Gauteng workshops on legislative drafting

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MEMORANDUM:

THE DRAFTING PROCESS IN GAUTENG PROVINCE

1 This Memorandum discusses the bill-creation process in Gauteng. 'Bill-creation' here means the processes by which a bill moves from an idea in the mind of an official or MEC to a finished bill ready for presentation to Cabinet and thence to the Parliament. The Schedule, annexed to this Memorandum, proposes a Cabinet Memorandum prescribing new, more systematic drafting procedures. 1

2 This Memorandum first describes the difficulties that seem to plague Gauteng's existing drafting procedures: 2 No agreed prioritization of bills selected for drafting; outsourcing of drafting projects; lack of public participation in the bill-creating process; and the relative inadequacy of some bills for implementing proposed transformation. Second, the Memorandum discusses the causes of those problematic behaviours. In large part, these causes seem to lie in the existing rules and conventions that structure the existing bill-creating process. 3 Finally, the Memorandum suggests a solution that logically seems likely to help alter or eliminate the identified difficulties' causes.

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1 The theoretical basis for this memorandum appears in Ann Seidman and Robert B. Seidman, "Beyond Contested Elections: The Processes of Bill Creation and the Fulfillment of Democracy's Promises to the Third World," HARVARD JOURNAL OF LEGISLATION (1995), which we append as an Annexure to this Memorandum.

2 This review of the problem rests, not on a carefully designed research, but on random discussions in workshops and with various officials as well as workshops, supplemented by knowledge about drafting processes in other countries. Time did not permit a proper research design. Any errors are regretted.

3 Law comprises government's primary tool for changing inherited institutions; but law cannot require bills to draft and enact themselves. Legislative theory underscores that, at most, law can only try to change existing problematic behaviors. Here, it can only seek to alter the problematic behaviors of relevant social actors that contribute to the apparent gap between declared transformatory policies and some new legislation's inept results.
I

THE DIFFICULTIES PRESENTED: PRIORITIZATION, OUTSOURCING, LACK OF PUBLIC PARTICIPATION, WEAK TRANSFORMATORY BILLS

3 Gauteng has experienced a range of difficulties in its efforts to draft legislation to translate transformatory policies into effectively implementable law. This Memorandum addresses in turn four of them: The relatively poor control that Government has over the prioritization of bills for drafting; the frequent outsourcing to private counsel of drafting projects, which, at considerable expense, do not always produce bills that contribute to desired institutional transformation; the lack of public participation in the bill-creating process; and the relatively inadequate and limited number of transformatory bills produced.

4 Prioritization. A government has limited time and resources to devote to the bill-creating and enacting processes. Government officials must not only legislate; they must conduct the daily tasks of governing. Given the scarcity of time and resources for law-making, prioritizing the many claims for producing legislation constitutes one of government's highest political tasks. In Gauteng, however, no overall prioritization authority or procedure apparently yet exists. Cabinet seems to have no opportunity to consider and prioritize the many bills that the several departments demand. Instead, each department seems to proceed with its drafting projects as best it can, and then, claiming urgency, presses Cabinet for their adoption. That kind of haphazard procedure tends to negate rational efforts at prioritization.

5 Outsourcing. Gauteng departments have apparently adopted a custom of outsourcing drafting projects to private counsel. At least two difficulties seem to plague this process. First, it costs a good deal. Private counsel generally charge private lawyers' usual fees -- at a far higher cost to government than if government drafters did the job. Second, private counsel do not consistently produce high-quality, effectively implementable transformatory legislation.

