

**Public Participation
in
The Legislation Process**

*A Summary of Results from a Nation-wide Regional Survey
and a National Conference Conducted by the National Council and
the National Democratic Institute between April and October 2000*

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Notes and Acknowledgements

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Public Participation in the Legislative Process

I. Introduction

Since its inception in February 1993, the National Council has been striving to serve the people of Namibia and fulfilling the Council's constitutional mandate. In pursuing this goal, the National Council has reviewed legislation passed by the National Assembly since 1993 and in the process; legislation has been accepted without amendments while some legislation has been accepted with recommended amendments. During the same process, some legislation has been rejected and returned to the National Assembly.¹

In addition to pursuing the Council's constitutional role as a house of legislative review, the National Council has also continued to serve as a forum for a regional caucus, an institution where all the Regions of Namibia are given an opportunity to directly articulate regional views on legislation individually or collectively with other regions.

The constitutional role and functions of the National Council provide a practical framework for taking the Parliament of Namibia closer to the people. Since members of the National Council are directly elected from regional councils, the institution is unique in the legislative process, as it is the only legislative institution with membership representing geographical constituencies in Namibia. The uniqueness of the National Council as an institution becomes even more important when considered within the context of the Namibian government decentralization process.

Through the regional structures, the Constitution places the National Council in a strategic position to serve as a conduit between citizens' voices and Parliament, an institution where the regions are given an opportunity to make input and scrutinize government policies. Within this context, the National Council provides a forum for regional debate and consensus, thereby contributing to increased public participation in the legislative process.

The constitution provides clear guidelines on the goals and objectives of the National Council. However, just like any developing institution, the National Council has its own set of challenges. Being the only institution made up of constituencies, the National Council has the constitutional obligation to solicit and incorporate the views of the public into national legislation. Therefore the quality and strength of democracy in Namibia largely depends on the quality and extent of efforts to solicit public input into national legislation.

¹ For example, among others, the National Council passed the Electricity Bill without amendments, passed the Petroleum Products and Energy Amendment Bill with suggested amendments and rejected the Communal Land Bill.

For the National Council to achieve meaningful and constructive public input into legislation, individuals and institutions in a particular region need opportunities to listen, question and express their opinions on national legislation. The public needs information and an understanding of the benefits and implications of national legislation on their lives, their communities and their respective regions.

As institutions of governance, directly represented in Parliament, the Regional Councils are well placed to facilitate public dialogue on national legislation, soliciting and facilitating input from local and traditional authorities, non-governmental organizations; community based organizations, the general public and other interested parties at a regional level.²

From this Constitutional arrangement, one can conclude that avenues and structures for public participation in the legislative process truly exist in Namibia. The challenge is to ensure that these structures are operating efficiently and to identify mechanisms that will strengthen and enhance the capacity of these structures.

In addition to the political structures of public participation established by the Constitution, the success of public participation also depends on the administrative capacity at a regional, local and traditional authority level. Therefore the success of the National Council legislative process largely depends on the availability of human, technical and financial resources at a regional level and within other key institutions in a particular region.

It is within this context that the Chairman of the National Council undertook the initiative to visit all the regions in 1999, and thereafter assigned National Council Staff, with the support of the National Democratic Institute for International Affairs (NDI)³ to conduct a regional survey and identify views or opinions, concerns and issues regarding the National Council legislative process at both the National and Regional levels.⁴

The survey was aimed at achieving several objectives, among them, the National Council sought to identify lessons that would strengthen the National Council's legislative process and foster informed regional and public participation in the country's legislative process. Secondly, the National Council sought to strengthen communication links with the Regional Councils, and to explore ways of using Computer Technologies to facilitate inter-regional communication, and communication between the National Council and its stakeholders, thereby facilitating greater participation in the legislative process.

II. Survey Methodology

² See: Agenda for Change

³ NDI is a US Based non-governmental organization working to promote, maintain and strengthen democratic institutions in new emerging democracies. With its headquarters in Washington DC, NDI has offices in Africa, Asia, Eastern Europe, Latin America and the former Soviet Union

⁴ See: Appendix 1, Regional Survey Terms of Reference

Starting from April 2000, the National Council embarked on a nation-wide survey, consulting major stakeholders including all thirteen Regional Councils, Local and Traditional Authorities in each region, business, labour, Non-Governmental and Community Based Organisations through NANGOF and in other cases directly through the Regional Councils. The survey consisted of the following components that complemented each other:

1. Opinion survey through questionnaires;
2. Regional Workshops; and
3. National Conference

The survey was aimed at identifying the following key issues:

- Mechanisms that would enhance public participation in Namibia's Legislative Process, in particular through the regions and the National Council;
- Mechanisms that would enhance communication between Parliament and the regions;
- Mechanisms that would bring the public closer to Parliament and its processes;
- Mechanisms that would enhance communication between the regions and the public; and
- Mechanisms that would enhance information flow between Parliament, the regions and the public.

(1) The Questionnaire:

The National Council with assistance from NDI developed a questionnaire that was sent to all Regional Councils, Local and Traditional Authorities, Non-Governmental and Community Based Organisations and the different stakeholders as determined by their respective Regional Councils.⁵

The questionnaire formed the first part of a regional survey process that was followed by regional workshops conducted in all thirteen regions starting from May 29, 2000 through to June 29, 2000.⁶ The regional workshops were the second phase of the survey process followed by a National Conference that took place on 24th and 25th October 2000, marking the final phase of the survey process

During the first phase of the regional survey, the questionnaire reached an estimated 500 people in all thirteen regions of Namibia and 63% responded.

(2) The Regional Workshops

⁵ See the Regional Survey Questionnaire. Appendix II

⁶ See the National Council Regional Workshops Agenda. Appendix III

During the second phase of the regional survey, 424 people attended the regional workshops in nine of Namibia's thirteen regions. The Regional Workshops took place on the following dates, (note that some regions were clustered for logistical purposes):

| | |
|------------------------------|--|
| 29 May 2000 | <i>Omusati Regional Council Kunene Regional Council</i> |
| 30 May 2000 | <i>Oshana Regional Council</i> |
| 12 June 2000 | <i>Oshikoto Regional Workshop Kavango Regional Workshop Caprivi Regional Workshop</i> |
| 13 June 2000 | <i>Ohangwena Regional Council</i> |
| 19 June 2000 20 June 2000 | <i>Karas Regional Workshop Hardap Regional Workshop</i> |
| 22 June 2000 | <i>Erongo Regional Workshop</i> |
| 26 June 2000 | <i>Khomas Regional Workshop Otjozodjupa Regional Council</i> |
| 29 June 2000 | <i>Omaheke Regional Workshop</i> |
| 24 – 25 October 2000 | <i>National Conference (Windhoek, Khomas)</i> |

At every regional workshop, the Regional Governors officially opened the deliberations, except in one region. During the workshops, participants were taken through an overview of the first phase of the survey (the questionnaire), how a bill becomes a law and the various opportunities for public participation and interventions in the legislative process. During these sessions, participants discussed the different avenues for public participation within the context of their respective regions and the potential opportunities and challenges facing their regions.⁷

The regional workshops also considered several options and mechanisms that would facilitate public participation and information flow, including the use of Internet and Electronic Mail (e-mail). At the end of each workshop, participants came up with recommendations that formed the basis of the National Conference agenda and the determination of a national strategy to enhance communication between Parliament and the public; thereby facilitating increased and informed public participation in the legislative process.

(3) The National Conference

After identifying the different regional views, opportunities, constraints and challenges, through the questionnaires and the regional workshops, the National Conference brought together the

⁷ See the National Council Regional Workshops Agenda. Appendix III

regional stakeholders that had responded to the questionnaires and participated in the regional workshops together with Members of Parliament, academics and representatives of civic organisations to collectively analyse the status of regional participation from a regional perspective and to identify mechanisms that would enhance public participation at both the national and regional levels.

The initiative to enhance public participation was also vital given the fact that the government of Namibia passed legislation enabling the implementation of a decentralisation process. Among other provisions, the policy facilitates the transfer or delegation of powers and functions of the government of Namibia from the national level to regional and local levels.⁸

Regional participation was also considered critical considering the fact the National Council has the constitutional obligation to advise and sensitise both the executive and the National Assembly on the needs of the regions and the impact of government policies on the regions.

However, it is important to note that the results from the survey and the National Conference do not offer any scientific indicators, nor do they represent the opinions and views of every Namibian. Instead, the results represent the views of selected groups specifically identified because the Regional Authorities considered them to be key community players in the respective regions, and also because they responded to the questionnaires and participated during the regional workshops and the National Conference.

It is equally important to note that the questionnaires, the regional workshops and the National Conference were all part of the same process. Therefore what follows is an outline of challenges and opportunities identified during these processes and discussed at both a regional and national level.

