

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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**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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April 19, 1998

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Transformation: That word encapsulates South African and Third World dreams of development and democracy. Poverty and authoritarianism root in existing institutions. Building development and democracy requires transforming those institutions. To transform them, governments have only one easily available tool: the legal order.¹ To transform inherited institutions requires that governments produce new legislation to transform inherited ones, and effectively to implement the new laws. Simultaneously, those transformatory laws must create the conditions for democracy and good governance: Accountability, transparency, and widespread public participation in on-going governmental decision-making.

To draft transformatory laws, governments require appropriately-trained personnel: ministry officials who must conceptualize them, legally-trained officials who must help translate them into clear, technically precise language, and legislators who must enact them.

¹ Broadly construed, the legal order here includes all forms of law and its implementation -- including not only state-promulgated rules (formally enacted national and provincial legislation, subsidiary legislation, departmental regulations, Cabinet memoranda, municipal ordinances, appellate court decisions, etc.) but also the institutions that enact them (Parliaments, Presidents, Cabinets, Ministers, Local Councils, military juntas, courts) but implementing agencies (courts, ministries, police, public corporations, 'quangos', even dogcatchers).

This year, to begin the task of providing this kind of training for government personnel in cooperation with the Gauteng provincial government, the School of Law of the University of the Witwatersrand used visiting staff² to introduce two legislative drafting courses. This proposal envisages building on that foundation to establish a Wits Programme in legislative drafting for transformation and good governance.

The Wits School of Law and the Graduate School of Public Administration and Development Management ('P&DM') will jointly administer and teach the Programme. The bulk of its prospective student population will include, not only regular Wits students, but also South African and other Third World officials and government lawyers.

This proposal first briefly reviews the South African and world-wide need to build capacity to draft and assess legislation; second, describes the proposed Programme and justifies its location at Wits; and, finally, outlines the budget for the seed-money required to get it started.

I.

THE NECESSITY FOR BUILDING GOVERNMENTS' CAPACITY TO DRAFT AND ASSESS LEGISLATION

This section describes (A) the world-wide need for new legislation to ensure institutional transformation and good governance; (B) the importance of training, not only government officials, but also NGO personnel to participate effectively in the process of producing and assessing effective transformatory laws; (C) the world-wide dearth of appropriate training programmes; and (D) the growing demand for courses in legislative theory, methodology and drafting techniques – the core of the proposed Wits Programme.

² Professor Robert B. Seidman and Professor Ann Seidman, Co-Directors of the Boston University School of Law's Programme on Legislative Drafting for Social Change; see Annex I for their curricula vitae.

A. THE NEED FOR TRANSFORMATORY LAWS THAT SIMULTANEOUSLY ENSURE GOOD GOVERNANCE

Four decades into the development era, in much of the world, development and good governance lie in shards. Putting them together requires governments to use state power – wisely. The persistent disarray in both development and good governance reflects newly-established governments' difficulties in formulating the legislation essential to achieve that task.

To achieve development and good governance, governments must transform prevalent institutions which perpetuate poverty and arbitrary rule. The distorted allocation of rich material and potentially creative human resources that today still impoverish the majority of peoples – not only in South Africa, but throughout most of the Third World – do not just 'happen;' they reflect political, economic and social institutions imposed by centuries of minority, mostly foreign, rule. As the 21st Century dawns, institutional transformation still lies at the very heart of every third world government's developmental tasks.

That imperative requires realization that institutions consist of repetitive patterns of behaviours.³

Development *means* the use of state power through law to induce appropriate changes in the behaviours that comprise institutions that perpetuate poverty and oppression.

³ Cf, Homans, George Casper. THE NATURE OF SOCIAL SCIENCE. N.Y.: Harcourt, Brace and World, 1967.

Governments wield state power through the legal order. No matter how clearly and powerfully stated, government policy alone rarely induces transformation. Declarations of policy seldom effectively induce new behaviours by either officials or citizens. Nor can legislators, even the most politically astute and attuned to peoples' needs, simply vote for those declarations and expect them to implement themselves.

They can only enact laws – new rules of the game – that require officials to behave in new ways likely effectively to implement those policies. As an essential step in law-making, the orderly change of institutions required to implement policy requires the translation of policy into well-drafted laws. Policy does not spark institutional change; at best, it sparks the drafting exercise.

