Capacity-building initiatives supporting good governance

Case studies of legislative drafting for Africa

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The West Africa Regional Program (WARP) is designed to support the five West African Commonwealth countries (Cameroon, The Gambia, Ghana, Nigeria and Sierra Leone) to build capacity and promote the efficiency and effectiveness of national and regional public sector institutions in order to realise national development priorities and the millennium development goals (MDG). These countries are all embracing reform programmes that will allow them to move away from the problems of decades of conflicts, civil wars, ethnic strife, religious intolerance and prolonged military rule. These crises have led to mismanagement and weak governance and have given rise to poverty, institutionalised corruption, lack of capacity and maladministration.

Even though these countries have embraced democratic governments, the fragility of the democracies are well known to the rest of world. Therefore, the need to assist governments and the private sector by strengthening their structures of governance and administration through well-functioning public services continues to be critical to ensuring the stability of the continent as a whole.

The objective of this paper is to illustrate an initiative that has contributed to improving good governance in Africa – a 12-week legislative drafting course.

The Legislative Drafting Course for African Commonwealth jurisdictions

Legislative drafters are the professionals who draft laws and bills for the appropriate authority to consider and pass into laws. The Commonwealth Secretariat's support to countries in legislative drafting goes as far back as 1975. More recently, at the request of Commonwealth Law Ministers, this support has focused on the need to find a sustainable solution to address the perennial shortage of legislative drafters and drafting skills in Commonwealth countries. Most Commonwealth countries have written constitutions under which the respective legislatures have paramount duty to pass laws for the good governance of the country. The implication or assumption is that an adequate number of well-trained parliamentary counsels are in place to assist in expressing the legislative intentions of the policies of the government in clear, cogent and concise bills. Where this is not the case, there is often confusion and inappropriate interpretation of such bills, which can be highly damaging to all. The circle goes on if such bills are also not in harmony with existing bills. Hence the importance of having skilled and competent legislative drafters cannot be underestimated, even to the ordinary people on the street, since legislation has an impact on the daily lives and needs of all citizens.

At the Law Ministers meeting in St Vincent and the Grenadines in 2002, the Commonwealth Secretariat was called upon to assist with the perennial shortage of drafters in developing member countries and was specifically requested to explore short-term training for legislative drafters. To move the initiative forward, the Commonwealth Secretariat's Legal and Constitutional Affairs Division (LCAD) and Governance and Institutional Development Division (GIDD) collaborated in the development of a curriculum for an intensive short-term training programme.

A consultant was engaged to help develop and draw up the curriculum, which was first introduced at a workshop in Barbados in November 2003. The workshop considered the curriculum and tailored it to suit the needs and requirements of the Caribbean region. A pilot programme to implement the curriculum was planned at the University of the West Indies at its Cave Hill Campus, Barbados. It was envisaged that the same curriculum would be introduced to other Commonwealth countries with the objective that it be taught at an appropriate institution.

To move the initiative forward for the Africa region, visits to various institutions in Africa were carried out between May and June 2004 to ascertain the feasibility of the Commonwealth Secretariat ‘buying into’ an existing training programme on legislative drafting that was taught at an institution. However, due to the prohibitive costs and other issues relating to the long-term sustainability of the programme, it was realised that this was not a realistic option.

The idea of approaching governments to partner the Commonwealth Secretariat in carrying out the initiative was favoured, and informal consultations continued to identify the African countries with existing institutions and also with a government willing to take part in the venture. Discussions were held with the Acting Director for Legislative Drafting at the Attorney-General's Department in Ghana, as well as at the meeting of Senior Officials of Commonwealth Law Ministries in October 2004, which led to a visit from the then Director of the Ghana School of Law to the Commonwealth Secretariat in London. A keen interest was expressed by Ghana in having the course run at the Ghana School of Law.
After further internal discussions between GIDD and LCAD, it was agreed that a fact-finding mission would go to Ghana to determine the viability of the training course being conducted there. The mission was undertaken in January 2005.

**Formation of the Legislative Drafting Course in Ghana**

The mission concluded that there was strong support for the course by key stakeholders in Ghana and that in addition there was a strong pool of expertise in legislative drafting in Ghana led by Professor Crabbe, who had also taught legislative drafting internationally for several years.

Hence an agreement was made with Ghana to set up a legislative drafting training course for Africa. The curriculum for the training programme was developed in consultation with member countries in Africa through a workshop organised in June 2005 on curriculum development and training for legislative drafting for the Africa region. This ensured that there was strong connection and adaptation of the training programme to the needs of Africa right from the start.

The short-term course of 12 weeks was based on the fact that most drafters are working with the minimum knowledge of legislative drafting, since specialisation in this area is not common among many lawyers recruited, partly due to the way the law degree and follow up experience to become a practising lawyer is structured. To ensure that in addition to the day-to-day acquisition of the act of preparing legislations is well grounded, the training course was developed to create the required basic foundation to enable the institutionalisation of this particular aspect of the law.

**Areas of training**

The 12-week course focused on areas such as introductory issues, the drafting process, drafting constraints, the legislative process, legislative syntax, legislative style, legislative structure and arrangement, drafting preliminary and final provisions, substantive provisions, and drafting subsidiary legislation. The training programme also provided sufficient opportunity for practical development and reviews of legislation from different jurisdictions in Africa using all the tools that had been studied.

