



AGENDA FOR CHANGE



REPUBLIC OF NAMIBIA

AGENDA FOR CHANGE:

**CONSOLIDATING PARLIAMENTARY
DEMOCRACY IN NAMIBIA**

**A REPORT TO PARLIAMENT BY A WORKING PARTY OF
THE NATIONAL ASSEMBLY AND THE NATIONAL COUNCIL**

JULY 1995

SUPPORTED BY THE EUROPEAN COMMISSION

A PROJECT IMPLEMENTED BY THE BRITISH COUNCIL

ISBN NO. 0-86976-366-0

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Acknowledgements

The international facilitators wish to express their appreciation to:-

Dr the Hon Mosé Tjitendero, Speaker of the National Assembly, and the Hon Kandy Nehova, Chairman of the National Council, for their inspiring leadership, constant support, and generous provision of a set of offices at the Tintenpalast.

Mr Johannes Jacobs for the great pains he took to provide us with computer and printing facilities and for a constant flow of advice, information and meticulous proof-reading.

Adv Stephanie Winson (Legal Counsel to the Speaker), Dr Ben Mulongeni (Secretary of the National Council), Dr Lazarus Hangula and Victor Tonchi (University of Namibia), for their advice and assistance throughout this exercise, and for giving so much of their valuable time.

The Vice Chancellor of the University of Namibia for making his colleagues available to the project.

Our colleague facilitator, Simone Mondesir, for her work on the media aspects of this project and, in particular, for conducting interviews with the study tour participants.

Professor André du Pisani for bringing to this project his wealth of experience, many hours of his valuable time, and all the qualities that could possibly be asked for in a colleague.

Ambassador Roger Leenders, Head of Delegation of the European Commission, for his continuing interest and support.

The staff of the British Council offices in Windhoek and Manchester for the tremendous support given from the earliest stage of this project, and especially Ms Ingrid Januarie, the late Mrs Liezel Bok, Edwin Nell, and the Directors - Jaspar Utley and latterly Dr Phil Mitchell.

Mrs Isabella Wellmann, Ms Ingrid Kazimbu, Miss Renate Tjongarero, Mrs Daisy Bwalya, and Mrs E van Schalkwyk for the trouble they took in making us comfortable in our work at the Tintenpalast, and to the kitchen and restaurant staff for the provision of meals and refreshments.

Mr V I Louw and staff at the Namibian Development Corporation, for their assistance in organising the Parliamentary Workshop.

Joe Chigumbu, Kaleb Shaalukeni and their colleagues at Namib Graphics (Pty) Ltd., who printed this report.

Stuart Weir
David Falcon

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PREFACE

This Report is a historic document which contains crucial proposals to strengthen and empower Parliament as the representative institution of the citizens of Namibia.

It must be stressed from the outset that Parliament consists of two chambers - the National Assembly and the National Council - and can only work effectively when both chambers fulfil their respective roles interactively. One of the most important aspects of this Report is its clear commitment to strengthening the relationship between the two chambers.

The Report is primarily the work of Members of Parliament from both chambers and represents their collective view. It derives from a common agreement that we have not yet established Parliament effectively at the heart of democracy in this country. The two chambers have been created, but inevitably they could not develop in only a few years into the institutions of living democracy and good governance that we wish for our citizens.

To assist this process, study visits were organised to examine the workings and practice of Parliaments in three groups of countries in the Caribbean, Western Europe, Africa and India. The purpose was to compare parliamentary and political practice in the study countries with that in Namibia and to identify strengths which would assist in the project of improving Parliament in this country.

The MPs who undertook the fact-finding missions gave priority to studying:

- Parliament's role in providing checks and balances to the work of the Executive and the public service;
- the relationships between the two chambers in other bicameral Parliaments;
- the work of Parliamentary Committees, minority parties and MPs in scrutinising legislation and government policies;
- the role of the Auditor-General and Ombudsman;
- and the research, secretarial and other support services provided to Parliaments and MPs.

The aim of this Volume is to focus on the study groups' recommendations for strengthening the institution of Parliament and empowering its Members in both chambers. The findings of their study visits, preparatory reports and other documentary material are published as Volume 2 of this Report.

A prime aspect of Parliament is that it is, above all, the transparent pillar of government and its work can be improved only in the context of transparency, which requires autonomy. The autonomy of Parliament is provided for in the Constitution, but in practical terms such autonomy is yet to be realised.

The study group participants put forward strong proposals for an independent parliamentary staff, under the scrutiny of Parliamentary Service Commissioners. They do so not only in the context of transparency, but argue also that it is right in principle and in practice: in principle, because it secures Parliament's place in the democratic checks and balances of the system of government set out in the Constitution; in practice, because it places clear responsibility for managing the parliamentary service in Namibia with those who are directly responsible for its effective running.

They also share a profound belief that, in order for Parliament to be effective in carrying out its constitutional duties, it has to be effectively organised and well-staffed. Both these aims can be accomplished within the context of existing executive proposals and the recommendations of this report.

The MPs recommend important changes in the operation of Parliament, including proposals for an effective committee structure in both chambers; improved conditions of service for MPs; a clearer definition of the roles and responsibilities of both chambers and their Members; and the launch of a proactive information and research centre for Parliament.

There are two significant extra proposals. The first is to strengthen and define more clearly the role and influence of Regional Councils throughout Namibia. This proposal has two purposes: to involve the populations of the diverse regions, through their Regional Councils, more directly in the plans and policies of central government; and to provide a firm base for the National Council's role as the representative body of the regions.

The second is to link the two parliamentary watchdogs, the Auditor General's Office and Ombudsman's Office, more directly with Parliament and to give them practical autonomy from government as an integral part of the Parliamentary Service, so that they may work in an environment free of extraneous influences.

I give these proposals my heartfelt support, believing that they will not only improve Parliament itself, but will also increase public awareness and confidence in Parliament, and so encourage contributions from citizens throughout the nation to the parliamentary process.

Parliament should no longer be perceived as an organ separate from the citizenry, but rather as a reflection thereof. The elected representatives of the citizens of Namibia have a moral obligation to express their wishes, and safeguard their interests, in Parliament.

