified in advance in the Order Paper.

#### **4.3.6 Committee Stage**

At the next Stage, called the Committee Stage, the whole House or Senate becomes a single committee under the Deputy Speaker or Deputy President of the Senate, for the purpose of considering the Bill clause by clause. The title of each individual clause is read out by the person presiding over the committee and it is then open for debate by the committee. If an amendment to a clause has been proposed and is notified in the Order Paper, that amendment is put to the committee for debate and, if it is agreed to by the committee, the amendment is adopted. Debate is confined to the substance of each clause or amendment, and the principles of the Bill are not reconsidered.

#### **4.3.7 Report Stage**

This is a purely formal stage where the Deputy Speaker or Deputy President of the Senate, as the case may be, reports to the Speaker or President of the Senate whether the Bill passed the Committee Stage, with or without amendments. If any amendments to the Bill were adopted, they must be referred back to the Parliamentary Legal Committee for its opinion on whether the Bill, as amended, would contravene the Declaration of Rights or any other provision of the Constitution. If the Parliamentary Legal Committee issues an Adverse Report on the Bill as amended and the House or Senate votes not to adopt the Adverse Report, or if no Adverse Report is issued in relation to the Bill, the Bill may proceed to the next stage. (NB: Constitutional bills are not referred to the PLC for scrutiny).

#### **4.3.8 Third Reading**

At the Third Reading Stage, debate may take place, as at the Second Reading, on the principles of the Bill. However, issues which were not brought up during the Second Reading may not be raised. The Third Reading is the final stage.

#### **4.3.9 Transfer to the other House**

Once a Bill has been passed by either the Senate or the House of Assembly, it is transferred to the other House and all the above stages are repeated. Once the Bill has been passed by both Houses it can be said to have been passed by Parliament.

#### **4.4 Presidential Assent**

When a Bill has been passed by Parliament, fair copies of it are signed first by the Clerk of Parliament and then presented to the President, who must either assent to the Bill or refuse assent within 21 days. The President grants assent to a Bill by signing copies of the Bill and attaching the public seal to them. If the President withholds his or her assent, the Bill is returned to the House of Assembly, and it cannot be revived unless, within six months, the House resolves by a two-thirds majority to present it to the President again. In that event, the President must either assent to the Bill within 21 days or dissolve Parliament and call a general election.

#### **4.5 Publication of Act**

Once the President has assented to an Act, the President's office causes it to be published in the *Gazette*. Most Acts come into operation on the day that they are published, but in some cases the President is given the power to specify when the Act will come into force.

#### **4.6 Enrolment of Act**

After the President has assented to an Act, the Clerk of Parliament sends a copy of the Act to be enrolled in the office of the Registrar of the High Court. The enrolled copy is conclusive evidence of the contents of the Act.

## **5. HOW TO ANALYSE LEGISLATION**

### **5.1 Preliminary Work**

At the beginning of each session of Parliament the President gives a speech outlining the Government's legislative programme. This gives Members and staff of Parliament notice of the Bills that the Government intends to present to Parliament during the session. Some of the Bills will already be printed and ready for presentation, and Members and staff should take the opportunity to study and analyse those Bills as soon as possible. All Government Ministries have Parliamentary Liaison Offices, and parliamentary staff should use these offices to obtain copies of Bills before they come to Parliament.

The Ministry responsible for a Bill should have carried out some form of analysis of the Bill's probable effectiveness, and Members and staff of Parliament should ask the Ministry for copies of that analysis before embarking on their own; this will avoid a duplication of work and may save time. The Ministry should have no hesitation in giving Parliament this information, since it is unlikely to be secret and may make the Bill's passage through the portfolio committee easier.

Having obtained a copy of the Bill and, where possible, a copy of the Ministry's analysis of its effects, Members and staff of Parliament will be in a position to analyse the Bill for themselves.

What follows is a description of the steps to be taken in a formal analysis of a Bill. This thorough type of analysis will normally be done by parliamentary researchers and clerks of portfolio committees; Members of Parliament may not have the facilities or the time to go through a Bill so carefully. But even if they do not conduct a full analysis of a Bill they need to know broadly how it is done and what factors to look for in determining whether the Bill will be good or bad law.