III. Outcomes of the Survey Process

As mentioned earlier, the main objective of the survey was to identify mechanisms that would strengthen “public participation” in the legislative process. However, the term “public participation” has been used widely and under different circumstances all over the world. At times, “public participation” is also called “citizen participation,” “public or community involvement,” “citizen involvement,” and so fourth. While these different terms may actually represent a different degree to which the public becomes an integral part in the decision making or legislative process, these terms have one thing in common, and that is the principle of citizen involvement in the decisions that affect the citizens’ lives, the principle of consultation on matters of public interest and the principle of collective decision making.

As an institution representing geographical constituencies, the National Council legislative process would be incomplete without the full adherence to this principle.⁹ The term “public

⁸ See Volume 2 of the Ministry of Regional, Local Government and Housing ‘s Policy Documents on Decentralisation in Namibia.

⁹ Hon. Kapere, Member of Parliament in the National Conference and National Conference Chairperson.

participation” is therefore used in this report in the context of consultation and citizen involvement on matters of public interest.

However, when dealing with matters of public interest, there are times when consultation, citizen involvement or “public participation” becomes a legal requirement such as in Article 132, Sub-Article (3) of the Namibian Constitution, while in certain cases, public participation becomes an integral means to justify the outcome of a particular process, such as in Parliamentary Committee hearings.

The challenge that faced the regional workshops and the National Conference was to identify and define the “public,” who is the public, how and where does the public participate in the legislative process or on matters of public interest. How to determine “public interest” and who should define “public interest.” Just as was the case at the regional workshops, the two-day national conference wrestled with these two concepts. In terms of the preamble to the Namibian Constitution, the public means all citizens of Namibia in terms of Chapter 2, Article 4 of the Constitution, while Article 17 of the Namibian Constitution goes further and makes provision for all citizens of Namibia to participate in the conduct of public affairs directly or through elected representatives.

The National Council initiative was therefore an attempt to identify mechanisms that would strengthen the participation of all Namibian citizens in the legislative process of the country and on matters that affect citizens’ lives.¹⁰ The challenge for the National Council and the National Conference was therefore to identify practical mechanisms that would create practical avenues and facilitate the participation of over 1.6 million Namibian citizens in the legislative process. Cognisant of the fact that not all citizens can directly participate on all the decisions all the time, and that in certain cases, the citizens may not be interested to participate, the National Council initiative sought to ensure that decisions being made in the National Council and the overall direction of government policies reflect a great degree of public sentiment.

During the conference, participants unanimously agreed that the constitutional framework for public participation in Namibia’s legislative process was clear and that the establishment of the National Assembly and the National Council consisting of 72 Members elected on the basis of proportional representation and 26 Members nominated by each Regional Council respectively should be seen within the context of institutionalising public participation. There was also consensus during the conference that since members of Regional Councils are directly elected, the establishment of a regional based National Council in Parliament provides an avenue for greater and direct public participation in the country’s legislative process. Therefore the challenge facing the National Council was to turn this constitutional provision into an effective and practical institutional reality.

The regional survey and the national conference that superseded it focused on the following specific areas:

- Regional Participation in the legislative process;
- Regional access to the National Council;

¹⁰ See Regional Survey and National Conference Terms of Reference. Appendix 1 and 4 respectively.

- Regional access to Members of the National Council;
- Regional access to legislative information in Parliament;
- Regional access to Parliament calendars, programs and activities;
- Decentralization and the role of the regions in the legislative and policy development process;
- MPs access to the regions;
- Sharing of legislative information between different regions;
- Dissemination of legislative information in the regions;
- Public access to legislative information through regional councils;
- Public access to legislative information through local and traditional authorities;
- The role of government departments in disseminating information pertaining to draft legislation;
- Plain language bills and draft legislation;
- Public hearings, potential and challenges;
- Feedback from parliamentary committees;
- The role of the National Council in the legislative process;
- The legislative relationship between the National Council and the National Assembly;
- The relationship between the executive branch of government and regional government
- The role of Information Technologies in the legislative process.

Overall, individuals who participated in the regional survey and the national conference supported the constitutional establishment of the National Council as a house of review in the Namibian legislative process. In several regional workshops, participants were of the view that the powers of the National Council should be increased as the institution is representative of geographical constituencies. Commenting on public participation and the role of the National Council, the Regional Governor of Kunene region observed that *“In a country with too strong party political influences, one doubt the fairness of debating and participation in the legislative process. The tendency to be always on your party’s side without considering the real facts somehow results in amendment of acts higher than the normal practice.”* While membership of the National Assembly is party based, most participants were of the view that the National Council would play a critical role in balancing party political interests with those of the regions.

Participants viewed the establishment of the National Council as a positive commitment by the authors of the Namibian constitution to take Parliament closer to the people and to provide more avenues for public participation in addition to the proportionally represented National Assembly.

The issues that surfaced in most regional workshops and the national conference were not necessarily about whether the establishment of the National Council was essential or not, but were more on whether or not the National Council was fulfilling its constitutional mandate, and whether the constitutional powers and functions of the National Council were adequate to achieve the intended goals and objectives? Participants were aware that the National Council was constitutionally accountable to the Regional Councils and ultimately the public in the respective constituencies, the question was rather on the extent to which National Council committees reflected and fulfilled this requirement.

Participants invariably supported the National Council concept. However, just as was the case during the regional workshops, participants at the National Conference were of the view that in addition to the provision for two representatives from each regional council to be represented in the National Council, a mechanism to directly represent the institutions of local and traditional authorities should also be considered.

However, virtually in all ten workshops and in most responses to the questionnaires, access to members of the National Council was a major concern. Participants were concerned that members were not constantly in-touch with their regions, as a result, the regions were not informed about the business and activities of the National Council, leading to minimal participation in the legislative process, and sometimes no participation at all. These sentiments were also echoed during the national conference, and the Ministry of Regional Local Government informed the national conference that a previous survey conducted by the Ministry had identified the same challenge.¹¹

However, it should be noted that both the survey and National Conference participants acknowledged that some elected representatives and government officials attempt to stay in touch with the regions and the people that elected them. However, there was equally a unanimous view that little and sometimes no public participation was taking place when these elected representatives or officials travelled to the regions. It was observed that often the regions are lectured by some government official, often in hurry or an elected representative who is not ready to take a position on a particular issue.¹²

Presenting a Hardap Regional view on public participation, the Regional Governor for the Region Hon Kisting said that public participation in the Hardap Region was rated at “ZERO.” The Hon. Governor submitted that the few times parliamentary committees had conducted public hearings in his region, these hearings were only held in Mariental and only those with the means of transport, and those who live in Mariental were able to attend the hearings. Furthermore, the few people that were able to attend were normally the unemployed members of the public as the notices were generally very short, and the hearings were taking place during working hours when members of other sectors could not attend.

One participant in Oshana said, *“It is not worth attending public hearings, because little hearing goes on. Either the officials are in a hurry or the elected representatives can not respond unless they consult the experts, and in the end it becomes the wishes of the people against those of the expert or consultant, yet these consultants are not accountable to the people.”*

Sentiments like these were common during the regional survey as well as the national conference, participants were concerned that little two way communication takes place during public hearings and that in the absence of two way communication, the public does not get feedback on issues, and therefore it was difficult to determine whether the public was being

¹¹ Capacity Assessment of Regional Councils by Dr. Mukwena and Mr. C.M Drake

¹² This view first appeared in response to the questionnaire that was sent to the regions and was also the first issue to be highlighted as an area of concern during the very first regional workshop in Oshana and continued to surface throughout the survey process.

heard. One participant concluded that the public was being consulted after decisions had already been taken.

This concern was based on the perception that on a few occasions when the participants thought real public participation had taken place, often the final decision taken by the elected representatives did not reflect the public sentiment, but the opinion of the so called “experts or consultants,” who were not directly accountable to the public. Therefore, according to the participants the challenge for the National Council is to introduce mechanisms that will inform the public, solicit public input and reflect the wishes and aspirations of the Namibian citizenry in the final decisions or actions.

The national conference addressed the issue from a different perspective. According to research conducted by Dr. Mukuena and Mr C M. Drake on behalf of the Ministry of Regional, Local Government and Housing, this lack of proper avenues for public participation would potentially hamper the implementation of the decentralisation program. The conference was informed that the study results indicated that the regions considered the decentralisation process as a “hand-me-down” from central government, whereas it should be seen as a partnership.

It should be noted that the decentralisation policy and its implementation process were used as a practical case study during the conference. The researchers concluded that unless regional and local councils were fully involved in the formulation of the decentralisation legislation and related policies, it would be unrealistic to expect the regions to own the implementation process, and that this lack of consultation and participation would increase the likelihood of policy failure.

There was a consensus during the conference that elected representatives ought to identify practical mechanisms to facilitate and attract public participation. There was also a consensus that public participation should be institutionalised in the legislative and policy development process. However, the conference also spent a considerable amount of time looking at the question of apathy. Participants indicated that while elected representatives have a constitutional obligation to represent the public and therefore solicit public input, there were instances where the public was not keen to participate, despite efforts by the elected representatives.