In this respect, other suggestions in the report are designed to encourage more public knowledge and participation in the affairs of Parliament, not least through the more effective and open broadcasting of Parliament.

Nambians owe thanks to Honourable Members of Parliament who undertook this important and demanding task on our behalf and have given us so many valuable proposals.

I should like to thank the facilitators who took part in the tours, Dr Lazarus Hangula and Victor Tonchi of the University of Namibia, and Adv Stephanie Winson, Legal Counsel to the Speaker. Johannes Jacobs from the Office of the Prime Minister provided a valuable additional report on resourcing MPs in the Caribbean.

The project also relied on the advice and guidance of two international facilitators, David Falcon, an independent consultant on institution building and management from the United Kingdom, and Stuart Weir, Director of the Democratic Audit of the United Kingdom and Senior Research Fellow at the University of Essex. I express our appreciation to them, along with the European Commission who gave support to the project, and The British Council and its staff, who managed the project and study visits on behalf of the European Commission.

On Friday 7 July 1995, a provisional executive summary of the proposals which this report contains was presented to a large and distinguished gathering of Honourable Ministers and MPs, public servants, notable members of civil society - including the churches, university and trade unions - and the media. Many of the valuable comments made at that workshop have been incorporated in this document.

This Paper is now published for public scrutiny, debate and further comments before it is presented to both chambers of Parliament for their consideration.

It has been a privilege to participate in this project and to have this opportunity, on behalf of the Parliamentarians who have been involved, to present this Paper to the Honourable Speaker of the National Assembly and to the Honourable Chairman of the National Council.

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EXECUTIVE SUMMARY

PREAMBLE

1. The Honourable Speaker of the National Assembly and the Honourable Chairman of the National Council jointly appointed three all-party parliamentary groups to undertake study tours to Western Europe, the Caribbean, India and Zimbabwe in May and June of this year. The study groups closely examined the workings of parliamentary democracy in those countries with the aim of identifying features of parliamentary practice which were relevant to strengthening and consolidating the role of Parliament in Namibia.
2. This Executive Summary presents their main recommendations.
3. The recommendations of the Report are based on three main foundations:-
 - (i) since independence, Namibia has required, and still requires, strong government led by the Executive;
 - (ii) the Namibian Constitution establishes inter-connected democratic concepts of “separation of powers” and “checks and balances” in its definition of the roles of the Executive and the Legislature (Parliament);¹ and
 - (iii) Parliament has to be strengthened in order to perform its different roles more thoroughly.
4. As the elected body, Parliament’s roles are to:-
 - (i) scrutinise the legislation, policies and actions of government;
 - (ii) hold ministers and public servants to account for their actions; and
 - (iii) act as the principal forum for public debate in Namibia’s citizen-based democracy.
5. An important aim of the work is to clarify the independence of Parliament and the associated offices of the Auditor-General and Ombudsman, so that they can perform their respective roles in the system of checks and balances more effectively.

RECOMMENDATIONS

Parliamentary Committees

- A1 Parliament should establish a full system of permanent Select Committees to examine the work and policies of all government ministries;
- A2 There should be at least one Joint Committee of the two chambers;
- A3 Select Committees should, whenever possible, develop a bipartisan approach to their work;
- A4 These Committees should have powers to examine any relevant legislation introduced into Parliament as well as government policies and decisions;
- A5 Provision should be made within the timetabling of parliamentary sessions for the operation of these permanent Committees;

¹ The word “Parliament” refers to both chambers, the National Assembly and National Council, working jointly and separately.

- A6 A Select Committee of the Regions should be set up within the National Council to examine the regional aspects of any ministry's policies or practice;
- A7 Select Committees should normally take evidence in public, but prepare their reports in private;
- A8 Committee reports should be publicly available, together with the minutes of evidence, once they have been presented to Parliament; and
- A9 The work of Parliamentarians on committees should attract allowances.

The Work of the two Chambers

- B1 Members of the National Assembly should develop specialisms in line with their committee duties, to develop a complementary role to the territorial role of National Council members;
- B2 Members of Parliament should make greater use of existing powers to initiate Private Members' bills and develop the independent role of Parliament;
- B3 Parliament itself should be made more open to the public so that members of the public can feel more confident about consulting and lobbying members;
- B4 The dual role of the National Council as the chamber of legislative review and representative of the regions should be made more explicit;
- B5 The relationship between the National Assembly and the National Council should be formalised and a Joint "Reconciliation" Committee be established to resolve areas of disagreement;
- B6 Offices should be established for National Council members at the Regional Council offices so that the public can contact their representatives more easily; and
- B7 The role of Regional Councils in giving advice to ministries and being involved in their consultative processes should be fully recognised to strengthen the role of the National Council and improve the information available to ministries.

Information, research and policy analysis

- C1 Parliament should establish an effective, integrated and pro-active information, research and policy analysis service for both chambers;
- C2 This service should use computer and CD-ROM technology, linked with international data services;
- C3 Parliamentary computer systems should be compatible with existing computer services in government, and should be extended to the offices of Regional Councils;
- C4 Members of Parliament should eventually be able, using home or portable computers, to have individual access to the information, research and policy analysis service; and
- C5 The information, research and policy analysis service should be under the command of a highly-skilled chief research and policy analysis official to secure a pro-active service.

Members' Support and Allowances

- D1 Members of both houses should receive office and secretarial assistance for the performance of their public duties;
- D2 Members of both houses should receive more adequate allowances, or free services, which give due weight to their housing and subsistence costs, and the travel, telephone and office costs incurred in the performance of their public duties; and
- D3 Simultaneous translation facilities should be available to ensure that all Members of Parliament can participate fully.

The Staff who serve Parliament

- E1 The staff of Parliament, together with that of the Offices of the Auditor-General and Ombudsman, should be established as the Parliamentary Service, independent of the Public Services Commission, so that their scrutiny and investigatory roles are not liable to be compromised;
- E2 The independent Parliamentary Service should be subject to the oversight of three Parliamentary Service Commissioners, leaving all day-to-day personnel management under the direction of their senior officials; and
- E3 Current staffing proposals for Parliament, while sufficient overall for it to perform its chief functions adequately, should be reviewed by the leaders of the two chambers on the creation of the Parliamentary Service so that the organisational structure and establishment reflect the needs of Parliament.

