



# Raising the Bar

The IBAHRI is well versed in delivering training to judges, lawyers and prosecutors, but training parliamentarians is a lofty challenge.

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**P**ending legislation in Uganda provocatively entitled the 'Anti-Homosexuality Bill 2009' proposes imposing the death penalty for 'aggravated homosexuality'. Under the Bill, 'aggravated homosexuality' is deemed to exist when a homosexual act occurs with disabled persons, persons below the age of 18 or when one of the parties is HIV-positive. Introduced as a private members' bill, the response from the Ugandan and international community has been vociferous. The debate surging around the morally charged components of the legislation highlights the power available to parliamentarians and the fundamental role they play in upholding human rights. They have the power to promote and protect civil liberties and human rights – or to limit and restrict them.

Effective democratic governance adhering to the rule of law requires capable, accountable and responsive legislatures. Many parliaments lack the capacity and knowledge of how to use the legislative process to formulate and implement policy, as well as lacking an understanding of the legal aspects of international human rights standards. At the same time, parliamentary oversight of the executive branch can be weak or inconsistent, while parliamentarians may not be identifying or responding to the needs of their constituents. Founded in 2008, the Westminster Consortium was established to assist developing parliaments in increasing their capacity and creating sustainable centres of learning for their own parliamentarians and staff. The Westminster

Consortium programme is funded by a £5 million grant over five years from the United Kingdom's Department for International Development Governance and Transparency Fund. The programme will operate in six countries, including Ukraine, Georgia, Uganda, Mozambique, Lebanon and a sixth country to be determined.

Led by the Westminster Foundation for Democracy, the Westminster Consortium has brought together leading expert organisations in the fields of parliamentary practice, financial oversight and communications (see box overleaf: 'Westminster Consortium international partner organisations'). Each international partner organisation has developed a curriculum based on their own expertise, and is working with local partners in each of the programme countries to ensure the curriculum is specific to that country's needs. The IBA's Human Rights Institute

(IBAHRI) will be delivering a curriculum on the rule of law and international human rights obligations, exploring parliament's obligations of scrutiny, monitoring and oversight through a human rights lens. While the IBAHRI is well practised in delivering training on human rights to judges, lawyers and prosecutors, delivering training to parliamentarians is a new and exciting area.

The Westminster Foundation for Democracy's Chief Executive, Linda Duffield, comments: 'I believe our partnership with the IBAHRI in this programme brings real benefit to both organisations and strengthens our programme delivery in the countries in which we are working. In addition, it affords the IBAHRI new opportunities to create greater awareness within parliaments of the importance of compliance to international legal conventions.'

To tailor the core curriculum individually to the needs of each country, IBAHRI Programme Lawyer Alex Wilks and Simpson Thacher Fellow Jenny Marsh have travelled to each country to meet the respective local partner (see box: 'IBA local partner organisations'). The local partners have conducted baseline surveys using a mixture of desk research and interviews with parliamentarians and staff to determine their parliament's strengths and weaknesses and to highlight specific areas for improvement. In addition to the baseline surveys, the Programme Lawyers met members of parliament and staff

to determine key subjects the participants to the programme wanted to explore. During these localisation visits, three key themes became apparent. While the circumstances for each country differ, they must each address their status as a fledgling democracy, addressing staff capacity issues and the need to train and educate parliamentarians and staff.

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### Fledgling democracies

All of the countries involved in the Westminster Consortium programme are relatively young. The Ugandan Parliament, for example, has been in existence in its current form for a little over 20 years. In 1986, the National Resistance Movement came to power under the control of now-President Yoweri Museveni, with a single-party system prevailing throughout

2006. The opposition, therefore, has only existed for one political term, as multi-party politics were only permitted in 2006. Mozambique similarly made the transition from single-party politics to a multi-party system in 1990 after a tumultuous civil war. In 1995, as a result of its strong British ties (particularly trade ties with former colonies South Africa and Tanzania), Mozambique joined the Commonwealth and is the only nation not previously under British rule to do so.