6 Participation. Unlike many countries, Gauteng does not lack departmental policies looking towards transformation. The Province's policy-making process does involve wide-spread popular participation. In contrast to the government's avowed efforts to formulate policy through public debate, however, the actual preparation of bills purporting to translate those policies into legislation tends to proceed -- as in most countries following the British drafting tradition -- under cover of government secrecy. In accordance with that tradition, Departmental officials have the authority and the duty to consult with 'interested parties'. In practice, they tend to find it relatively easy to consult
representatives of relatively more powerful and privileged groups (concerning bills designed to deal with unemployment problems, they may consult with business organizations like the Chamber of Commerce and perhaps trade union officials representing of formal sector workers; they will have more difficulty consulting with the unemployed). The drafting procedure too often fails to enable the historically disadvantaged majority to provide inputs derived from their intimate knowledge of the nature and causes of the problems they confront. Yet that kind of knowledge often proves essential to shaping the detailed legislative measures required for essential implementation. Without those details, the resulting laws too often prove -- at best -- merely symbolic.

7 Although Gauteng's elected legislators have an opportunity to vote for or against bills they receive from Cabinet, too often they do not participate in designing the critical details which, ultimately, determine the laws' social impact. As in most parliamentary systems everywhere, the majority party elects the Government. Its members will not likely vote down a government bill; so far, they never have done so. Whatever pressure constituents may place on their MPs, whatever chance constituents have to voice dissent in committee hearings or in commenting on a bill in the notice and comment period, whatever chance MPs have to protest in the party caucus, under the present circumstances, at the end of the day the majority of legislators have little option but to vote in favor of government bills -- whether or not they believe that those bills' detailed measures will likely achieve their stated transformatory objectives.

8 Relatively weak, and few, bills contribute to transformation. Too often the bills enacted have not contributed sufficiently to transforming inherited institutions. Few bills even purport to serve a transformatory purpose -- contributing to an apparent gap between policy and bills drafted, between desire and performance.

9 Whose and what behaviours? To address these difficulties, the first task becomes to ascertain whose and what behaviours constitute them. The absence of prioritization arises from the activities of individual departmental officials engaged in the drafting process, and the mechanisms by which Cabinet considers individual bills. Outsourcing arises because of decisions by individual department officials -- again absent central coordination. Lack of popular participation reflects the behaviours of the officials involved in the drafting process -- departmental officials, private counsel employed to draft bills, the Department of Legal Services and the State Counsel -- who by reason of custom, if not formal rules, tend to conduct their drafting efforts in secret. The bills' inadequate substantive content results from the way that all the officials and lawyers involved go about conceptualizing the process of translating policies into to draft legislation. Finally, all of these
difficulties reflect the implicit, if not explicit, acquiescence of those holding high political office, mainly Cabinet members. The following section analyzes the causes of these problematic behaviours in more detail.

II
THE CAUSES OF THESE BEHAVIOURS

10 Solutions must address not merely the superficial manifestations of social problems, but their causes. This section proposes explanations for the problematic behaviours of officials, private counsel, drafters in the Department of legal Services, lawyers in the State Counsel's chambers, and Cabinet members. Those explanations include the existing legal framework within which all four sets of actors behave. This part aims to identify the causes, first, of the cognate problematic behaviours involved in prioritization, outsourcing, and the lack of public participation in bill-creation; and, second, the limited number -- as well as relatively inadequate -- transformatory bills produced.

A. EXPLAINING THE PROBLEMS RELATING TO PRIORITIZATION, OUTSOURCING AND PARTICIPATION

11 The problematic behaviours that contribute to inadequate prioritization, frequent outsourcing, and exclusion of public participation in the bill-creating process seem to have common explanations. This section focusses on (a) the present legal framework for drafting; (b) the sheer lack of numbers of government drafters trained to produce transformatory bills; (c) the constraints inherent in the drafting procedures now in place; and (d) the values and attitudes of those involved in the drafting process.

12 The present legal framework for drafting. Apparently, no formal set of rules, either in the form of legislation or Cabinet memoranda, frame the drafting process. The Provincial government has created the Department of Legal Services to serve as the central drafting office for the province. In the absence of a formal rule, however, decisions about the drafting process any particular bill will follow ineluctably rests in the discretion of departmental officials and MECs.

