

PARLIAMENT AND CIVIL SOCIETY
IDEAS FOR INCREASING PUBLIC PARTICIPATION
IN THE LAW-MAKING PROCESS

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Try to imagine some aspects of the law-making process from the point of view of civil society.

Imagine that you want to go to the movies. Let's suppose that you are hoping to see the Namibian premiere of "Where Others Wavered". According to the newspaper, it will be on between 2:30 and 5:00 on Tuesday afternoon. You take a taxi to the movie theatre, but the previews are so long and numerous that the feature presentation is postponed until the next day. You go back on Wednesday, but the same thing happens. Same story on Thursday. The manager of the movie theatre tells you to try again next week, but by this time you are so frustrated about all your wasted time and wasted money that you give up on seeing the show. That's what it feels like sometimes for people who want to observe a Parliamentary debate on a particular bill.

Let me give you another hypothetical situation. Suppose that you work with an NGO that assists women who are in the process of going through divorces. You are very interested in the Divorce Bill that is going to be considered by Parliament. You have seen the draft Divorce Bill that was published by the Law Reform & Development Commission -- you even gave comments to the Commission on this draft. But you have not been able to get a copy of the bill that was approved by Cabinet. You have no idea if your concerns have been addressed in this version of the bill or not, so you are not sure if you need to mount a lobbying campaign. You don't know how to find out when the bill will be tabled, and you can't get a copy of the bill that is actually going to be introduced into Parliament until after it is tabled. Debate on the bill begins in the National Assembly the very next day. There are a number of new

provisions in this bill that you find problematic on the basis of your experience on the ground. You want to consult the women that you have worked with in the different regions, but you don't know if there will be enough time for this. You do not know if the bill will be referred to committee or not. Even if the bill is referred to committee, there may or may not be regional hearings. You don't know. So at this stage, you do not know how much time you have to prepare comments and you are not even sure who you should direct your comments to – The Minister who introduced the bill? Individual Members of Parliament? Members of the opposition parties? The press? How should you allocate the limited resources you have available for lobbying – Should you try to hold a workshop that brings people together from different parts of the country? Should you travel to different areas to hold consultations? What if you plan something like that, but then find that the bill passes through the National Assembly before you can complete your efforts? Only the most determined and well-resourced NGO is likely to stay the course in an atmosphere of such uncertainty. These are some of the factors which work to discourage meaningful participation by civil society.

One of the principles of state policy cited in the Namibian Constitution is “encouragement of the mass of the population through education and other activities and through their organisations to influence government policy by debating its decisions”. (Article 95(k)). There is scope for a more robust application of this principle to the relationship between Parliament and civil society.

I realise that we are talking about a dialogue that has two partners. In a separate presentation later today, I will be talking about things that civil society can do to improve its efforts to interact with Parliament. This morning I would like to focus on what government could do to carry out its Constitutional duty to “encourage” widespread public participation more effectively.

In order to have a participatory democracy, people must be able to engage in public debate, offer alternatives to policies, and influence decisions that affect them. To do this in a meaningful way, the public needs information about how

the law-making process works, and clear and timely information about proposals for new laws.

I would like to offer some concrete, practical suggestions about what could be done to increase the flow of information between civil society and Parliament:

1. Demystify the law-making process.

- Disseminate simple information about how the entire law-making process works through the media and in educational material, in all Namibian languages.
- NBC could produce a television series in several segments on how laws are made.
- Add information on the law-making process to the secondary school curriculum.
- In particular, the public needs to know more about the role of the Cabinet Committee on Legislation (CCL) and Cabinet. These bodies play a crucial decision-making role, and yet as closed bodies their methods are the most mysterious to the general public. Most members of the general public would be unaware of the CCL, and certainly unable to name its members.

The Cabinet Committee on Legislation (CCL) is a subcommittee of Cabinet which screens bills before they go to the full Cabinet. The members of the CCL are government ministers, but membership changes from time to time. As a matter of custom the Attorney-General and the Minister of Justice are always members of the CCL, along with a few other Ministers. The members of the CCL are usually chosen for their experience and expertise not because of the Ministry portfolio they hold.

The Minister who is proposing the bill will meet with the CCL to discuss the bill, usually along with other staff members from the ministry who can help explain the background of the bill. The CCL meetings are not open to the public, and minutes of these meetings are not published.

The CCL must approve a bill before it can go to Cabinet. The CCL sometimes will decide that the issues need further legal advice or that additional consultations are necessary.

No bill goes forward until it has the approval of the CCL. This means that the CCL is a very powerful body in the law making process.

At the beginning of 2004, the following persons were members of the CCL:

- Attorney General
- Minister of Justice
- Minister of Finance
- Minister of Labour
- Minister of Higher Education
- Deputy Minister of Home Affairs
- Deputy Minister of Regional and Local Government and Housing.

2. Involve members of the public at early stages in policy-making.

- Encourage ministries to make more use of white papers and green papers.

A Green Paper is a discussion document on policy options. The ministry will put forward its proposals in a Green Paper and ask interested parties to submit comments and ideas by a specific date. The Green Paper and the public feedback are then used to draft a White Paper, which is a broad statement of government policy.

