

*National Democratic
Institute for
International
Affairs*

**STRENGTHENING THE
PARLIAMENT:**

**REPORTS ON THE NAMIBIAN
COMMITTEE SYSTEMS**

**Windhoek, Namibia
May 7, 1996**

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A Report on Consultations between U.S. Congressman Howard Wolpe and Members and Staff of the Parliament of Namibia

submitted by Erin Martin and Jean Lavoie

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

DECEMBER 1995

We want citizens to be part of the decision-making and they want to be part of the decision-making. For that reason, it is so important that the committees work. Committees are the key to people's participation, and that participation, in turn, is the key to true democracy. We are here now trying to manufacture the keys.

The Hon. Deputy Speaker Zephania Kameeta
Committee Workshop, 28 November 1995

As part of continuing efforts to implement standing committees in the National Assembly, former US Congressman Howard Wolpe spent 26 November - 1 December 1995 in Namibia leading a series of consultations and discussions with Members of Parliament who will serve on committees and make recommendations about their operations. The program was designed by the National Democratic Institute for International Affairs (NDI) under the direction of Deputy Speaker of the National Assembly, the Hon. Zephania Kameeta. Colleagues from two South African provincial assemblies, Hon. Speaker Chabaku of the Free State and Hon. Deputy Speaker Nyama of the Northern Province, attended the sessions as observers. By offering invaluable insights based on their own legislative and political experiences, the two South African colleagues brought a rich dimension to the program. Sessions focused on:

- * the role and function of committees in the legislative process;
- * powers and jurisdictions of committees;
- * procedures and rules governing committees;
- * powers of committee chairpersons;
- * role of opposition parties serving on committees; and
- * relationship of committees to the public, NGOs and interest groups.

In addition to the approximately 25 committee members who attended sessions, Wolpe met during the course of the week with Deputy Prime Minister Hendrik Witbooi, National Council Chairperson Kandy Nehova, Deputy Foreign Minister Netumbo Ndaitwah and Minister of Finance Helmut Angula to seek their views and discuss the committee consultations. At a reception in his honor held by the U.S. Embassy, Wolpe spoke with the Minister of Trade and Industry Hidipo Hamutenya; Minister of Mines and Energy Andimba Toivo Ya Toivo; Minister of Agriculture Nangolo Mbumba; Deputy Minister of Agriculture Stan Webster; Deputy Minister of Works and Transport Klaus Dierks; and Deputy Minister of Prisons Michaela Hubschle.

Staff Consultations

There are many people in this country who have never learned or studied democracy, but still we are asking them to participate fully in our new Namibian democracy. How do we as the staff of the Common Services division find a way to bring them into the process?

Ellen Namhila, Deputy Director
Staff Workshop, 27 November 1995

At the request of the Deputy Director of the Common Services division, Wolpe conducted two sessions for newly-hired staff from the National Assembly, National Council and Common Services (library, research and information.) The first session was dedicated to a discussion of the principles of parliamentary democracy. The exchange helped orient the new parliamentary staff to the legislative arena. The staff, like the MPs, were given background reading material on participatory democracy, comparative parliamentary systems and committee operations through material on the parliaments of Germany, Australia, Malawi and Great Britain, and the US Congress. The second session, which was attended by two National Council staffers only, focused on the specific responsibilities of committee staffers. Wolpe identified key support areas for committee staff:

- * organize hearings, including drafting, circulating and publicizing agendas, briefing material and additional background information for committee members;
- * act as a resource to committee members on legislation, procedure and rules;
- * help MPs respond to letters from the public;
- * develop relationships with civil servants and staff members from ministries relevant to the portfolio of the committee; and
- * cooperate with colleagues on disseminating information to the press and public.

Summary of Mr. Wolpe's comments and recommendations

General Statements about Parliamentary Democracy

"All democracies have one thing in common: their power derives from the people, not from a king or a dictator. The power of democracies is based on consensus rather than force or coercion, and all individuals are equal and deserve to receive the same degree of consideration by the State. Governments that are held together by force create more conflict.

"Parliament is a true mark of democracy. Of all institutions, Parliament is the most representative. It is the source of law that governs the society and is meant to be the most accessible of all institutions. Even dictatorships create phony Parliaments to create the appearance that the government is open to the people.

"Conflict is not a bad thing. One function of Parliament is to institutionalize conflicts, and find a means to deal publicly with them. It makes the whole society inherently more stable.

“Ironically, because Parliament is the most public institution, it is often the one subject to the most ridicule. It is closest to the public and people often accuse it first when a problem arises in the society. Parliament provides a full public view and represents all people as they are, with their strengths and weaknesses, their egos, frustrations, concerns and arguments.

“When Parliament works properly, it gives to the people a real sense of ownership of their government. People must feel connected to the decision-making process. People at the grassroots should be consulted before a decision is made by the government. This requires that mechanisms be set up – such as hearings and consultations -- and this takes time. But at the end of the day, it is what democracy is all about. It is worth it, because by allowing the people to express themselves before passage of legislation, Parliament and the government minimize the risk of being criticized.

“Democracy is not limited to elections. Quite often, the important issues or the decisions to be taken are not being discussed during the campaigns. People must understand that their obligations as citizens do not stop after they cast their vote.

“Being in the opposition does not imply that MPs have to criticize and contest everything, but at the same time, search for consensus is necessary in a democracy, no matter what the representation between the majority and minority.”

Committee Structure and Rules

- * In most jurisdictions, there are standing committees (permanent) and select committees (ad hoc: specific mandate for a certain period of time)
- * The timing for the referral of a bill to a committee varies according to the jurisdictions. Sometimes, it goes to committee right after the bill is introduced in the plenary; sometimes it does not go to a committee until a full debate on the bill has taken place. What is most important is not to submit a bill to a committee after any final decisions have been made on the issue.
- * Referral in the US Congress:
 - a) joint: assigned simultaneously to more than one committee
 - b) sequential: sent to one committee first and then to others
 - c) consultative: one committee is assigned review of a bill with the requirement to consult another committee
- * Committees can write, introduce, amend, approve or reject bills. They have an oversight role on governmental agencies; they may check if the agencies' implementation of a law follows both the content of the law and the intent of the legislature. They can also hold special investigations.
- * Committees have an opportunity to educate the public and to build a consensus around legislation. Committees are the link between the general population and the Parliament.

- * Committees can hold hearings before a bill has been introduced, and do not need to have a bill under consideration in order to hold a hearing on a current issue. In fact, committees can use hearings as a way of calling attention to the need for legislation in a certain area.
- * Committees can help MPs build legislative expertise in specific areas and give back bench MPs an opportunity to develop a sense of participation and ownership in the parliamentary system.
- * Committees allow members to build relationships across party lines, and a committee that functions well resolves partisan conflicts at that level to provide for quick passage in the plenary. The process is less formal and is based on the search for consensus. Most of the time however, reports include views of the majority and the minority.

Recommendations

1. Specialized training of MPs on how to analyze and understand legislation, as well as procedural aspects of committee operations being followed during the debate, would allow MPs to be more effective in committees.
2. Decision-makers in Parliament may want to consider amending the standing rules and orders to require that all bills are referred to committees. Also, the current committee rules do not address issues including the responsibilities of chairpersons or staff; the conduct of public hearings or witnesses and experts, etc. The Liaison Committee may want to examine the committee rules of other parliaments to see how those issues are handled in other systems.
3. Ample time should be allowed for Members of Parliament to review bills and proceed with necessary consultations before the debate or the review process in committee starts.
4. Committees can work more effectively if members are given a written summary or discussion of a bill -- including its objectives, advantages and disadvantages, and the groups that oppose or support it -- in advance of any hearings. The summary would assist the MPs in reviewing the bill and drafting the final report.
5. Witnesses at committee hearings should be asked to submit written testimony in advance but provision should be made for people who cannot read or write. As Speaker Chabuku said, "Some people who do not know how to read or write may still have an incredible social wisdom."

**COMMENTS AND OBSERVATIONS ON
THE STANDING RULES AND ORDERS OF
THE NAMIBIAN NATIONAL ASSEMBLY**

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*The National Democratic Institute Namibia Project is funded
under a grant from the United States Agency for International Development*

INTRODUCTION

In an effort to support the institution of the committee system of the Namibian Parliament, Mr. R. Brian Kidney came to Windhoek in March 1996 to meet with the Leadership and Staff of the National Assembly and the National Council. Mr. Kidney work for nearly 30 years in the Office of the Chief Clerk of the California State Legislature and possesses considerable experience with parliamentary issues. He served in the capacity of the Assistant Chief Clerk from 1965 to 1988 when he was elected Chief Clerk of the California State Legislature. This report details Mr. Kidney's discussions concerning the committees and procedures of the National Assembly. A separate report is being issued covering the Mr. Kidney's consultations with the National Council.

