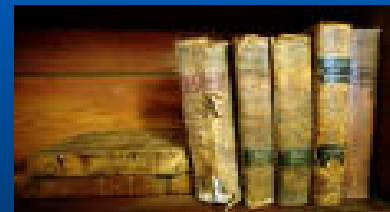


Rationalisation of Laws Project

Revision of the KZN Statute Book



1. Background

- **History**
- **Old legislation still forms part of the body of law currently applicable in KZN (section 229 of the 1993 Constitution; Item 2 of Schedule 6 to the 1996 Constitution)**
- **The Provincial Legislative Framework**
 - *Post 27 April 1994 National and KZN laws*
 - *Pre 27 April 1994 National, KwaZulu and Natal laws*
 - *Pre 27 April 1994 assigned old order laws*
 - *Post 27 April 1994 delegated national laws*
 - *Subordinate legislation saved in terms of certain laws*

Background/ ...2

- **Areas requiring attention:**
 - Assignment of old order legislation
 - Consistency with the provisions of the Constitution
 - Apportionment of powers between the spheres of government
 - Saved subordinate legislation
 - Local government laws (also Municipal By-laws)

Background/ ...3

- No national legislation assigned or delegated to certain Departments
- Determination of provincial legislative competence
- Duplication of functions
- Provincial powers iro national laws not assigned to provinces
- Pending legislation and policy initiatives

Background/ ...4

- Possible consolidation and re-enactment of existing laws

2. Project AIM (Outcomes)

- To establish a Statute Book for KZN:
 - that is *aligned* to the Constitution;
 - that *addresses* the current needs of the Province in a coherent and comprehensive manner;
 - that is *free* from obsolete and ideologically determined references and components;
 - that will be *accessible*; and
 - that will *promote* legal certainty, smooth administration and enhanced delivery

3. Project OBJECTIVES

- The **identification, inventorisation, categorisation and review** of all laws currently applicable in the Province
- The **testing** all such legislation considered for possible *retention, amendment or re-enactment* **against the Constitution**
- The **identification of post 1994 laws** enacted in other Provinces which may assist the KZN legislative and rationalisation programme

Objectives/ ...2

- The identification of **principles** which will underpin the rationalisation programme
- Ensuring the **alignment** of existing KZN legislation earmarked for retention with the Constitution, recent national and provincial legislation and KZN policy initiatives
- Resolving the problem of **duplication of functions** in different provincial Departments

Objectives/ ...3

- Ensuring the **compatibility** of KZN provincial legislation with **national framework legislation**
- Ensuring the **compatibility** of KZN subordinate legislation with the **enabling legislation**
- Making recommendations on the **amendment** and **re-enactment** of existing legislation earmarked for retention

Objectives/ ...4

- Making recommendations on the **repeal** of all obsolete KZN legislation
- Making recommendations on the drafting of **new** KZN provincial legislation
- Formulating draft legislation to give effect to the objectives listed above

Objectives/ ...5

- Investigating the feasibility of the **codification** of all legislation applicable in KZN and the establishment of a KZN Code of Law
- Facilitating **building of capacity** in, and **transfer of skills** to, officers in the respective provincial Departments

4. PRINCIPLES pertaining to Roleplayers and Resources

- Rationalisation of laws is not an event or a once-off exercise, but must be seen as a **continuous** and **ongoing process**
- To ensure the long-term **sustainability** of this process, all legal administration officers in Departments (KZN Public Sector Lawyers) must **participate** in, and **contribute** to, the process to ensure that the necessary **capacity is built** and that **skills are transferred**
- **MEXCO** has **approved** Project in principle and **HoDs** are **aware of**, and **committed to**, the process

Principles/ ...2

- **Full co-operation and commitment of all KZN Public Sector Lawyers is required**
- **Monthly Meetings and end of phase 5-day Workshops must be attended by all KZN Public Sector Lawyers**
- **Heads of Legal Components in Departments to present detailed progress reports**

Principles/ ...3

- **After completion** of this Project, the process of rationalisation of laws must be pursued by individual Departments as a **continuous** and **ongoing** process
- HoDs are directly responsible and accountable for the **ongoing rationalisation process** in their respective Departments
- Constant **evaluation** and **revision** of the legal framework within which a Department functions is imperative in the light of changed circumstances and new policies

Principles/ ...4

- **MEXCO**: will exercise *supervision* and set *time frames*
- **The Department of the Premier (CD: State Law Advisory Services)**: will ensure *quality assurance* of legal work done in individual Departments and *legally edit* and *certify* legislation emanating from the process
- **Provincial Lead Advisor: (*Business Enterprises* at the University of Pretoria: Prof Nic Olivier)**

Principles/ ...5

- Each individual provincial Department in KZN (and, specifically, the *legal services component* in that Department): will do the actual *legal, technical* and *administrative work* involved (assisted, if necessary, by a specialist consultant appointed by the Department concerned)

Principles/ ...6

- Broad **co-ordination** of Project by CD: State Law Advisory Services using the mechanism of **Monthly Meetings** and end of phase **5-day Workshops** of the **KZN Public Sector Lawyers' Forum**
- Confirm that any **other process of rationalisation of laws** which may have commenced in individual Departments is to be welcomed and will **feed into**, and be **integrated** with, this Project

Principles/ ...7

- The **specifics** of:
 - the **participation** in the Project;
 - the **responsibilities** of individual Departments; and
 - the proposed mechanisms for **co-ordination, reporting, monitoring and evaluation,**

will be the subject of another presentation

Principles/ ...8

- All **costs** pertaining to the rationalisation process in individual Departments will be **carried by individual Departments**
- Each provincial Department will **budget** for, and administer, the attendant financial and administrative aspects pertaining to the process in that particular Department, including subsistence and traveling expenses of Departmental staff and consultants appointed by the Department concerned

Principles/ ...9

- **Equipment, stationery, secretarial services and all other resources, facilities and infrastructure will be provided by the provincial Department concerned**

Principles/ ...10

- Proposed **new legislation** emanating from the process of the Rationalisation of Laws, as well as any **proposed amendment** or **repeal** of **existing legislation** forming the currently applicable body of law in the province will be referred to the **Provincial Chief State Law Advisor** for **legal editing** and **certification** before introduction into the Provincial Legislature

Principles/ ...11

- The **2005 Certificate Course in Legislative Drafting** facilitated by the Department of the Premier will be **extended** to members of NADEL and BLA who may wish to attend
- Members of NADEL and BLA who successfully complete the **Legislative Drafting Certificate Course** should receive **preference** when Provincial Departments outsource legal work iro **Rationalisation of Laws Project**

5. SCOPE of Project and Funding

- A great deal of *preliminary work* has been done
- The Project has been broken down into different **Phases**
- The contract with IPSP has been signed for **Phases 1- 3** of the Project which commences today (**30 August 2004**) and will take us to the **end of May 2005**
- **Phases 4 – 11** of the Project will commence in the **first Quarter of 2005/ 2006** and run until the **end of 2007**

Scope of Project and Funding/ ...2

- Additional IPSP funding may be possible – Provincial IPSP Co-ordinator negotiating
- Details as to the **different Phases** of the Project, the **outputs** required for each Phase, the **responsibilities**, **deliverables** and **due dates**, will be the subject of another presentation

6. In Conclusion ...

- **Pilot Project**
- **Lessons for other Provinces?**
- **Benchmark for best practice?**