## **5.2 Steps in Analysing a Bill**

1. Read through the Bill's memorandum. The memorandum outlines the Bill's purpose and objectives. Note down the key aspects contained in the memorandum. At this stage you should identify whether the memorandum identifies the problem that is being addressed by the Bill and whether the Bill is likely to rectify the problem.
2. Read through the definition section in the Bill. Complex terms used in the Bill are often explained in this section.
3. Read through the Bill. At this stage it is recommended that you do the reading in stages. Long Bills are divided into Parts, each Part dealing with a specific topic, and you should read through each Part separately, summarising its key features and provisions.
4. Identify the fiscal provisions of the Bill and its impact on the Government's revenues and expenditure. For example, if the Bill creates a new public office (e.g. a Registrar), or a tribunal or a board, you should try to estimate what it will cost and how the cost is to be met.

## **5.3 Identifying the Objectives of a Bill and Assessing its Effectiveness**

Having read through a Bill and summarised its key features and provisions, you should turn to identifying the objectives of the Bill, particularly the problems that the Bill is intended to solve, and decide whether the Bill is likely to achieve its objectives and solve those problems.

To do this you need to ask a series of questions, which are set out below.

These questions cannot be answered on the basis of mere speculation. After answering each question, you must ask a further question: on what evidence do I base my answer? If there is no evidence to back up your answer, then you are just speculating and you must think again.

### **5.3.1 The problem addressed by the Bill**

- (a) What problem does the Bill attempt to solve?
- (b) What behaviour has caused the problem?
- (c) Whose behaviour has caused the problem?
- (d) Who benefits and who suffers from the present situation?
- (e) Does the existing law forbid the behaviour that has caused the problem?
- (f) Does the existing law expressly require or permit the behaviour that has caused the problem?

### **5.3.2 How the Bill seeks to address the problem**

- (a) What are the ways in which the Bill proposes to address the problem? (summarise them)
- (b) What might you learn from efforts to deal with this problem in the past in Zimbabwe and other countries? Does this help you to understand the reasons for introducing the Bill in its current form?

- (c) Does a review of Zimbabwe's history of efforts to use law, or other countries' laws and experience, provide insights into possible solutions other than the one that is proposed in the Bill?
- (d) What alternative solutions did the proponents of the Bill consider?
- (e) Are there likely to be any unintended effects of the Bill?
- (f) Do the Bill's provisions with respect to the implementing agency and officials:
  - seek to change the causes of the problematic behaviour;
  - induce people to behave in socially desirable ways?

### **5.3.3 Economic and social costs**

- (a) What are the Bill's short- and long- term economic and social costs and benefits?
- (b) Do the Bill's estimated long-term social and economic benefits seem likely to outweigh its estimated long-term social and economic costs?
- (c) What social impact is the Bill likely to have for:
  - different social groups, especially the poor, women, children, minorities and marginalised groups;
  - community concerns such as the environment, social harmony, human rights and the rule of law?

### **5.3.4 Capacity**

- (b) Are there manpower resources available to administer the Bill?
- (c) Do people have the capacity (the skills, knowledge, and resources) to obey the Bill? Conversely, do they have any special capacity to disobey the law?

### **5.3.5 Funding**

Does the Bill or any other relevant law (e.g. an Appropriation Act) provide adequate funding to ensure that the Bill will be implemented?

### **5.3.6 Dispute Settlement**

- (a) Do the Bill's dispute settlement provisions seem appropriate and adequate to take care of anticipated disputes?
 

**Note:** If the Bill is an amending Bill, the dispute-settlement provisions may be contained in the legislation being amended rather than in the Bill. In that event you should check that those provisions cover any new disputes that may arise under the Bill.
- (b) Does the decision-making process defined by the Bill seem likely to induce accountable, transparent, participatory behaviour?

### **5.3.7 Drafting**

- (a) Is the Bill drafted precisely and unambiguously, and sufficiently clearly for non-lawyers to form a reasonable understanding of its provisions?
- (b) Are all the key terms used in the Bill adequately defined in the definition clause?