13 One custom -- if not a formal rule -- probably still persists in the present legal drafting framework: The requirement of secrecy.7 Everywhere, these requirements impose themselves on those involved in the drafting process. Usually, these permit

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7 Most former British colonies adopt rules imposing secrecy upon its public servants; it seems probable that a similar rule -- or at least a custom -- persists in Gauteng.
authorized officials to disclose the proposed bill to 'interested parties', but in effect they forbid drafters from disclosing the bills' details to the public at large.

14 **Drafting capacity.** Like most third world governments, Gauteng's suffers from a lack of sufficient technicians skilled in the techniques of drafting, far less in a theory to guide them in conceptualizing how to translate policy into effectively implementable laws. Gauteng's newly created Department of Legal Services apparently remains seriously overloaded, not merely with bills that require drafting, but also other legal work demanded by the departments.

15 **The drafting process.** In the absence of a formal rule, the drafting process mainly proceeds pursuant to the dictates of each department's time and circumstances. In general, ideas for bills usually originate within a department. There, officials expand it into a memorandum. When the memorandum comes to the MEC, the MEC determines its next course. The memorandum may go for drafting to Legal Services, or it may go to private counsel; the decision seems in the MEC's discretion. When drafted, it presumably goes to State Counsel which vets it for constitutionality. The MEC then presents the bill to Cabinet -- apparently the first time that Cabinet has an opportunity to consider the bill or its relative priority in government's overall transformation programme.

16. **Departmental Ideologies.** To say that the drafting process a bill follows depends upon the discretion of departmental officials and their MECs says that the values and beliefs -- their ideologies -- play an important function in determining that process. As elsewhere, these apparently remain constrained by a widely-held belief that secrecy in the drafting process constitutes an important governmental prerogative; that the public will get its chance to participate when the legislature considers the bill. As discussed briefly above (para. 7), in Gauteng as elsewhere that largely proves a myth; the legislative debate on a governmental bill seldom results in meaningly alteration of the bill's critical details.

16 Conclusion: The explanations for problems of prioritization, outsourcing and lack of participation in the drafting process consist of the following:

16.1 The absence of formal drafting rules and procedures means that Cabinet considers bills one at a time, as presented by individual MECs, after the completion of the drafting process. Unless Cabinet can consider the whole range of bills claiming priority at the same time, prioritization becomes extremely difficult; it becomes even more difficult Cabinet receives individual bills after a substantial investment of government's resources. That, to date, the Gauteng Cabinet has not effectively
carried out the critical task of prioritizing the drafting of essential legislation clearly seems to reflect the absence of appropriate rules governing the drafting process.

16.2 The absence of formal rules also seems an important explanation for the departments' frequent reliance on outside counsel for drafting. MECs of course want to see their bills drafted, approved by Cabinet and enacted by the legislature. Given the level of overwork in the Legal Services Department, outsourcing appears a reasonable, if expensive, solution, and no rule makes it difficult to do so.

16.3 The rules about secrecy and the ideologies of departmental officials and even MECs about the function of the legislature probably explain the lack of public inputs into the drafting process.

A competent solution must address these several causes. Before proposing a solution, however, the next section examines the causes for the perceived inadequate output of transformatory bills.

B. RELATIVELY WEAK, AND FEW, TRANSFORMATORY BILLS

17 In the face of the transformatory policies announced by MECs, why have the departments drafted so few transformatory bills, and why have those few drafted produced so little effective institutional transformation? The explanations seem to lie mainly in the capacities of the departmental officials and the private and governmental drafters to develop detailed, implementable legislative programmes; the departmental officials' and governmental drafters' value-sets; and the procedures by which they draft those bills.

18 Capacity. Few, if any, departmental officials, government lawyers, or private counsel know how to translate polices into effective, implementable legislative programmes. At its heart, transformatory legislation must change the repetitive behaviour patterns that comprise institutions. Yet none of those engaged in drafting for Gauteng have had much, if any, training in designing legislation to change behaviours. Few have paid any attention to how government can, indeed must, use law to change behaviours in order to achieve desired social change.