Both Ukraine and Georgia are equally young, having declared independence in 1991, commensurate with the collapse of the former USSR. Georgia has had a particularly turbulent political youth, with the 'Rose Revolution' in

### Westminster Consortium international partner organisations

- The **Westminster Foundation for Democracy** was established in 1992 to support consolidation of democratic practices and institutions in emerging democracies and works through the Westminster political parties on a party-to-party and cross-party basis. It works at national, regional and local levels and with civil society, the press and broadcast media to support the development of good governance.
- The **Thomson Reuters Foundation** was established in 1982 to promote high standards in journalism through training and scholarship. Its workshops promote the core values of accurate and impartial reporting and have been delivered in more than 170 countries.
- The **National Audit Office** is the supreme audit institution in the United Kingdom and audits the accounts of all central government departments and agencies as well as a wide range of other public bodies. It reports to the UK Parliament and the British taxpayer on the economy, efficiency and effectiveness with which they have used public money.
- The **University of Essex, Centre for Democratic Governance** draws on research and knowledge of the Department of Government, the highest-rated political science department in the UK. It works with academic and public sector partners on a variety of projects.
- The **Overseas Office of the House of Commons** supports the Speaker, Deputy Speakers and senior officers in their international activities and provides advice and support to delegations to international assemblies. It organises parliamentary conferences in the UK and programmes for senior parliamentary visitors and promotes knowledge and understanding of the work of the UK Parliament, drawing on the experience and expertise of the House of Commons service, particularly of staff responsible for supporting the Chamber and the Committees.
- The **Commonwealth Parliamentary Association (UK Branch)** (CPA) is one of more than 170 autonomous bodies within the Commonwealth Parliamentary Associations. Its mission is to strengthen parliamentary democracy, which is achieved through a programme of annual international parliamentary conferences and seminars, exchange visits and activities with other CPA branches.

2003 in which large-scale protests by a coalition of the opposition forced then-President Eduard Shevardnadze to resign two weeks after what was widely considered to be an illegitimate election. Presently, opposition party members are boycotting parliament in a continuing stand-off in response to election results claimed to be marred by violence and fraud.

Lebanon, on the other hand, has had a constitution in place since 1926, when it was still under French control, and declared independence in 1941. Racked by conflict and civil war, the Ta'if Accord of 1989 provided a roadmap to stability and political normalcy, attempting to address some of the sectarian issues the country faced, and, admittedly, continues to face today. Under the 1943 'National Pact' system, the roles of President of the Republic, Prime Minister and President of the National Assembly would always be Maronite Christian, Sunni Muslim and Shi'a Muslim, respectively. While identifying abolition of political sectarianism as a national priority, the Ta'if Accord set no timetable for doing so. Lebanon continues to grapple with sectarianism as it attempts to progress along the road to democracy.

### Staff capacity

Laws are not conceived in a vacuum and parliamentarians do not draft legislation out of thin air, regardless of public perception to the contrary. In most Westminster-style parliaments, the members are assisted by a secretariat or legal services division providing legal analysis of proposed legislation and technical and research support during the drafting process. More often than not, these legal services divisions are overstretched,

under-funded and under-resourced, making it exceptionally challenging for them to carry out their mandate.

The IBAHRI seeks to address this lack of capacity through its programme, specifically addressing issues facing staff as they work to analyse legislation for its compliance with human rights obligations. The curriculum is structured to include a practical discussion

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of best practices regarding the obligations on parliamentarians to scrutinise legislation, monitor their country's policies and oversee actions taken both by parliament and the executive as regards compliance with international, regional and domestic human rights obligations. Examples of these practices from different countries are

provided in the curriculum, looking in depth at the practices of the United Kingdom's Joint Committee on Human Rights (JCHR) and the role played by full-time legal specialists to the committee. While not being presented as an idealised method for approaching human rights issues, as the JCHR has an obligation to certify that all legislation complies with the United Kingdom's human rights obligations, it thus can be a valuable benchmark for other parliaments. Moreover, comparing experiences and sharing practices regarding approaches to human to rights in legislating provides a panoply of approaches parliamentarians and staff can draw on in building their own best practices.