During the course of his stay in Namibia, Mr. Kidney met with both the Leadership and the Staff of the Assembly to discuss parliamentary issues. Mr. Kidney and Mr. Jean Lavoie met with Findley Harker, Assistant Secretary to the National Assembly, to discuss those aspects of the Standard Rules and Orders which, at times, have proven to be nettlesome in practice. Mr. Kidney and Mr. Lavoie met with the Liaison Committee of the Assembly. This committee comprises all of the Chairpersons of the Assembly's committees. Also in attendance were Mr. John Agnew, Assistant Clerk of the National Assembly, and Ms. Stephanie Winson, Legal Advisor to the Speaker. Lastly, discussions were held with the Hon. Dr. Mosé Tjitendero, Speaker of the National Assembly. Ms. Erin Martin, National Democratic Institute Country Director for Namibia, attended this meeting along with Mr. Kidney and Mr. Lavoie. The conversation with the Speaker focused on a review of the Standing Rules and Orders of the Assembly and an overview of the discussions that emerged from the two earlier meetings.

At the end of the day, these discussions centered on two broad yet distinct topics: the development of a substantive committee system and the investigation of the parliamentary process with the goal of making the movement of bills through the Assembly more efficient and more responsive to the interests of its Members. All of the individuals contracted in these meetings expressed considerable interest in the issues examined. Of particularly keen importance was the issue of committees in the Assembly. This report provides comments and suggestions on first the current committee system of the Assembly and second on its Standing Rules and Orders. It is important to note that the comments and suggestions contained in this report are merely that. Every parliament is unique. Each institution evolves in response to the physical, social, moral and political environment of the community it serves, and the responsibility for it lies with its leaders.

PART I: COMMITTEES OF THE ASSEMBLY

Standing vs. Select Committees

No major disputes were generated when the question of defining these terms was raised. General consensus was reached to employ the following definitions:

Standing or Permanent Committee: a continuing committee established in the Standing Orders, usually at the beginning of the Session, to study and report upon a principle area of national interest. In identifying such committees, the Standing Orders must clearly describe the mandate of each committee so that Members of Parliament, members of the committee and the referring power will have a guide in their particular responsibilities toward each committee.

Select or Ad hoc Committee: a committee specifically created by the Speaker with the approval of the Assembly to investigate a matter of particular or unusual concern to the nation and to the Membership. Such a committee will continue in existence only until its work is concluded and a report presented. Select committees, if their work is not finished, must be re-established at the beginning of each Session, should the Speaker and the House so desire.

See Appendix A for additional materials on the definition of different types of parliamentary committees.

Role of Standing Committees

This issue has been a keystone in every discussion of committees. In order to permit the Assembly to develop useful information and expertise in the various subject matter areas, and to make the most valuable use of a finite amount of time for meaningful investigation and review of matters of state, each standing committee should have under its scrutiny all questions presented to the House which are relevant to its mandate. It would seem necessary and prudent, therefore, that all bills introduced in the Assembly whose subject matter is a responsibility of a standing committee be referred to that committee.

This does not dictate that any bill which addresses a matter of utmost urgency **must** be referred to a standing committee. On rare occasions, it may be imperative that the question be reviewed. The Committee of the Whole which, upon conclusion of its study, may immediately report to the House for its earliest decision. Even under this approach, the Members of the concerned subject matter committee will no doubt be called upon to provide leadership, experience and information not otherwise available to the general membership.

Thus, one of the primary recommendations to the Assembly is that Rule 85 be reworded to emphasize the importance of review by the appropriate standing committee. One suggestion might be:

“When a bill has been read for a second time, it *shall*, subject to rule 32, be referred *(by the Speaker or the Committee on Standing Rules and Orders)* to the *standing* committee whose jurisdiction includes the subject matter of the bill.”

Composition of Committees

Existing Rule 116.1 states: “The Committee on the Standing Orders shall determine the number of members of a select (read *standing*) committee which has been appointed, and appoint the members who shall serve on such a committee.” Rule 113 states: “The names of the members appointed to serve on a select (read *standing*) shall be announced by the Speaker of the Assembly.”

The selection of a Vice-Chairperson is not explicit in the Standing Orders. It may be supposed that this determination will be made in the same fashion as that of the Chairperson of each committee.

Other concerns, such as limiting the number of committees on which each Member of Parliament may serve, and excluding Members who are also Ministers from serving on committees with similar subject matters as those of his/her Ministry, seem to have been decided by the Assembly in advance.

Joint Committees

As identified in Rule 116, the idea of joint committees is already acknowledged. Joint committees made up of Members of the Assembly and of the Council are considered in most parliamentary usage as committees of each House meeting jointly. A vote requirement for such a meeting consists of a majority of a quorum of each committee, not a majority of a quorum of the combined membership.

Joint committees of Standing Committees of a single House are again two committees meeting jointly. If the discussion is investigative in nature, no special conditions apply because the group is not voting on a proposed piece of legislation. If the discussion involves a bill, however, only the committee in charge of the bill may vote on any motions pertaining to the bill which are generated by the joint discussion.

Scheduling of Committee Work

A schedule of regular Standing Committee meetings has already been prepared. Special meetings of Standing Committees may be called by a majority of the Members of the Assembly present or by the Speaker. Standing Committees may meet to investigate subject matter topics as well as to debate proposed legislation.

Notice of Standing Committee Meetings

Notices should be prepared and distributed well in advance of any Standing Committee meeting, two or three days at a minimum. They should include the time and place of the meeting, the agenda, and any other particulars which might be relevant for Members of the Assembly, the Council, witnesses, the press and the public. This encourages attendance, interest and inclusion. Of course, if circumstances demand, the House may dispense with any notice requirement by a majority of a quorum.

Preparation of Standing Committee Reports

Under Rule 120, the report of a committee shall be presented by the Chairperson of the committee. Proposed committee rules (see 15 (I - v)) indicate that all parts of the report on a bill are open to amendment and re-amendment at any time prior to exhausting debate. Future use of these provisions may suggest that a curb on repetitious propositions on the same subject may be considered.

Form of the Report: Some thought might be given to the standardization of committee reports. For instance, the first page of the report might contain only the recommendation of the committee, e.g., favorable, favorable but with amendments, favorable only toward selected sections of the bill. The second page might contain the text of any amendments offered by the committee; the third, significant testimony; the fourth, selected documents as background, and the fifth, meeting dates, attendance, votes taken, etc. With a standard format, Members of the Assembly and other interested parties should be able, at a glance, to note the recommendation and to go directly to the information he/she might deem to be of principle interest.

Staff for Committees

Provision has been made to hire or to have persons already employed by the Assembly to staff the committees. The problem with new staff is a lack of experience, both in how a committee is run and in the depth of knowledge in the subject matter.

How a committee is run is essentially clerical: it requires the recording of minutes of the meeting, the preparing of materials for the meetings, the organizing and filing of various papers, documents and records. These matters might be developed by an experienced office manager or secretary.

Subject matter knowledge must be developed. It may be a desirable strategy to hire young people who have just finished their studies in a subject area directly related to the committee's mandate. Hiring an expert in the field is ideal, but may prove expensive; engaging an expert for a brief period of time to consult with the committee on a particular issue might be equally effective but less costly. Over time, some of the members of the committee will, by virtue of repeated exposure to the field, become quite conversant with the issues. A well functioning committee in the long run requires: knowledgeable staff, exposure to experts in the subject, and growth in expertise of the members of the committees.

Witnesses

The treatment of witnesses seems to be well addressed in proposed rules 12 through 14. An additional rule regarding meeting closed to the public is purloined from the Rules of Parliament of the Province of Quebec, Canada, and is offered here, as with all the material presented, for consideration:

“The total or partial disclosure of testimony and documents received by a committee sitting with closed doors is permissible only upon motion passed by the committee with the unanimous consent of its members, and written consent of persons involved.”

Strangers

Not a major suggestion, but one which might make the Parliament appear to be more friendly and welcoming, the appellation “stranger” seems to imply an outsider whose presence is not particularly appreciated. It might, in the interests of denoting equality and respect, be changed to “visitor”, “member of the public”, or some other agreeable term or phrase.

Committee Rules

It is recommended that language be included in the Standing Rules and Orders to state explicitly that “committees may establish rules of procedure not in conflict with the Standing Rules and Orders of the National Assembly or the Constitution.” This ability may be implied, but by being set forth it places committees on notice that they are precluded from adopting rules contrary to the Standing Rules.