The procedure on this point is not standard. Policy papers are not always published before a bill is proposed. White Papers are sometimes published without a Green Paper coming first. Ministries decide upon a course of action depending on the nature of the issue involved.

Government is not required to use the Green Paper and White Paper process. Each ministry can decide what process to follow in each case. This means that advocacy organisations have to be alert, always looking out for signs that government is planning to introduce a new policy or law. Forming links with people in government is vital to create an early warning system on issues of interest.

- Encourage the Law Reform and Development Commission to use a two-step process similar to that employed by the South African Law Commission.

In South Africa, issue papers laying out key questions and options are frequently published at an early stage, before the position of the Law Commission itself has crystallised. Public comment is invited, and then the comments received are summarised in a second paper, in which the Commission explains what decisions it has taken on points of debate and why. This procedure allows for public input at a useful

stage of the process – after the issues have been articulated in a way which invites meaningful and detailed response, but before complex negotiations and compromises have begun.

3. Standardise the procedure for informing the public about draft legislation.

- Encourage ministries and the LRDC to make greater use of the media to disseminate information about proposed laws. Press releases summarising a proposed law while it is still in the form of a lay-person's draft would be very useful.

A ministry will usually prepare a first draft of the proposed law which is called a "layperson's draft". A "layperson" is someone who does not have special training in a topic such as law. The layperson's draft is meant to be understandable to laypersons who might be consulted.

Sometimes the ministry will ask a lawyer from outside the government to assist it in preparing the bill, such as a local, regional or international expert on the issue in question. Sometimes it will use legally-trained people employed by the ministry, or legal drafters from the Ministry of Justice.

The layperson's draft is intended to set forth the main ideas in the bill. Although many of the details are included at this stage, the bill will still need to be fine-tuned. It is easier to adjust the ideas in the bill at this early stage, before the bill has been refined.

- Standardise minimum requirements for public consultation by ministries on all new bills and major amending legislation. Require that all "layperson's drafts" be published in the *Government Gazette* for information purposes, with a short summary of the key aspects of the proposed law, to ensure that any member of the public can have access to them. Alternatively, make "layperson's drafts" with accompanying summaries and other policy documents which form the background to the legislation available through a single government official (such as a Parliament or Cabinet Information Officer), since it is difficult for members of the public to know which ministry to approach, or who to approach within the ministry.
- Require ministries (and the LRDC) to share all major comments received on draft bills with the public. This could be done in the form of brief reports

which summarise public input, such as the papers which the South African Law Reform Commission publishes after it has invited comments on its initial “issue papers”. The same reports would also be of use to the CCL and to Cabinet, thus accomplishing several purposes at once. Alternatively, copies of all written submissions received by the Ministry could be made available to the public on request through a single designated government official.

- Require publication of all bills approved by Cabinet in the *Government Gazette* for information purposes at least one month before they are tabled (with exceptions for urgent legislation if necessary). Publish the explanatory memorandum which accompanied the bill to Cabinet along with the bill. Provide translations of these materials into Namibia’s indigenous languages if possible.

The Ministry proposing the bill will generally prepare an Explanatory Memorandum outlining the background to the bill and explaining its key provisions. This memorandum will accompany the bill to Cabinet, so that Cabinet members will understand exactly why the new law is being proposed.

Unfortunately, the explanatory memorandum is not usually made available to the public. It seems a duplication of effort to prepare a separate summary of every bill for public consumption, when the Explanatory Memorandum is usually prepared by someone from the Ministry who has a full understanding of the background and context of the bill. There is no apparent reason why the official Explanatory Memorandum should be kept secret.

4. Make Parliamentary processes easier for the public to understand and access.

- Introduce a single Government Information Officer who could give any member of the public clear and accurate information about where a bill is in the Cabinet or Parliamentary process, along with information on how to get access to the bill and its accompanying explanatory memorandum.

Even more importantly, make sure that these information officers are friendly, efficient and good at public relations. There should always be someone answering the publicised phone number during working hours, and emails and faxes should be answered promptly. It would be

a great boon to civil society if there were a single office to approach for quick and accurate information on the progress of proposed laws.

- Send out order papers to be announced on radio each morning and make them available for publication as a public service announcement in all newspapers.

Returning to the analogy which I used earlier, it is at the moment much easier to find out what will be on at the movies than what will be debated in Parliament.

- Place items of high public interest at the top of order papers so that they are more likely to take place when scheduled.

NGOs can accept the fact that it is not possible to make proceedings in Parliament perfectly predictable, but surely there is some scope for making it easier for the public to see Parliament in action.

- Make every effort to have full Parliamentary proceedings broadcast live on radio or television.

For example, the Constituency Channel sounds like a very exciting initiative in this regard. The Constituency Channel is a Parliament-based radio and video production house which intends to serve as a source of legislative, public policy and developmental information for community radio stations in Namibia. Its aim is to encourage informed civic participation in how the country is governed.