While participants attending the regional workshops acknowledged the logistical, financial and time constraints that make it difficult for elected representatives to stay in-touch regularly, the conference was mandated by the delegates to identify mechanisms and strategies that will attract and facilitate public participation. Participants also acknowledged that it was unrealistic to expect elected representatives to consult and please all the people all the time.

Participants at both the national conference and the regional workshops highlighted the need for elected representatives to make an added effort to consult the public, not on an ad hoc basis, but as part of regular procedure when making decisions on behalf of their constituents. Participants also proposed the creation of clear avenues for public input when formal consultations are not taking place.¹³

¹³ See The Ministry of Regional, Local Government and Housing Capacity Assessment of Regional Councils in Namibia.

(1) Access to debates, bills, reports and other documents in the National Council

Access to parliamentary information such as bills, reports, parliamentary calendars, order papers and other parliamentary related documents varied between the different regions. An estimated 75% of the participants indicated that they did not have direct access to parliamentary information and that there were no formal systems in place at a regional level for receiving and disseminating parliamentary information.

75% of the participants indicated that the only sources of parliamentary information were radio, television and newspapers. On the other hand, staff in 9 regional councils indicated that they had received parliamentary information such as bill summaries and on a few occasions, they had received draft legislation. However, none of this information was received consistently. The only documents that the regions received consistently were government gazettes. The implication of this lack of information was that the regions were not able to participate in the legislative or policy development process due to lack of information, and instead they only received finalised government policies by way of government gazettes.

While regional staff acknowledged receiving parliamentary information on a few occasions, the information was often received late or the time given for regional input was not adequate for the regions to consult and make informed inputs in the legislative or policy development process. This challenge was compounded by the fact that regions did not have the expertise to analyse the legal jargon used in draft legislation, and even when they received the plain language bill summaries, the regions did not have research information to inform them on the background of the draft legislation or proposed amendments, neither did they have a scientific understanding of the social, economic and political impact of a particular bill on their respective regions. While it was taking government ministries months and sometimes years to conduct research and develop legislation and government policies, when consulted, regional councils with their limited resources were expected to provide feedback in just a few days.

Therefore it was difficult for the regions to make meaningful and informed contributions in the legislative or policy development process. While most of the concerns revolved around the link between Parliament and the regions, other stakeholders at a regional level were equally concerned about the lack of communication and information flow between the regional councils and other institutions at a regional level, such as local and traditional authorities, business and civil society at large. There was a concern in most of the regions that information reaching the regional council offices did not filter through to other stakeholders. The lack of co-ordination was a view that was raised in 8 regions.

Regional survey participants invariably requested the National Council as an institution and the MPs as individuals delegated by the regions to devise mechanisms that will ensure consistent and efficient sharing of information between the regions and the Parliament through the National Council. In addition, participants requested the regional councils to enhance or develop communication-sharing mechanisms, to ensure that stakeholders in a particular region had

information on legislation or policies, and that they were given an opportunity to make informed inputs and actively participate in the country's legislative processes.

(2) Participation when bills are being reviewed by the National Council

As a house of review, and an institution representing all the regions in the country, most participants were of the view that the National Council was strategically positioned and that it could do more to encourage and facilitate regional participation in the legislative and policy development process. Although the participants upheld the constitutional provision that requires every region to elect only two representatives to the National Council, participants invariably emphasised the need and desire to have the elected members report back and consult their constituencies regularly when the National Council was considering legislation.

The role of parliamentary committees was also highlighted as the most relevant in facilitating public participation when the National Council is reviewing legislation or sensitizing the executive and the National Assembly on regional concerns and the impact of legislation on the various regions. *"The admission of the public, experts and the government into the deliberation of Parliamentary Committees is a worldwide practice among democratic institutions. The participation of experts and ordinary Namibians in a committee policy debate broadens the scope of opinions under consideration and helps to illuminate the possible consequences of policy choices,"* said the Hon. Willem Konjore: Deputy Speaker of the National Assembly.

Conference participants endorsed parliamentary committees as the link between the general population and the Parliament. Parliamentary committees were said to be the forums most capable of facilitating the outflow and input of information concerning decisions regarding a particular issue or sector and that their small size allows for policy focus, while their multiparty composition facilitates broad discussion. Furthermore, the mandate given to committees to conduct open hearings provides direct channels to communicate with the public.

Since the National Council committees are relatively new, participants at the National Conference urged the National Council to strengthen its committee system as they had the potential to focus on a specific issue and task at a time, through which committee members could benefit and develop specialization and ultimately share that expertise and information with the regions. Through the National Council committee hearings and deliberations, the National Council would also play a vital role in providing guidance from a public and regional perspective to both the National Assembly and the Executive.

While both the survey and the National Conference participants agreed that members of the public are keen to have access to the legislative process, the public was equally aware that not all views could be reflected in every final decision. However, National Council members were urged to understand the benefits of considering a diverse set of opinions or recommendations. A key to success in this process was recommended to be the involvement of the public before decisions are made. In addition, the decision-making process should be as transparent as possible; to an extent that all committee work remains open to the public and that closed meetings should be a rare exception.

It was recommended that each committee should (where possible and appropriate) consider providing the necessary space in the committee's work schedules for informing the public about the committee's work, conducting public outreach activities and programmes and incorporating public input in the final decision. In publicising the committee work schedules, it was recommended that committees should always keep the public informed and alert the public on ways to become involved in parliamentary activities.

However, it was noted that this could not be achieved easily, particularly for the relatively new National Council committees. It was therefore recommended that National Council committees endeavor to enhance their capacity to respond to citizen inputs. This would require a focus in the work of committee staff and members to develop written responses to citizen requests and concerns, among other strategies.

While participants acknowledged that some committees had been active than others, National Council committees were requested to extend periods of time for public outreach as it was proving very difficult to conduct public outreach programmes during short periods of one or two days, especially if Members do not reside in their constituencies.

“Public hearings should be publicised with advance notices and should be incorporated as part of the institution's overall constituency outreach efforts and not a once off event.” Said the Governor of Otjozondjupa Region. Participants requested that hearings should preferably not only depend upon the introduction of legislation, but should rather remain focused on issues under debate and that each committee should develop a plan for public hearings that can be included in Parliament's overall outreach publicity. Committees were also requested to send information to the regions in advance if they were to receive meaningful public input.

However, participants conceded that there were some National Council committees that had visited their respective regions to consult on key legislation thereby enabling the regions to participate in the legislative and policy development process.

Participants however emphasised the need for the National Council to consider allocating more time for public hearings. One participant in the Hardaap region said that the public hearings are not adequate for meaningful citizen participation, because of time constraints and that expecting citizens to contribute on legislation instantly was unrealistic. The participant made reference to the expertise at the disposal of parliament and the government departments that initiate bills and propose amendments, in comparison with members of the public, who do not have access to similar expertise or information, yet they are expected to contribute within a few hours of the bill being read to them during a public hearing.

The participant suggested that, *“unless the public was given information or bills ahead of a scheduled public hearing, to provide the public with adequate time to digest and analyse the information, public hearings were not serving any productive purpose. Public hearings without adequate and timely information should not be counted as mechanisms of facilitating public participation.”*

This sense of impotence seemed to transcend region and circumstance. Participants from different institutions across the country and virtually in all the regions expressed concerns about the level of participation in the legislative and policy development process. The challenge for the National Council was therefore to identify mechanisms that will enhance credibility in its decision-making process, incorporating widely differing points of view and building consensus in its decisions and actions. The action taken by the National Council on the Land Bill was regularly raised as a positive example in this regard.¹⁴

(3) Access to activities, programs and calendar of the National Council

Of great significance during both the survey and the National Council was the provision in section 11(c) of the Regional Councils Act, 1992 that restricts regional councils from convening a meeting during any period during which the National Council is in session.

Within the context of public participation, this provision allows the regional representative in the National Council an opportunity to be part of any regional meetings, thereby creating an opportunity for both the constituents, councillors and other interested parties to interact with their representative in the National Council during recess.

However, the participants during the survey and the National Conference were concerned that this was never the case and that in fact, this provision was making the work of the regional councils difficult. The regions do not have the National Council calendar, which often is dependent on the National Assembly calendar. The absence of a calendar has made it difficult for the regions to plan meetings. Secondly, the delegates sent to Windhoek to represent the regions in the National Council were not bringing back the feedback needed by the regional councils.

The participants therefore requested the development of a joint National Assembly and National Council parliamentary calendar that will be circulated to the regions at the beginning of each year or session. In addition to the general calendar, participants also recommended that the calendar be updated regularly and copies circulated to the regions and other stakeholders. Except for isolated instances, Local Authorities and NGO's were equally concerned that they had no access to a parliamentary program and that this hampered prospects for their participation in the formulation of legislation and government policies.

