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# Sri Lanka Legislative Drafting Workshops

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## COMMENT ON ENVIRONMENT GROUP'S RESEARCH REPORT

I. General comments: You have generally followed the outline well, thus establishing an overall framework for structuring the facts and logic you need to justify your bill. The details, however, require more careful attention (see margin notes on your draft).

II. Using the critique assignment outline, here are some thoughts on the report's substance.

A. Re Introduction: 1. The quote is OK, but not specifically related to the problem of protecting water supplies in Sri Lanka at the level of Uva Province -- which, one gathers, constitutes the focus of your bill.

B. Your B.1 seems to describe the larger social problem, of which water pollution constitutes a part; shouldn't that go in your section D showing that your bill on water pollution fits into the province's legislative programme addressed to that larger social problem? B.2 might summarize the bill's purpose in one or two sentences, rather than list.

C. Whether you want to review this history here, in your Difficulty Part II, or in your Explanations Part III (where you describe the existing rules in some detail), remains a matter of judgment. In any case, you probably should distinguish the national legislation -- and its relatively ineffective implementation -- from your proposal for a provincial bill. Indeed, one reason for proposing a provincial bill presumably relates to the possibility of improving participatory implementation procedures at a provincial level.

D. Again, shouldn't you distinguish the province's developing legislative programme relating to environment from the national legislative programme of the past; and show where your bill fits into the provincial programme?

E. You have combined the problem-solving methodology and the report's contents well. Nevertheless, you need a little more explanation for the readers as to the fact that law can not command water to unpollute itself; it only try to change behaviours of those who currently pollute it. Presumably, for that reason, you plan to use a legislative theory that focuses a problem-solving approach on the nature and causes of problematic (water-polluting) behaviours as a way to ensure your proposed bill rests on logic and facts.

Part II: The difficulty:

1.0 Your mini-introduction seems again to refer to the general environmental problem, rather than the specific one of Uva Province's water pollution. Also, it does not outline the Part's contents, emphasizing again why, after describing the resource problem (ie the nature and scope of water pollution), the Part will identify whose and what behaviours comprise the difficulty.

Both 2.0 and 3.0 briefly refer to the historical development of the water pollution difficulty; do they really add much to the statement in the Introduction Part? Wouldn't you do better to describe the nature and extent of the water pollution problem in the province, perhaps providing some (presumably available) information about how serious it has become, and the specific characteristics that make it necessary to provide an Uva Provincial agency to protect the provincial water supplies?

In 4.0, you outline whose and what behaviours contribute to the province's water pollution. If you really propose, as you suggest in the Introduction, to draft an intransitive bill, then you need further details about the very different and continually changing characteristics of these role occupants and their behaviours. That comprises an important reason for designing a bill that gives a secondary role occupant, your proposed agency, the powers to research the causes of all those complex behaviours as a basis for drafting regulations likely to effectively curb them. Furthermore, if you do propose an intransitive bill, don't you need to focus attention on the problematic behaviours of all the existing implementing agencies which fail under existing law to protect the province's water supplies? In your explanations part, you seem to indicate a range of existing implementing agencies, from local authorities (which ones? what do they do?) through a National Environmental Agency to the courts. You need to specify these here, and describe their problematic behaviours, since in the end you will have to decide to which agency with what characteristics you will assign the crucial tasks implied by the idea of an intransitive bill. Your readers need all the information they can get about the alternative possible implementing agencies so they can judge whether your proposed agency can do a better job.

5.0 Your mini-conclusion, should summarize for the readers the characteristics of the provincial water pollution problem, the complexity of the polluters' different kinds of polluting behaviours, and the importance of reviewing the causes of the existing implementing agencies failure to implement existing legislation to curb those polluting behaviours. You could then point out that problem solving's next step, the explanations of the causes of those agencies' problematic behaviours will help design your proposed provincial intransitive agency. In particular, your analysis will lay the basis for ensuring that your bill's proposed agency has the resources and capacities, as well as the appropriate decision-making processes to formulate, implement, and enforce appropriate regulations.