19 Officials and governmental drafters: Ideologies. Responsibility for designing a detailed legislative programme frequently falls between two chairs. Few departmental officials have legal training. They tend to think of the law as a mystery. The instructions they give to the drafters tend to be long on visions and short on detailed programmes to implement those visions. Too many officials subsume the design of the detailed
programme under the general heading of 'legal matters', which their world-view entrusts to the legal drafters in the central drafting office.

19.1 Government lawyers in the central drafting office may have had considerable training in drafting bills in appropriate legal form. That training, however, gives them no training in developing legal programmes that will effectively implement governmental policies. More: It most frequently imbues them with an ideology descended from the history of drafting in England, that drafters have no business interfering with substantive matters. Given their capacities and ideologies about their role in the drafting process, they fall back upon three, basically inappropriate and unsatisfactory ways of designing transformatory legislation. They either: (a) copy foreign law quite uncritically; (b) canvass competing stakeholders' views, and draft a compromise that inevitably favors the most powerful; or (c) merely write laws that declare the problematic behaviours unlawful under threat of criminal sanctions. None serve the cause of transformation and development.

20 Private counsel retained as drafters. If the requested bill falls within the the private counsels' field of specialization, they may have a specialized knowledge of the subject-matter of the proposed bill. That knowledge, however, likely concerns, not the structure of the underlying problematic institutions and how they interact with their social surrounds -- that is, what a competent drafter must know to draft legislation to transform those institutions -- but only how judges have dealt with the legal doctrine related to the bill's subject-matter.

21 More: Too frequently, private counsel have at best a superficial knowledge even of the techniques of drafting. No law faculty in South Africa (and precious few the world around) teaches legislative drafting techniques. None teach their students how to translate policy into law. No more than government counsel do most consultants have a theory or methodology concerning the use of law in the processes of transformation. Like government drafters, they too frequently copy foreign law with abandon -- and with no more success. As a result, bills outsourced to private counsels may fall well short of that required to achieve the proposed institutional transformation.

22 Process. Nothing in the present law-making process provides those responsible with the necessary underlying facts and logic they require to assess whether a department's draft bill will likely prove implementable and achieve its stated objectives. If an MEC, Cabinet members (and later, legislators) receive a bill prohibiting spitting on the sidewalk, their own experience enables them to determine whether it will likely achieve its purposes. By contrast, if they receive a bill concerning reorganization of
provincial welfare institutions, they will likely either have to take the drafter's assurances that the bill will work, or, as a basis for assessing the bill's quality, gather their own information -- a task none enjoy either the time and resources to perform. Without that essential information, however, neither Cabinet nor the legislators usually have the capacity to decide whether a bill will likely prove implementable and contribute to the desired social change. The whole law-making process tends to blunder in the dark; for all their good intentions, those responsible tend to decide on the bill's fate in terms of their own perceived interests, rather than reason informed by experience and the public good.

23 **Summary.** None of the three sets of actors who nominally participate in translating policies into bills have the capacity to develop appropriate detailed, implementable rules. Their ideologies do not require them to do so: Departmental officials regard that as part of the drafter's job, but drafters typically insist their task focusses entirely upon a bill's technical form. Private counsel typically have training neither in legislative techniques nor in the theory and methodology required to guide them in drafting bills that effectively implement proposed policies. For the most part, neither they nor the members of cabinet and the legislature have the factual or theoretical basis for assessing the draft bills they receive; yet, without those, the law-making process tends, not towards enlightened analysis of the facts and logic as to whether and how the bills may serve the public interest, but the exercise of power politics.