The laws that emerge from the drafting exercise must do more than merely prescribe new institutions for economic development. Development's aspirations look to more than the satisfaction of material desires. They also look to realize democracy's promises. Bitter experience teaches that without development, erupting popular resentment destroys good governance; without good governance, the kleptocrats hijack development. Without a well-conceived Rule of Law, democratic practices cannot survive, and economic development stumbles. An appropriate drafting process must produce new laws that nurture both development and good governance.

Three decades ago, experts declared that dual mandate a mission impossible: Good governance, they argued, requires discretion closely cabined; development demands unbounded governmental power to experiment. Unbounded experimentation requires unbounded discretion. Yet unbounded discretion breeds everything the Rule of Law promises to prevent: Corruption, abuse of power, arbitrary rule. Politics, these experts claimed, could have either the Rule of Law, or change and development, but not both.⁴

⁴ See Schaffer, B. B. *The Deadlock in Development Administration*. In Leys, Colin, ed. 1969. *POLITICS AND CHANGE IN DEVELOPING COUNTRIES: STUDIES IN THE THEORY AND PRACTICE OF DEVELOPMENT*. Cambridge: Cambridge Univ. P.. 1969 at p. 177.

Today, almost 40 years of experience has persuaded the development community that that proposition errs. Successful democratic development requires transforming institutions to implement **both development and** governance. The legal order must underpin both. As a necessary (although not sufficient) condition, both require competently crafted laws.

For that, governments need to translate usually vague transformatory policies into concrete, implementable legislation that not only prescribes but actually induces citizens and officials to behave in appropriate new ways. To formulate those new laws, governments need corps of competent drafters.

B. THE POTENTIAL ROLE OF COMMUNITY PARTICIPATION

South African civil society's vital contribution to the struggle against apartheid underscores what many people everywhere have come to realize: Good governance requires community participation, not only in periodic elections, but in the on-going, day-to-day law-making process. The informed, effective participation of non-government organizations (NGOs) in mobilizing and providing inputs into laws' formulation, and feedback as to the consequences of elected and administrative officials' decisions as to laws' implementation, proves essential to ensuring that those laws will likely achieve transformation's goals.

This implies that NGO personnel, too -- whether or not legally-trained -- must acquire more than the skills necessary to assess laws politicians propose. They, themselves, must learn to help their members to participate in the process of conceptualizing and translating their demands into effectively implementable laws.

Whether at the local, provincial, or national level, they must acquire the necessary theoretical and methodological tools to participate in drafting teams to use reason informed by experience to prepare and argue persuasively for transformatory bills likely to meet their members' needs.

Almost nowhere in the world, however, can drafters acquire training required to draft those kinds of laws, or can legislators learn how to assess proposed transformatory draft bills. Far less do the few available courses in legislative drafting techniques purport to equip members of civil society with the tools they need to participate effectively in providing appropriate inputs and feedback into the law-making process.

C. THE ABSENCE OF APPROPRIATE TRAINING FOR DRAFTERS

Development and good governance depend upon equipping government officials and civil society's leaders with the theory and skills required to translate policy into transformatory bills. Those charged with the drafting task – ministerial or departmental officials, lawyers in the central drafting office, and, increasingly, NGO personnel – need two sorts of skills. First, they need the capacity to devise laws that will induce the institutional changes required for both transformation and good governance. For that, they need a working knowledge of legislative theory and methodology. Second, they need the craft skills involved in drafting understandable, unambiguous, legally correct, and elegantly-written laws – that is, legislative drafting techniques. Yet almost no place in the third world can drafters acquire the first, and almost nowhere in the world can they learn the second.

A tiny handful of legislative drafting courses in the English-speaking world offer instruction in drafting techniques. In the United States, Tulane University (New Orleans) and the International Law Institute (Washington, D.C.) offer short-term courses for third world government drafters. So does the International Development Law Centre in Rome.

The British Commonwealth Secretariat offers a distance training course and, intermittently, a six-month course in Barbados. In the past, it also occasionally mounted shorter but essentially similar courses in Ghana and in Zimbabwe. The University of London apparently offers higher degrees in legislative drafting, but no short-term courses. All these courses, however, focus primarily on teaching government drafters the forms and techniques of writing out proposed laws' provisions. None offer drafters a legislative theory or methodology for conceptualizing – let alone undertaking – the process of translating policy into effectively implementable laws.⁵

As far as is known, Boston University (BU)'s School of Law alone offers drafters an opportunity to learn how to translate governments' developmental transformation policies into effective legislation.