Thea Kentchadze, Westminster Foundation for Democracy Programme Manager for Georgia, notes: 'The Westminster Consortium programme will aim to improve the understanding of existing international

### IBAHRI local partner organisations

- Based in Kampala, the **Foundation for Human Rights Initiative** (FHRI) was founded in 1991 to educate Ugandans about their human rights. FHRI advocates for just and humane laws promoting respect for human rights and encourages collaboration among human rights defenders.
- The **Agency for Legislative Initiatives** (ALI) in Kiev, was founded in 2000 and has worked on a number of projects relating to parliamentary development in Ukraine, including analysis of legislation and policy dialogue.
- Founded in 1994, the **Georgian Young Lawyers Association** (GYLA), based in Tbilisi, is dedicated to promoting the rule of law and protecting human rights and freedoms by increasing public legal awareness, promoting professional ethics among lawyers and developing the skills and competence of young lawyers.
- The **Institute of Human Rights of the Beirut Bar Association** (IHR) is a specialised body within the Beirut Bar Association in Lebanon aimed at promoting universal values from the Lebanese constitution and international human rights obligations.
- Based in Skopje, the **Macedonian Young Lawyers Association** (MYLA) seeks to unite young lawyers to raise the quality and professionalism of the legal community while strengthening the principle of the rule of law within Macedonia.



standards for adhering to the rule of law and protecting human rights.’ She adds: ‘Besides the need for strengthening legislative and oversight capabilities of MPs and staffers, there is a particular need for developing research skills within the parliamentary service, which will improve the quality of legislation and ultimately ensure a well-informed and well-conceived law-making process.’

### Education

A major goal of the IBAHRI training is to improve understanding of human rights obligations by both parliamentarians and staff so that the effects of legislation on human rights can become a major consideration underlying all bills. Human rights should be a critical component to all legislation, as any government action or policy will inevitably touch on at least one of the many civil, political, economic, social and cultural rights. By signing up to various international conventions, countries affirmatively agree to be bound by certain obligations in this regard, but actual knowledge of the obligations among legislators and their staff may not be up to the level necessary to implement the obligations.

‘The IBAHRI brings something unique and special to the Westminster Consortium parliamentary programme’, says George Kunnath, Programme Director of the Westminster Consortium. ‘Legislatures continually pass laws that have wide-ranging impact on the rule of law and human rights. However, few of these institutions have the legislative drafting skill or the legal expertise to

analyse critically legislation for its compliance with the country’s bill of rights or international conventions.’

To address issues of skill and expertise, part of the IBAHRI’s curriculum is a substantive analysis of specific human rights obligations. As the training is only three days, the rights covered are those most pressing to the particular country and are selected in close consultation with the local partner. The curriculum looks at specific obligations enshrined in the country’s constitution, then moves on to consider specific rights under regional and international conventions, exploring how they are protected (or not) in the individual country and how to maximise the guarantee of such rights.

In addition, the programme involves a workshop using a piece of legislation as a case study. Participants work through a legal analysis of that legislation based on the discussions on substantive rights. They are then tasked to collaborate to develop a set of conclusions for best practices in terms of enhancing the substantive human rights components and addressing the procedural aspects of considering pieces of legislation. In many countries, there is a lack of trust or engagement with civil society actors, who often have the knowledge base to contribute positively on the pending legislation. After attending the programme, it is hoped that this engagement and sharing of knowledge will improve.