As an institution representing geographical constituencies, participants were of the view that the development of a parliamentary calendar would also assist the regional and local stakeholders to prepare for participation in the different processes taking place in the National Council and the various parliamentary committees. While a parliamentary calendar was considered a priority, Regional Councils and Local Authorities were also advised to develop similar calendars and circulate them amongst themselves, but also with major stakeholders, such as Traditional Authorities, NGO's, CBO's, business, labour, churches, schools and the general public.

(4) Flow of information between the National Council and the Regions

¹⁴ See also Agenda for Change

The survey and the National Conference both commended the National Council for taking the initiative to consult the regions on the access to the National Council and identifying the potential and challenges for information flow between the National Council, the Regional Councils, Local and Traditional Authorities and ultimately the public.

However, participants in virtually all the regions and at the National Conference urged the National Council to enhance communication between Windhoek and the regions. Of particular concern was the lack of legislative information in the regions and failure of the National Council to circulate draft legislation to the regions before taking a decision.

One participant made the following observation, *“If National Council members could obtain the bills in their draft forms and disseminate them to the regional councils, councillors and their electorates would have ample time to study the bills and give their inputs in good time. The circulation of the Parliament’s agenda to the Regional Councils would give an indication of when the different bills would be tabled. That would enable us on the regional level to inquire about the bills when their dates for discussion drew closer,”* observed one participant during the Hardap Regional Workshop.

While this view corresponds with the request to develop and circulate a parliamentary calendar, participants during both the regional survey and the National Conference wanted more information flow from the National Council. An acknowledgement was made that the authors of the Constitution had fulfilled their duties by providing for the establishment of a regional based National Council in Parliament, however, the challenge was for the elected members to make the institution work and ensure that the National Council was not becoming an obstacle of information flow and public participation, but rather a facilitating institution.

Participants, particularly government officials operating in the regions were equally concerned that while they are expected to implement government policy, their access to legislative and policy information was limited, and at times non-existent. The National Council was therefore urged to devise mechanisms that would facilitate information flow during the development of legislation and government policy, and more importantly when bills are passed or policy decisions are taken.¹⁵

(5) Flow of information between the different regional councils

The Regional Councils Act makes provision for regional cooperation on issues of development and sharing of resources. While this provision has the potential to facilitate exchange of information, expertise and resources, participants during both the survey and the National Conference were concerned that links between different regions were non-existent, or in the best case, minimal and inconsistent. While most participants were of the view that the regions had a lot in common when it came to the development needs of their respective regions, it was noted that regions were not always aware of developments, resources and expertise in other regions,

¹⁵ See also Decentralisation and Public Participation in the Legislative Process by Dr. Mukwena, University of Namibia

and that in some cases this led to unnecessary duplication and a waste of resources by re-inventing initiatives that had already been undertaken in other regions.

As a national institution, participants were of the view that the National Council would also facilitate greater inter-regional information sharing. Since the National Council consists of representatives from all regions, meeting regularly, participants considered the institution strategically positioned to advise central government on the development needs of the respective regions, and also to advise central government on the impact of legislation on the respective regions, based on sound research and public input. While advising central government and the National Assembly on the development needs and the impact of government policies, the National Council was also considered strategic in advising the regions on the same, and drawing up regional comparative analysis on the impact, advantages and disadvantages of legislation.

Commenting on the need for inter-regional cooperation and information sharing the Governor for the Omaheke Regional Council made the following comment, *“the Omaheke Regional Council is not operating in isolation because the Council is fully aware that isolation leads to deterioration and deterioration leads to stagnation and stagnation leads to destruction of operations.”* The Governor urged regional councils to strengthen their information base and share technical resources and experience, as this was the only practical and sustainable method for sustainable skills development, and that the failure of one region would mean the failure of all the regions.

(6) The role of Regional Councils in facilitating public participation

“The Regional Council Act has a wonderful provision, which provides that a member of the public may observe the discussions of the Council. Despite many efforts to make our people aware of this provision, since the inception of our Regional Council, we have not witnessed any participation of the public in the Regional Council’s meetings,” observed one Regional Governor.

There was consensus during both the survey and the National Conference that public participation was the seedbed for sustainable development and a fundamental ingredient for the entrenchment of democracy. However, as highlighted in the previous chapters, meaningful public participation entails access to information, an opportunity to articulate and express views, and finally a guarantee that the views expressed matter, and that they will make a difference.¹⁶

The public in virtually all the regions was keen to participate in the legislative and policy development process; however, the legal language used in draft legislation was incapacitating a significant portion of the citizenry from active participation. Secondly, while participants did not have a problem with English as the main medium, there was a recurring view that efforts should be made to translate draft legislation into indigenous languages and it was within this context that the role of the regions in facilitating public participation became vital.

¹⁶ David Mathews: Politics for the People, Finding a Responsible Public Voice

Since the regions have geographical constituencies, participants were of the view that the decentralised regional councils through their membership would facilitate public participation and the sharing of information, based on indigenous languages spoken in the respective constituencies. Secondly, while it was acknowledged that some parliamentary committees and government ministries had conducted public hearings in some parts of the country, it was observed that these public forums had often taken place in towns and major centres. This being the case, participants recommended the maximum utilization of regional councillors to facilitate public participation, since their structure permeated throughout the regions, covering cities, towns, rural and remote areas, and that the input sought from this process would be channelled back to Parliament through the National Council.

Participants were cognizant of the challenges faced by parliamentary committees and government ministries in terms of logistics and lack of infrastructure in some remote parts of the country, however, the survey and the National Conference were informed that even in the remotest areas, structures of governance existed either as regional authorities, local authorities or traditional authorities. In addition, there exists a regional development committee in each region which is representative of different stakeholders and is always in consultation with the constituents, and that these structures could be utilized to facilitate greater and informed public participation.

The National Conference was requested that if meaningful public participation is to be attained and co-facilitated by the regional councils, the public comment or public participation periods should be considered and if possible extended, to ensure that the review process is open and that there is space for the public to participate in the development of legislation.¹⁷ An example was given from the Parliament of the Republic of South Africa, whereby Rule 249. (1) Of the Standing Rules of the National Assembly provides that *“If a Bill has been published for public comment in terms of Rule 241 or 258, the Assembly committee to which the Bill is referred must arrange its business in such a manner that interested persons and institutions have an opportunity to comment on the Bill.”* Commented one participant.

It was concluded that in a country such as Namibia, the government is only one element co-existing with other institutions, such as political parties, organizations and associations representing different interest groups and that these civic organizations’ exist in terms of the fundamental human rights and freedoms of their members and that they are therefore the channels through which their respective members can exercise their rights and responsibilities as citizens of Namibia. These organizations have a responsibility to educate their members on issues affecting them, to formulate the ideas and concerns of its members and promote a spirit of tolerance for the views of others. While these different groups exist with different structures, some of them National, but most of them local, the Regional Councils and the regional based National Council were the only conduits for them to participate in the policy and legislative development process.

Chapter 12, Article 108 of the Namibian Constitution was also hailed as a provision that entrenches public participation in Namibia’s democracy. Article 108 allows the Regional Councils to pass by laws to govern their respective regions. Secondly, the constitution makes

¹⁷ A Khomas Regional Perspective presented by the Regional Governor, Hon. Pandeni

provision for private member bills. According to the participants, both avenues had not been adequately explored and the National Council was requested to take a lead in ensuring that regional proposals are translated into draft legislation and introduced into Parliament.

(7) Public participation in the context of Decentralisation

During the regional survey, “Decentralisation” and the implications therefore were among the key issues raised by the participants. The National Conference therefore looked at decentralisation and public participation within the context of the development of decentralisation related policies and their implementation. The National Conference critically looked at the concept of decentralisation within the Namibian context, as the term had been widely and differently defined by different analysts. The conference also noted that decentralisation can take many forms or degrees, and that the concept of decentralisation is more complex than it is often recognised in the literature or in policy statements

For purposes of the National Conference and public participation, the Conference adopted a broader view of decentralisation, as the transfer of powers or functions of government from the national level to any sub-national level”. Decentralisation in this context was conceived as a multi-dimensional concept, referring to “the transfer or delegation of legal and political authority to plan, make decisions and manage public functions from the central government and its agencies to Regional Councils and other institutions at a regional level, including subordinate units of government, semi-autonomous public corporations, area-wide or regional development authorities, functional authorities, autonomous local governments, or non-governmental organisations’.

In his remarks, the key note speaker at the National Conference, Dr. Mukwena from the University of Namibia outlined different forms and degrees of decentralisation, among them was the common form known as decentralisation or deconcentration, and then delegation and finally devolution. Dr. Mukwena informed the Conference that deconcentration is the most limited form of decentralisation, which basically involves the shifting of workload from central government ministerial headquarters to staff located in offices outside of the national capital and that through deconcentration, staff may not be given the authority to decide how these functions are to be performed. A more extensive degree of deconcentration can be achieved, on the other hand, through a strengthening of regional administration.