Its short-term (four month) course not only equips participants with drafting techniques, but also the legislative theory and methodology they need to bridge the gap between governments' policy statements and implementable transformatory legislation.⁶ The Programme here proposed aims to transplant the four month BU drafting programme to Johannesburg. At Wits, it will establish the only training programme in the English-speaking world centred on legislative theory and methodology, as well as drafting techniques.

⁵ A widespread myth, rooted in 19th Century British history, underpins legislative drafting tradition throughout the English speaking world: Ministry personnel should formulate policies, and leave it to drafters to translate their details into the technical language of law. This myth ignores the reality: The law's details determines the policies' details and how officials will likely – if at all – implement them. (R.B.Seidman, "Parliamentary Drafting in SubSaharan Africa" *Journal of Modern African Studies*; see Introduction of the **Manual** used by the Wits drafting course.)

⁶ In addition, BU's School of Law and Graduate Department of Political Science have recently introduced a Masters and a Doctoral programme for those wishing to deepen their understanding of legislative theory and methodology as the key to further enhancing the use of law both for transformation and good governance.

What holds true world wide of course holds true for the South. Except for the two Wits School of Law drafting courses this term and the occasional Commonwealth Secretariat course, neither in South Africa nor anywhere else in the Third World do law schools offer instruction even in conventional legislative drafting techniques. None offer courses in legislative theory and methodology.⁷ The relatively few English-speaking third world drafters (until very recently in South Africa, none from historically disadvantaged groups) mainly learn legislative techniques on the job. A few learn them in Commonwealth Secretariat courses focussed exclusively on drafting techniques. None have opportunity to study how to bridge the gap between policy and law. Those that do study at one of the few existing courses must travel huge distances to attend them.

That nowhere do law schools teach legislative theory and methodology to facilitate *transformation* probably reflects the , historical fact that established, western polities saw no need to use law to transform their institutions. They primarily viewed drafting as the task of government officials seeking to employ laws to make mere incremental changes.

Most law schools boasted that they taught their students to 'think like a lawyer': Taking existing laws as given, to represent their clients in court, and to advise them about matters conducted in the court's shadow. Traditionally, public administration schools primarily aimed to teach government officials -- not members of civil society -- how to formulate policy, not how to translate it into effective legislation.

Without an adequate theory of the role of law in effectuating social change, drafters everywhere tend to fall back on one of three inappropriate drafting practices. First, driven by the scarcity of well-trained drafters, government departments at great expense out-source proposed legislation to local practitioners or to foreign consultants. Too often, these consultants have no particular expertise in legislative drafting. Most frequently, they merely copy some other countries' laws.

⁷ The Seidmans briefly offered a six month course for drafters from the SADCC countries in Zimbabwe in the early '80s, but it ended their departure in 1983.

The resulting new laws generally fit the host country's unique realities only by accident. They seldom transform the institutionalized behaviours that perpetuate inherited power inequities and mass poverty.

Second, too often drafters write purportedly transformatory bills that comprise little more than statements of policy, written in legal form. To ensure conformity, they then impose heavy criminal sanctions on those who do not obey. Criminalization, however, seldom – if ever – effectively engenders institutional transformation.

Third, drafters sometimes merely collect competing interest groups' views as to what proposed laws should contain. The drafters then write what they deem an appropriate compromise. That seldom represents anybody's idea of adequate law, and mainly reflected the bargaining groups' relative power. The results tend to resemble the legendary committee-designed horse – that is, a camel.

Laws drafted in any of these three ways seldom achieved either good governance or development. In both South Africa and world-wide, experience underscored the need for improved legislative drafting training.

D. THE GROWING DEMAND FOR TRANSFORMATORY DRAFTING SKILLS

World-wide concern with institutional transformation to attain both development and good governance produced demands for building drafters' capacity to bridge the gap between transformatory policies and effectively implementable legislation. That generated a growing demand for training in legislative theory, methodology, and techniques. Building on the foundations laid by the two law courses introduced at Wits this year,⁸ the Wits Programme will help to meet that demand.

⁸ See Annex II for the syllabi for the two courses that comprise this initial Wits legislative drafting programme, and the list of participants as well as the bills they have undertaken to draft.

The participants in these courses included a number of university students and several faculty members, together with provincial and national governmental officials responsible for preparing bills: Two dozen officials from the Gauteng line departments and the Department of Legal Services, the Leader and four members of the Gauteng Legislature, several municipal officials, and a number of national ones. In addition to learning legislative drafting theory and techniques, the government officials all undertook assignments to produce bills accompanied by research reports – 18 in all⁹ – designed to meet their departments' priority legislative needs. In the course of learning the theory and methodology, participating Wits law students also contributed to the preparation of these bills and research reports.