PART II: STANDING RULES AND ORDERS OF THE ASSEMBLY

This section provides a general review of the Standing Rules and Orders of the Assembly. The Standing Rules and Orders are grouped under subject headings and appear generally in numerical order. Again, these comments and suggestions are offered for your consideration. They are not proposed as the only method of conducting parliamentary business.

Preliminary

Standing Order 2.1

Text

“In any matter for which these Standing Orders do not provide or that is not provided for by a Sessional Order or other Order, the decision of the Speaker or the Chairperson of Committees, as the case may be, shall be final, and in arriving at such decision he/she may take as his/her guide the relevant practices.”

Comments and Suggestions

In resolving a question not provided for in the Standing Orders, the Speaker will be establishing what, in usual parliamentary parlance, is called a “precedent.” Precedents do not have the force and effect of a rule, but they may be invoked if the Rules are silent on the matter. Precedents are normally set aside by a majority of Members present and voting.

Standing Order 2.2

Text

“A rule so framed by the Speaker shall remain in force until, on recommendation of the Standing Committee on Standing Rules and Orders”

Comments and Suggestions

New language is suggested so that the Rule would read as:

“A rule so framed by the Speaker shall remain in force until, on recommendation of the Standing Committee on Standing Rules and Orders, *the Assembly either sets it aside or adopts it as an amendment to the Standing Rules.*”

Standing Order 3

Text

“Any rule of the Standing Orders may be suspended upon motion made after notice, such suspension being limited in its operation to the particular purpose for which it has been sought.”

Comments and Suggestions

What vote does it take to suspend the rules? It is often stated that a majority of the House must suspend, and with unanimous consent, a quorum being present will accomplish the same purpose.

Sessions, Quorum and Adjournments

Standing Order 20

Text

“Unless otherwise ordered by the Assembly, the time for the ordinary meeting of the Assembly on each sitting day shall be at half-past-two-o’clock pm (14h30) to quarter-to-six (17h45) on Tuesday, Wednesday and Thursday and nine-o’clock (09h00) to half-past-twelve at noon (12h30) on Friday in each week, public holidays excepted:

Provided that business on each Tuesday, Wednesday or Thursday is adjourned at 15h40 and resumed at 16h00 and on a sitting day which is a Friday, is adjourned at 10h20 and resumed at 10h40.”

Comments and Suggestions

The Orders of the Day, together with a calendar of forthcoming committee hearings, might be published on or before the next scheduled sitting. (If publishing of the Orders of the Day for each sitting has been stated elsewhere, this suggestion will only add the calendar of committee hearings. An alternative would be the separate publication of committee hearings for every sitting day.)

Standing Order 21

Text

“In order to facilitate the business of the Assembly or the exchange of messages with the National Council, or for any other reason, the Speaker may, in his/her discretion, suspend business or vary the time laid down for the interruption or for the suspension of business and shall, as soon as may be, inform the Assembly of his/her intentions to do so.”

Comments and Suggestions

An assumption is made that the “suspension of business” or varying “the time laid down for the interruption” is, in fact, a temporary recess of the business of the day and not an adjournment to the next sitting.

Standing Order 24.2

Text

“The Speaker shall take the Chair as soon as a quorum is present after the hour appointed for the meeting of the Assembly but if, after an hour after the hour appointed there is no quorum present, the Speaker shall take the Chair and adjourn the Assembly until the next sitting day.”

Comments and Suggestions

It might be useful to have a two-minute bell at the conclusion of the half hour after the hour appointed for meeting so that all within the precincts of the Assembly will know that the meeting is adjourned.

A procedure referred to as “A Call of the House” is used in some other Parliaments to compel attendance at a sitting. In effect, the House, by a majority of those present, declares the doors locked and the absentees brought in by whatever means are required. This condition remains in place until a quorum is present, and the House “lifts” the Call. The Speaker has the authority to excuse a Member after he/she has been counted as present should the need arise. This procedure is offered as a matter of interest and as a procedure which might be more useful in the future.

Standing Order 24.4

Text

“Any member who draws the attention of the Speaker thereto that there is no quorum, is held as present at the counting of the Assembly, whether he/she is indeed present or not.”

Comments and Suggestions

The purpose of this Rule is unclear. Why would a person drawing attention to the fact that a quorum does not exist depart before a quorum is established?

Standing Order 26.2e & 40.d

Text

“the motion must not raise a question of privilege;”

and

“raising a point of order or a question of privilege;”

Comments and Suggestions

At some point in our discussions, a problem regarding a “question of privilege” was voiced. When the problem concerns the proper use of the procedure, it might be of interest to note Rule 111 of the Standing Rules of the California State Assembly on the matter:

“Any Member may rise to explain a matter of personal privilege. A matter of personal privilege is a matter involving the Member’s integrity, dignity, or honor. Upon rising to explain such a matter, the Member shall forthwith be recognized by the Speaker, but shall not discuss a question in that explanation. Those matters of personal privilege yield only to a motion to recess or adjournment.”

Standing Order 26.3

Text

“A matter submitted in pursuance of this rule which fails to obtain the necessary support cannot within two months be again brought forward under this rule.”

Comments and Suggestions

If a motion for the adjournment of the Assembly for a definite matter of urgent public interest does not receive sufficient support, is the prohibition against bringing the issue again to the House within two months a meaningful or an arbitrary period?

Routine and Order Paper

Standing Order 38.5a

Text

“At Question Time the Speaker shall call in turn each Member in whose name a question stands upon the Order Paper, in the order in which the questions are printed or in any such other order as the Speaker may on any particular occasion (by leave of the Assembly) determine. Each Member so called shall rise in his/her place and ask the question by reference

to its number on the Order Paper and Minister questioned shall give his/her reply.”

Comments and Suggestions

A Member of another Parliament has noted that, during Question Time, questions proposed were identified only by number, and the Members were left to riffle through their papers to read the question while the Minister was in the midst of answering the question. A solution was proposed which might be of interest to the Assembly: that each “Member so called shall rise in his/her place and ask the question by reference to its number on the Order Paper and by reiterating the question just prior to the response by the Minister. At that, the Minister questioned shall give his/her reply.” In this fashion, not only would everyone present but also those within hearing, as with radio for instance, would have the benefit of an immediate connection between the question and the answer.

Questions from the Chair and Divisions

Standing Order 41.1

Text

“Unless otherwise provided for in the Constitution, all questions in the Assembly shall be determined by a majority vote of the votes of members of the Assembly, excluding the Speaker or other presiding member who shall, however, in the event of an equality of votes have and exercise a casting vote.”

Comments and Suggestion

The vote described in this rule would suggest that questions are determined by a majority vote of the entire membership of the Assembly. It would be useful to make explicit the rules governing how questions are decided.

Standing Order 44

Text

“No motion or amendment shall be moved which is chiefly the same as any motion or amendment which during the 30 days immediately preceding, has been resolved in the affirmative or negative, unless the order, resolution or vote on such motion or amendment has been repealed.”

Comments and Suggestions

The idea to reduce the number of those nuisance motions by which a Member might bring up a question already determined by the House is laudable. The procedure or postponing for no less than 30 days the reintroduction of an issue once settled by the House may already have

been employed and found useful. If not, it might be of some value to consider an alternative: an issue once settled in some other parliaments may not be brought up again until after intervening business. This has been interpreted to mean that some action has been taken on the question, such as the adoption of an amendment, which would render the main question a slightly different proposition from its previous form.

Order in the Assembly and Rules of Debate

Standing Order 57

Text

“After the presiding member has called the attention to the conduct of a member who persists in irrelevance or in repeating arguments, he/she may direct the member to discontinue his/her speech.”

Comments and Suggestions

The word, “unsuitability,” in the title of this rule describes rather a matter of taste than of judgement. It might be clearer to use the word “irrelevance” in the title of this Rule as is employed in the rule itself.

Standing Order 60

Text

“A member who is suspended in terms of rule 59 or instructed in terms of rule 58 to leave the Assembly chamber shall forthwith withdraw from the precincts of the Assembly.”

Comments and Suggestions

A Member suspended and instructed to leave the Assembly Chamber s further ordered to withdraw from the “precincts of the Assembly.” It might avoid disagreeable incidents if the Standing Committee on Standing Rules and Orders were to determine in advance just what areas of the surround are considered “precincts.”

Speeches and Time Limits

Standing Order 65 & 66

Text

“When the Assembly is not in committee:

a) the member who is charged with the business before the Assembly shall not be restricted in regard to the length of time he/she may speak;

b) members may speak for 45 minutes on a question.

A member may not address a Committee of the Whole Assembly more than three times on a question, including amendments, and he/she may also not speak longer than 20 minutes at a time, except the member charged with the business before the committee, to who no such restriction applies.

