

## **A Partnership For Evidence Based Legislation**

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### **I. Introduction**

Thank you for inviting me to speak today to offer a proposal meant to support the African Parliamentary Knowledge Network.

Specifically: how can we create a partnership between this network and my institution Boston University School of Law—a partnership to promote the use of evidence based legislation.

As a person who studies laws and legislatures professionally, I am often confronted with Bismark’s famous statement “There are two things you don’t want to see being made—sausage and legislation.” Bismark’s implication is that both sausages and legislation are the result of an unsavory combination of waste products. If one wants to keep their appetite, they will take what they can, while ignoring how it came to be. In fact, one professor I know calls legislation “an unprincipled, incoherent, disordered mess.”

Those of us who work closely with legislatures know that often people believe such statements because they don’t understand the legislative system. There *is* order and principle at work, but it is easier to walk by the sausage factory than it is to understand what goes on inside.

We also know that—at times—all legislatures around the globe are capable of producing poorly thought out and poorly drafted laws.

My colleagues and I believe that if we hope to use law to address the great problems of the day, we must start looking at legislation as a subject of serious academic and practical study.

We must seek out ways to make both legislative process and drafting systematic, thoughtful, and firmly grounded in the best available facts—the *evidence*.

## **II. Proposal For Clinic**

When Mr. Zeni from UN/DESA suggested a formal relationship between the United Nations and Boston University School of Law to *support* the work of the African Parliamentary Knowledge Network, my colleagues and I were very excited.

BU Law has been at the forefront of teaching legislation for 30 years.

Our students, who are all doing graduate legal work, come from some of the best colleges and universities in the United States and from around the world. While some American law schools treat legislative process and drafting techniques as afterthoughts, we offer our students many opportunities to learn both legislative theory and the practical application of how legislatures craft and enact statutes. They do this by working for actual clients and on real issues through clinics. And we emphasize that legislative drafting is not just a technical skill— but helps create the substance of the law.

This achievement is due, in large part, to the work of Professors Robert and Ann Seidman who have been teaching legislation and uses of law as a powerful method of social change at BU and around the world since the 1970s. Bob and Ann have taught at universities in Ghana, Zambia, Zimbabwe and South Africa. They also run ICLAD—the International Consortium on Law and Development, which trains legislative drafting to policy makers from around the world.

Our students frequently graduate to become leaders in finance, health care, manufacturing and government—as legal staff, high ranking policy makers and as elected legislators at the state and national levels.

Boston University also has a wealth of African learning resources. Since 1951, BU has operated one of the largest African Studies Centers of any American university. This center is staffed by 70 faculty members from over 20 departments and professional schools and conducts both graduate and undergraduate programs.

It has an impressive library of material on Africa, And now hosts the African Presidential Archives and Research Center, which is directed by the former ambassador to Tanzania, Charles Stith. This Center hosts former heads of African nations as scholars in residence, archives African public records, and provides a forum on political and economic developments in Sub-Saharan Africa. So far this Center has hosted former leaders from Botswana, Mauritius, Cape Verde, Liberia and Zambia.

Currently, Bob, Ann and I run three clinics that teach sound legislative methodology to our students and produce high quality research reports and legislative language to policy makers in the United States.

Today we propose building on the experiences of our Law School and the ties BU has with Africa, to create a new clinic with a mission to support the work of the African Parliamentary Knowledge Network and to increase the legislative capacity of African parliaments. We envision a course where our law students in Boston spend a semester working on problems facing an African nation or region. In addition, our students will work to add content about recently created laws to websites such as the African Parliamentary Information Exchange.

Our students will have the benefit of learning how law can—and must—be used as a tool of social change in developing nations. They will gain an appreciation for how legislative challenges are met on an international level. They will also learn of the particular issues facing the great nations of Africa.

In return, I hope that through modern communications and technologies we can help support the APKN and provide high quality work that will both advance particular legislative proposals, and ultimately build the capacity of African law making bodies to make use of evidence based legislative practices.

### **III. Capacity Building for African Parliaments**

What work product will this Africa i-Parliaments Clinic produce?

First, we propose to work with the APKN to solicit government officials and members of national or regional parliaments to be our clients. Ideally, these clients will have a social problem that needs to be addressed, but, for whatever reason, they have not had the time or resources to properly study and formulate a legislative fix for the problem.