At the outset, the two courses received little publicity. Nevertheless, through word-of-mouth they attracted wide attention. As late as half way through the term additional officials requested permission to join, bringing with them more bills they wished to draft. The Legal Resources Centre and the Financial and Fiscal Commission invited the Seidmans to teach workshops on translating policies into implementable transformatory legislation. Aid agencies asked them to put on two day workshops in several provinces to equip legislators with the theory and methodology required to assess transformatory bills.

Recent questions in South Africa's national Parliament have also highlighted the provinces' need for a Programme like the one here proposed. In 1997, two provinces apparently passed only three bills each. The other provinces enacted only marginally more. One identified cause lay in the lack of skilled staff to draft priority bills.¹⁰

⁹ The bills addressed a wide range of social problems: Restructuring Gauteng's Department of Welfare to serve the needs of the Province's historically-disadvantaged majority; establishing of a system of community tribunals to resolve minor community disputes; reducing the corrupting influence of officials' potentially conflicting interests; strengthening the provincial legislators' oversight of subsidiary legislation; providing credit to foster small enterprise; and strengthening municipal governments' capacity to promote employment.

¹⁰ "Efficiency of provincial governments is questioned," *Business Day*, March 24, 1998, p. 2.

In recent years, other governments have also manifested a strong interest in improved legislative drafting training for transition and development. First, every year since the late 1980s, when first the World Bank and later other international agencies began to emphasize the importance of law in transforming societies, the number of governments adopting programmes to draft laws for transitional and developing polities has multiplied almost exponentially.

These ranged from those in China (where the United Nations Development Programme <UNDP> and then the Asian Development and World banks introduced multi-million dollar programmes to draft new laws to foster the Reform and Open Policy) to Lao P.D.R. (where the UNDP and the World Bank cooperated to finance development of the Lao legal framework) to Indonesia (where USAID has embarked upon a new phase of the ELIPS programme which spent some \$15 million on the drafting of 17 new laws), and to all the transitional economies of Eastern Europe (where the World Bank, UNDP, USAID, French and Swedish, and German donor agencies have actively financed drafting projects).

The UNDP African Bureau proposes to allocate some \$500 million to fostering good governance programmes throughout Africa.¹¹ That most of these programmes depended almost entirely on foreign consultants testified to the need for training centres to build national drafting capacity.

¹¹ After the Seidmans conducted a workshop for the New York UNDP Africa Bureau staff, the Bureau leadership indicated an interest in sending officials from other African countries to a Programme on legislative theory, methodology and techniques, but indicated their preference for sending them to one located in an African country. John Ohiorhenuan, the former Director of the UNDP African good governance programme – now head of the UNDP South-South Bureau – indicated that his Bureau might support a South-based Centre of the kind proposed for Wits.

Second, the experience of the BU Programme on Legislative Drafting for Democratic Social Change also underscores the need to expand legislative drafting training. The Programme originated in a five-year UNDP project, for which the Seidmans served as Chief Technical Assistants.¹²

That project helped Chinese drafters to prepare 22 priority bills to implement the Reforms and Open Policy. It sent some 50 Chinese drafters to BU for an intensive four-month programme. At BU, each pair of drafters drafted a priority bill and an accompanying research report. In that context, they not only strengthened their capacity to draft technically competent bills to transform policy into implementable legislation; ultimately, they actually drafted the bills and accompanying research reports.¹³

On returning to China, the Programme participants also helped to equip other officials in their ministries with legislative theory and methodology that enabled them to draft additional bills. Building on that experience, the BU Programme also trained Lao and Mozambican drafters, and expects to play host to 12 Sri Lankan drafters in the Fall Semester, 1998.¹⁴

¹² It also drew on the theory and skills developed by the Seidmans over some 30 years of work in law and development, 11 of them while teaching and doing research in African universities; and materials and experience gained by R.B. Seidman in teaching a legislative drafting course for BU students who prepared real bills and reports for the Massachusetts State Legislature.

¹³ Of the original 22 bills, the Project helped draft 21 (after research, the Chinese authorities decided not to press for the remaining two. The Chinese added three bills to the Project, concerning unemployment insurance, industrial accident, and health care. The Chinese have not drafted all three.

