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

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Boston University
Dear Dean Lewis

Re: Proposed Legislative Drafting Programme at the University of Witwatersrand

I write to express my strong support for the proposed Legislative Drafting Programme at the University of Witwatersrand. That support rests on several grounds:

1. In the four years since the establishment of the Gauteng Provincial Government, we have experienced major difficulties in obtaining the high quality drafts of legislation required to implement our policy of achieving both transformation and good governance. This has become a major obstacle to our efforts to transform the legacy of apartheid, and simultaneously to achieve open, democratic and accountable governance in the Province. We have policy documents galore, all extensively discussed both at official and grassroots level. These policy documents, however, generally focus on broad visions of what Gauteng and South Africa might become. We sorely lack drafts, let alone actual legislation, that provide the detailed rules that alone can make those policies spring to life.

2. Those few transformative bills we have managed to draft have come from the pens of private counsel. These come at great expense to Government, from practitioners who sometimes have some expertise in the subject-matter. (But not always. For many bills that require drafting — for example, the organisation of the system of street children shelter, or primary health care — no private practitioner has had opportunity to gain much relevant experience). They rarely, however, have much expertise in either technical drafting techniques, nor in the problems of translating policy into implementable legislation.
3. Until this year, there has existed no place in South Africa where our government officials could learn either the theory and methodology necessary to prepare transformatory legislation, nor conventional legislative drafting techniques. Some legally-trained staff members of the Provincial Legal Services Department have studied legislative techniques in British Commonwealth Secretariat courses, or at Tulane University in the United States. Courses that teach those techniques, without more, train a drafter to draft legislation in acceptable form. They do not, however, purport to train either a departmental official or a lawyer in our Legal Services Department to translate the Provincial Departments’ transformatory policies into effectively implementable legislation or subsidiary legislation.

4. This year, for the first time, the four month trial programme introduced at Wits addressed that question. It has trained some Provincial, both legally- and non-legally-trained officials, not only in conventional drafting techniques, but also in the theoretical and methodological tools they need to draft transformatory bills. In those four months, more than 40 Provincial and National officials, law students and law faculty members have worked together to draft some 18 bills, dealing with topics as diverse as —

- caring for street children;
- restructuring the Provincial health system to provide more equitable primary care on the district level;
- creating community courts to deal with local and family disputes, and to provide non-penal measures to deal with petty offenses;
- resolving officials’ conflict-of-interest matters; and
- coordinating national, provincial, and municipal support for small enterprise.

5. In addition, to the deplorable absence of transformatory bills to place before our legislature, as Leader of the Gauteng House, I am particularly concerned that the elected Provincial legislators find it difficult to assess the merits of even the relatively small amount of transformatory legislation that comes before them. The Wits Programme required a person drafting a bill to accompany it with a structured research report that provides the facts and logic necessary to justify the bill’s provisions. This demanded that a person drafting a bill explicitly review the available evidence to ensure that the bill’s provisions would likely work in South Africa’s unique circumstances. It also produced research reports that will enable both Cabinet and Gauteng Provincial legislators to assess the bill’s factual and logical foundations. That must underpin any assessment of the bill’s likely success in achieving its transformatory and good governance objectives.

As I understand it, the proposed Wits Legislative Drafting Programme will build on the lessons learned in the trial four month programme. It will provide an on-going opportunity for national, provincial and local officials from all parts of the country to learn the theory, methodology and techniques required to draft high quality
transformatory legislation, accompanied by research reports grounded in reason informed by experience. The four month trial suggests that the institutionalization of the proposed Wits Legislative Drafting Programme will make a major contribution to enactment of legislation required to achieve democratic governance and meet the needs of all South Africans.

In addition, by bringing to South Africa other countries’ officials engaged in the drafting process, will provide an exciting opportunity for all the Programme participants to learn from each others’ experiences in developing legislation to ensure good governance and transform inherited institutions.

I hope you will do whatever is in your power to help make the proposed Wits Legislative Drafting Programme a reality. If it will help, feel free to show this letter to prospective funding agencies. Please do not hesitate to call me if you have any questions or desire further information about the Gauteng Government’s efforts to strengthen capacity for improved governance and transformation.

Yours sincerely

Firoz Cachalia
Leader of the House

cc: Prof Ann & Bob Seidman
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