

Legal Resources Centre workshop on legislative drafting, May 22-23. 1998

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**Legal Resources Centre
Land, Housing and Development Programme
Legislative Drafting Training Workshop Report
22nd and 23rd May 1998**

Introduction:

The Legislative Drafting workshop was facilitated by Professor Anne and Bob Seideman who are visiting professors from Boston University facilitating a Transformative Legislative Drafting course at the Witwatersrand School of Law in Johannesburg for students, national officials and drafters from the Gauteng Legislature.

Workshop summary:

To implement its proposed democratic transformation in a context of good governance, the South African government must at all levels transform a large number of inherited institutions. Law comprises governments primary tool for implementing social change. Law making is an ongoing process as the world is always changing. Moving from policy documents, drafters need to consider the following:

A country cannot change only through good legislation. Good Governance is the Rule of Law. Transformation needs to take place within the context of the Rule of Law.

The problem of transformation in South Africa is that there is a wealth of resources yet great poverty exists. Legislative Drafting can contribute to resource allocation. Distribution can change institutions through law. Institutions - assembly of repetitive patterns of behaviour and law addresses and perpetuates patterns of behaviour eg Apartheid.

A rights based approach only, diverts attention to the behaviour of the legislative implementing institutions and makes rights abstract. A present schism exists between rights, behaviour of implementing institutions, the constitution and the implementation of legislation. There is a need to translate rights into behaviour for legislation to be successful and implementable.

To ensure law that works you need to adopt a problem-solving approach with a four steps identification process:

1. The social problem (resource dimensions; role occupant behaviour)
2. Causes of problematic behaviour
3. Solution must alter or eliminate the causes of the problem - assess social costs and benefits.
4. Monitoring and evaluation of implementation and social impact.

A problem-solving approach is more democratic, participatory and transparent and draws on peoples knowledge in the process. This process is inclusive of public participation and consultation in the law reform process.

Legislative drafters should not duplicate or copy laws from other countries because of the differences involved. In the process of structuring a bill two principles should be maintained ie the architecture of the bill and who does what should be clearly stated.

New legislation must accomplish two objectives simultaneously ie it must ensure its own implementation to achieve the changes prescribed and it must induce government officials to do so in ways consonant with good governance. The experience of developing countries has persuaded them that without appropriate institutional change and good governance, development cannot succeed.

Legislative Drafting Topics: (participants divided into 3 groups according to focus area):

- * Environmental Legislation (Amendments)
- * Administrative Justice
- * Land Tenure Reform (proposals)

Participants: (list attached)

+25 (inclusive of attorneys and candidate attorneys).

Venue:

LRC National Office in Johannesburg

**LRC Legislative Drafting Workshop
Participants List**

Name	LRC Region	Area of Focus	Accommodation
Ellen Nicol	PTA	Environment	No
Louise Du Plessis	PTA	Land Tenure	No
Nick De Villiers	PTA	Admin Justice	No
Vusi Malebane	PTA	Environment	
Achmat Mayet	JHB	Land Tenure	No
Happy Masonde	JHB	Admin Justice	No
Ajay Makka	JHB	Admin Justice	No
Solly Bokaba	JHB	Environment	No
Mzo Mdladhla	DBN	Land Tenure	Yes
Thulani Nkosi	DBN	Environment	Yes
Pushpa Naidu	GHT	Land Tenure	No
Mary Honey	CPT	Land Tenure	No
Chantal Fortuin	CPT	Admin Justice	Yes
Kobus Pienaar	CPT	Land Tenure	Yes
Angela Andrews	CPT	Environment	Yes
Anthea Billy	CPT	Land Tenure	Yes
Achmat Toefy	CPT	Admin Justice	Yes
Nolitha Mazwai	CPT	Environment	No