The Public Service

- F1 The accountability of members of the public service to Parliament through Parliamentary Committees should be fully recognised in the service's dealings with both houses;
- F2 The public service ethos should become more responsive and open, and, in particular:-
 - (i) the service should provide information to Regional Councils, consult them and consider their advice in a more structured and responsive way than has been possible so far; and
 - (ii) Ministers should expect senior public servants to give frank advice on policy proposals as an integral part of the constitutional system of "checks and balances".

The Media

- G1 A Broadcasting Unit should be set up within Parliament to enable full coverage of parliamentary debates and proceedings, including committee sessions to be provided by television and radio; and
- G2 Media reports should contain extracts from the speeches and proceedings of Parliament, suitably and responsibly edited, instead of only providing summarised reports.

Public Appointments

- H1 Appointments to bodies whose impartiality is important for the democratic process (eg the Board of the Namibia Broadcasting Corporation and the Electoral Commission) should be subject to rules and procedures that secure a balanced composition.

1 INTRODUCTION

- 1.1 Namibia's achievement of independence in March 1990 closed a dark chapter of oppression in the country's history and opened another of opportunity. After a long, heroic struggle for freedom and independence, the Namibian state was firmly anchored in the values and practice of a citizen-based democracy. The Constitution provides for and guarantees democratic rights, freedoms and obligations that the Namibian people never before possessed. Fundamental human rights, including the right to life and human dignity, freedom of association, freedom of expression, and equality before the law are respected and protected.
- 1.2 Independence came during a momentous period in world history. It coincided with the end of the cold war and the new wave of democratisation that broke over Africa, Latin America, Eastern and Central Europe and the former Soviet Union. In Africa, Namibia was the first country to take full advantage of this democratic breakthrough and the first to chart a new course that redefined the relationship between citizens and the state to embed it in legally enforceable rules for the protection of basic human rights, political freedoms and diversity.
- 1.3 Namibia adopted one of the most liberal constitutions in the world and set about creating a new culture of citizen-based democracy and tolerance in which its aspirations for the freedom and well-being of the community could develop. That aim is not yet fully achieved. Namibians face an ongoing challenge of internalising the democratic culture and respect for human rights and freedoms that give life and meaning to the Constitution. If there is a failure to achieve this goal, Namibia's significance as a symbol and expression of democratic governance in a continent that grapples with the problems of underdevelopment and unaccountable rule will be diminished.
- 1.4 After independence, the imperatives of national reconciliation and nation-building dominated the political life of the young Republic. Understandably, great emphasis was put on unity, as it was widely agreed that the major tasks of constructing a national identity, consolidating the power of new governing structures, addressing the historical and social deficits of the past and developing the economic and social life of the country required this unity. Institutionally, the consensus around these needs and imperatives gave primacy to the Executive - the President and his Government. Namibia required strong government and decisive political action.
- 1.5 The Executive soon dominated the legislative process and the public service. The task of creating a new nation demanded a huge flow of legislation which the Executive swiftly initiated. Parliament was a new institution of limited experience, resources and capacity and, at first, consisted of a sole chamber. Only the National Assembly was established at independence while the National Council was not created until 1992. Parliamentary culture had to evolve as elected representatives gained a fuller understanding of their role and relationship with the Executive.
- 1.6 Five years after independence, the people of Namibia have demonstrated remarkable resilience. They have shown a capacity, peacefully and freely, to elect political representatives in multi-party elections. The political culture is one of tolerance. One of the principal challenges of the next five years, and far beyond, is to consolidate parliamentary democracy on this popular base and to develop Parliament's institutional capacity and democratic culture so that it becomes both the fulcrum and forum for a vibrant and pluralistic democratic country. It is widely recognised that Namibia continues to require strong government - but strong government within a system of democratic checks and balances. The task is to "broaden the back of government, and strengthen the rod that beats it."

- 1.7 Unlike many other countries in Africa, Namibia has a profoundly democratic constitutional architecture. A democratic Constitution, multi-party politics and the rule of law are necessary, but not sufficient, conditions for the consolidation of parliamentary democracy. Parliament as an institution must be made self-confident and secure in its relations with government, the public service, electors, civil society and the media. This Report focuses on the practical and cultural changes which will accomplish this goal and enable Parliament to play its representative role. First, however, the existing organisation of Parliament and its relations with the Executive, including the public service, and the Judiciary are briefly outlined.
- 1.8 The cost of implementing the proposals set out in this paper was raised at the Parliamentary Workshop. The Executive has already recognised the need to provide Parliament with more staff and this Report's staffing proposals will cost no more than the arrangements already approved by the Cabinet. More work needs to be done to calculate the cost of the other proposals and a programme of phased implementation will be necessary within the resources that can be afforded. Democracy, like education, is not cheap. There are parallels with the slogan: "*If you think education is expensive, you should try the cost of ignorance.*" Developing a strong democratic system may appear to be expensive, the cost of the alternative can be incalculable to a country.

2 THE SYSTEM OF GOVERNMENT ²

- 2.1 Parliament is one of three key pillars of democratic governance, the Executive, the Judiciary and the Legislature (i.e., Parliament) created by the Namibian Constitution. Parliament and its members are the link between government and the people.
- 2.2 The Constitution of the Republic of Namibia establishes the state as a legal entity, with provision for the Executive, the Legislature and the Judiciary. Each organ is responsible for clearly defined functions. The Legislature is the supreme law-making body. The Executive is largely responsible for initiating and, through the President, Cabinet and public service, implementing laws. The Judiciary is responsible for interpreting laws and protecting the Constitution.