At the report stage of a Bill, the member who is charged there with may twice address the Assembly on any question and other members may not speak longer than 10 minutes at a time.

If, by agreement, the whips allocate a specific time to a specific debate, such time shall not be exceeded without the unanimous consent of the Assembly and the closure of the debate takes place forthwith.”

and

“The debate on a motion that leave be given to introduce a Bill is limited to one hour and no speech shall last longer than 10 minutes.”

Comments and Suggestions

The question of time limits has been a part of many of our conversations with Members of the Assembly. There are many minds about this issue. The suggestion is here made that the Speaker and the Members address the matter from time to time with a view: to making speeches relevant to the point, and to moving the business of the House along in an expeditious manner. Once again, a rule of the California State Assembly is offered as but one example of a different approach to this question.

Rule 108 states, in part, “No Member shall speak more than once during the consideration of any one question on the same day and at the same stage of proceeding, except that the author of a bill or resolution or the mover of a question shall have the right to open and close the debate thereon. No Member shall be allowed to speak more than five minutes to open and five minutes to close the debate on any question, including amendments, and no Member other than the author or mover of the question shall be allowed to speak more than five minutes thereon, ...”

Standing Order 72.2

Text

“A member may with the prior consent of the Speaker also explain matters of a personal nature, although there is no question before the Assembly, but such matters may not be debated, and the member shall confine him/herself strictly to the vindication of his/her own conduct.

Comments and Suggestions

Is explaining “matters of a personal nature” something different from a point of personal privilege as discussed under Standing Order 26.2e & 40.d (see page ??)?

Standing Order 73

Text

When a point of order is raised, the member called to order shall discontinue his/her speech, and after the point of order has been stated to the presiding member by the member who raised it, the presiding member shall give his/her ruling or decision thereon either forthwith or subsequently.

Comments and Suggestions

Ruling on Points of Order, in certain parliamentary practices, may be subject to an appeal by a Member of the Assembly. This procedure allows a Member to contest the ruling of the Presiding Officer and to ask the House to support either his/her position or that of the Presiding Officer. Again, as a matter of interest, a rule of the California State Assembly is quoted in part:

Rule 82 states “Any Member may appeal from the decision of the Speaker without waiting for recognition by the Speaker, even though another Member has the floor ... Upon the appeal being seconded, the Speaker may give his or her reasons for the decision, and the Member making the appeal may give his or her reasons for the appeal, and the Speaker shall forthwith put this question to the Assembly: ‘Shall the decision of the Speaker be sustained?’ An appeal cannot be amended ... A majority vote of the Members present and voting shall decide any appeal.”

It is also a firm principle of parliamentary law that the Presiding Officer, if in doubt as to the proper ruling in a given instance, may put the question to the house directly: “The Speaker is in doubt. Should the point of order be well-taken?” This is not the strongest position to take, but there are times when it may well be the most judicious.

Closing of Debate

Standing Order 74.3

Text

“If amendments to a question have been moved and the closure approved, amendments well as the main question are put forthwith without amendment or debate.”

Comments and Suggestions

This may be an erroneous reading of this rule, but it seems that, after amendments have been moved and closure approved, but before a vote has been taken on the amendments, amendments as well as the main question are put forthwith without amendment or debate. Thus, any closure approved on any amendment offered would force a vote on the main question, the only debate having been on the amendment(s) closed.

Most practices observed dictate that the amendments to be taken up and disposed of in their order of presentation. After all amendments proposed have been accepted or rejected, as the case may be, the main question now including the accepted amendments is then debated.

Strangers

Standing Order 55.c & 75.

Text

“to call attention to the presence of strangers; or”

and

“The power to admit strangers to the precincts of the Assembly, the places set aside for them in the Assembly Hall or the portion which is set aside for members, shall vest in the Speaker.

The presiding member may at any time, or after his/her attention has been called to the presence of strangers, at his/her discretion or in accordance with a decision of the Assembly, on the motion of a member which may happen without notice and be resolved without debate, order any stranger to withdraw from any part of the Assembly.

If a sitting is held in terms of Article 61(2) of the Constitution, the Speaker shall order the public to withdraw, failing which he/she shall cause them to be removed.”

Comments and Suggestions

See the section on “strangers” in Part I of this report.

Public Bills

Standing Order 89

Text

“Amendments may be made to a clause or new clauses added provided that they are relevant to the subject matter of the bill, or pursuant to any instruction or be otherwise in conformity with the Standing Order of the Assembly, but if an amendment be adopted which is not within the title of the bill, the committee shall amend the title accordingly and report it specially to the Assembly. Provided however, that no clause or amendment may be moved which is in conflict with the principles of the bill as read a second time.”

Comments and Suggestion

This rule, as stated, permits amendments not within the title of the bill to be adopted in a committee; directs the committee to amend the title to identify the new material, and allows them to address any matter not in conflict with the principles of the bill. This suggests that, as long as the title includes every concern which has been appended to the bill, there is not limit to the number of subjects which one bill might encompass. This is the so-called “Christmas Tree” approach to legislation because one might be adorned with a hundred different “ornaments.” The United States Congress and the President wrestle with this procedure frequently.

We strongly urge a second approach, one which allows each bill but one subject. When a bill is introduced, the title indicates what area of concern the bill addresses. Amendments to the bill may only relate to that area of concern. The title may be amended should the area expand, but a totally new subject may not be amended to the bill in addition to the original. This makes the focus of the bill comprehensible and not comprised by a series of unrelated issues.

Standing Order 91

Text

“The principles of a bill shall not be discussed in committee, but only its details.”

Comments and Suggestions

If it is the consensus of the Assembly that the committees be given the tools they need to carry out their mandates, then we suggest that this rule be deleted. The committees may indeed be charged with investigating and evaluating the worth of the ideas proposed in any bill and not proposing any amendments foreign to the subject embodied (see the discussion of Standing Order 89 above), but to insist that it look only at details is to deny the committee the ability to look at policy and to give any meaning to its functions, both of legislation and of oversight of governmental policies. There is also the problem of defining clearly just what is a principle and what is a detail of a bill. For one subject, it could be one thing; for another, something else.

Committee of the Whole Assembly

Standing Order 104.5

Text

“If a bill passed by the Assembly and transmitted to the National Council is passed with amendments or is objected to in principle or not passed within three (3) months or thirty (30) days in the case of a Money Bill of its receipt, the Secretary (Speaker) shall communicate the fact to Members and (the Secretary) shall cause copies of the bill to be supplied to them.”

Comments and Suggestions

Does this Rule mean that if the National Council does not act upon a bill that has been passed to it by the National Assembly within 3 months, or within 30 days in the case of Money Bills, that the bill automatically becomes available to the National Assembly for further consideration? Is this a Constitutional provision or has the National Council agreed to this limitation?

**COMMENTS AND OBSERVATIONS ON
THE STANDING RULES AND ORDERS OF
THE NAMIBIAN NATIONAL COUNCIL**

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*The National Democratic Institute Namibia Project is funded
under a grant from the United States Agency for International Development*

INTRODUCTION

In an effort to support the institution of the committee system of the Namibian Parliament, Mr. R. Brian Kidney came to Windhoek in March 1996 to meet with the Leadership and Staff of the National Assembly and the National Council. Mr. Kidney work for nearly 30 years in the Office of the Chief Clerk of the California State Legislature and possesses considerable experience with parliamentary issues. He served in the capacity of the Assistant Chief Clerk from 1965 to 1988 when he was elected Chief Clerk of the California State Legislature. This report details Mr. Kidney's discussions concerning the committees and procedures of the National Council. A separate report is being issued covering the Mr. Kidney's consultations with the National Assembly.

During the course of his stay in Namibia, Mr. Kidney met with both the Leadership and the Staff of the Council. On Monday 11 March Mr. Kidney, Mr. Jean Lavoie and Ms. Erin Martin, NDI Country Director for Namibia, met with the Hon. Kandy Nehova, Chairman of the National Council, and Dr. Ben Mulongeni, Secretary of the National Council. The following day, Mr. Kidney and Mr. Lavoie met with the members of the National Council Committee on Standing Rules and Orders and Internal Arrangements. These meetings provided an opportunity to discuss both the current Standing Rules and Orders of the National Council and the nascent development of a committee system in the Council.

As noted, these meetings focused on analyzing two issues: the development of a functional and substantive committee system and the investigation of the parliamentary process in the Council with the goal of making that process more open and efficient. This report provides comments and suggestions on the possible committee system in the National Council, on its Standing Rules and Orders. It will briefly address several other topics that were raised by the Leadership and Staff of the National Council during these consultations. It is important to note that the comments and suggestions contained in this report are merely that and not intended as criticisms. Every parliament is unique. Each institution evolves in response to the physical, social, moral and political environment of the community it serves.