III

**SOLUTIONS; IMPROVING PROCEDURES AND BUILDING CAPACITY**

24 A adequate solution must address the five causes identified:

1. the present legal framework of drafting denies Cabinet the opportunity and capacity to prioritize bills, and gives ministers and departments the discretion to outsource the drafting process;

2. the formal rules and conventions that tend to impose secrecy in the drafting process limit the possibilities of public participation, especially by those historically disadvantaged;

3. in light of its load, the Department of legal Services' staff lacks a sufficient number of well-qualified officials;

4. departmental officials and drafters do not have sufficient capacity to develop adequate legislation to implement declared policies, while their ideologies
persuade each that the other should perform that task; and

(5) however drafted, the drafters do not furnish the MECs, Cabinet and the legislature with the facts and logic to facilitate assessment as to whether complex, transformational bills will like achieve their stated objectives.

25 Foreign law and experience. Gauteng cannot of course copy foreign law and expect the foreign law to have the same outcomes here as it had in its original home. Gauteng, however, can learn a good deal from the following experiences of other countries:

25.1 China's Bureau of Legislative Affairs of the State Council ('BLA' -- China's national functional equivalent of Gauteng's Legal Services Department) routinely prepares yearly and long-term legislative plans for the approval of the State Council. In doing so they canvass the several ministries and departments for their legislative priorities, so that they can present the entire array of proposed legislation to enable the State Council to decide on the appropriate order of priority.

25.2 China also creates drafting teams composed not only of BLA drafters, but also of ministerial personnel. These drafting teams work closely together to produce a bill, with the ministerial representatives providing the factual information necessary to producing a competent draft bill or regulation.

25.3 Sri Lanka continues to draft by a process originally prescribed in an Establishment Code enacted in the colonial period. Their drafters, although well-trained in drafting techniques, have no capacity to decide on the detailed provisions likely to implement ministerial policy; yet the departments assume they will design the bills' details -- so they frequently do so merely by pretty blindly copying law from other times and places, which seldom, in Sri Lanka's unique context, achieves their stated objectives.

25.4 In England and in most Commonwealth countries, a Cabinet Memorandum lays down the procedures for drafting. A bill originates in a Ministry, which prepares a memorandum and sometimes a Layman's Draft, that is, an actual draft bill prepared by the Ministry. In drawing that memorandum, ministerial officials consult 'interested parties' -- other ministries, and organizations in civil society that they deem important to consult. They then submit the memorandum and Layman's draft to the Cabinet Committee on Legislation, which determines whether the bill will go forward for drafting. If that Committee approves, the memorandum and Laymen's Draft go on to the central drafting office for drafting into a final bill. The central drafting office also determines the bill's final legality; it does not require further vetting. Bills
go to Cabinet, however, with no more than a flimsy description of their contents, rarely more than a page or two, and never providing the necessary facts and reasons to justify their substance.

25.5 In the former German Democratic Republic, a proposal for a bill first reached the Cabinet Committee on legislation by a similar route. The accompanying memorandum, however, also proposed a procedure for drafting, including the composition of the drafting group (for important bills, frequently including an academic or some other non-governmental expert, and sometimes representatives of important stakeholder groups as well as ministerial officials and central drafting office members); and recommended the procedure for public participation (for a minor bill, no more than notice and comment on a completed draft bill; for a major bill, public hearings at strategic spots around the country). After the draft bill's completion, it returned to the Cabinet Committee on Legislation, which examined it in detail (if necessary recommending alterations) before forwarding it to the full Cabinet.

25.6 The United States drafting system differs completely from any of these other countries. There, the weak Party structure gives a government bill no special probability of enactment. Since Cabinet members do not sit in the Congress, if government wants to introduce a bill it must enlist a Senator or Congressman to introduce it. As a result, all bills become what the British system denotes as Private Members' Bills. Senatorial and Congressional Committee staff members do most of the work of drafting bills. All bills come with extensive Committee reports. These vary greatly in quality; almost no formal rules determine their content. Sometimes they reach very high standards of research and logical argument; sometimes committee reports constitute mere fluff. Public participation enters the system at the Committee stage; the several senatorial and congressional committees hold public hearings on every bill that passes before them.