The Executive

- 2.3 The Executive is that part of the system of government that implements the laws passed by Parliament. The President is chief executive and appoints the members of the Cabinet. Under the Constitution, the President is both Head of State and Head of Government. The President is directly elected in a national election in which he or she must win more than 50 per cent of the vote. As the democratically elected representative of the people, the President has special duties of upholding the Constitution. The President appoints the Cabinet and is the Commander-in-Chief of the Namibian Defence Force.
- 2.4 The President has the power to dissolve the National Assembly and thereby call fresh elections. The President has the right to receive and appoint ambassadors, sign international agreements, establish and dissolve government ministries and declare a state of emergency. Fundamental rights and freedoms provided for in the Constitution - including the right to life, liberty, human dignity, free association and equality before the law - may not, however, be abrogated under a state of emergency. As a safeguard against abuse of power, the National Assembly must approve the state of emergency by at least a two-thirds majority within seven or thirty days, depending on whether the National Assembly is in session (see Article 26 of the Constitution). Should it fail to do so, the state of emergency is no longer in effect.
- 2.5 The first Namibian President was elected, exceptionally, by the Constituent Assembly, the body that drafted the independence Constitution. In December 1994, the President was popularly elected in a national election. The presidential term is for five years and the President may not serve for more than two terms.

The Cabinet

- 2.6 The President is empowered by the Constitution to appoint the Cabinet from members of the National Assembly. The Cabinet consists of the President, the Prime Minister, Deputy Prime Minister and Ministers. In addition to advising the President, the Ministers are the heads of the respective ministries. Each Minister is assisted by a Deputy Minister, a Permanent Secretary (as chief accounting officer) and public servants who are appointed subject to the Constitution and on the recommendation of the Public Service Commission.
- 2.7 The Prime Minister, acting in concert with the Cabinet, is the overall coordinator of individual ministries and the entire public service. The Ministers supervise the operation of their respective ministries and explain the activities of these to the National Assembly as well as to the general public.

The Legislature

- 2.8 The Legislature, or Parliament, consists of the National Assembly and National Council. It is responsible for making the laws of the land, usually by way of scrutinising, revising and approving legislation drafted by the Executive. As the National Assembly was created first, there is a tendency for people to describe the Assembly as "Parliament". Although the legislative power of Namibia is vested by the Constitution in the National Assembly, Parliament consists of both chambers, or houses. Thus, members of both chambers are properly described as "Members of Parliament".

² In this report the word government on its own is used interchangeably with the word Executive, as defined by the Constitution. When referring to all the organs of governance (Executive, Parliament and Judiciary), the phrase system of government is used.

The National Assembly

- 2.9 Article 44 of the Constitution establishes the National Assembly as the highest law-making body of the land. The National Assembly is composed of 72 elected members and up to six people appointed by the President. Their responsibilities include approving the national budget and taxation, upholding the Constitution, initiating legislation and referenda on issues of national concern, and generally calling the Executive to account.
- 2.10 Members are elected on a national party list system of proportional representation. Party lists, compiled nationally by the competing political parties, are submitted to the Electoral Commission for scrutiny. Popularly contested elections are held every five years. The President may nominate up to six people to membership of the National Assembly, chosen on the grounds of their special experience, skills or positions. Since these members are not popularly elected, they cannot vote in the Assembly.

The National Council

- 2.11 Article 68 of the Constitution establishes and defines the power and functions of the National Council. The National Council consists of two members from each region elected from among their members by the Regional Council from such region. Regional elections are held every six years according to procedures to be prescribed by Act of Parliament.
- 2.12 The National Council is an integral part of the Legislature and a key element of representative government in Namibia. Its principal constitutional task is to act as a review and advisory chamber for the National Assembly. It may also propose legislation for the consideration of the Assembly. Additionally, as its 26 members are elected from the Regional Councils, the National Council is also representative of the regions of Namibia and its members are the only members of Parliament who are elected from territorial constituencies. Thus the National Council is uniquely placed to consider regional concerns in Parliament and to scrutinise government policies and legislation from a regional viewpoint. This role defines one of its core responsibilities.

Regional and Local Authorities

- 2.13 Namibia is a unitary state containing 13 recently established regions. The elected Regional Councils, as stated above, elect two of their members to the National Council, to represent regional interests. Each region has several local authorities, consisting of councillors elected by the local community to represent local interests. There is also provision for a Council of Traditional Leaders, the purpose of which is to advise the President on the control and use of communal land. Both the regional and local authorities have the power to legislate regarding their own affairs as long as their decisions and ordinances do not conflict with the Constitution. Their actions and ordinances are subject to judicial review.

The Judiciary

- 2.14 The power and position of the Judiciary in the overall system of government are defined in Article 78 of the Constitution. This Article provides for the independence of the courts which are subject only to the Constitution and law. No member of the Cabinet or Legislature or any other person shall interfere with judges or judicial officers in the exercise of their judicial functions and all organs of the state are obliged to assist the courts for the protection of their independence, dignity and effectiveness.
- 2.15 The Judiciary is the third pillar of the system of government and is responsible for the interpretation of the Constitution and laws that govern the country and for the maintenance of justice. The Constitution, Acts of Parliament and the decisions and behaviour of state and government officials are all subject to interpretation by the Judiciary.
- 2.16 The Supreme Court is the highest court in Namibia. It is headed by the Chief Justice who is assisted by other judges. A ruling of the Supreme Court is binding on all other courts. The Supreme Court has special responsibility for making final rulings on any questions regarding those fundamental rights and freedoms protected under the Constitution. The Supreme Court also rules which laws, proposed or existing, are unjust or unconstitutional.

- 2.17 The second highest court is the High Court, headed by the Judge-President. The High Court has original jurisdiction to hear and adjudicate cases that deal with the interpretation, implementation and upholding of the Constitution and respect for the fundamental rights and freedoms it establishes.
- 2.18 Article 85 of the Constitution provides for the Judicial Service Commission which makes recommendations with regard to all judicial appointments and disciplinary actions against a judge. The Commission consists of the Chief Justice, or the presiding officer of the Supreme Court, a judge nominated by the President, the Attorney-General, and two representatives of the legal profession. Judges are appointed by the President on the recommendations of the Judicial Service Commission.