‘A key element of all the Westminster Consortium’s programmes is to ensure sustainability in a country by investing in local partners to help develop material for the parliament, using local case studies’,

### Westminster Consortium curriculum

The Westminster Consortium courses fall into three main areas:

1. parliamentary process and management; 2. financial oversight; and 3. access to information. The courses are:

#### 1. *Parliamentary process and management*

- Parliamentary seminars, led by the CPA
- Working in the parliamentary services, led by the Overseas Office of the House of Commons
- Parliamentary democracy, led by the University of Essex
- Role of parliament in upholding the rule of law, led by the IBA
- Three roles of a member of parliament, led by Westminster Foundation for Democracy
- Government and opposition, led by Westminster Foundation for Democracy and members of the UK Parliament

#### 2. *Financial oversight, all led by the National Audit Office*

- Financial scrutiny for parliamentary staff
- Financial scrutiny for parliamentary staff practicum
- Financial scrutiny for members of parliament

#### 3. *Access to information, all led by Thomson Reuters Foundation*

- Parliamentary reporting for journalists
- Parliamentary media communications for parliamentary staff
- Parliamentary training of trainers course

says Kunnath. He adds: 'We see this as an opportunity to bring the parliaments closer to institutions and civil society that work in the area of human rights. Although this is often a controversial and sensitive topic within many parliaments, opening up the discussion from a technical and legal perspective to create good legislation will ultimately improve the effectiveness with which parliaments deal with new legislation.'

### Macedonian example

While the IBA curriculum is still being prepared for the Westminster Consortium countries, a similar programme was delivered in Macedonia in November 2009 with impressive results. Ivan Sterjoski, a member of the IBAHRI's local partner, the Macedonian Young Lawyers Association, noted that the attendees considered the training session to be 'an outstanding experience', and that most of the participants expressed 'readiness and willingness to be a part of future events organised as part of this programme', specifically commenting on the programme's importance for personal development.

Angela Patrick, legal specialist to the JCHR, comments:

'The Westminster Foundation for Democracy training on the rule of law and human rights is an exciting and valuable programme, which aims to equip parliamentarians with human rights tools capable of supporting their work. The Joint Committee on Human Rights at the Westminster Parliament has been praised by a number of international organisations for its role in scrutinising the government's approach to human rights in legislation, policy-making and in its response to human rights judgments. However, it provides only one model for the involvement of parliamentarians in upholding the rule of law and national human rights obligations. Parliaments across the world continue to develop new models for integrating human rights scrutiny into their scrutiny functions and this project provides a good opportunity to share the Westminster experience and to learn from work going on in new democracies.'

Patrick adds:

'It is key to recognise that parliamentarians already deal with human rights issues and the rule of law in their day-to-day work

as representatives of their constituents, scrutineers of government and as legislators. An important role for this project will be to provide training on the operation of human rights law and human rights principles in a practical way, in order to make what could otherwise be considered "legalese" relevant in a political context. It might be boring to talk about the "ruling of the Court in *Marper* that the UK was in breach of Article 8 ECHR", but more politically interesting to discuss the right to privacy and the operation of government DNA databases. It will be important for the IBA and local trainers to work closely together to highlight local topics of political interest and to show how human rights – and the international obligations by which the individual participating countries are bound – may help move forward the debate.'

*'The programme will aim to improve the understanding of existing international standards for adhering to the rule of law and protecting human rights'*

Beyond merely proving informative, participants in the Macedonian training derived a concrete set of conclusions to be presented to the Standing Inquiry Committee for the Protection of Civil Freedoms and Rights of the parliament of Macedonia. Among other things, the conclusions called for further advanced training, more active engagement

between members of the committee and civil society and improved cohesion between members of the committee, notwithstanding political background, in cases of violations of human rights and freedoms.

While it is yet early days, the Macedonian example shows the potential value of the Westminster Consortium's programme and the substantive change the IBAHRI's curriculum may be able to help institute among parliamentarians. With the right tools, parliamentarians and their staff can accomplish astonishing amounts of work, especially when it comes to being cognisant of and protecting critical human rights. ☒

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