26 A proposed solution for the problems of prioritization, outsourcing and participation in Gauteng Province. Where relevant, international experience suggests several measures to overcome the five causes identified for Gauteng's current drafting difficulties:

26.1 To resolve the issues of prioritization, outsourcing, and public participation in the drafting process, Gauteng should put in place a Cabinet Memorandum prescribing the following specific features of the bill-creating process

26.1.1 The Memorandum should appoint the Strategic Planning Committee of the Cabinet to serve also as the Cabinet Committee on Legislation ("CCL"), with the task of prioritizing bills for drafting and presentation to Cabinet. The Director of Legal Services should sit in attendance at all meetings of that
Committee when its agenda contains a reference to legislation.

26.1.2 The Memorandum should require the Department of Legal Services to prepare annually a report of the projected legislation that the several Departments would like to propose during the year, and to recommend priorities among them, giving reasons. On the basis of that report, CCL will prepare a priority list of legislative projects. Departments may submit other projects during the year, but must justify their priority in light of the other claims on drafter and Cabinet time.

26.1.3 The Memorandum should require that a department wishing to propose a legislative project prepare a memorandum describing the social problem in some detail, together with a statement of the problem's relative importance in the transformation process, and a description and a budget for the Department's proposed drafting plan. Ordinarily, that memorandum would also specify the departmental officials in charge of the project, the drafting group's other members, the proposed form of public participation, and a detailed timetable for the drafting process. For a large project, the drafting group should contain members not only from the department and a drafter from the legal Services Department, but members from other interested departments, an academic or other consultant where necessary, and members of relevant stakeholder groups. The drafting group may include private counsel in lieu of the drafter from legal Services, but the accompanying memorandum must specifically justify that choice. The accompanying memorandum should also state whether the drafting group will provide a complete research report to accompany the bill.

27 After necessary discussion and amendments, the CCL may approve the project, in which case the project will go forward, mark it for delayed drafting, in which case it goes to a list of deferred projects, or reject it entirely. CCL will permit a department to omit a research report only in the case of bills involving mere technical amendments.

27.0.1 The Cabinet Memorandum should require that, pursuant to the procedures approved by CCL, the drafting group described in the departmental memorandum may then go forward with drafting the bill and (if required) an accompanying research report.

27.0.2 The Cabinet Memorandum should require that, upon completion, the drafting group submit the draft bill and, where stipulated, the research report, to CCL. The research report should detail the following, with supporting evidence:

(a) the social problem that the bill addresses, and whose and what behaviour constitutes it;
(b) explanations for those behaviours;

(c) a description of various alternative measures logically likely to overcome the causes identified, thus facilitating the desired new behaviours; a description of the specific measures proposed, including a statement of who will implement them, and how, together with reasons based on their respective social costs and benefits for choosing the measures proposed; and

(d) a description the bill's provisions for monitoring and evaluating, after its enactment, the implementation of the law and its social consequences.

27.1 A two-pronged strategy would help to build departmental and the Legal Services Department's capacity to translate policy into implementable laws:

27.1.1 Gauteng Provincial Government should use the costs saved by not outsourcing drafting projects to increase the number of Legal Services Department staff members to enable them to meet the demands upon it.

27.1.2 Gauteng Provincial Government should develop a systematic learning process focussed on building Provincial capacity, not only to translate policy into law, but to teach the necessary theory and methodology and craft skills to successive generations of officials and drafters. It would involve sending some drafters from Legal Services and over time at least two officials from each Department to Boston University for a four months' training course in legislative theory and methodology.

28 Social costs and benefits. A assessment of the social costs and benefits of proposed scheme for a Cabinet Memorandum regulating the drafting process and a training scheme for Provincial drafters indicates its potential advantages in comparison with the present situation and possible alternatives.

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5 Here, we declare an interest: We are co-Directors of that program at Boston University. We know of no other program, world wide, that teaches anything about how to translate transformatory policies into law. Hence, we feel justified in recommending that Gauteng send people to it. Over the years, China has sent 50 drafters to it; Lao P.D.R., eight; Mozambique, one. In the next two years, Sri Lanka proposes to send seventeen people (including four academics); as a possible source of ideas about developing such a programme in Gauteng, Annex 2 includes a United Nations Development Programme proposal recently adopted by the Government of Sri Lanka to strengthen its drafting capacity. That proposal includes sending a total of seventeen drafters and officials to BU for training.
28.1 The proposed Cabinet Memorandum.