The delivery of the first annual training course took place between January and March 2006. After the first course, it was agreed that every effort should be made to run subsequent training programmes during the summer months, when most of the university students would be on holiday, thus freeing up resources and adequate support for the legislative drafting programme.

A summary of the 12-week Legislative Drafting Course that have been delivered to date are as follows:

- The first regional training programme was conducted from 16 January to 8 April 2006, with 21 participants from 11 Commonwealth member countries.
- A second training programme was delivered from 9 July to 29 September 2007, with 27 participants from 11 Commonwealth member countries.
- A third training programme was delivered from 21 July to 10 October 2008, with 25 participants in attendance from 13 Commonwealth member countries.
- A fourth training programme was delivered from 27 July to 16 October 2009, with 25 participants in attendance from 15 Commonwealth member countries.

In all, 98 officials from Commonwealth African countries have benefited from the course to date, and it is expected that countries will continue to avail themselves of the benefits of the training programme that will eventually become part of the Ghana School of Law.

**Course structure**

The training course is structured in a way that allows for understanding of the critical role that legislative drafting plays in supporting rules of law and contributing to good governance systems of their respective countries. Training delivery puts emphasis on practical elements and offers an opportunity for participants to research and develop legislation on several points during the course. The course aims to provide initial formal training to legislative drafters by developing competence in the basic essentials of legislative drafting. It is geared to improving the performance, efficiency and effectiveness of delivery of drafters as a means of addressing the lack of adequate knowledge in drafting offices across Africa.

**How the training course can contribute to good governance**

Achieving the aims of the training course is critical to ensuring that the programme contributes to achieving a structure of good governance. As part of demonstrating that these aims are achieved, feedback from the participants and from the Heads of Legislative Drafting Offices in Africa must be provided. Remarkably fewer countries are requesting support for the placement of long-term experts in legislative drafting in Africa. It is important to note at this point that efforts are continuing through LCAD to complement the training with other essential support in order to help countries develop a robust legal drafting capacity that is an essential bedrock of a good, democratic society.

At the end of each training course, one-to-one evaluations with participants, group evaluation and questionnaires are carried out to measure how the programme has impacted on the participants and what immediate actions must be taken on their return to their home country. The feedback received demonstrated that participants found the programme to be very enriching and most were eager to put their acquired skills into practice on their return home. Feedback from the Heads of Legislative Drafting Offices also confirmed the huge improvement and confidence in such participants on their return home.

**Feedback from participants of the 12-week legislative training programmes**

*It appears that the course is very wide; however, due to the seriousness of the instructors in teaching the course curriculum, completed within the time. This is due to the fact that the instructors who conducted this course are well experienced in legislative drafting and experts in legal matters.*  
*Mr Paul JK Magessa*
The topics covered have enlightened me to have a better understanding of why and how the law is clearly communicated to the public.

**Ms Nthabiseng Sekokotoana**

I am very happy that I attended the course as I have acquired a lot of knowledge and skills that I will be able to use in drafting good legislation. I am very grateful to the Commonwealth for giving me an opportunity to attend the course.

**Mbololwa Muyaba**

Participating in the Commonwealth drafting course has completely changed my approach and work ethic in the area of legislative drafting. As a lawyer in the Legal Division of the Internal Revenue Service with responsibility for drafting tax legislation, the experienced gained in this course has been invaluable.

**Reic Mensah**

I return home committed to use the knowledge acquired to contribute to the better drafting of laws and international public agreement.

**Claudette Awa Babilia**

One additional important gain from the training programme is that it has created networks among the legislative drafters in Africa, which continue to assist the profession in improving quality, since these participants now share ideas and communicate regularly among themselves on new, emerging issues relating to legislative drafting.

At the last meeting of the Heads of Legislative Drafting Offices in Africa held in South Africa in November 2008, the following extracts from the communiqué outlined the sentiment and important role the capacity-building measures gained through the 12-week training programme are contributing to Commonwealth Africa.

‘The Heads of Legislative Drafting Offices of African Commonwealth jurisdictions attended a regional meeting at the Arabella Western Cape Hotel and Spa on the assessment of the three Commonwealth Legislative Drafting Courses run from 2006 to 2008 in Ghana, sponsored by the Commonwealth Secretariat, in collaboration with the Government of Ghana. The meeting:

(i) Affirmed that the training of legislative drafters in a sustainable manner in African Commonwealth jurisdictions is necessary and expedient for good governance and the rule of law.

(ii) Resolved that the Legislative Drafting Course for African Commonwealth jurisdictions has proven to be an essential method of training legislative drafters to meet the urgent need of African Commonwealth jurisdictions.

(iii) Stressed that the Legislative Drafting Course should be sustained in the best interests of the African Commonwealth jurisdictions.

(iv) Concluded that the Commonwealth Secretariat should continue to fund the Legislative Drafting Course as it has done since its inception.

(v) Acknowledged that the Legislative Drafting Course provided a unique opportunity for the participants to improve networking and share the experience of their respective jurisdictions.’

In conclusion, the 12-week Legislative Drafting Course is making its own contribution to enhancing the capacity of lawyers and legal counsels who are charged with drafting laws and bills in Africa by building their skills and contributing to their appreciation of the critical role they occupy, thereby allowing them to be more responsive to how they carry out their role to ensure a better contribution to the good governance of Africa.