¹⁴ Following the Seidmans' Mission, funded by UNDP, to help the Sri Lankan government formulate a strategy to improve provincial drafting capacity, the UNDP in Sri Lanka agreed to send a dozen drafters to BU, including Central Drafting Office officials, provincial ministerial personnel, and university law school lecturers (who, on their return, will mount drafting courses in their university). In principle, if the Wits Programme gets underway in time, the UNDP has agreed to send another seven officials to participate in it during the first term of 1999.

Third, a year ago the BU Programme sent out 1,500 copies of a brochure about the existing Boston University (BU) Programme to international agencies and national drafting offices. As an indicator of the growing world-wide demand, the Programme received many enquiries and applications for admission, not only from individual drafters, but also from attorneys-general and Chief Parliamentary Draftsmen throughout the world – from Nigeria, Tanzania, Zambia, Zimbabwe, Namibia, Brazil, Papua-New Guinea, Vietnam, Khazikstan, and elsewhere.¹⁵

Finally, the increasing numbers of academics engaged in legislative drafting consultancies in third world and transitional countries, has fostered an increasing academic interest. Macmillan recently published not only the Seidmans' 1994 book, *State and Law in the Development Process*, but also their edited book on the Chinese project.¹⁶ A leading English law publisher, Kluwer, has agreed to publish another edited book¹⁷ on legislative theory and methodology, and also to initiate an academic journal focusing on that subject.

All this suggests a widespread and growing recognition of the need for appropriate training programmes. These must teach concerned government officials to understand how to conceptualize, assess and implement the process of translating transformatory policies into effective law. Potentially, the proposed Wits Programme may play a central role in meeting that demand.

¹⁵ Almost none of the individuals who wanted to come could find sponsors to pay BU's high tuition, room and board (\$15,000 per visiting scholar, plus travel costs). To date, most of the BU Programme's participants have come from countries where the Seidmans have worked with donor agencies to set up drafting projects.

¹⁶ A. Seidman, R.B. Seidman, and J. Payne, eds.
Legislative Drafting for Market Reform - Some Lessons From China (1997)

¹⁷ Edited by the Seidmans together with Professor Thomas Waelde, Director, the Centre for Petroleum and Mining Law, Dundee University, and containing contributions, *inter alia*, from the General Counsel of the Asian Development Bank, senior lawyers from the World Bank, and leading U.S., Polish, German and British academics.

II. THE PROPOSED WITS PROGRAMME

Initially, the Wits Programme will build on the BU Programme in Legislative Drafting for Democratic Social Change. As South Africans increasingly take over teaching and administrating the Wits Programme, and more Third World drafters participate, however, the Programme will inevitably change and grow. This section first outlines the assumptions that underpin the BU Programme. It then describes the proposed Wits Programme's substantive content. Finally, it explains why Wits constitutes a particularly appropriate venue for the Programme.

A. THE BU MODEL

The BU Programme centres on five basic principles.

First, as its ruling perspective, the BU Programme focuses on building capacity to produce legislation that simultaneously facilitates institutional transformation for social justice and good governance (that is, the Rule of Law).

Second, the BU Programme assumes that, whatever drafters claim, in translating government policies into law, they inevitably participate, not only in determining proposed legislation's form, but also in detailing its content. For that they need training in both drafting techniques and legislative theory and methodology.

Third, as its intellectual foundation, the BU Programme underscores the importance of grounding transformatory legislation on the use of reason informed by experience. To accomplish that, drafters must accompany major bills with **full-dress research reports that explicate the bills' underlying logic and evidence**. Only then can political leaders, legislators, stakeholders and the public-at-large assess whether their facts and reasoning will likely ensure the bills' **quality as instruments for desired social change**.

Fourth, far from a mere academic exercise, the BU Programme aims primarily at people who will either **do** or **teach** drafting theory and skills – frequently both. That they can only learn, not through the typical lectures and exams or even seminar debates of academia, but by engaging in the actual process. Just as, to learn to ride a bicycle, the trainee must actually get on the bicycle, drafters can only learn to draft by actually **doing** drafting. The BU Programme requires each participant to bring to BU an actual priority transformatory bill to draft. Once a day for two hours all the participants meet in workshop-like seminars – to study different aspects of the drafting process by helping each other to improve their bills and research reports. At every point in the four-months course, the participants learn, not through lectures, but through **doing** drafting.

Finally, skills transfer lies at the heart of the BU Programme's mission. It assumes that most participants will return home, not only to draft new laws themselves, but also to help train other drafters.¹⁸ For that reason, it includes a weekly workshop in how to teach legislative drafting theory, methodology and techniques to other drafters by involving them in actually drafting new legislation.