Office of the Attorney-General

- 2.19 The Constitution designates the position of the Attorney-General who acts as the principal legal adviser to the President and Government. The Attorney-General is a member of the National Assembly. Articles 86 and 87 define the powers of the Attorney-General in relation to that of the Prosecutor-General who is responsible for the prosecution of criminal offences. The Attorney-General assumes final responsibility for the Office of the Prosecutor-General, but recently the Supreme Court ruled that the Attorney-General cannot stop the Prosecutor-General from prosecuting in any case (although he or she is entitled to be consulted). Both officials are political appointees whose terms expire with that of the government under which they were appointed.

Parliamentary Watchdogs

- 2.20 Chapter 10 of the Constitution establishes the Office of the Ombudsman as a key agency with wide powers to investigate complaints of injustice in the administration of the state. Article 127 of the Constitution sets out the powers and duties of the Office of the Auditor-General. Both Offices are vital to Parliament's duty to scrutinise the Executive and their powers and relationships are dealt with later (see paragraphs 5.1 ff).

3 THE NEED FOR CHECKS AND BALANCES

- 3.1 This Report is firmly based on two inter-related constitutional principles, those of “the separation of powers” and “checks and balances”. Parliament’s scrutinising and debating role is the most important aspect of the idea of the **separation of powers**. The idea is that while the three central institutions of the state are interdependent, they must also possess sufficient autonomy and independence from each other to be able to act as “watchdogs” over each other. They therefore effect **checks** upon each other. For example, under the Constitution, the Executive may propose new legislation, which has to be approved by the Legislature before it can become law. The Judiciary, through the Supreme Court, has the power to rule that proposed legislation is unconstitutional if it violates the Constitution as the “mother of all laws”. Equally, the Legislature can initiate and pass laws of its own, but the President, as part of the Executive, can veto such legislation.
- 3.2 There is an equal need to ensure that a broad **balance** is maintained between the three pillars of democratic rule. For example, the Judiciary, an unelected institution, may extend its role as guardian of the Constitution to interpret the law in a way that usurps the democratic prerogatives of the Executive and Legislature. In turn, if either the Executive or Legislature become too powerful, they may pursue policies which please the majority of people, but which violate the human rights of minorities. The Judiciary must be strong enough to prevent “majoritarian” policies which deny the rights of minorities. There is, thus, a need for constitutional **checks and balances**.
- 3.3 There are checks and balances within the three pillars of the Constitution as well as between them. The Constitution allows for legislation approved by the National Assembly to be subject to review by the National Council. Within the Executive, the President, Prime Minister, Cabinet, the public service and various public bodies act as checks upon each other and provide an element of balance. The constitutional role of the public service is to act as a politically neutral institution, at the service of an elected President and government; thus, Permanent Secretaries are supposed not only to carry out the wishes of the Cabinet and Ministers, but also to provide frank advice on policies which they believe to be unworkable, corrupt or unconstitutional. Further, the public service is doubly accountable, both to the Cabinet and Ministers (the Executive) and, through Parliamentary Committees, to both houses of Parliament (the Legislature).
- 3.4 The purpose of this Report is to assist the process of developing the **balance** between the Executive and the Legislature so that the elected Parliament can act as a more effective **check** on the constituent parts of the Executive.
- 3.5 The introduction describes how the Executive led the urgent tasks of nation building and became more powerful than the less firmly established Parliament. One consequence of this, and the inherited bureaucratic structures, is that the system of government in Namibia also became highly centralised. The establishment of the National Council and regional authorities was designed to temper the power of the central state and to devolve some power and influence to the regions. However, three features of the political and constitutional systems have combined to strengthen the centralising tendency and to weaken the separation of powers in Namibia.
- 3.6 So strong is the electoral popularity of the ruling party (SWAPO) that Namibia is for the moment “a dominant party system” in the sense that a single party dominates the other parties and has a firm grasp of political power. This is a frequent feature of parliamentary democracies throughout the world. The electoral system reinforces the centralising effects of a dominant party system in Namibia. The national party list system gives the central party headquarters of all parties the power to appoint members to the top of their lists and to ensure their loyalty to the party in the National Assembly through the additional power to remove them from their place in Parliament by expelling them from the party. Moreover, it means that Assembly members are under no regional, constituency or regional/local party electoral pressures which counterbalance national party pressures. Possible changes in the electoral system are discussed later in this report (see paragraphs 9.1 ff).

- 3.7 A dominant party in any democratic country inevitably has a vast range of powers of appointment and patronage which means that it can, if it wishes, “swamp” constitutional measures designed to achieve a separation of powers. In Namibia, the Government has shown respect for the principle of the separation of powers through, for example, the appointments of highly-qualified and able men, neither of whom belonged to the majority party, to the critical positions of Auditor-General and Ombudsman. The Constitution also provides for processes by which significant appointments, such as those to the Judiciary, are not the province of the Executive alone. Nevertheless, the Executive does possess significant powers of appointment to public bodies which have democratic significance, such as the board of the Namibian Broadcasting Corporation (NBC) and the Electoral Commission, and has flexible powers to appoint and control public commissions of inquiry.
- 3.8 Finally, the public service is both powerful and highly centralised, with accountability only being exercised at the centre of government. Appointments to the most senior positions in the ministries are “political” in nature. Limited decentralisation has resulted in activities at regional level being run by junior staff with few powers and little apparent authority even to share information in the regions.
- 3.9 In current circumstances, it remains possible for the ruling party to “unify” those institutions (the public service, public bodies, state agencies and commissions) which are constitutionally supposed to be separate and to act independently of each other. This could weaken the complex system of checks and balances that provide for accountability within and outside the state on which a modern citizen-based democracy like Namibia depends.
- 3.10 This Report’s proposals therefore are devoted to:-
- (a) developing the independence of Parliament from the Executive in terms of status, resources, information and research;
 - (b) strictly observing the principles of the separation of powers and checks and balances:-
 - (i) by making the management and staff of the Office of the Parliament, and the Offices of the Auditor-General and Ombudsman institutionally separate from the rest of the public service;
 - (ii) by making the Offices of the Ombudsman and the Auditor-General more accountable to Parliament;
 - (iii) by clarifying the conduct of future public commissions of inquiry to provide for independence from the Executive and bringing them under the ambit of either Parliament and/or the Judiciary; and
 - (iv) by reviewing all bodies supervising important public functions, such as the NBC Board and the Electoral Commission and suggesting rules to ensure a balance (in political and other terms) in the composition of such bodies.
 - (c) strengthening the role of Regional Councils as advisory, information and liaison authorities, to strengthen the Government’s wish to devolve power and involve citizens at the regional and local level in the decision-making processes; and
 - (d) stressing the accountability of the public service to both chambers of Parliament, and encouraging a more open and responsive relationship with the regional authorities.