PART I: COMMITTEES OF THE COUNCIL

Standing versus Select Committees

Throughout the Standing Rules and Orders of the Council, committees, other than the Committee of the Whole Council, are consistently referred to as “select committees.” Presented here are the definitions of “standing” and “select” being considered by the Assembly. It is presented here to the Council with the recommendation that, to avoid misunderstandings and confusion on the part of parliamentarians, the media and the public, both Houses adopt the same manner of identifying committees, whatever that might be.

Standing or Permanent Committee: a continuing committee established in the Standing Orders, usually at the beginning of the Session, to study and report upon a principle area of national interest. In identifying such committees, the Standing Orders must clearly describe the mandate of each committee so that Members of Parliament, members of the committee and the referring power will have a guide in their particular responsibilities toward each committee.

Select or Ad hoc Committee: a committee specifically created by the Speaker with the approval of the Assembly to investigate a matter of particular or unusual concern to the nation and to the Membership. Such a committee will continue in existence only until its work is concluded and a report presented. Select committees, if their work is not finished, must be re-established at the beginning of each Session, should the Speaker and the House so desire.

Note that “select” is often synonymous with the term “special.” In the rest of this part of the report, the term committee refers to standing committees unless otherwise noted.

See Appendix A for additional materials on the definition of different types of parliamentary committees.

Role of Committees

The role of standing committees has been a critical issue in every discussion regarding committees. In order to permit the Council to develop useful information and expertise in the various subject matter areas, and to make the most valuable use of a finite amount of time for meaningful investigation and review of matters of state, each standing committee should have under its scrutiny all questions presented to the House which are relevant to its mandate. It would seem necessary and prudent, therefore, that all bills introduced in the Council whose subject matter is a responsibility of a standing committee be referred to that committee.

This does not dictate that any bill which addresses a matter of utmost urgency **must** be referred to a standing committee. On rare occasions, it may be imperative that the question be reviewed in the Committee of the Whole which, upon conclusion of its study, may immediately report to the House for its earliest decision. Even under this approach, the Members of the concerned subject matter committee will no doubt be called upon to provide leadership, experience and information not otherwise available to the general membership.

Thus, one of the primary recommendations to the Council is that Rule 71 be reworded to emphasize the importance of review by the appropriate standing committee. One suggestion might be:

“When a Bill has been read for a second time, it shall, subject to rule 20, be referred to the standing committee whose jurisdiction includes the subject matter of the Bill, unless otherwise ordered by a majority of the Council.”

Number of Committees

While the Council is a relatively small body, having only 26 members (including 2 Deputy Minister), it does contain enough parliamentarians to create numerous committees. For example, if each Member were limited to membership in three committees, 78 appointments would theoretically be available. If each committee were to be composed of seven members, 11 committees could be filled and still leave the Chairperson free to pursue his/her duties without committee responsibilities. These, of course, are merely numerical examples intended to demonstrate the feasibility of forming a number of subject matter committees.

The Standing Rules and Orders identify only one committee, the Committee on the Standing Rules and Orders and Internal Arrangements (Rule 111). In conversations with the Chairman of the Council, it was learned that a number of committees have already been established, including the Committees on Public Accounts, Defense and Security, Economy, Privileges and Amenities and Legislation.

The purpose of the Committee on Legislation is not clear. It may be that the responsibility of the Legislation Committee is to refer bills to appropriate committees and/or to review those bills which do not fall under the subject matter of existing committee.

Regarding these matters, two suggestions come to mind. First, as the workload increases, subject matter committees should be created to address incoming bills from the Assembly, and these subject matter committees should, to the extent possible parallel those of the Assembly. For instance, bills heard in the Assembly Committee on Agriculture should be referred to the Council Committee on Agriculture.

The second suggestion is to place the responsibility of referring bills under the Committee on the Standing Rules and Orders and Internal Arrangements and to replace, as conditions warrant, the Committee on Legislation with a satisfactory group of subject matter committees. Again, this would reduce the number of committees stretching the limited membership of the Council.

Composition of Committees

Existing Rule 99 states: “The Committee of the Standing Orders shall determine the number and members of a select committee which has been appointed, and appoint the members who shall serve on such a committee.” Here is recommended that the membership of each committee created,

insofar as is possible, consist of an odd number of members, so that the necessity of using the questionable procedure of a Member of a committee casting two votes (Rule 104) may be avoided.

The idea of proportional representation by party in the committees should be stated explicitly in the Standing Rules and Orders. An example of such a Rule is taken from Paul Mason's *Manual of Legislative Procedure*, the parliamentary authority used by the California Legislature, he writes:

“A committee for deliberation or investigation ... should represent all the important factions in the body, so that its opinion will carry as great weight as possible. Such a committee should also consist of representatives of both sides of a question, where there is a clear division, as the committee will also be subject to changes of bias if any important faction is not represented.” (Section 640.2)

Some Members of the Council who are also Deputy Ministers in the Government wear two hats. They are at once members of the executive branch and of the legislative branch of the national government. Since the responsibilities of the Parliament are both to create policy and to oversee the administration of those policies, the possibility of a conflict of interest is very real. To avoid placing those Members who are also Ministers in a most difficult position, it is suggested that, at the very least, those Minister whose portfolios are mirrored by subject matter committees not be appointed to the committee that mirrors their portfolio. It is preferable, however, that they not be assigned committee responsibilities.

The selection of a Vice-Chairperson for each committee is not explicit in the Standing Rules and Orders. It may be supposed that this determination will be made in the same fashion as that of the Chairperson of each committee (see Rule 103).

Joint Committees

Joint committees may be created from the committees in each House or from two committees of one House regarding an issues of mutual concern. In each case, the joint committee is treated in general parliamentary practice as two or more committees meeting jointly. Any vote taken, to be successful, consists of a majority of a quorum or a majority of the entire membership of each committee as determined by the Standing Rules and Orders, not a majority of the combined membership.

If the reason for meeting is investigative in nature, no additional conditions apply because the group is not voting on a proposed piece of legislation. If the discussion involves a bill, however, only the committee in possession of the bill may vote on any motions pertaining to the bill.

Subcommittees

Subcommittees can be useful mechanisms by which the standing committees may focus on specific areas of current concern. Bills may be referred to them by the committee for study but may be withdrawn at the will of the committee. Agreement on a recommendation to the full committee should be achieved by vote of a majority of the subcommittee. Membership in a subcommittee is

normally appointed by the chairperson of the committee from the membership of the committee which created it with the approval of the Chairperson of the Council.

Procedures in Committees

The organization of the committees and the quorum needed to conduct business is addressed in the Standing Rules and Orders. It remains to be established what number of votes is to be required for actions to be taken by committees. In the absence of any rule to the contrary, the number of votes required for any action by the committee is a majority of the members present and voting.

In certain parliaments, a distinction is made between those actions that will send a bill out of committee and those actions internal to the committee. Motions sending a bill to the House require a majority of the full committee while procedural motions within the committee require only a majority of a quorum of the committee. The notion behind this distinction seems to be that a motion sending the bill out of the control of the committee should take a vote of the majority of the entire committee, and a motion keeping the bill under the control of the committee need only have the blessing of a majority of the quorum.

Scheduling of Committee Work

As standing committees are formed, a schedule should be developed so that all those concerned will be able to plan their calendars accordingly. This is initially important for the selection of committee members in order that no member will be appointed to two committees which meet on the same time and day. Included in the schedule should be the enumeration of bills to be heard so that members, staff, witnesses, advocates and the media and public may prepare for each meeting. As previously suggested, standing committees may meet to investigate subject matter topics as well as to debate proposed legislation.

Special meetings of standing committees may be called by a majority of the Members of the Council or by the Chairpersons.

It is advisable to place some sort of limitation on the times when committees may meet. For instance, a rule might stipulate that no committee may meet past midnight of the day for which the meeting was called, or it might stipulate that no bill be taken up after a fixed time. The Standing Rules of the California Assembly contain the following example of such restrictions:

“The several standing committees and subcommittees and their chairpersons are directed to adopt a procedure which assures that no committee or subcommittee shall commence the hearing of any bill after the hour of six o'clock p.m. at an evening meeting, but the hearing on a bill commenced prior there to may be continued thereafter for that period of time that the committee or subcommittee deems necessary.”

Notice of Committee Meetings

Notices should be prepared and distributed well in advance of any standing committee meeting, perhaps two or three days at a minimum. They should include the time and place of the meeting, the agenda, and any other particulars which might be relevant for Members of the Council, the Assembly, witnesses, the press and the public. This encourages attendance, interest and inclusion. Of course, if circumstances demand, the House may dispense with any notice requirement for a particular meeting by a majority of the Council, or a majority of a quorum of the Council.