To meet the requirements of South African and South-South realities, the proposed Wits Programme will flexibly adapt and develop these underlying principles.

¹⁸ Over the years, the BU Programme participants included two persons specifically designated to lead a proposed centre for legislative drafting in the Bureau of legislative Affairs of the State Council, as well as a Professor at the Faculty of law of the University of Political Science and law, and a Professor at the Faculty of Law, Fudan University; the former Associate Dean of the Faculty of law and Eduardo Mondlane University, Mozambique; and the Associate Dean of the Vientiane Law School in the Lao P. D. R. The Sri Lankan delegation that will attend BU in the Fall Semester, 1998, will include two academics from the University in Colombo, and two from that country's public administration training institution.

B. THE CONTENT OF THE WITS PROGRAMME

The Wits Programme will teach legislative theory, methodology and the craft skills to South African and overseas personnel engaged in designing and drafting transformatory legislation;¹⁹ legislators who must assess whether complex draft bills will likely attain their stated objectives;²⁰ and regular Wits students of law and public administration who, on graduation, may have the opportunity to fill either of these roles.

The Wits Programme faculty will also engage in research designed to strengthen legislative theory and methodology, and improve the law-making process, legislative drafting techniques, and the use of social science research methodologies as they relate to legislative drafting.

At the outset, the proposed Wits Programme will include two kinds of courses. One will comprise a certificated four month intensive, residential programme for South African and foreign drafters, most of whom will return to their home governments or universities to initiate further training in legislative drafting while producing their countries' much-needed new legislation.

¹⁹ These will include both legally- and non-legally trained government officials as well as central drafting office lawyers; see section I-B above.

²⁰ Simply by reading the texts of complex bills on which they must vote, legislators – indeed, no one – can determine whether they will achieve their stated goals. To prescribe specified behaviours anticipated to resolve social problems, bills comprise carefully crafted ordering of substantive sections written in precise language designed to facilitate interpretation by those who must implement them. On their face, however, bills never provide any explanation of the complicated logic and essential evidence upon which drafters supposedly ground them. For that reason, the Wits Programme will require drafters to prepare research reports to accompany their bills, thus providing the information legislators and other need to assess them. As part of the Wits Programme, short courses will provide legislators an opportunity to learn the theory and methodology that lie behind those research reports to enable them to determine whether, in fact, they adequately justify the bills.

The proposed four month programme will include five seminars similar to those currently taught at BU. As part of their regular course work, Wits law and public administration students may receive course credit for their participation in the four month components' seminars.

The second component of the Wits Programme legislative drafting curriculum will consist of shorter or part-time workshops – ranging in length from two days to four weeks – for officials and legislators from national, provincial and local South African governments, and perhaps from neighbouring countries.

1. *The four-months, full-time residential course.* This course will primarily cater to full-time participants who plan to return to their own governmental services, local universities and training institutions to draft new legislation and to train other drafters. As in the BU Programme, unless changed in light of new experience, each participant will bring to the Wits Programme a proposal for a specific priority bill. As the core of their work in the Programme's learning-by-doing process, each will draft that bill and an accompanying research report designed to justify the bill's contents.

Most participants will attend five weekly seminars, tailored to build the specific skills they need to draft implementable transformatory bills, and to teach those skills:

***Seminar in Law and Development.** This will equip the participants to use legislative theory as a guide for translating policy into effectively implementable legislation consonant with good governance;²¹

²¹ At BU, and in the two courses held in 1998 at Wits, regular university law students participated together with government officials. The resulting cross-fertilization proved useful to both. Often, the students conducted research that provided valuable information about other countries' legislation and experience in problem areas similar to those addressed by the officials' bills. In turn, the students learned a lot about the use of theory and methodology to resolve complex real-life difficulties through law.

***Seminar in Legislative Drafting Techniques.** To learn the technical aspects of drafting bills, in this seminar the participants will write carefully-structured research reports and prepare draft bills;²²

***Seminar in Methodologies of Social Science Research.** To develop capacity to ground bills on reason informed by experience, in this seminar the participants will learn to make competent assessments of and utilize available social science research as evidence to substantiate the explanations that underpin their research reports;

***Seminar on Methodologies for Non-formal Education.** This seminar will **equip the participants to serve as trainers** to teach legislative theory and techniques , not only to students in other South African institutions, but also to governmental officials typically far removed from academic pursuits;

***Tutorials in Areas of Foreign Law and Experience** relevant to their particular priority bills. These weekly tutorials will enable participants to confer one-on-one with professors who will supervise their research and help them review other countries' laws and experience in areas relevant to the participants' own bills.