- (c) Does it provide for coming into force at an appropriate date?

**Note:** Laws in Zimbabwe come into effect when they are published in the *Gazette*, unless otherwise stated.

### **5.3.8 Consistency with existing laws and international obligations**

- (a) How does the Bill fit into the government's larger legislative programme?  
Are there any conflicts or inconsistencies?
- (b) Does the Bill contain the necessary amendments to existing laws to avoid conflicts?

**Note:** Be careful of a provision that says "This Act prevails over all other laws" or "This Act overrides all other laws to the contrary". It usually means the drafter was too lazy or too pressed for time to check if other laws need to be amended. You will have to do the checking yourself.

- (c) Is the Bill consistent with Zimbabwe's international obligations?

### **5.3.9 Limitations on discretion**

- (a) Does the Bill contain a "general principles" (or objectives) clause sufficiently narrowly drawn to guide officials in drafting regulations under the new law?

**Note:** General principles clauses are seldom contained in Zimbabwean legislation, but they are a useful way for Parliament to indicate to Ministers, judges and officials how the legislation is to be interpreted and applied. If there is no general principles clause in the Bill, the clause empowering a Minister or official to make regulations should indicate clearly the precise purposes for which regulations may be made.

- (b) Does the Bill contain appropriate instructions (for example, through a general principles clause) to judges and others who must interpret and apply the Bill, so that they can ensure it fits into the existing body of the law?

### **5.3.10 Monitoring**

Does the Bill provide an adequate mechanism for monitoring and evaluating whether, after its enactment, it will be effectively implemented and produce the desired social impact?

**Note:** One useful way to ensure that a Bill is evaluated after its enactment is a so-called "sunset" clause, i.e. a clause that states that the Bill will expire or lapse after a specified period of time. At the end of that period, the Government will have to approach Parliament with a new Bill to re-enact the provisions of the current Bill, and then Parliament will have an opportunity to question the Minister on how the current Bill was implemented.

## **5.4 Analysing a Bill Generally: Is it Good Law?**

Having gone through the stages listed above, you should turn to a general assessment of whether the Bill will be not only effective but also good law, i.e. reasonably justifiable in a democratic society. To aid this process, you should put the Bill through the tests and questions set out in the table in Annex 1.

## **6. PREPARATION OF THE ANALYSIS**

Having analysed a Bill in accordance with the previous paragraphs, you as analyst now need to present your findings in such a way that they can be clearly and readily understood.

If you are a member of the staff of Parliament — a committee clerk or a researcher — you should share your write-up with your colleagues and peers, discuss it with them and get their feedback.

Every Bill is different and no one analysis will be precisely the same as another, but the following outline of how to set out a written analysis will be appropriate for most Bills and you should follow it where possible.

### ***6.1 Heading***

The heading of your analysis must identify the Bill you are analysing. You should use the Bill's short title and HB number, for example: Electoral Laws Amendment Bill, 2007 (HB 13-2007).

Bills are often revised during the parliamentary process, and you must indicate clearly which version of the Bill is being analysed. You can indicate this either in the heading or in the first paragraph of your analysis.

### ***6.2 Executive Summary***

An executive summary states briefly the main statements and conclusions that are made in the rest of the analysis. It must be brief (or people won't read it) but comprehensive (or it may be misleading). It can be set out in point form.

It is recommended that you should write the executive summary after completing the rest of the analysis, because it is easier to summarise what you have already written rather than what you intend to write. Nonetheless, the executive summary should be placed at the beginning of the analysis, so that readers can get a quick idea of what the analysis contains.

### ***6.3 General concepts and background to the Bill***

This section offers you an opportunity to define the problem that the Bill is intended to overcome and to introduce factual data related to the Bill. If you use a framework in your analysis, you should state it explicitly here. Two key questions to ask and answer in this section are: How did the issue first come to the attention of decision-makers, and: Who supports this law and why?