Preparation of Committee Reports

Under Rule 106, the report of a committee shall be presented by the chairperson or another member of the committee. The report should reflect any review or amendments made by the committee and whether the committee approved the bill.

Form of the Report: Some thought might be given to the standardization of committee reports. For instance, the first page of the report might contain only the recommendation of the committee, e.g., favorable, favorable but with amendments, favorable only toward selected sections of the bill. The second page might contain the text of any amendments offered by the committee; the third, significant testimony; the fourth, selected documents as background, and the fifth, meeting dates, attendance, votes taken, etc. With a standard format, Members of the Council and other interested parties should be able, at a glance, to note the recommendation and to go directly to the information he/she might deem to be of principle interest.

As the Council becomes more familiar with the committee process, the caution evident in Rule 105 regarding publication of reports may abate. When it is agreeable to do so, the Council might entertain the idea that all reports, after review by the Council, should be published unless otherwise ordered by the Council. This capability is inherent in the existing rule; the suggestion above may be carried out not by changing the rule, but merely by motion to that effect.

Staff for Committees

Provision has been made to hire or to have persons already employed by the Council to staff the committees. The problem with new staff is a lack of experience, both in how a committee is run and in the depth of knowledge in the subject matter.

How a committee is run is essentially clerical: it requires the recording of minutes of the meeting, the preparing of materials for the meetings, the organizing and filing of various papers, documents and records. These matters might be developed by an experienced office manager or secretary.

Subject matter knowledge must be developed. It may be a desirable strategy to hire young people who have just finished their studies in a subject area directly related to the committee's mandate. Hiring an expert in the field is ideal, but may prove expensive; engaging an expert for a brief period of time to consult with the committee on a particular issue might be effective and less

costly. Over time, some of the members of the committee will, by virtue of repeated exposure to the field, become quite conversant with the issues. A well functioning committee in the long run requires: knowledgeable staff, exposure to experts in the subject, and growth in expertise of the members of the committees.

Witnesses

The admission of experts and advocates into the deliberations of the committees is a world wide practice among democratic institutions. Their value can be inestimable when exploring any issue facing the country. The Constitution recognizes this by providing, under Article 74 (2), powers to the Council to subpoena witnesses and any material relevant to the proper business of a committee.

Rules should be incorporated into the Standing Rules and Orders that would provide for the appropriate treatment of witnesses. Persons to be summoned should be identified to the chairperson of the committee for committee approval. If approved, those identified persons must be given sufficient notice in order to prepare for travel and testimony. Reasonable expenses of persons summoned should be reimbursed.

If the meeting is otherwise closed to the public, the testimony and materials brought forward by witnesses must be given some guarantee of discretion and protection from disclosure. The Rules of Parliament of the Province of Quebec, Canada provide a rule which is here offered for consideration:

“The total or partial disclosure of testimony and documents received by a committee sitting with closed doors is permissible only upon motion passed by the committee with unanimous consent of its members, and written consent of persons involved.”

Strangers

Unless the matter under review calls for a closed meeting, citizens and visitors to the country should be encouraged to attend meetings of the Council and its committees. Indeed, to avoid any possible charge of devious or unfair behavior, all actions in these meetings should only be taken with the public and media present. This does not deny to the committees the opportunity to have informational meetings where no votes are taken and where attendance by non-members may be limited to experts in the subject under inquiry.

Not a major suggestion, but one which might make the Parliament appear to be more friendly and welcoming, the appellation “stranger” seems to imply an outsider whose presence is not particularly appreciated. It might, in the interests of denoting equality and respect, be changed to “visitor”, “member of the public”, or some other agreeable term or phrase.

Proxies

At some point, the issue of proxy voting was raised during our discussions. It is available in few, if any, of the parliaments observed, probably for good reason. With proxy voting the opportunities for abuse and fraud or the appearance of such are quite great. The possibility of developing a system of proxy voting that would eliminate these concerns is unlikely.

Committee Rules

The current Standing Rules and Orders impose few requirements on committees, suggesting the limited role heretofore expected of them to play in the parliamentary process of Namibia. Conversations with the Chairman of the Council and with Members of the Council indicated a greatly heightened interest in developing a useful committee system. This review of the role of committees in the Council is the direct result of the expression of that interest.

In view of that desire to move committees into the mainstream of the parliamentary process, it is strongly recommended that many of the decisions reached by the Council in response to the matters contained in this review be incorporated into the Standing Rules and Orders. For instance, the identification and mandate of those continuing committees created by the Council should be stated in the Standing Rules and Orders; the requirement that committee membership be proportional as to party, if that is desired; the number of votes required to report a bill out of committee, to postpone consideration in committee; public meetings and executive, or closed door, meetings; the treatment of witnesses; notice requirements for meeting, and other aspects of committee procedure deemed appropriate should be included.

Committee rules adopted into the Standing Rules and Orders provide for uniform action by all committees affected and prevent or at least reduce the possibility of arbitrary determinations being made by different chairpersons of committees and committees as they face varying political pressures.

With the inclusion of committee rules in the Standing Rules and Orders, it is recommended that language be inserted into the Standing Rules and Orders to state explicitly that "committees may establish rules of procedure not in conflict with the Standing Rules and Orders of the National Council or with the Constitution." This ability may be implied, but by being set forth it places committees on notice that they are precluded from adopting rules contrary to those governing the Council in particular and the Parliament in general.

PART II: STANDING RULES AND ORDERS OF THE COUNCIL

This section provides a general review of the Standing Rules and Orders of the Council. The Standing Rules and Orders are grouped under subject headings and appear generally in numerical order. Again, these comments and suggestions are offered for consideration. They are not proposed as the only method of conducting parliamentary business.

Application, Supplementing and Suspension of Rules

Standing Order 3

Text

“Any provision of these Rules may be suspended by resolution adopted by the Council.

The suspension of any provision shall be limited in its operation to the particular purpose for which suspension has been approved.”

Comments and Suggestions

The vote required to suspend any provision of the Standing Orders is unclear. Standing Order 28 states that “all questions in the Council shall be determined by a majority of the votes of members of the Council, ...” If a motion to suspend is considered a question, then a majority of the Council is required. If it is considered a procedural motion and not a question in the same sense that a piece of legislation is, does it then require only a majority of the quorum in the Council? The decision ultimately rests with the determination by the Council of the relative ease or difficulty with which it may suspend its own Rules.

Standing Order 4

Text

“A reference in these Rules to a member shall be construed as a reference also to H.E. The President and to a Minister or Deputy Minister who holds a seat in the Assembly, when attending a meeting of the Council.”

Comments and Suggestions

The purpose of this Rule, we believe, is to extend parliamentary courtesy to those officials mentioned in the Rule. The intent is to provide these individuals with the privileges of the House, rather, than to invite them to participate in the work of the Council. The language of this Rule is a little vague and hence open to the latter interpretation.

Proceedings in Connection with Commencement of Session

Standing Order 12.2

Text

“The Chairperson shall take the Chair as soon as a quorum is present after the hour appointed for the meeting of the Council but if, after half an hour after the hour appointed for the meeting there is no quorum present, the Chairperson shall take the Chair and adjourn the Council until the next sitting day.”

Comments and Suggestions

If it appears that the Council has difficulty in securing a quorum from time to time, it may be of interest to contemplate a procedure referred to as “A Call of the House.” This is used in some bodies as a way in which to compel attendance at a sitting.

The House, by a majority vote of those present, declares the doors of the Chamber locked and the absentees brought in by whatever means necessary. This order remains in place until a quorum is present, and the House then “lifts” the Call. On occasion, Presiding Officers (with the tacit approval of the House) have been known to leave the Call in place throughout the sitting in order to assure sufficient attendance to do business. The Chairperson has the authority to excuse a Member after he/she has been counted as present should the need arise. This procedure might be worthy of consideration as experience accrues.

Standing Order 12.4

Text

“Any member who draws the attention of the Chairperson thereto that there is no quorum, is held present at the counting of the members, whether he/she is indeed present or not.”

Comments and Suggestions

The purpose of this paragraph is unclear. If the member calling attention to the fact that no quorum is present is permitted to depart and still be counted, might not the Council conceivably then have an actual attendance of 13 members and not the required quorum of 14?

Routine and Order Paper

Standing Order 20

Text

“Subject to these Standing Orders, the consideration of an order of the day shall be set down for the next sitting day unless the member in charge moves some other future day.”

Comments and Suggestions

The subject of this Standing Order provides an opportunity to address the matter of scheduling Orders of the Day. If it is not already part of the process, the publication at the beginning of each sitting day of an agenda identifying the questions to be addressed and their proper sequence is strongly recommended.