The students, again in concert with APKN, would work with these clients to gather information on the social problem and analyze it according to the Institutional Legislative Theory and Methodology.

All too often governments enact poorly drafted laws—those with no evidence or no scheme, toothless generalizations, contradictory proposals cobbled together without any logical plan, or simply copying what other countries have done. None of those methods require a close analysis of evidence and, not surprisingly, none of those methods work—except for a rare case of luck.

In contrast, Institutional Legislative Theory addresses social problems through an evidence based methodology. That is, by identifying and attempting to systematically change defective institutions—sets of repetitive behaviors that poorly serve the public interest.

In this modern and wired world, the policy maker rarely finds herself at a loss for information and evidence, but rather, is confronted with the problem of too much data.

Institutional Legislative Theory and Methodology allows a drafter to identify the information that is most useful and relevant to the policy debate.

When working for a client and designing evidence based legislation, we ask that our students—and any policy maker—take four steps:

First, to make a detailed description of the problematic behavior. What is the nature and scope of the social problem? Is there a pattern of unequal resource distribution? Whose behaviors are causing, or collectively leading to this social problem?

In describing the problem and defective behaviors, we ask our students to provide relevant facts for their assertions—a solid foundation for a legislatively based solution.

Second, propose an explanation for the problem identified in step one. This allows the policy maker to predict the social impact of a new law's provisions. Given the current situation, why do people act the way they do? Understanding this point is essential to predict what impact a new proposal will have.

Actors will behave according to the constraints and resources of their environments. Their behavior will be affected by several factors: the nature of the legal commands—the statutory language—and the person's ability to understand the law; how people anticipate government agencies will use that law; and the “non-legal” constraints and resources in a person's environment.

Social problems have several—and interrelated causes, and are unique to their locations. That is why simply copying legislation from another jurisdiction rarely works.

To help explain behavior, one should consider seven possible categories:

1. The content of the **Rule**;
2. **Opportunity** to obey the law;
3. **Capacity** to obey;

4. *Communication* of the law to the actor;
5. *Incentives* to obey;
6. The *process* of deciding whether to obey; and
7. The role occupant's *ideology*

By considering these categories, we can make a hypothesis—an educated guess—as to what causes a role occupant's behavior—be it the citizens or the implementing agency's behavior, that makes an institution defective.

As always, these hypotheses must be based on supporting evidence.

Third, one must design detailed provisions that will likely alter or eliminate the causes of problematic behavior. In using this method, one should provide for alternative possible solutions and some cost-benefit analysis to demonstrate which course of action will be the most effective. Once again, this must be an evidence based argument showing that the socio-economic benefits will outweigh the socio-economic costs.

Fourth, a bill should contain provisions to monitor and evaluate the new law in the future. We all know that there is no perfectly written statute, and changing circumstances require the law be constantly reviewed and updated. How can a parliament best gather information on the effectiveness of its statutes? Can we gather information from those most affected—especially the poor and the vulnerable? How do we foster a culture of transparency and accountability?

We have our students provide their clients with not only a bill for their consideration, but also a report that documents their research, their findings, their conclusions and possible alternatives.

This report not only provides quality control for the proposed bill language, but provides the foundation for a parliament to consider the proposal based on facts and logic.

Can someone offer a better solution? If so, what facts are they relying on?

The entire debate moves beyond guessing about what needs to be done or copying another country's statutes, or making broad generalizations. The debate will be framed and organized around the evidence.

We have already started trying to apply this methodology to current problems in regions of Africa. For example, over the last two years, my colleagues Professors Ann & Bob Seidman and several students have been working with the East African Community to draft bills and reports for improving East Africans' access to affordable medicines. I have a copy of the working draft with me if anyone would like to take a look.

Going forward, my hope is that the African Parliamentary Knowledge Network will be able to help provide clients, ideas for projects and background information. In turn, our students will apply the legal methodology to produce draft evidence based legislation as a starting point for debate.

I also hope is that using this methodology will not just improve the debate on the particular issue a client has asked for assistance, but will impact legislative practice on a deeper and more permanent level.