In contrast to deconcentration, Dr. Mukwena informed the Conference that delegation basically entails “the transfer or creation of broad authority to plan and implement decisions concerning specific activities – or a variety of activities within specific spatial boundaries – to an organisation that is technically and administratively capable of carrying them out.

Devolution by far the most ambitious form of decentralisation, involves, among other features the giving of autonomy and independence to local units (such as regional and local governments), which are allowed to exist as separate levels over which central authorities exercise little or no direct control. Devolution was the form of decentralisation that most participants gathered at the National Conference were interested in because of its role in facilitating public participation in local and national affairs.

Conference participants were informed that there exists a direct link between decentralisation and public participation. Among the key reasons for decentralisation is that *“decentralisation may allow greater representation for various political, special interest and ethnic groups in the development and implementation of legislation and government policy, and hence could lead to greater equity in the allocation of government resources and investments,* said Dr. Mukwena. *Furthermore, decentralisation provides a practical tool through which development programmes and projects that are appropriate and acceptable to the communities are designed and implemented,”* observed Hon. Pandeni, Regional Governor for Khomas Region. In conclusion, it was highlighted that decentralisation has the potential to provide a framework through which communities can directly or indirectly participate in policy formulation and implementation.

It was therefore recommended that the government initiative of developing and implementing the *“Decentralisation Enabling Bill”* should be considered as a positive step and that the challenge was with the regions and the National Council to ensure that this legislation and its related policies were embraced by the communities and used to facilitate greater public participation.

(8) The role of Information Technology in facilitating public participation

During the regional workshops, different mechanisms were identified as mediums for facilitating public participation. These mechanisms included individual interviews, workshops, committee hearings, publications, surveys and opinion polls. However, in most of these processes, there was a general view that little public participation took place, often because these were used more as public information dissemination processes and not necessarily public participation processes.

Secondly, it was also observed during both the surveys and the National Conference that the unavailability of legislative information in the regions was in itself an impediment to public participation. Several factors were identified as potentially contributing to the unavailability of legislative information in the regions and the lack of feedback to Parliament. During the survey and the National Conference, participants considered various options that would be used in facilitating public participation, sharing of information and ultimately achieving Parliament’s constitutional obligation of being the people’s voice at the same time working towards achieving the goals set out in the Agenda for Change. Participants considered the following options as mediums for sharing information and facilitating public participation:

- Newspapers;
- Parliamentary publications, such as the debate;
- Wide circulation of Parliament Order Papers;
- Radio;
- Television;
- Fax Broadcasting;
- Electronic Mail (e-mail); and
- The Internet

For each option, participants considered the following:

- Advantages and disadvantages;
- Requirements for the successful implementation and utilisation of each medium;
- Financial and technical implications for each medium;
- Accessibility of each medium by the general public;
- Sustainability of the mediums;
- A cost benefit analysis for each medium; and
- The level and quality of public participation facilitated by each medium.

The tables below illustrate the feedback and views of participants on the options highlighted above:

| Newspapers | |
|-----------------------|---|
| Advantages | Newspapers are distributed widely and daily, in addition, Journalists posses skills to report on Parliament |
| Disadvantages | Newspapers are not obliged to report on Parliament and reporting is not consistent. Secondly, newspapers are written in a few languages and they do not allow for wide feedback, except for a few people who express their views in the paper. Participants were equally concerned that the circulation is limited to Cities and Towns and that newspapers rarely reach rural communities, and if they do, it is usually late. Bills are usually long, and can not be adequately covered in a newspaper, and lastly, elected representatives have no control over the independent media or newspapers |
| Costs vs. Benefits | Newspapers are for profit, and with the challenges highlighted above; they cannot guarantee the anticipated results, in terms of increased and informed public participation. |
| Impact on Legislation | The media is key to shaping public opinion, because it goes beyond mere reporting, the media analyses legislation and at times include expert views and public opinions on a particular piece of legislation and the impact of legislation on the lives of the people |

| Parliamentary Order Papers | |
|-----------------------------------|---|
| Advantages | They capture the daily parliamentary proceedings |
| Disadvantages | Their circulation is limited. Order papers are produced and sometimes changed at the last minute. Order papers are only produced in English and there is no mechanism to circulate them widely. In addition, they would not be of significant benefit to people outside of Windhoek in terms of timely feedback |
| Costs vs. Benefits | Order papers are sizeable documents and easy to produce for circulation, but would yield meagre results in terms of increasing and facilitating public participation outside of Windhoek |
| Impact on Legislation | Order papers have the potential to notify the public on the business of Parliament, and therefore attract increased participation |

| Parliamentary Debate | |
|-----------------------------|---|
| Advantages | Parliament has full editorial rights and it is produced in-house. |
| Disadvantages | Limited circulation only published in English and would be too big if it were to contain detailed legislation and policy-related information, and the other parliamentary information that participants sought. |
| Costs vs. Benefits | As a magazine, it is a periodic publication and if it were to be published frequently for purposes of facilitating public participation, there is no guarantee that the investment would yield the intended results, due to language barriers, limited circulation etc. and the cost would be high, therefore a challenge to sustain. |
| Impact on Legislation | The debate provides the public access to developments in Parliament, however, participants during the survey were not familiar with the publication, therefore its impact on legislation could not be evaluated |

| Radio | |
|-----------------------|---|
| Advantages | By far the most widely accessible medium, and the National Broadcaster and the various community radios have managed to address the language barrier issue. According to the participants, radio is the most effective medium at the moment. |
| Disadvantages | Parliament has no control over Radio, and therefore could not guarantee them as a sustainable medium for public participation. While radio has contributed towards disseminating legislative information and as a voice of the people through open lines and public forums, there was little structured feedback to Parliament. |
| Costs vs. Benefits | Radio can facilitate public participation widely and the costs are minimal |
| Impact on Legislation | Radio has the potential to facilitate two way communication, thereby sending feedback to Parliament on legislative matters, while keeping the public informed on legislative issues and providing analytical perspectives on bills. |

| Television | |
|-----------------------|--|
| Advantages | TV already has the infrastructure to cover Parliament and has allocated time when Parliament is in session to broadcast a summary of the proceedings every evening. |
| Disadvantages | TV signals are not available in some parts of the country and a significant rural majority does not have TV sets and electricity. While TV succeeds in disseminating information, TV does not provide an avenue for feedback and does not cover a specific bill in detail. |
| Costs vs. Benefits | TV is costly and would do not guarantee increased participation by the majority of the people. Secondly, Parliament has no control over the program content. |
| Impact on Legislation | TV is a mechanism for transparency and accountability. It is a mechanism that gives a significant portion of the Namibian population access to the proceedings of parliament. |

| Fax Broadcasting | |
|-------------------------|--|
| Advantages | Fully owned by Parliament and can reach a significant portion of civil society and different key stakeholders. Most institutions in the country have a fax machine that can receive Fax Broadcasts. |
| Disadvantages | Would have a significant increase on the Parliament telephone line bill if used to send large documents such as bills, order papers etc. to the general public. No guarantee that all fax pages will be received by the recipients and costly when there are changes in the content of the document being sent, requiring a “re-send.” Fax Broadcasting cannot reach the ordinary person in the rural community. |
| Costs vs. Benefits | Very costly, but participants during the survey and the National Conference committed to circulate the information in the regions once received. |
| Impact on Legislation | Fax broadcasting would ensure that regional stakeholders have legislative information on time and that they would instead circulate the information and solicit public input. Fax broadcasting would also facilitate information sharing between National Council MPs and the regions, thereby increasing accountability. |

| Electronic Mail (e-mail); | |
|----------------------------------|--|
| Advantages | Very fast and can handle large volumes of paper. There are e-mail facilities in every Regional Council office and feedback from the Regions can be instant and guaranteed |
| Disadvantages | The average Namibian does not have e-mail and computer skills to access electronic mail. There are no computers and electricity in rural areas where the majority of the people live. |
| Costs vs. Benefits | Taking advantage of the Telecom Namibia digital data network across the country (the first in Africa), Parliament can utilise e-mail to send information to the regions, where the information can be distributed to interested stakeholders as the Governors committed during the National Conference. Secondly, the large volumes sent to the regions by post could be sent more efficiently and timely via e-mail at a minimal cost |
| Impact on Legislation | With Internet in every school in Namibia and e-mail in every regional council office, e-mail would provide an important tool for the sharing of information between the regional delegation to the National Council and their respective regions. This would also close the communication gap between the National Council MPs and their regions. |

| Internet | |
|-----------------|--|
| Advantages | Widely accessed, every Regional Council has access to the Internet, it can be accessed from any part of the country, any time of the |

| | | |
|-----------------------|--|---|
| | | day/week, and is a practical tool to provide continued two-way access to elected representatives who may not be at their base of operation and their respective institutions. Internet has the ability to store and provide large amounts of legislative and regional information, small and large documents and is a practical tool for research. Access to the Internet is instant and relatively cheap. Large volumes of information can be exchanged and printed instantly for a fraction of a postal charge. |
| Disadvantages | | Limited access, the average Namibian does not have access to a computer and electricity. The Internet requires skills at both the sender and recipient levels that are not available at the moment. |
| Costs vs. Benefits | | The cost of establishing a Parliamentary Knowledge and Data bank on the Internet is relatively low compared to the information sharing that the system can guarantee. The Internet has instant feedback mechanisms with no extra cost for Parliament. Participants during the survey highlighted feedback as a significant motivating factor for increased public participation |
| Impact on Legislation | | The Internet will provide unhindered access to Parliament and parliamentary processes in both houses, thereby allowing the public an opportunity to follow the different stages of a bill and make contributions. The Internet is one medium that can produce quantifiable results in terms of increased public participation |