One suggestion comes to mind. Perhaps the appropriate office to prepare such an agenda might be that of the Secretary of the Council under the direction of the Chairperson or the Standing Committee on Standing Rules and Orders and Internal Arrangements.

An agenda is already framed in Standing Order 19, the publication of which may currently exist in what is termed "the Order paper." The agenda should be made available to the Members of the Council, their staff, the media and the visiting public, preferably in time for readers to review it before the commencement of the sitting.

Questions from the Chair and Divisions

Standing Order 27 & 28

Text

"Every motion requires notice except a motion:

by way of an amendment to a question already put to the chair;
for the adjournment of the Council or of a debate;
in Committee of the Whole Council;
raising a point of order or a question of privilege;
discharging a member from attendance of a select committee;
for the postponement or discharge of an order of the day;
which is expressly excluded by these Standing Orders;
to grant leave of absence to a member;
in regard to which notice is dispensed with by the unanimous concurrence of all the members present; and
whereby a Bill is referred to a Select Committee."

and

"Unless otherwise provided in the Constitution, all questions in the Council shall be determined by a majority of the votes of members of the Council, excluding the Chairperson or other presiding member who shall, however, in the event of an equality of votes have and exercise a casting a vote.

Except in the case of a division, there shall, when the question is put be asked for:

the members in favour of the question;

the members against; and
the members abstaining.”

Comments and Suggestions

These Rules raise the question of the weight given to procedural motions to amend, to refer, to postpone, etc. Are these considered “questions” within the meaning of Standing Order 28, or may they be accomplished by vote of a majority of a quorum? While the question is posed merely as a point of clarification, it should be noted that parliamentary rules often have a hierarchy of vote requirements, with procedural motions only requiring a majority of those present and voting, or a majority of a quorum.

Standing Order 32.2

Text

“Notwithstanding for provisions of sub-rule (1) the presiding member may grant permission for the withdrawal of the motion if he/she considers that misuse is made of the unanimous consent as contained in sub-rule (1).”

Comments and Suggestions

If unanimous consent is withheld, a clause indicating that the presiding Member may have the option to put the motion to the House to be decided by a majority of the quorum (or House) might be useful.

Order in the Council and Rules of Debate

Standing Order 47

Text

“A member who is suspended in terms of rule 45 shall forthwith withdraw from the precincts of the Council.”

Comments and Suggestions

A member whose misconduct causes him/her to be ordered from the Council Chamber in accordance with Standing Order 45 “shall forthwith withdraw from the precincts of the Council.” If there is a distinction, it might avoid disagreeable incidents if the Chairperson or the Standing Committee on Standing Orders were to determine in advance just what areas of the property are considered to be the “precincts of the Council.”

Closing of Debate

Standing Order 61.3

Text

“If amendments to a question have been moved and the closure approved, amendments as well as the main question are put forthwith without amendment or debate.”

Comments and Suggestions

It would appear from this paragraph that, after amendments have been moved and closure approved, but before a vote has been taken on the amendments, amendments as well as the main question are put forthwith without amendment or debate.

Strangers

Standing Order 42 and 62

Text

“No member shall interrupt another member whilst speaking, except:

to call attention to point of order or question of privilege;
to call attention to the absence of a quorum;
to call attention to the presence of strangers; or
to move the closure.”

and

“The power to admit strangers to the precincts of the Council, the places set aside for them in the Council Chamber, or the portion which is set aside for members, shall vest in the Chairperson.

The presiding member may at any time, or after his/her attention has been called to the presence of the strangers, at his/her discretion or in accordance with a decision of the Council, on the motion of a member, which may happen without notice and be resolved with debate, order any strangers to withdraw from any part of the Council.

If a sitting is held in terms of Article 61 (2) of the Constitution, the Chairperson shall order the public to withdraw falling which he/she shall cause them to be removed.”

Comments and Suggestions

See the section on “strangers” in Part I of this report.

Public Bills

Standing Order 75

Text

“Amendments may be made to a clause or new clauses added, provided that they are relevant to the subject matter of the Bill, or pursuant to any instruction or be otherwise in conformity with the Standing Order of the Council, but if any amendment be adopted which is not within the title of the Bill, the committee shall amend the title accordingly and report it specially to the Council. Provided however, that no clause or amendment may be moved which is in conflict with principles of the Bill as read a second time.”

Comments and Suggestions

This rule, as stated, permits amendments not within the title of the bill to be adopted in a committee; directs the committee to amend the title to identify the new material, and allows them to address any matter not in conflict with the principles of the bill. This suggests that, as long as the title includes every concern that has been appended to the bill, there is not limit to the number of subjects that one bill might encompass. This is the so-called “Christmas Tree” approach to legislation because one might be adorned with a hundred different “ornaments.” The United States Congress and the President wrestle with this procedure frequently.

We strongly urge a second approach, one which allows each bill but one subject. When a bill is introduced, the title indicates what area of concern the bill addresses. Amendments to the bill may only relate to that area of concern. The title may be amended should the area expand, but a totally new subject may not be amended to the bill in addition to the original. This makes the focus of the bill comprehensible and not comprised by a series of unrelated issues.

Standing Order 77

Text

“The principles of a Bill shall not be discussed in committee, but only its details.”

Comments and Suggestions

In anticipation of a well-developed committee system in the Council, it is essential that the committees be given the tools they need to carry out their mandates, then we suggest that this rule be deleted. The committees may indeed be charged with investigating and evaluating the worth of the ideas proposed in any bill and not proposing any amendments foreign to the subject embodied (see the discussion of Standing Order 75 above), but to insist that it look only at details is to deny the committee the ability to look at policy and to give any meaning to its functions, both of legislation and of oversight of governmental policies. There is also the problem of defining clearly just what is a principle and what is a detail of a bill. For one subject, it could be one thing; for another, something else.

Select Committees

Standing Order 104

Text

“The Chairperson or Acting Chairperson of a select committee shall, besides his/her vote as a member, have a casting vote in the event of equality of votes.”

Comments and suggestions

While it is highly unusual to permit a member to cast two votes on the same question, it is not out of bounds, if that is what the Council wishes. A casting vote is normally made by someone who otherwise may not vote on the matter. Most parliamentarians agree that, absent a rule to the contrary, a tie vote causes a question to be lost.

PART III: ADDENDUM

Committee Development

This is an expansion of an earlier discussion. Concern was expressed during a meeting with Members of the Council that, given the size of the Council's membership and limited resources that the capacity may not be available at this time to create a committee structure. It was suggested at the time that the Council need not seek to establish a complete system at once. As the need grows, the number of committees may be expanded to whatever number the Council feels acceptable at the time. At one time resource and experience may permit only four committees at a latter date six may be a more appropriate number. In the beginning, committees might be given broad mandates covering more that one subject matter. Staff might need to be shared. As the workload grows and as capacity develops, committees can always be divided and more staff hired.

Committee Meetings Outside Council Precincts

If such flexibility is desired, it is recommended that the Standing Rules and Orders include a rule permitting standing and select committees to meet at locations outside of the Capital, perhaps with the approval of the Chairperson of the Council. To curb potential excesses, the rule might include a clause prohibiting committees from venturing beyond the borders of the country without the express approval of a majority of the Council.

Standing Orders are not Absolute

One final remark needs to be made. While it may be accepted as obvious, it bears repeating. Rules are adopted as a way of conducting the business of parliament in a manner agreed upon by a consensus of the House. If a majority of that body chooses to change for the foreseeable future some or all of the rules previously agreed to, it will do so. If it chooses or needs to set aside one or more rules in order to effect the desired result in the desired or necessary time, it empowers itself to suspend the impeding rule or rules. In the case of the Council, such actions require a majority of the Council (Rule 3).

These thoughts are meant to reassure Members of the Council that while decisions regarding their rules are to be taken seriously, they are not etched in stone. In most jurisdictions, this is the main function of the Standing Rules and Orders Committee. They may be changed when enough members are convinced that a different approach is warranted. Of note, it is the experience of a number of parliamentary bodies that, as they become more accustomed to their rules, they are less inclined to amend them without grave consideration.

APPENDIX A

Information on Committees of the Australian Senate

Senators serve on more than thirty parliamentary committees. These can be classified according to their purpose and method of operation.

Select Committees

A select committee is an *ad hoc* committee created to inquire into and report upon a particular matter. It may be established at any time by a resolution of the Senate which will specify the committee's composition, terms of reference and posers. A select committee has a limited life and ceases to exist on the presentation of its final report or on the day fixed for such presentation unless the Senate has granted an extension. At present (November 1994) there are four Senate select committees inquiring into superannuation, community standards relevant to the supply of services utilizing electronic technologies, foreign ownership decisions relating to print media, and the management and operation of the Australian Broadcasting Corporation.