4 PARLIAMENT AND ITS KEY RELATIONSHIPS

4.1 Parliament performs several overlapping functions:-

- (a) it scrutinises the work of the Executive and calls it to account in the areas of policy formulation and execution. The Ombudsman assists Parliament in this role. Parliamentary committees, members' questions, and MPs in the majority and minority parties, etc, are important elements in the process;
- (b) it authorises budget-setting, the raising of revenue and loans and the expenditure of public funds and scrutinises the government's accounting for money spent with Parliament's authority. The Auditor-General is an important agent of financial probity;
- (c) it provides a forum for national debate and assists the process of public consultation in preparing legislation and government policies, as its members represent the general public and regions of the country; and
- (d) it represents the people of Namibia, and their diversity of interests, and gives meaning to freedom. It is the public arena for the expression of diversity of opinion and the peaceful resolution of conflicts.

4.2 The main "legislative" role of a modern Parliament is not to initiate legislation, but to scrutinise draft legislation laid before it by the Government, and to subject it to careful examination in considered fashion. But Parliamentarians also fulfil a secondary function by initiating Private Members' Bills, usually on non-party political issues of public concern. The legislative role is the fulcrum for the project of national development and reconstruction in Namibia, providing the essential foundations for the construction of national consensus.

The Direction of Change

4.3 Parliaments throughout the world suffer from executive domination and being bypassed by the bureaucracy and powerful institutions in the private sector as well as by the executive branch. But there is also a worldwide reaction designed to "deepen" democracy through Parliament. The decision by the Cabinet to devote adequate resources to Parliament reflects that international tendency. It is recognised that there is an urgent need now, five years after independence, to examine Namibia's institutions, with the aim of consolidating democracy and encouraging openness and diversity; and to develop the critical educational role of the media, and particularly public service broadcasting within the Constitution's strong commitment to the freedoms of expression and opinion.

4.4 In the early stages of national development, it was inevitable that the Executive would be the main source of solutions to immediate problems. There is now a need to develop the democratic system in keeping with traditional processes of consensus building, with Parliament as the focus. There is also a need to re-examine the relevance of western models of public scrutiny and popular control in the Namibian context. On the basis of the study visits to the Caribbean, Europe, India and Zimbabwe it is clear that an understanding needs to be developed of:-

- (a) the importance of questioning and dissent in Parliament;
- (b) the importance of independent scrutiny of the executive;
- (c) the loyal role of the opposition and media; and
- (d) the role which organisations in civil society can play in developing a nation's economic and social advance through democratic means.

4.5 Most of this Report's recommendations are **institutional**; but they can have a major role in developing a country of **self-confident, self-reliant, equal, educated and well informed citizens** and a **truly pluralist, open and responsive citizen-based democracy** in Namibia.

- 4.6 But this Report also includes recommendations which are **cultural** in nature. Attitudes have to change. Members of the majority party have to appreciate the role which opposition parties should play in resolving major political questions within a tradition of non-violence. Opposition parties must seek to offer alternatives and not just criticisms. Ministers and Parliamentarians must learn to live with the media, which will almost always seem unfair and critical, but which form an essential part of a self-confident democracy. At the same time, the media must report the political process in a responsible manner which demonstrates awareness of their role in a democratic society. Members of the public service have to understand that they have a loyalty to Parliament and citizens, within the Constitution, as well as to the Government and its Ministers.
- 4.7 The study tours showed that these are aspirations for all parliamentary systems, all of which suffer from exactly the same political and cultural tensions. Some of them have simply lived longer with them!
- 4.8 Other parts of this report describe how Parliament and its agencies interact with the Executive and Judiciary. Whilst this report focuses on Parliament, it shows that it does interact with other democratic institutions and reform of Parliament will involve cultural and structural changes in these relationships. On a longer timescale, constitutional change may be necessary as well.

Empowering Parliament

- 4.9 The urgent priority, then, is to improve the powers and stature of Parliament. Until now, Parliament has been gravely weakened by the absence of adequate staffing and other resources. After independence, the National Assembly opened with only 13 of the 35 staff it was allocated. The National Council began with only five staff. Today, Parliament is only served by 37 officials. The library has been left undeveloped and barely staffed. It is a tribute to its officials that Parliament has functioned at all.
- 4.10 Now the opportunity exists to service Parliament properly. The Cabinet has agreed that Parliament should have an establishment of staff adequate to its needs. It is understood that the overall level of staffing proposed is sufficient to fulfil the various functions and procedures that this report recommends Parliament should adopt, including a strong and proactive information and research centre.
- 4.11 However, for the staff to be efficiently deployed, it is vitally important firstly that the Speaker's and National Council Chairman's offices define and prioritise the functions to be performed by the enlarged staff and, secondly, that staff are recruited accordingly. This section identifies certain of these functions.
- 4.12 **It is recommended that:-**
- (a) An Office of the Parliament should be created and staffed by people who belong to the Parliamentary Service rather than the Public Service, and who are subject to the oversight of Parliamentary Service Commissioners rather than the Public Service Commission;
 - (b) The staff of the Office of the Auditor-General and the Office of the Ombudsman should also belong to the Parliamentary Service;
 - (c) Parliament should establish a network of Parliamentary Committees through which government legislation, policies and practice can be effectively scrutinised in an objective and expert manner;
 - (d) the library should be developed as a proactive information and research resource under a high-level officer whose prime responsibility will be to ensure that informed and up-to-date policy analysis is available to members;
 - (e) the information and research centre should be based from the outset on computer and CD-ROM technology as well as printed material;
 - (f) the members and parties of both houses should be adequately resourced with research and secretarial support, with a view both to improving their capacity to scrutinise the executive and to represent the citizens of Namibia;

- (g) various procedural rules should be introduced into Parliament, including limiting the membership of select committees to those who do not hold ministerial positions.