Among the different options listed above, it was identified during the survey and the National Conference that none of the options was in itself a perfect fit for Parliament and the public participation initiative under discussion. However, it was also noted that the ideal situation could have been to engage every member of the public in discussions when Parliament was considering legislation, however, this was said to be unrealistic as it was practically impossible, therefore the conference considered the options whose advantages significantly outweighed the disadvantages. On that basis, it was recommended that a combination of a few practical options should be considered to facilitate primarily information flow and thereafter provide public access to Parliament.

Participants acknowledged the fact that there is no single mechanism that can facilitate public participation for over 1.6 million at a time. However, Parliament was requested to utilise existing structures of governance at a National, Regional, Local and Traditional Authority level, and that by deploying a mechanisms that would guarantee information flow to, from and between these institutions, Parliament would have gone a long way in reaching out to the public.

“In order to strengthen the link between Councillors and the colleagues serving in the National Council, a mechanism like a computer website is needed to have constant communication for exchanging views, opinions and concerns. Regional Councillors need capacity building, empowerment in order to improve their performance in rendering effective services to the communities in their respective constituencies,” reiterated the Governor of Otjozodjupa Region, Hon. Claudia Grace Uushona

(IV) Conclusion

As highlighted in this report, different analysts have defined the concept of “public participation” differently and it is not an easy concept to define. However, it is a concept that is embedded in the Constitution of Namibia, it is a concept that is embedded in the Regional Council and Local Authorities Act, and it is a concept that the authors of the Agenda for Change emphasized in sections: 4.19 – 4.23, among other recommendations.

According to the views of individuals that participated in the regional survey and the National Conference, public participation in the context of parliamentary democracy was understood to be “the involvement of citizens (or communities) in the planning, implementation and evaluation of public policies, but it is important to note that participants were cognizant and accepted the fact that public participation takes different forms, and that at times the public may participate directly, while in other cases, the public might participate indirectly through elected representatives.”¹⁸ However, participants in virtually all the regions were not in favor of reducing public participation to the election process.

From consultations with individual Members of Parliament, the regional survey and National Conference participants, it is undisputed that public participation is the foundation upon which sustainable democracy has to be built. “*Without public participation we cannot talk of genuine and effective democracy,*” concluded the Governor of Khomas Region. Notably, the Honorable Governor’s remarks underscore the recommendations of the Agenda for Change and other research products, such as the recent report by the Ministry of Regional, Local Government and Housing on the Capacity Assessment of Regional Councils in Namibia.

Conference participants noted that effective public participation involves elected representatives consulting citizens before taking decisions on matters involving their lives. It also entails the participation of people in implementing these decisions and evaluating the outcomes. Public participation is therefore fundamental to democratic governance. “*Indeed, if democracy is “government of the people, for the people, by the people”, then participation is the foundation upon which to build a viable and genuine democracy,*” said the Governor of Oshana Regional Council. On the other hand, there was overall consensus that the decentralisation process which provides structures through which the public can participate in local and national affairs including the formulation of legislation is vital for the establishment of sustainable democracy at a grassroots level.

Conference participants noted that the Constitution of Namibia makes provisions for public participation in the legislative process through decentralised structures, one of the most relevant institutions within this structure being the National Council, which comprises of two regional councilors from each of the thirteen regions. Through the National Council and regional councils, communities can participate in the formulation of legislation.

The provision of structures within the Regional Councils Act, such as Community Development Committees, through which members of the public can influence and shape legislation via the

¹⁸ Article 17 of the Namibian Constitution

regional councils and the National Council was also seen as a practical mechanism for facilitating public participation and entrenching democracy in Namibia. Of course participants acknowledged that these structures need strengthening so that they can become more effective. The challenge was therefore placed upon the regional councils and the members of the National Council to ensure that they do not become obstacles to public participation, but rather active facilitators. While elected representatives have a pivotal role to play, it was also agreed that among other measures, members of the public need to be made aware of how they can effectively utilise the structures provided by the Constitution, which have since been established.

While Namibia has made significant progress in establishing democratic institutions, creating capacities and thereby laying the foundation for good governance and the rule of law, participants observed that this progress had not yet translated itself into meaningful improvement in the lives of the Namibian people. Therefore the challenges of social development and empowerment in Namibia requires the active participation of all sectors of the Namibian Society, including Government, Private and Civil Society sectors.¹⁹

In per capita terms (US\$4 300) Namibia was among the upper-middle-income countries, yet the experience of most Namibians has been that of outright poverty or of continuing vulnerability to being poor.²⁰ In addition, the distribution of income and wealth in Namibia has remained among the most unequal in the world, and many households still have unsatisfactory access to education, health care, energy and clean water. In this context, the marginalisation of women in the decision making process is another significant challenge. While women comprise about 60% of the informal sector and about 70% of the agricultural sector. Given their experience, women have different priorities in terms of services, infrastructure and equipment, yet their participation in the legislative and policy decision making process remains limited or non-existent.²¹

While it was generally understood that the government does not have the resources, or the expertise, to provide all the services that people might want at a given time, it was important for Parliament to ensure that the available resources were used for the best of the Namibian people, and that this could only be determined if government spending and priorities were guided by the beneficiaries, and if the beneficiaries themselves took as much responsibility as possible during the design and implementation of policies, programs and projects. It was observed that this would be possible if Parliament institutionalized its public participation initiative as was demonstrated through the organization of the survey and the National Conference. *“Public participation promotes legitimacy and public support for legislation and government policies, and thereby ensures democratic stability and growth,”* commented one participant during the Conference.

Participants during the survey and the National Conference unanimously agreed that because public participation gives people power to influence and understand the decisions that affect their lives, the practice reduces a feeling of alienation and powerlessness. However, it was also noted

¹⁹ This was the view of NANGOF on behalf of the Namibian NGO Sector, presented by Uhuru Dempers, Executive Director of NANGOF.

²⁰ World Fact Book 1999 estimates. **GDP - per capita:** purchasing power parity

²¹ Presentation by the Minister of Women and Child Welfare, Hon. Netumbo Nandi-Ndaitwah.

that public participation might have little value if it is based on terms defined by others and imposed on the public. An example was given of a scenario whereby the political leadership imposed a candidate for regional council elections to a particular constituency, in this scenario the principles of public participation were violated. Elections in this instance had been abused to authenticate the “selected” candidate.

Public Participation leads to a sense of responsibility for a policy, programme or project. When people take an active part in policy formulation, the planning and/or implementation of programmes or projects, they consider such policies, programmes and projects to be collectively their own, and therefore the public takes pride in such initiatives and take responsibility which leads to the sustainability of such initiatives. The conference unanimously agreed that public participation legitimizes government initiatives in the eyes of the citizenry.

For this reason and many others, the Conference unanimously adopted that the role of public participation in the legislative process should be taken seriously and institutionalized within the context of the Agenda for Change, the Regional Survey Outcomes and the National Conference recommendations. The conference agreed that while public participation was a prerequisite for sustainable democracy, there was not single prescription, but rather guidelines and principles that elected representatives should adhere to. These principles and guidelines are critical as they have the potential to credibility in the work of elected representatives, the National Council in particular, identify public concerns and values and develop a consensus.

By creating an open and visible decision making process to which every Namibian has equal access, Parliament/government decisions and policies will receive support and credibility from the public and groups that have highly divergent viewpoints.

Because different groups in different regions have fundamentally different needs and viewpoints, these groups will continue to evaluate any proposed legislation or policy from a different perspective. The National Council public participation initiative will therefore assist Parliament and government in general to understand regional problems, issues and possible solutions from a particular regional perspective. The commitment by all regional governors to embrace the enhanced public participation initiative is therefore a much-welcomed development.

Noting that there exists divergent regional, sectoral and political viewpoints on legislation and policy proposals, no single philosophy can guide National Council positions on legislation and policy proposals. However, the fact that the citizens of Namibia will play an integral role in the formulation of legislation and policy through the mechanisms agreed upon during the survey and the National Conference will go a long way in legitimizing the National Council legislative process in particular, and parliamentary democracy in Namibia in general.