Standing Committees

These are permanent committees established under the Senate's Standing Orders or by resolution of the Senate for the duration of a Parliament. They are usually re-established at the beginning of each new Parliament and can continue to function until the end of the day before the commencement of the next Parliament. When there is a double dissolution all committees of both Houses cease.

Standing committees permit a continuing surveillance of defined fields of government activity, call upon scholarly research and advice and create an awareness of the Senate's 'watchdog' function.

From *Senate Brief*
November 1994

Information of Committees from Around the World

In general, committees can be divided into two categories: standing committees and *ad hoc* committees. Most legislatures have standing committees with jurisdiction over draft bills (*i.e.*, proposed legislation) can and do appoint *ad hoc* committees to investigate specific matters. *Ad hoc* committees cease to exist once they have accomplished their purpose, and they usually issue a report to the full changer or to the public that contains their findings and conclusion. Bicameral legislatures may also establish permanent or temporary joint committees, with representatives from both bodies, to review issues of general and continuing concern or to reconcile differences in bills adopted by the two chambers.

Standing Committees and Review of Legislation

Standing committees are usually established for the duration of the legislature (*i.e.*, until a new legislature is elected). They are specialized by subject matter and often parallel executive branch ministries or agencies. The degree of specialization differs among legislatures. Standing committee members, because they may remain on the same committee for a considerable period of time, usually become knowledgeable about the subjects within their committee's jurisdiction.

The U.S. Congress is organized into standing committees that are crucial to the legislative process. U.S. congressional committees generally are recognized as stronger than those in any other Western legislature. Political scientist and future U.S. President Woodrow Wilson in 1885 described the Congress as a collection of committee baronies and congressional government as "government by the standing committees of Congress."

The permanent subject-matter of committees of the U.S. Congress determine the major (and minor) decisions that shape a draft bill before it comes to the full body for a vote. Committees have broad authority to adopt amendments and redraft bills, and it is the committee's version of a bill that is voted on the full chamber. While committee members may well hold diverse points of view on controversial issues, the committee provides an opportunity for members to craft compromises that may reconcile partisan differences.

Bills usually must be considered by the appropriate committee(s) before they can come before the House of the Senate for a vote. Committee chairs, who are all members of the majority party, control committee agendas and the consideration of amendments to bills. They are able to ignore a bill by not bringing it up for committee consideration, thus precluding it from coming to a floor vote.

When members fail to agree on a draft bill, the committee votes on amendments to the bill; these votes are frequently cast on party lines. After considering, amending and voting to approve a bill, the committee issues a report that explains its views on, and amendments to, a bill. These reports also include a section describing or setting forth the views of the committee's dissenting members (*i.e.*, those who disagree with the recommendations of the committee majority). Usually, the product of the committee's work - rather than the original draft bill - is the version of the bill considered by the full chamber. The committee chair and the minority party's most senior committee member (Known as the "Ranking Minority Member") usually lead the floor debate on a committee-reported bill and often take opposing views on specific issues within the bill or on the bill as a whole.

Ad hoc Bill Committees

Some legislatures establish *ad hoc* committees to review draft bills. These *ad hoc* committees convene to consider bills and then disband; thus, members of *ad hoc* committees do not necessarily develop experience or knowledge about the subject matter of bills they review.

The British Parliament relies on *ad hoc* committees to review draft bills. In Parliament and in legislatures modeled on the British parliamentary system (like the Canadian, Indian and Irish Parliaments) there is a "second reading" of the bill in plenary session when the membership debates the general principles of the bill. After this debate, the chamber votes to send the bill to committee for consideration. The *ad hoc* bill committees cannot make changes that run counter to the principle of a bill. Instead, the committees tend to adopt amendments that are introduced by the government's ministers. These amendments are usually technical in nature: "In practice, their ability to amend and

influence the content of measures is circumscribed ... The result is that bills usually emerge from committees relatively unscathed."

One reason the British bill committees have "little opportunity to develop and vote upon alternative provisions" is that the party composition of the committee is proportional to floor party strength, and party discipline in support of a bill is imposed by the minister who introduced it. *Ad hoc* parliamentary committees are organized to reflect the adversarial, party-dominated nature of Parliament; and debate in committee usually takes place along party lines. Bill committees are not as important in Parliament as they are in the U.S. Congress, in which committee leaders lead the floor debate. In Parliament, "floor debate is led by the minister and the opposition front bench [minority] spokesperson."

Compared to their U.S. counterparts, the relative weakness of the British Parliament's *ad hoc* bill committees is in large measure a consequence of the parliamentary system in which leaders of the majority party in the legislature are members of the government's cabinet. These cabinet ministers dominate the legislative process within the committees and in plenary sessions. The cabinet thus has significant control over Parliament, and the committees have a limited role in the law-making process.

Variations

The French National Assembly, which has been described as having characteristics of both the U.S. House of Representatives and the British House of Commons, has standing committees with specialized jurisdiction. However, National Assembly committees have limited "decision making" power; they cannot revise the purpose of the government's legislation and only can make technical modifications to government bills. Because the committees must report back to the full chamber within three months, they cannot prevent bills from coming to a vote of the assembly. The committees also do not have sufficient time to fully examine government proposals. Before the Constitution of 1958, the National Assembly comprised 20 committees organized on the basis of subject matter that "constituted very powerful hurdles" to government action: "The Constitution of 1958 [the Fifth Republic] sought to reduce drastically the power of committees from one of complete control of the legislative process to one of advice given to the house on the line to take on the bill in general and on the various clauses." Today, the standing committees of the National Assembly, which have relatively little authority, have been reduced to six and described as little more than "components of the legislative conveyor belt."

The German committees are more important to the legislative process than are their French (or British) counterparts and are more akin to U.S. congressional committees. In the German Bundestag (Federal Diet) committees cannot bury bills and are not known to make aggressive use of their investigatory and information-gathering powers; however, they carry the chief burden of parliamentary work, exercise their power to amend legislation and function as a "responsible critic of the government." "Committees are the indispensable workhorse of the Bundestag, the machinery through which the greater part of its business must be processed."

In the Canadian House of Commons, a comprehensive system of standing, specialized committees parallels the government ministries. The committee system underwent major restructuring in 1968 in order to increase the amount of time available for plenary sessions: committee membership was reduced to no more than 20 seats, committees were authorized to sit whether or not the House was in session and committees were allowed to delegate substantial

responsibilities to subcommittees. In addition, the reforms required that most government bills be referred to committees automatically after a second reading and authorized the committees (upon orders of the House) to investigate policy issues. While the Canadian committee system is atypical for a parliamentary model, the committees are much less powerful than their formal duties might suggest.

Despite these reforms, the committees in the Canadian House of Commons remain relatively ineffectual; they play no important role in either scrutinizing government bills or overseeing government policies. One source of their weakness stems from the process by which committee chairs are selected: the government, though, its House leader, selects the committee chairperson from the majority party. As such, committee chairs are not predisposed to conduct investigations or otherwise hold the government accountable. Instead committee chair positions have grown into, "the proving and recruiting ground for advancement of government backbenchers." in general, a committee chair carries little prestige, thus contributing to tenures of short duration (*i.e.*, few serve more than two years). The weakness of committees is also compounded by low attendance and high turnover of committee membership.

Hungary's National Assembly, a unicameral legislature, has 12 standing committees that are organized broadly to reflect the structure of the government and are an important component of the legislative process. Although committees are required to act on bills submitted to them, they also initiate legislation and submit motions for amendments. National Assembly committees can require government officials and private individuals to testify and to provide requested documents. In the early 1990s members of the National Assembly made several attempts to broaden the committee framework by establishing new committees; although these efforts failed, they have been cited as "proof that members consider [committees] as a source of influence and a means by which they can openly and publicly concentrate on a specific problem area."

In Thailand, draft legislation does not need to be reviewed by a committee before being considered by the full chamber. In the event that the National Assembly does establish *ad hoc* committees to review draft legislation, they are given a set period of time in which to review and issue a report on the draft. The Thai committees are unusual in that they may include outside experts as well as members of the assembly.

And in Jordan, where the king and the cabinet play the lead role in proposing and determining the legislative agenda, the four permanent and eight *ad hoc* committees of the Representative Assembly play a very minor role. Bills are drafted by the executive and sent to the committee for study before plenary session consideration. The relevant cabinet minister explains the proposal to the committee, and the committee members can seek further clarification. Although the committee may at times suggest to the minister changes for incorporation as "friendly" amendments, the assembly needs a two-thirds vote to adopt any amendments the minister declines to adopt.

From *Committees in Legislatures: A Division of Labor*
National Democratic Institute



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