The Roles of the Two Parliamentary Chambers

- 4.13 One of the priorities of the study tour participants was to examine the relationships between the two chambers in bicameral Parliaments. In all these Parliaments, the second chamber performed a revising and advisory role, as in Namibia. In almost every case, the second chamber also acted as the representative of the regions or internal provinces of the nation, even though most, like Namibia, were unitary, not federal, states.
- 4.14 There is room for rationalising the respective roles of the two chambers in Namibia as the position of the members in the two chambers differs considerably. Members of the National Assembly do not possess the responsibility of representing a constituency area. Some perform an informal constituency role around the area in which they live, but no coherent role can be built for Assembly members on such a patchwork basis.
- 4.15 Instead, it is suggested that Assembly members build representative roles of another kind as some already do. For example, the Assembly contains members who are closely associated with organised labour. Others have professional careers and experience which have direct relevance to government activities. As the Parliamentary Committees which are recommended grow in stature, members could develop expertise and experience in various areas of committee work. It is for this reason that it is suggested that the majority of Parliamentary Committees should be placed in the National Assembly, as is common in most democracies.
- 4.16 Members of the National Council already fulfil a representative role. They are appointed from the 13 regional authorities to represent their region's interests at the centre of the system of government. Recommendations are made on strengthening the powers and responsibilities of the Regional Councils in the next section (see paragraphs 4.19 ff). If these recommendations were implemented, they would inevitably empower National Council members and expand their role and that of the second chamber itself.
- 4.17 It is vitally important to make a reality of the constituency roles of National Council members. They represent one of the few formal links between the public and Parliament and these links are poorly supported under current arrangements. The National Council depends on an effective Regional Council system. Without this essential back-up, its members are relatively powerless to represent regional interests effectively. This report makes further proposals for clarifying the work of Regional Councils and strengthening their links with the National Council and its members, including the establishment of staffed offices in every region for National Council members (see paragraphs 7.21 ff).
- 4.18 The National Council is already developing its role as a revising chamber. There would be more harmony between the two chambers if some mechanisms could be developed for a formal report back from the National Assembly to the National Council, even where all its amendments have been rejected by the requisite majority. Such a process of reporting back is common in other bicameral systems. Several of the study tour participants also propose that a joint Conciliation, or Consensus, Committee be established to resolve differences and other matters affecting the relations between the two chambers.

Regional Development

- 4.19 The existing regional structure is too weak and under-resourced to provide a meaningful layer of government in Namibia. As the base for regional representation in Parliament, Regional Councils need a clearer role. In Namibia there has been no devolution of powers to Regional Councils although some ministries have decentralised their activities and appointed regional officers. These regional officers are directly responsible to their line ministries in Windhoek and have no accountability to the Regional Governors.
- 4.20 The creation, in any country, of a regional level of government with true executive autonomy inevitably creates tensions. The desire to develop and implement national policies which aim to achieve consistency across the whole country conflicts with the desire to devolve decision making powers to a lower level. Such devolution can achieve greater sensitivity to local needs but result in some inconsistency across the nation. The priority afforded to national unity and the limited resources available, particularly the resource of suitably trained staff, suggests that it will be some time before Namibia can devolve significant executive powers, with revenue raising autonomy, to its Regional Councils.

- 4.21 However, if these Councils appear to the public to have no realistic function they will rapidly lose credibility and risk disenchantment with the democratic process. It is thus important that a role for the Regional Councils is defined. A meaningful role can exist in providing advice, based upon close contact with the public, to individual ministries and the Cabinet on the needs and priorities of the individual regions. In short, it is recommended that Regional Councils be given an explicit role in the consultative process that should ensure that decisions taken in Windhoek are sensitive to public opinion at a regional level.
- 4.22 Each ministry responsible for the provision of services should prepare forward plans for the development of those services across the country. Regional Councils should be provided with information on the plans of all ministries at the earliest possible stage so that the interaction between the plans, and their impact on the regions, can be considered by Regional Councillors. The Regional Council Officers should have the right to obtain information from ministries and should have the power to convene meetings of the ministries' regional officers. These meetings would not have executive authority to modify programmes, but would share information between ministries and the region. Regional Councillors, armed with information on the forward plans of ministries, would be in a position to discuss these plans with their constituents. Following these discussions, the Regional Council could decide what advice they wish to give, both direct to line ministries and through their appointed members of the National Council, to seek modification to future programmes the better to meet the needs of the region. Through their involvement in the Committee of Regions, members of the National Council could seek justification from Ministers of the decisions taken that affect their regions and so complete the virtuous cycle of consultation and accountability.
- 4.23 In the fullness of time it may be appropriate for Regional Councils to be given revenue-raising powers of their own and for the provision of public services and functions to be devolved. In the meantime, some study group participants suggest that each Regional Council should be allocated a small amount annually (say, about N\$100,000) to pay for rural development or other improvements to local facilities. Other participants recognise the danger that a great deal of energy might be devoted to deciding how this, relatively small, amount of money is to be used. This could deflect attention from the more important task of influencing how substantial sums of money are to be deployed within the Regions.