Appendices: (1) *Regional Survey Terms of Reference*
(2) *Regional Workshop Agenda*
(3) *National Conference Terms of Reference*
(4) *National Conference Agenda*

(Appendix 1)

Regional Workshops Overview

Since its inception in February 1993, the National Council has been striving to serve the people of Namibia and fulfilling the Council's constitutional mandate. Since 1993, the National Council has considered legislation passed by the National Assembly, and some of this legislation has been accepted without amendments while some legislation has been accepted with recommended amendments. During the same process, some legislation has been rejected and returned to the National Assembly.

Since members of the National Council are elected from regional councils, the institution is unique in the legislative process of the country because it is the only legislative institution with geographical constituencies. Through the regional structures, the National Council is strategically placed to serve as a conduit between citizens' voices and Parliament, an institution where the regions are given an opportunity to make input and scrutinize government policies. The National Council provides a forum for regional debate and consensus, thereby contributing to increased public participation in the legislative process.

The constitution provides clear guidelines on the goals and objectives of the National Council. However, just like any developing institution, the National Council has its own set of challenges. Being the only institution made up of constituencies, the National Council has the constitutional obligation to solicit and incorporate the views of the public into national legislation. Therefore the quality and strength of democracy in Namibia largely depends on the quality and extent of efforts to solicit public input into national legislation.

For the National Council to achieve meaningful and constructive public input into legislation, the public needs opportunities to listen, question and express their opinion on national legislation. The public needs information and an understanding on the benefits and implications of national legislation on their lives and communities. The regional councils are therefore well placed to facilitate public dialogue on national legislation.

However, the success of these processes depends on the political and administrative support that the National Council receives from all the regions. Therefore the success of the National Council legislative process largely depends on the availability of human, technical and financial resources at a regional level.

It is within this context that the Chairman of the National Council undertook the initiative to visit all the regions, and thereafter assigned National Council Staff, with the support of NDI to conduct a regional survey, to identify the views and issues regarding the National Council legislative process at both the National and Regional levels. The survey is aimed at achieving several objectives, among them, the National Council seeks to identify lessons that will strengthen the National Council's legislative process and foster informed regional and public participation in the country's legislative process. Secondly, the National Council seeks to strengthen communication links with the Regional Councils, and to explore ways of using Computer Technologies to facilitate inter-regional communication, and communication between

the National Council and its stakeholders, thereby facilitating greater participation in the legislative process.

The survey has been conducted through two methods, the first method being the questionnaires, soliciting views, concerns and issues from the regions and the different stakeholders. After completing the questionnaires, the workshop is a follow up on the issues raised through the questionnaires and an opportunity for the regions to ask questions and exchange ideas on strengthening the links between Parliament and the Regions, and between the Regions themselves.

(Appendix 2)

***National Council Regional Workshops
Agenda***

| | |
|--------------|--|
| 08:00 | Registration |
| 09:00 | Welcome Remarks <i>(Regional Governor)</i> |
| 09:15 | Introduction and Workshop Objectives <i>(G. Shinyala, Chief Control Officer in the National Council)</i> |
| 09:30 | A Reflection on the Regional Survey <i>(Foster Mijiga, NDI Namibia)</i> |
| 10:00 | Overview of the Legislative Process in Namibia and the Role of the National Council <i>(G. Shinyala, Chief Control Officer in the National Council)</i> |
| 11:00 | <u>Tea Break</u> |
| 11:30 | Question and Answer Session |
| 12:00 | Panel Discussion on Public Participation in the Legislative Process and Structures of Public Participation <i>(Adv. Akumu, Director, NDI Namibia, Pero Nampila, NDI Namibia)</i> |
| 13:00 | <u>LUNCH</u> |
| 14:00 | Public and Regional Participation in the Legislative Process and the Role of Information Technology in facilitating and enhancing Public Participation <i>(Foster Mijiga, NDI Namibia)</i> |
| 15:30 | <u>TEA BREAK</u> |
| 15:45 | Question and Answer Session |
| 16:00 | Recommendations and the Way Forward <i>(G. Shinyala, Chief Control Officer in the National Council)</i> |
| 16:15 | Closing Remarks <i>(Regional Governor)</i> |

(Appendix 3)

National Council of the Parliament of Namibia

History of the National Council

The first National Council (NC) was constituted in February 23, 1993 after the first Regional Elections that were held from November 30 to December 3, 1992. Members of the Second National Council were sworn-in on February 15, 1999, after the Regional Elections that took place in December 1998.

The NC consists of two (2) members from each region of Namibia. Each region is divided into between six (6) and twelve (12) single electoral constituencies. Aspirant members of the Regional Councils must contest and win elections at constituency level.

The winners of the various constituencies within a specific region come together to constitute the principal governing body of the region, the Regional Council. Each Regional Council then elects two (2) members from its midst to represent it at the NC.

Currently Namibia is divided into thirteen (13) regions, this means that the NC has twenty-six (26) members. The term of office of members is six (6) years. The seat of the NC is at Parliament Building in the capital, Windhoek.

National Conference Terms of Reference

The following Terms of Reference provide background information for the National Conference taking place from the 24th to the 25th of October 2000 in the city of Windhoek. The two day conference focusing on strengthening the link between Parliament and the Public is an initiative of the National Council which is also aimed at assessing the role of the National Council after 10 years of democratic governance in Namibia.

Introduction

Since its inception in February 1993, the National Council has been striving to serve the people of Namibia and fulfilling the Council's constitutional mandate. In pursuing this goal, the National Council has reviewed legislation passed by the National Assembly since 1993 and in the process, legislation has been accepted without amendments while some legislation has been accepted with recommended amendments. During the same process, some legislation has been rejected and returned to the National Assembly.

In addition to pursuing the Council's constitutional role as a house of legislative review, the National Council has continued to serve as a forum for a regional caucus, an institution where all

the Regions of Namibia are given an opportunity to directly articulate regional views on legislation individually or collectively with other regions.

The constitutional role and functions of the National Council provide a practical framework for taking the Parliament of Namibia closer to the people. Since members of the National Council are directly elected from regional councils, the institution is unique in the legislative process, as it is the only legislative institution with membership representing geographical constituencies in Namibia.

Through the regional structures, the Constitution places the National Council in a strategic position to serve as a conduit between citizens' voices and Parliament, an institution where the regions are given an opportunity to make input and scrutinize government policies. Within this context, the National Council provides a forum for regional debate and consensus, thereby contributing to increased public participation in the legislative process.

The constitution provides clear guidelines on the goals and objectives of the National Council. However, just like any developing institution, the National Council has its own set of challenges. Being the only institution made up of constituencies, the National Council has the constitutional obligation to solicit and incorporate the views of the public into national legislation. Therefore the quality and strength of democracy in Namibia largely depends on the quality and extent of efforts to solicit public input into national legislation.

For the National Council to achieve meaningful and constructive public input into legislation, individuals and institutions in a particular region need opportunities to listen, question and express their opinions on national legislation. The public needs information and an understanding of the benefits and implications of national legislation on their lives, their communities and their respective regions.

As institutions of governance, directly represented in Parliament, the Regional Councils are well placed to facilitate public dialogue on national legislation, soliciting and facilitating input from local and traditional authorities, non-governmental organizations; community based organizations, the general public and other interested parties at a regional level.

From this Constitutional arrangement, one can conclude that structures for public participation in the legislative process truly exist in Namibia. The challenge is to ensure that these structures are operating efficiently and to identify mechanisms that will strengthen these structures.

In addition to the political structures of public participation established by the Constitution, the success of public participation also depends on the administrative capacity at a regional, local and traditional authority level. Therefore the success of the National Council legislative process largely depends on the availability of human, technical and financial resources at a regional level and within other key institutions in a particular region.

It is within this context that the Chairman of the National Council undertook the initiative to visit all the regions in 1999, and thereafter assigned National Council Staff, with the support of the National Democratic Institute for International Affairs (NDI) to conduct a regional survey and

identify views and opinions, concerns and issues regarding the National Council legislative process at both the National and Regional levels.

Strengthening the link between Parliament and the Public (The Regional Survey)

The regional survey was aimed at achieving several objectives, among them, the National Council sought to identify lessons that would strengthen the National Council's legislative process and foster informed regional and public participation in the country's legislative process. Secondly, the National Council sought to strengthen communication links with the Regional Councils, and to explore ways of using Computer Technologies to facilitate inter-regional communication, and communication between the National Council and its stakeholders, thereby facilitating greater participation in the legislative process.

Starting from April 2000, the National Council embarked on a nation-wide survey, consulting major stakeholders including all thirteen Regional Councils, Local and Traditional Authorities within each region, business, labour, Non-Governmental and Community Based Organisations through NANGOF and in other cases directly through the Regional Councils.