The Constituency Channel intends to run a full time FM radio program from Parliament. They hope to have it up and running before the end of 2004. Until that time the Constituency Channel will be producing weekly updates on Parliamentary proceedings and public opinion on legislative and policy issues. These updates will be sent to local community radio stations and the Namibian Broadcast Corporation (NBC).

- Establish and publicise criteria for the referral of bills to Parliamentary committees.

Perhaps there could be some measure of public interest which could lead to a committee referral – such as a request for referral from a specified number of bona fide NGOs.

- Make Parliamentary questions along with their answers available to the public in flyer form and via email, instead of just as part of the Hansard.

Question time in the National Assembly is when MPs can ask Ministers questions about government activities and receive replies. Questions can be an important way to obtain information about an issue if other

avenues of seeking that information have not been successful. They can also a way of calling attention to a problem or an issue of concern.

In the National Assembly, question time takes place on Thursday afternoons. This means that MPs respond to questions which have been put to them before the National Assembly discusses any other matters on the Order Paper. On Thursdays, a list of questions is prepared and printed on green paper. The paper is titled “Questions”, and it lists the questions that will be answered that day. It can be obtained in the visitor’s gallery, or outside the National Assembly Chamber.

Members of Parliament who want to ask questions must give advance written notice of the questions in Parliament so that the Minister can be ready to respond. Once notice is given, the Member can then put the question to the Minister on the next Thursday after the notice of the question was given.

If the Minister is present, he or she may answer the question or state that the question will be answered at some later date. If the Minister is not present, another Member of Parliament may have been designated to answer the question. If no Member is able to answer the question, the question will be held over until the next Thursday’s question time.

Parliamentary questions and their answers are often sources of extremely interesting and relevant information on matters of general public interest. These would be better-utilised as sources of information by civil society if they were available in a more user-friendly form.

5. Take special steps to encourage participation by women and citizens in rural areas.

- Use a two-step process for regional hearings by Parliamentary committees, first explaining the bill and then asking for comments after the community has had a chance to discuss the issues.

Public hearings will be most effective if they involve some preparation of the community in advance. NGOs can assist with this, but they may not have the necessary resources to take full responsibility for it. Government can use press releases or advance teams to highlight and explain key issues in a bill before going to an area to ask for public comment. They could also ask regional representatives of the ministry sponsoring the bill to hold public meetings explaining the bill in advance of the public hearings.

- Direct particular consultation efforts at women.

For example, perhaps women would speak out more honestly and confidently if a parliamentary committee holding public hearings took submissions from women on one day and men on another day, or allowed people to chose to make their submissions in public or in private.
- Utilise existing women's groups to channel information and responses from women if women's views seem to be under-represented.
- Where any government body solicits public input, it should make sure that meetings are scheduled at times and places which are appropriate for working people and for parents with child care responsibilities.
- Give all citizens opportunities to give input on law reform proposals in a comfortable environment – which means in their own language, in a familiar setting.

6. Use computer and internet technology more effectively.

- Make order papers and minutes of National Assembly and National Council meetings available by email subscription.

This happened at one stage, but then apparently fell apart. It was wonderful while it lasted. And NGO access to email is certainly on the increase -- the Legal Assistance Centre recently sent out information on the Children's Status Bill to over 100 interested individuals and NGOs by email. This is admittedly true primarily for organisations in urban centres, but such groups often act as conduits for information to persons in rural areas. It is necessary to get information quickly in order to respond in a timely fashion.

- Keep the Parliament website up-to-date.

It is enormously helpful to have access to information about Namibia through the internet. One NGO that gets access to a bill in electronic form can quickly email it to others, or print it out and distribute it to those without computer access.

The Parliamentary website is very useful when it is up-to-date. I checked it on 20 April 2004 in preparation for this paper. On acts already passed by Parliament, the website is very good. There were electronic versions of acts available right up to the end of 2003 (albeit not in either chronological or alphabetical order). But when it comes to bills, the last bill posted as of April 2004 was dated October 2003. Two

bills of the most widespread public interest that were introduced into Parliament in February -- the Children's Status Bill and the Labour Bill -- are not yet available on the Parliamentary website in April.

When NGOs have an electronic version of a bill, they can assist Parliament by disseminating it widely in Namibia at minimal expense. They can also send it to their international colleagues and counterparts for input more easily.

- Include information on the website about each Parliamentary committee, including its membership, its clerks, any bills being currently considered by that Committee and any public hearings planned.

This information changes from time to time. We at the Legal Assistance Centre have found the committee clerks to be extremely well-informed and helpful, but it helps to know exactly whom to telephone or email. NGOs must take responsibility for cultivating good relationships with the staff of Ministries and Parliament, but it helps us with this task if we can be directed to the right people for the right questions.

When it comes to input on the law-making process, "the more the merrier". A well-debated bill is likely to produce a wiser law for Namibia. A government official said to me once that "consulting members of the public just complicates things." This is true, no doubt, but I think that it is a worthwhile form of complication. Increasing public involvement might take more time and effort on the part of government, but it will serve the function of raising public awareness about new laws at the same time -- which may produce a corresponding savings in time and money on implementation and enforcement at the end of the day. It should certainly produce an increased feeling of public ownership of laws, which can only strengthen Namibia's democracy.

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