2. Part-time and shorter courses for South African drafters.

As indicated above, a strong demand exists in South Africa for on-the job training for drafters. To meet this demand, the proposed Wits Programme faculty will mount part-time courses for officials (like the two mounted this semester at the School of Law).²³

²² It is anticipated that qualified Wits law and public administration students may elect to participate in this course for credit as they do in the BU course that drafts bills for the Massachusetts legislature (see note 12 above).

²³ On request in the past, the Seidmans have conducted several two day to three week courses elsewhere in South Africa, both for drafters and legislators.

3. *Other courses.* As part of its on-going mission, proposed Wits Programme faculty will service additional demands for capacity building for legislative drafting and for assessing bills. Given the enormous diversity of country demands, they will tailor new offerings to the drafting needs of requesting government units and legislatures.

C. WHY WITS?

For five reasons, Wits constitutes an appropriate venue for the proposed Programme: In no particular order, its proposed mission to bridge the perceived gap between academia and its social surround; the depth of its academic resources; its location; its existing infrastructure for mounting the four month course and shorter workshops; and, compared with BU, its relatively low cost.

1. *Serving the community.* In his inaugural address, Wits's new Vice Chancellor, Professor Colin Bundy, emphasized that the University should respond affirmatively to demands that the academy become more closely linked to the society that nourishes it. In tomorrow's university, he forecast, "curricula and research agenda will be directed by priorities established in the broader society." He concluded that Wits should be "deeply involved in the social, political and economic restructuring of our society' and that it was superbly located to play an active and leading role in Africa."²⁴ In accord with the principles underlying its establishment, the proposed Wits Programme should make an important contribution to bridging the academia-society gap.

²⁴ WITS REPORTER, 6 April 1998, p. 1.

2. *Academic capacity.* This proposal anticipates that the Wits Programme will become self-sufficient not later than the end of three years.²⁵ From the outset, many Wits Law School faculty members – several of whom already have served as consultants in drafting legislation for the national and provincial governments – have demonstrated enthusiasm for the Programme. Seven faculty members have participated in various aspects of the two pilot courses introduced in 1998. Two Associate Law School Professors have agreed, if funded, to go to BU in September, 1998 to prepare themselves to help establish the Programme beginning in the first term of 1999.

Other Wits faculty have indicated an interest in undertaking the BU a Ph.D. programme in legislative drafting. In a relatively short time, therefore, the Programme will have sufficient local staff to teach it without external visitors or consultants.²⁶

Concerned with problems of public policy formulation, P&DM's staff has long understood that public policy formulation must take into account the processes by which policy becomes legislation, and the necessity of teaching its students about that process. It has already employed a law teacher to initiate courses for that purpose. With her assistance, the proposed Programme will fit comfortably within P&DM's mission. P&DM will also send a faculty member to the fall 1998 BU Programme as part of the Programme's foundational teaching staff.

²⁵ For the next three years, that Programme's co-directors (See Annex I for the Seidmans' curricula vitae) have agreed to serve in the proposed Wits Programme as Visiting Professors.

²⁶ This does not obviate the potential benefits of inviting guest lecturers from time to time to enrich the Programme's offerings, especially relating to other countries' laws and experiences relating to specific priority issues.

Together, the Law School and P&DM, as well as the larger Wits community, boast a world-class faculty. Among its members, or in university and research institutions in the Johannesburg area, the Programme will readily find supervisors with substantive expertise to supervise participants in reading in applicable foreign law and experience and to assist them in the drafting projects they bring to the Programme.

3. *Location.* Many writers have underscored the desirability of South-South cooperation.²⁷ A Programme at Wits obviously meets that criterion. Moreover, Wits exists in the heart of a large metropolitan center. That will facilitate finding solutions to problems of housing and general living for visiting participants from other provinces and countries.

4. *Infrastructure.* The Wits Graduate School of Public and Development Management (P&DM) has a long history of conducting relatively short term programmes for officials and others. It has a strong organization, fully capable of handling the proposed Programme's administrative and housekeeping aspects, including the provision of accommodation for the Programme's participants.

Assuming the availability of funding, P&DM will employ a Programme administrator to undertake the first essential steps of establishing the Programme.