The survey was aimed at identifying the following key issues:

- Mechanisms for enhancing public participation in Namibia's Legislative Process, in particular through the regions and the National Council;
- Mechanisms for enhancing communication between Parliament and the regions;
- Mechanisms for enhancing communication between the regions and the public; and
- Mechanisms for enhancing information flow between Parliament, the regions and the public.

The National Council with assistance from NDI developed a questionnaire that was sent to all Regional Councils, Local and Traditional Authorities, Non-Governmental and Community Based Organisations and the different stakeholders as determined by their respective Regional Councils.

The questionnaire formed the first part of a regional survey process that was followed by regional workshops conducted in all thirteen regions starting from May 29, 2000 through to June 29, 2000. The regional workshops were the second phase of the survey process followed by the October 2000 National Conference.

During the first phase of the regional survey, the questionnaire reached an estimated 420 people in all thirteen regions of Namibia and 63% responded. During the second phase of the regional survey, 560 people attended the regional workshops on the following dates:

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| 29 May 2000 | <i>Omusati Regional Council</i> <i>Kunene Regional Council</i> |
| 30 May 2000 | <i>Oshana Regional Council</i> |
| 12 June 2000 | <i>Oshikoto Regional Workshop</i> |

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| | <i>Kavango Regional Workshop</i> <i>Caprivi Regional Workshop</i> |
| 13 June 2000 | <i>Oshana Regional Council</i> |
| 19 June 2000 | <i>Karas Regional Workshop</i> |
| 20 June 2000 | <i>Hardap Regional Workshop</i> |
| 22 June 2000 | <i>Erongo Regional Workshop</i> |
| 26 June 2000 | <i>Khomas Regional Workshop</i> <i>Otjozodjupa Regional Council</i> |
| 29 June 2000 | <i>Omaheke Regional Workshop</i> |

Participants during the regional workshops included Regional Governors, Regional and Local Councilors, Traditional Leaders, representatives of non-governmental and community based organizations, members of the Namibian Defense and Police Forces, civil servants and students.

While the regional workshops succeeded in bringing together different stakeholders at a regional level to discuss and identify ways of strengthening participation in the legislative process and access to Parliament, the National Conference is expected to provide a forum where all regional players will be brought together, to explore and identify a national strategy that will facilitate greater access between elected representatives and their respective constituencies.

By sharing different experiences, challenges and opportunities, the National Conference will take stock of the Ten Years of Democracy in Namibia, while developing mechanisms that will strengthen Parliament in the 21st Century. The National Conference will bring together elected representatives from both Houses of Parliament, elected representatives at a regional and local level, traditional authorities, civil society and representatives of different government departments to deliberate on the following:

- Regional Participation in the legislative process;
- Regional access to the National Council;
- Regional access to Members of the National Council;
- Regional access to legislative information in Parliament;
- Regional access to Parliament calendars, programs and activities;
- Decentralization and the role of the regions in the legislative and policy development process;
- MPs access to the regions;
- Sharing of legislative information between different regions;
- Dissemination of legislative information in the regions;
- Public access to legislative information through regional councils;
- Public access to legislative information through local and traditional authorities;

- The role of government departments in disseminating information pertaining to draft legislation;
- Plain language bills and draft legislation;
- Public hearings, potential and challenges;
- The role of the National Council in the legislative process;
- The legislative relationship between the National Council and the National Assembly;
- The relationship between the executive branch of government and regional government
- The role of Information Technologies in the legislative process.

The National Conference is expected to take place over a period of two days in Windhoek.

Powers and Functions of the National Council

The NC as the upper chamber of the Namibian Parliament reviews all national legislation and articulates regional interests in the National Parliament. To accomplish this double role the Namibian Constitution permits the NC to exercise the following powers and functions:

1. To review all bills passed by the National Assembly and submit any recommendations thereof to the Speaker.
2. To investigate and report on any subordinate legislation, reports and documents that have been sent to it by the National Assembly for advice.
3. To recommend legislation on matters of regional concern for submission to and consideration by the National Assembly.
4. To perform any functions assigned to it by the National Assembly or by an Act of Parliament.
5. To establish Committees; and
6. To adopt rules and procedures governing its proceedings.

Powers, Functions and Prerogatives of the National Council Chairperson

Leadership is an important factor for the orderly operation of a legislative institution. At the first meeting of each new National Council, the members elect the chairperson to preside over its sessions as required by the Namibian Constitution.

The members also elect the vice-chairperson to act as presiding officer during the unavoidable absence of the chairperson and also to assist the chairperson in carrying out his/her multiple functions.

- The chairperson is expected to exercise the powers and functions listed underneath with discretion and judgement:
- Presides over sessions of the National Council and ensures that the decorum and order of the House is maintained.
- Makes rulings on questions not expressly provided for by the rules and procedures of the National Council.
- Oversees policy guidelines of the National Council and its Committees.
- Ensures the implementation of decisions and directives of the National Council.
- Acts as a link between the National Council and government offices, ministries, departments, agencies and other institutions.
- Exercises a casting vote when there is an equality of votes.
- Appoints the Secretary of the National Council subject to the provisions of the laws pertaining to the Public Service.
- Chairs the Committee of Privileges; Committee on the Standing Rules and Orders and Steering Committee.
- Welcomes and receives foreign delegations that visit the National Council.

(Appendix 4)



10 Years of Parliamentary Democracy in Namibia

National Conference

Enhancing Public Participation in the Legislative Process

24 – 25 October 2000

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| Day One |
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| 08:30 | Registration |
| 09:00 | Welcome Remarks <i>Conference Chairperson</i> |
| 09:10 | Opening Remarks <i>Hon Minister Nickey Iyambo, Ministry of Regional, Local Government and Housing</i> |
| 09:45 | Conference Objectives and Goals <i>Hon. Kandy Nehova, Chairman of the National Council</i> |
| 10:00 | The Legislative Process and Public Participation in Namibia <i>Hon. Mose Tjitendero, Speaker of the National Assembly</i> |
| 10:30 | Tea Break |
| 11:00 | Question and Answer Session |
| 11:30 | Regional Perspectives on Public Participation in the Legislative Process. <i>Conference Chairperson</i> |
| 11:40 | Omaheke Regional Perspective <i>Hon. Paulo Thataone, Regional Governor</i> |

- 11:50 Kunene Regional Perspective
Hon Simson Tjongarero., Regional Governor
- 12:00 Otjozondjupa Regional Perspective
Hon. Claudia Grace Uushona, Regional Governor
- 12:10 Karas Regional Perspective
Hon. Stephanus, Regional Governor
- 12:20 Question and Answer Session
- 13:00 Lunch
- 14:00 Erongo Regional Perspective
Hon. Samuel S Nuuyoma, Regional Governor
- 14:10 Ohangwena Regional Perspective
Hon. B Mwaningange, Regional Governor
- 14:20 Oshikoto Regional Perspective
Hon. Vilho Elifas S Kamanja, Regional Governor
- 14:30 Omusati Regional Perspective
Hon. S Kayone, Regional Governor
- 14:40 Khomas Regional Perspective
Hon. John A Pandeni, Regional Governor
- 14:50 Hardap Regional Perspective
Hon. Karl Kisting, Regional Governor
- 15:00 Question and Answer Session
- 15:30 Tea Break
- 15:50 Oshana Regional Perspective
Hon. Clemens H KASHUUPULWA, Regional Governor
- 16:00 Kaprivi Regional Perspective
Hon. Bernard S. Sibalantani, Regional Governor
- 16:10 Okavango Regional Perspective
Hon. Sebastian Karupu, Regional Governor

16:20 Question and Answer Session

17:00 End of Day One

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| Day Two |
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08:30 A review of Day One
Conference Chairperson

09:00 The Role of Parliamentary Committees in Facilitating Public Participation
Hon. Rev. Willem Konjore, Deputy Speaker of the National Assembly

09:30 Question and Answer Session

10:00 Public Participation in the Legislative Process, an NGO perspective
Uhuru Dampers, NANGOF

10:15 Question and Answer Session

10:30 Tea Break

11:00 Panel Discussion

- Public Participation in the Decentralisation Process
Permanent Secretary, Ministry of Regional Local Government and Housing
- The Role of Regional Councils in the Decentralisation Process
Hon. A Kapere, President of the Association of Regional Councils (ARC)
- The Role of Women in Policy Development and Decentralisation
Margreth Mensah, Vice Chairperson of the National Council
- Decentralisation and the Role of Elected Representatives
Hon Mburumba Kerina, Member of Parliament

13:00 Lunch

14:00 The Role of Modern Technologies in facilitating Public Participation
Hon. Teopolina Mushelenga, Member of Parliament
Foster Mijiga, National Democratic Institute for International Affairs (NDI)

15:00 Tea Break

15:30 Recommendations and the Way Forward

Hon. S Kayone, Governor

17:00

Closing Remarks

Hon. Kandy Nehova