### ***6.4 Objectives of the Bill***

Set out the objectives of the Bill, which you have ascertained in accordance with paragraph 5.3 above. Answer each of the questions in sub-paragraph 5.3.1, preferably in the order in which they are set out in that sub-paragraph.

### ***6.5 How the Bill seeks to achieve its objectives***

Here you should deal with the ways in which the Bill seeks to overcome the problem which it is intended to resolve. Again, you should answer the questions in sub-paragraph 5.3.2, preferably in the order in which they are set out in that sub-paragraph.

## ***6.6 The constitutionality of the Bill***

At this stage you should indicate whether or not the Bill is constitutional, with particular reference to the Declaration of Rights. If you consider the Bill to be unconstitutional, then you must state in detail your reasons for that view.

If you consider the Bill is wholly unconstitutional, then you need go no further: if the Bill is enacted it will be completely invalid, a nullity. All you need do in such a case is indicate if there is any way for the Bill to be redrafted so as to make it constitutional.

If, on the other hand, you believe only a part of the Bill is unconstitutional, you should consider whether that part can be omitted from the Bill or redrafted so as to make it constitutional. If it is omitted or redrafted, will the Bill achieve its objective?

## ***6.7 Advantages and disadvantages of the Bill***

Here you should deal with the economic and social benefits and costs of the Bill, in the long-term, the medium-term and the short-term. You should answer the questions set out in sub-paragraph 5.3.3 above.

## ***6.8 Capacity to implement the Bill***

In this section you should deal with the question whether there are sufficient resources to implement the Bill, and you should answer the questions set out in sub-paragraph 5.3.4.

## ***6.9 Funding***

Here you should deal with the financial costs of implementing the Bill, and how those costs are to be met. See the questions in sub-paragraph 5.3.5 above. You should consider not only direct costs but also indirect costs. For example, will the Bill require an increase in police manpower? And you should take into account the financial costs of not passing the Bill, which are easy to overlook: if the Bill is likely to save costs or expenses, that saving must be set off against the anticipated costs of administering the Bill.

## ***6.10 Dispute settlement provisions***

If there are any dispute-settlement provisions in the Bill, you should deal with them here, answering the questions set out in sub-paragraph 5.3.6 above.

## ***6.11 Drafting of the Bill***

Here you should deal with the questions set out in sub-paragraph 5.3.7 above. Remember that although some Bills may be difficult to understand because they deal with complex, technical matters (for example, telecommunications), most Bills should be clear enough to give “ordinary” people (i.e. intelligent non-lawyers) a reasonable understanding of what they mean.

## ***6.12 Consistency with existing laws and obligations***

In this section you should deal with the questions set out in sub-paragraph 5.3.8 above.

## ***6.13 Limitations on discretionary powers under the Bill***

Deal here with the questions set out in sub-paragraph 5.3.9 above. Legislation in Zimbabwe sometimes gives the President and Ministers excessively wide regulation-

making powers (the Control of Goods Act is an extreme example) and there is seldom any real attempt to define the purposes for which regulations can be made. It is in the interests of the separation of powers that regulation-making powers should be strictly limited and clearly defined.

### **6.14 Monitoring the implementation of the Bill**

In this section, you should deal with the matters set out in sub-paragraph 5.3.10 above. You can make suggestions as to how the appropriate parliamentary portfolio committee should monitor the Bill.

### **6.15 Advantages and disadvantages of the Bill**

In this section you should list concisely the arguments for and against the Bill. Obviously what you say will reflect your personal views, but you should try to be as objective as possible. Remember that, if you are a member of the staff of Parliament, you must be politically neutral.

### **6.16 Recommendations**

Recommendations are appropriate in the majority of policy analyses. Some non-partisan analyses will not make recommendations, leaving legislators to draw conclusions from the fact presented. Recommendations must be consistent with your stance as analyst.

## **7. WHAT TO DO WITH THE ANALYSIS**

If you are a committee clerk or researcher on the staff of Parliament, it is recommended that you take the following steps after preparing an analysis of a Bill:

1. Show a copy of the analysis, before it is finalised, to your colleagues and peers for their feedback.
2. Give a copy of the analysis to the Counsel to Parliament.
3. Give a copy of the report to the chairperson of the appropriate portfolio committee *before* presenting to the whole committee.
4. Then present the report to the committee or joint committee.