28.1.1 The principal social cost of developing a centralized prioritization of drafting projects concerns the consequent diminution of the power of individual MECs to compete in pressing forward with drafting projects on their own. That involves basically a conflict of relative power between individual departments, and Government as a whole. It would seem the public interest comes down decisively on the side of Government directing the legislative process, rather than that process depending upon individual MECs' relative political strength.

28.1.2 Requiring Legal Services to prepare an annual priority list of proposed bills of course places a new burden on a heavily-pressed department. As suggested above, however, it seems possible to add personnel to that department.

28.1.3 Given Gauteng Government's many tasks, no more important function exists than prioritization of legislative efforts; hence the proposal that the Strategic Planning Committee of Cabinet, sitting as CCL, prioritize legislation and oversee coordination of the drafting process.

28.1.4 Requiring the departments to specify a drafting group and a programme of participation will ensure that a Cabinet committee determines who shall have inputs into the drafting process. That, too, constitutes a preeminently political decision, and hence ought to rest not with a technical officials, but with Cabinet or its CCL.

28.1.5 Requiring a research report for all but relatively minor bills simultaneously serves two purposes:

(1) The requirement structures the drafting group's decision-making processes in a way consonant with reason informed by experience.

(2) It provides a mechanism to provide Cabinet and legislature with information so that they can assess the bill -- that is, it serves as a quality control on the substance of legislation.

Compared with its advantages, the additional burden on the drafting group to write a research report as well as drafting the bill seems negligible.

28.2 Building Provincial capacity to draft implementable transformatory bills. Building the departments' (especially the Legal Services Department's) capacity to design adequate transformatory bills has benefits that vastly outweigh its costs. Various funding agencies may help to cover the financial costs. The
UNDP has financed similar programmes in China, Lao and apparently now Sri Lanka; perhaps it would do so here. The World Bank has an interest in 'governance' issues, including building drafting capacity plays an important part. So does USAID. Other agencies may suggest themselves to people who know more about the South African situation than we do. The social benefits should include improved legislation to implement proposed transformational policies, thus ensuring better use of Provincial departments' human and financial resources in servicing Gauteng's needs.

CONCLUSION

29 This memorandum addresses four existing difficulties in the bill-creating process: lack of prioritization of drafting projects, excessive outsourcing, lack of public participation, and transformatory bills too weak and too frequently incapable of successful implementation. The principal actors in that process include ministerial officials, private counsel, lawyers in the legal Services Department, and MECs and Cabinet. Their problematic behaviours seem to arise because of the state of law defining the drafting project, which leaves the process to MEC discretion under the cloak of secrecy; the lack of capacity, both in numbers and ability translate policy into legislative programmes; the existing drafting procedures that have come into being in the absence of formal rules defining the process; and the ideologies of departmental officials and central drafters, which let the project of developing detailed legislative programmes fall between them.

30 This memorandum recommends the promulgation of a Cabinet Memorandum defining a drafting process that will include the following:

30.1 Requiring the Strategic Planning Committee to act as also in the capacity of cabinet Committee on legislation;

30.2 Requiring Legal Services to submit an annual proposed prioritization schedule, subject to approval or amendment by CCL;

30.3 Submission by departments of memoranda proposing a drafting project, accompanied by a Drafting Plan describing the drafting group, participation in the drafting process, a schedule for the drafting, and a budget, approval by CCL, and, after drafting, submission to CCL for approval before sending to Cabinet of the draft bill and a research report with a prescribed content.

31 This memorandum further recommends building departmental capacity to translate policy into implementable legislation and institutionalize a learning process within the several departments and within Legal services, by sending some personnel over the next year or so to Boston University for a four month's training course.