### Part III: Explanations:

1.0 Your mini-introduction probably should tell readers why you here explain the behaviours of the primary and secondary role occupants; the purpose of reviewing the ROCCIPI factors suggested by legislative theory; and the contents of the chapter.

2.0 and 3.0 Note you again repeat the history of (national) legislation. Here, the primary reason, presumably,

relates to the fact that the existing (national) legislation sought to deal with the different kinds of industrial water polluters set by set, using a variety of implementing agencies, none of which worked very well. For that purpose, you need to analyze the specific kinds of behaviours those laws prescribed for the primary role occupants, and the inadequacies of the provisions they included to try to ensure the implementing agencies did implement them. Presumably, you should point out how much discretion the laws granted the agency decision-makers, as well as their provisions relating to the agencies' transparency, accountability and participation -- in detail. (You may want to quote specific sections of the laws that seem relevant.)

In 4.0, your analysis of the causes of the water polluters' behaviours may want to underscore the differing kinds of non-legal factors, and the inadequacy of available information as the specific details of those factors as they related to each polluter. That would again emphasize the necessity of separately reviewing the causes of all the implementing agencies' failures to control them as a basis for identifying the features you would need to introduce to ensure your bill's intransitive agency played the appropriate implementation role.

Then, in reviewing the causes of the existing (national as well as local?) implementing agencies' problematic behaviours, you would especially want to examine those causal factors that hindered their effective enforcement of the existing laws, including the degree of discretion those laws permitted, as well as the nature of their prescribed decision-making processes (and the extent of their resulting transparency, accountability and participatory decision-making).

6.0 should summarize your separate sets of explanations for the primary role occupants, the polluters, and the secondary set, the implementing agencies. Instead of summarizing the main features of your proposed bill, you could then underscore the fact that the proposed solution -- an intransitive agency -- would have to include provisions to ensure that that agency had sufficient capacity and appropriate processes to design regulations likely to change the water polluters' behaviours. Finally, you could tell the readers that your report's next part would describe the bill's provision that aim to achieve that.

#### Part IV: Solutions (your bill)

1. Your mini-introduction should emphasize that your proposed bill's measures aim to alter or eliminate the primary role occupants' problematic behaviours by empowering the proposed intransitive agency to conduct research as to the detailed causes of each set of polluteers, and to formulate rules through a appropriate process which seemed likely to overcome those causes. It should then outline the contents of the Part.

2. Again you have an historical section -- but what purpose does it have? You need not repeat what you said before. Here, you might want to emphasize that you can learn from the

history of the past failures what causal factors your present bill must alter to ensure effective implementation of anti-pollution measures. In particular, the history underscores the fact that it seems difficult to write a transitive bill that will work because the nature and causes of the polluters' behaviours remain qualitatively different and constantly changing; they require changing, new measures to deal with them of the type that only an agency equipped with adequate regulatory powers could provide.

3. Your solution section, however, does not describe the essential details of the intransitive agency you propose; the nearest it comes to doing so, in #13, is to propose 'establishment of a water pollution control agency' -- and say -- by implication only! -- it should do all the other things listed. Nor do you formulate and attempt to justify the specific criteria and procedures your bill must provide to ensure the agency behaves openly, accountably, and with participatory inputs and feedback along with appropriately limited discretion. You still need to specify those, and show how each will help to ensure the agency can formulate and implement regulations likely to effectively change the polluters' behaviours.

Where do you consider alternative solutions and the social and economic costs and benefits to persuade readers your preferred provincial solution really will succeed where all the other laws have failed? What system of monitoring and evaluation do you propose?

Part V: Conclusion: Finally, your research report's conclusion should summarize the logic and facts that underpin your argument justifying your intransitive bill; and summarize the bill's main provisions.