A proposal to institutionalize a legislative drafting programme jointly managed by University of Witswatersrand Schools of Law and Public and Development Management

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PROF. CAROLE LEWIS
Dean of the Faculty of Law
University of Witwatersrand
Johannesburg

Dear Prof. Lewis

IN SUPPORT OF THE PROPOSED LEGISLATIVE DRAFTING PROGRAMME
AT THE UNIVERSITY OF WITWATERSRAND

Expressed in numerous policy documents, in the speeches of our highest political
leaders, and in the RDP and GEAR macroeconomic policies, South Africa has adopted
a strong policy of transforming our social, political and economic structures. That policy
aims, not only to do away with formal legally enforced apartheid, not only to produce
a formally democratic policy, but to improve the quality of social, political and economic
life for all our citizens.

Rapid transformation imposes a second, equally important priority. Since casting off
colonial rule, third world history teaches that unless change comes accompanied by
good governance - that is, the Rule of Law - the State too easily falls prey to rapacious
and grasping rulers. Our government's policies require not only transformation
accompanied by the transparency, accountability and public participation in
governmental decision-making that marks good governance.

Policy statements alone, however, whether for transformation or good governance, do
not automatically produce the desired changes. The legal order, broadly conceived,
constitutes government's only tool for bringing about those changes. Drafting
competent transformatory laws that enhance good governance becomes a high priority
for our government. At most, policy triggers, not institutional transformation, but the
process of legislative drafting.

Everywhere, parliaments primarily enact bills; they seldom have capacity to draft them.
In most Parliamentary systems, the drafting process mainly takes place in government
offices. Until the post-World War II developmental era, no government even purported to use law to make much more than incremental changes. No more than elsewhere in the world, whatever their skills in traditional drafting techniques, have our ministry and drafting office officials had experience in translating policies into implementable, workable legislation that actually induces both transformation and good governance.

Furthermore, in the apartheid state no members of the historically disadvantaged communities found employment as central government drafters (a tiny handful gained some experience in the former homelands). Before we can employ drafters from these groups, we must train them, both in drafting techniques, and in conceptualizing and drafting bills that translate transformatory policies into laws that will induce transformation and good governance on the ground. Until now, in all South Africa, no formal course of instruction in formal drafting techniques. No law student puts pen to paper to learn how to draft. Perhaps even more important for South Africa, no place can our officials study a theory and methodology of using law for transformatory change consistent with good governance. No place can a member of a previously disadvantaged group learn the craft skills and theoretical bases for the kinds of drafting competence South Africa needs today.

For these reasons, I strongly endorse the proposal that the University of Witwatersrand’s School of Law, together with the Wits School of Public and Development Management, establish a programme in Legislative Drafting for Democratic Social Change. I understand that this new programme will both train drafters in the traditional drafters’ craft skills that ensure polished, exact, and legally sufficient bills, and also equip them with the legislative theory and methodology required to produce transformatory bills that advance transparency, accountability and participation, and which our national, provincial and local authorities can successfully implement.

I wish you well in your search for funding for the proposed programme. If you think it is useful, of course you may use this letter in that effort.

Yours sincerely

DR A M OMAR MP
MINISTER OF JUSTICE