I have worked with legislatures for many years. The legislative process is often a rushed affair, and often there we do not have the time for a lengthy investigation or a formal report. Still, if policy makers can start to think of problems methodically and to look for evidence to understand social problems and formulate solutions, the work product of that legislator—and her institution—will improve dramatically. I believe that by entering into these partnerships we can promote both the formal and informal uses of this methodology.

My colleagues and our students will also greatly benefit from this partnership. While we can gather and analyze evidence of the constraints and limited resources that dictate how effective a law will be, African Parliaments—like all organizations—

have their own social constraints and limited resources. Very often only the members of a particular Parliament will know exactly what those are. For that reason, our work product—our report and bill language—is meant to be a starting point for debate, amendment and revision.

By partnering with clients in Africa, we can continuously learn what those constraints and limits are. This will allow us as academics, and our students, as future policy makers in America, to be aware of the problems faced by African nations and what has been done to overcome those challenges. We will also have the chance to compare your legislative situations to American legislatures and begin to draw lessons about how best to run any institution where the representatives of free men and women seek to govern.

To look at a problem systematically, to gather evidence, and to base new laws on that evidence may be our best hope to finally address the defective institutions that continue to cause and perpetuate the problems that plague our society –regardless of whether we are talking about the hills of Kigali or the tangled streets of my hometown of Boston.

I also propose to have BU Law students support the APKN in another way: by providing content for the African Parliamentary Information Exchange and its website. This Exchange intends to publicize recent legislative events for the benefit of other countries.

Each semester, I would like to see our students:

- Identify a recently enacted statute;
- Objectively and fairly summarize the statute;
- Analyze the problem the statute sought to solve;
- Analyze the methods the Parliament chose to address the problem;
- Reference alternative methods used in other countries.

I believe this information will provide a tremendous benefit to the APKN. It will also allow countries to see what specific problems their neighbors are facing, and how they

have chosen to deal with them. Hopefully, this information will allow the nations of Africa to learn from each other—to build on good experiences and to avoid missteps. This project will also give students an opportunity—outside of the classroom—to learn how African parliaments operate and to know them by their legislative work product. They will also have a chance to compare what they propose for clients according to the Institutional Legislative Theory and Methodology to laws actually being passed.

In addition to documenting changes to the law, I hope the Information Exchange will become a method to propose and chronicle innovations that parliaments make to their legislative process. Did a parliament create a new professional drafting office? Did a parliament create a new committee or bureau to deal with a persistent social problem? Has the parliament asserted its oversight powers over a traditionally powerful executive? Have there been improvements to the Parliament's technological capacity?

The APKN, in partnership with our students, could offer objective and fair analysis of these legislative changes for the benefit of people within that country and for other nations that may be contemplating similar actions.

Should this clinic be a success, I would like to see current and former members of African parliaments come to Boston for a semester or a year to help teach and advise our students. They would benefit greatly from your experience and insights.

This program will also seek to build African Parliamentary capacity in one final—and perhaps in its most far reaching way. I hope this will happen by building relationships between Boston University Law School and various universities of Africa. Through exchange programs and internships, we can educate an ever expanding circle of African and American law students about the benefits of evidence-based legislation.

Perhaps African Universities can join BU Law to engage senior law students, teach evidence based legislation and partner with other social scientists to address the social problems of the day. With any luck, these graduates will be the legislative drafters, the

policy makers, the members of Parliament and the Presidents of our nations for generations to come.

## **VI. Conclusion**

Is legislative process difficult to navigate? Yes.

Is legislation a thoughtless mess? Even if it only happens rarely, it is too often.

These are problems that my colleagues and I see everywhere—whether in the marbled halls of Congress or the Massachusetts Legislature, or in the provisional seat of government struggling to establish peace and overcome the great challenges of poverty, famine and disease.

We can do so much better.

While it may well be wise to ignore what takes place in the sausage factory, we ignore the legislative process at our own—and our children's—peril.

Legislation must take its rightful place as a field of serious legal study

It is time for men and women of action—whether they are learning legislative theory in a BU classroom—or serving in an African parliament—to create each piece of legislation into the finely wrought tool designed for that time and in that place. Only then can the law be used in a way to effectively achieve its aims—be that bringing stability, eliminating disease, eradicating hunger, or bringing economic development.

Boston University is committed to working with the African Parliamentary Knowledge Network to achieve these goals. I hope you will join us, both as future clients and as advisors.