## **ANNEX 1: GOOD LAW CHECKLIST**

This is just a check-list, so the questions can be answered simply Yes or No, and reasons need not be given. In a full analysis of a Bill, on the other hand, the questions must be answered fully as explained earlier in this Guide.

The answers to all the questions should be Yes, if the Bill is to be regarded as good law. If the answer to a question is No, but you think that the Bill remains justifiable

despite that answer, you should state in the last column the special reasons why the answer does not render the Bill a bad law.

		Yes	No	Comments / Special reasons why No is justified
1	<p><b>Objective</b></p> <p>Has the objective of the Bill been clearly defined?</p>			
2	<p><b>Evaluation of Objective</b></p> <p>Has the importance of the objective been evaluated?</p> <p>Does the importance of the objective justify legislation?</p> <p>Is the Bill the best way of achieving the objective?</p> <p>Have alternative methods of achieving the objectives been considered including the repeal of an existing law?</p>			
3	<p><b>Side-effects</b></p> <p>Have the possible side-effects of the Bill been considered?</p> <p>Have all reasonable steps been taken to minimise undesirable side-effects in the Bill?</p> <p>Does the expected benefit from the Bill outweigh any likely undesirable effect?</p>			
4	<p><b>Constitutionality</b></p> <p>Do any of the provisions of the Bill violate the Constitution?</p> <p>If a provision does, can it be omitted from the Bill without impairing its effectiveness?</p>			

5	<p><b>Costs and Benefits</b></p> <p>Has a realistic quantified estimate been made of the benefits which are expected from the Bill and the time over which they are expected?</p> <p>Has a cost/benefit analysis been done of the Bill?</p> <p>Is the expected cost to the public justified by the expected benefit?</p> <p>Is the expected cost to the State of enforcing the Bill justified by the benefits?</p> <p>Has this been budgeted for, either in the Bill or in some other law?</p>			
6	<p><b>Capacity and Enforceability</b></p> <p>Will it be possible to enforce the proposed law?</p> <p>Are there manpower resources to administer the proposed law?</p> <p>Will it be possible for people to comply with the proposed law?</p>			
7	<p><b>Dispute Settlement</b></p> <p>Is there adequate provision for settling disputes arising under the Bill?</p> <p>Is there provision to ensure that disputes arising under the Bill are settled by due process?</p>			
8	<p><b>Drafting</b></p> <p>Are the provisions clear and precise?</p> <p>Are they unambiguous?</p> <p>Are there inconsistencies between different provisions of the Bill?</p>			
9	<p><b>Consistency with Existing Law</b></p> <p>Do any of the provisions of the Bill conflict with existing laws?</p> <p>If they do, has the existing law been repealed or amended to ensure that there is no remaining conflict?</p>			



10	<p><b>Consistency with International Obligations</b></p> <p>Is the Bill consistent with Zimbabwe's international obligations?</p>			
11	<p><b>Limitations on Discretionary Powers</b></p> <p>Does the Bill clearly define who may exercise the discretion?</p> <p>Does it impose limits upon the discretion?</p> <p>Does it give guidelines as to the purpose for which and the manner in which the discretion may be exercised?</p> <p>Have the criteria the implementers will use when applying the legislation been clearly stated?</p>			
12	<p><b>Delegation of law-making powers</b></p> <p>Does the Bill clearly define who may make regulations?</p> <p>Does it clearly define and limit the purpose for which regulations may be made?</p>			
13	<p><b>Retrospectivity</b></p> <p>Does the Bill or any of the provisions apply retrospectively?</p>			
14	<p><b>Tribunals and Bodies</b></p> <p>Is the composition of any tribunal or body established by the Bill clearly defined?</p> <p>Is the composition such that the body is likely to be objective?</p> <p>Have the matters on which the tribunal or body has power to make decisions been defined clearly?</p> <p>Is the tribunal or body required to observe due process?</p>			