In the context of its larger Wits library system, Wits not only has an extensive branch library focussed primarily on law, but also branch libraries on social science and other cognate disciplines. These will provide Programme participants with ample access to essential access to South African and international legal and substantive materials.

5. *Cost.* The cost of tuition, room and board per participant from South Africa or elsewhere will amount to about half of BU's \$15,000 (not including travel expenses). In addition, for most third world countries, travel to and from Johannesburg runs rather less than travel to and from Boston.

²⁷ See footnote 11, above.

III. THE PROPOSED BUDGET:

The budget for the proposed Wits Programme will include start-up costs, requiring seed money, especially for training staff; and on-going teaching and administrative costs. The possibilities of providing scholarships for well-qualified personnel responsible for drafting transformatory legislation for their home governments raise special financial issues. The present request concerns seed money only: To train staff to begin to take on the Programme's teaching tasks' to fund the Seidmans as visiting professors; and to pay preliminary administrative costs.

A. TRAINING PROGRAMME FOR TWO SCHOOL OF LAW AND ONE P&DM STAFF MEMBERS, AND FOR TWO STAFF DEVELOPMENT FELLOWS

As a first step, this proposal envisages that, in the fall of 1998, three Wits faculty members, two from the Law School, and one from P&DM, will attend BU Programme. In the context of Wits' affirmative action policy, these will include substantial Black and female representation.

On their return to South Africa in the beginning of 1999, the three staff members, working with the Seidmans, will initiate establishment of the proposed Programme. In the first year the Programme would enable at least 50 participants to learn legislative theory, methodology and techniques while preparing priority legislation.²⁸

²⁸ The staff's ability to provide individualized assistance in their preparation of the bills and research reports comprises the main constraint on the numbers of Programme participants. In the two 1998 Wits courses, the two Seidmans helped participants, some of whom worked in teams of two or three, to produce 18 draft bills. With three more staff members, they could work with 60 to 70 participants to produce at least 30 bills.

Over the years, as the Programme's staff grows in numbers and experience, this proposal anticipates that Wits may become a Centre, not only for legislative drafting training, but also the research and on-going pioneering work required to provide leadership for the improved use of law to foster democratic change throughout the third world.

Eventually, the Programme should receive enough money in the form of tuition to stand on its own.

TRAINING COSTS

Tuition and costs for three staff members to attend the 1998 session of the BU Programme in legislative Drafting for Democratic Social Change: *4 weeks*

Per participant:	
Tuition	<u>\$10,285</u>
Board and room @1250/month x 4 mos.	5,000
Health insurance	250
Airfare	<u>1,500</u>
Total per participant	<u>\$16,785</u>
x 3	<u>\$50,355</u>
 TOTAL IN SAR @ 5.5 (est)	 <u>R276 952.50</u>

If available, an additional stipend per participant would enable the three Wits faculty members to visit Washington and New York to study United States law-making institutions as well as the very limited array of other law school legislative drafting programmes.

**B.WITS UNIVERSITY SCHOOLS OF LAW AND PUBLIC & DEVELOPMENT
MANAGEMENT**

FUNDING REQUIREMENT TO ESTABLISH LEGISLATIVE DRAFTING PROGRAMME

Note: This budget assumes a six month lead time, with the first course being run in March 1998. The budget covers delivery of the first planned course, assuming 50 per cent of students on the first course will require sponsorship, which will be provided to 10 students from South Africa and other African countries. The Programme will aim to become self-sustaining through fees in the long term.

1. Staffing and lecturing

Academic staff member (lecturer scale - one year from September 1998)	R 140 000
Administrative support - part time (one year)	80 000
External lecturers (first course - 100 hours @ R300 p/h)	30 000
Stipend - Seidmans (USD 15 000 x 2 @ 5.5)	165 000
Travel - Seidmans (USD 3 000 x 2 @ 5.5)	33 000

2. Overheads and operating costs

Office space and classroom rental	50 000
Telephones, postage, and stationery	30 000
Transport (2 x trips to Cape Town plus accommodation)	8 000
Sundries	3 000

P&DM overheads (Note 1)	107 800
3. Delivery of first course (March - June 1998)	
10 x tuition fees @ R20 000	200 000
10 x accommodation fees @ R250 x 100 days	250 000
Total	<u>R 1 093 800</u>

(Note 1): P&DM levies a 20 per cent cost recovery fee on expenditure on all programmes. This covers computer costs (including networks), library costs, faculty costs, certification costs, security and general services, support, and common costs of the School.