The Public Service and Parliament

- 4.24 Many of the proposals in this Report bear upon the relationship between the public service and Parliament. Inevitably, the urgent needs experienced at the assumption of democratic power meant that priority was given to "getting things done". Policies and legislation had to be put in place. The public service became a machine at the disposal of the Cabinet and Ministers. The appointment of Permanent Secretaries was clearly political and at the time of independence this was understandable, as there was little alternative.
- 4.25 A consequence of the public service's past in pre-independent Namibia is the partial survival of an exclusionary culture of disrespect for ordinary citizens and their parliamentary representatives. In some ways, the subordinate role of Parliament since independence has reinforced this disrespect. It may be glimpsed, for example, in the way that senior public servants, according to some reports, have missed appointments with the Public Accounts Committee (PAC) or refused to answer MPs' questions satisfactorily. They have also failed to appreciate the democratic significance of the near universal practice of such committees being chaired by minority party members. Thus, the PAC has been wrongly dismissed as an "opposition body" of no account, rather than a wholly representative parliamentary body - and Parliament's most important body at that!
- 4.26 The model for the public service is that of the impartial service common to most British Commonwealth countries. It is recommended that this model be developed for the future. This is particularly important in a political system which seems to be developing as a "dominant party" system, with a single party in power for a long term rather than alternation of power-holding between parties.

- 4.27 Thus, the public service should develop as a career service and senior public servants should be non-political appointees in the future. Permanent Secretaries, appointed on the basis of ability, would gradually create a new culture within which they would see their role as serving and providing impartial advice to the Government of the day. In certain circumstances, their duty is to warn Ministers about the implications of decisions and to be a check on unconstitutional conduct. Overall, it should be part of their remit to keep Parliament fully informed about legislation and policies, including negative aspects and implications, and to ensure that members inquiring about government business in committees or by way of questions receive full and frank replies. Current events in the UK show that more established democracies often fail to meet such standards, and constant vigilance will be necessary as Namibian democracy develops.
- 4.28 Ministries often undertake extensive pre-legislative consultations prior to the preparation of bills. This admirable practice is far more developed and thorough than any comparable exercises in the study visit countries. These consultations can involve public meetings. Nevertheless, the process usually takes place outside parliamentary scrutiny and the public gaze and a means ought to be found to bring it within the parliamentary system. This point is discussed further in paragraph 6.8 (e).

Parliament and the Citizenry

- 4.29 These, and other, measures by which the powers and stature of Parliament and its members can be significantly increased are dealt with in later sections. Here, however, it is right to stress the **democratic** standing of members of both houses. Their formal power rests in their role as elected representatives of the citizens of Namibia who are their ultimate source of power. It is recommended that every effort be made to make this formal position a democratic reality.
- 4.30 In every democracy in the world the political classes ask anxiously, "What can be done to raise the standing of Members of Parliament? How can they regain the respect of the electorate?" The answers are partly institutional. But the real answer lies in increasing the powers and stature of citizens themselves, so that they gain the awareness and confidence to make demands upon Parliament, pass on their wishes and aspirations, and respond to consultation and participation exercises. This involves two developments. First, as this paper proposes, Parliament must become a major actor at the centre of all the measures which are taken to bring these aims about. In turn, people will then have genuine confidence in Parliament's ability to bring about change and will be encouraged to make use of it and its members.
- 4.31 The MPs who visited Costa Rica were deeply impressed by the way that the Parliament there formed part of people's everyday lives. The parliamentary buildings there are busy with ordinary citizens who come not only to meet members and to watch debates, but also to meet, talk, eat and drink together. Several Parliamentarians have described how forbidding Parliament in Namibia is for ordinary citizens. If they ask them to come and meet them in their offices, they are frequently too over-awed to do so. There is, of course, a need to protect the security and dignity of Parliament, its members and staff. Other Parliaments give less access to their buildings and members than Costa Rica, but manage to give more access than the Namibian Parliament currently does. It is sufficiently close to the centre of Windhoek, and its buildings and grounds are sufficiently attractive, to become a place where people feel they can easily meet their representatives and to share in some degree in their common democratic "home".
- 4.32 Democracy will truly be established in Namibia when Namibians feel that Parliament is theirs, not the property of state nor simply of their formal representatives. The chief reason for stressing this deeper democratisation is to create over time a democratic nation in which the practice of Parliamentarians and public servants alike is informed with a democratic spirit and the hearts of the public are filled with democratic self-confidence. The aim must be to move from a "citizen-based democracy" to a "citizens' democracy".
- 4.33 There are also pressing practical reasons for such ambitions. Already, there is a tendency for people to ask, "What did we fight for - surely it wasn't to exchange one group of people for another who refuse to hear our voices and refuse us answers?" Namibia's reputation for political stability is a vital element in its economic and financial progress. If the people become frustrated with the democratic nation for which they fought, then that stability will be put in danger.

5 AN AUTONOMOUS PARLIAMENTARY SERVICE

- 5.1 The Constitution of Namibia [Articles 44 & 68] establishes the National Assembly and the National Council as the independent legislative organs of state. The Constitution also establishes the status and powers of the two parliamentary agents, the Ombudsman and the Auditor-General, and puts them under a duty to report annually to the National Assembly, giving them a direct line of accountability to the Parliament.

The Ombudsman's Constitutional Role

- 5.2 Chapter 10 of the Constitution establishes the Ombudsman as a key instrument in the administration and oversight of justice in all government departments and para-statal organisations. The Ombudsman is a lawyer or a judge appointed by the President to guard against corruption and injustice in the Government and to protect the fundamental human rights and freedoms of all Namibians. The wide-ranging investigatory powers of the Ombudsman cover:-
- (a) alleged or apparent instances of violations of fundamental rights and freedoms, and abuse of power;
 - (b) the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access; and
 - (c) complaints of the over-utilisation of natural resources, the irrational exploitation of non-renewable resources and the degradation and destruction of eco-systems.
- 5.3 The Ombudsman is explicitly given independence by the Constitution [Article 89].

The Powers of the Auditor-General

- 5.4 The Constitution [Article 127] defines the powers and duties of the Auditor-General and his/her relationship to the Ministry of Finance. The Auditor-General is appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly. The Auditor-General holds office for five years and is eligible for reappointment. The Auditor-General audits the State Revenue Fund and performs other functions assigned to him or her by the Government or by Act of Parliament. The Auditor-General is not a member of the public service and he/she can only be removed from office within the five-year term by a two-thirds majority vote in the National Assembly on the ground of mental incapacity or gross misconduct.
- 5.5 The Auditor-General is not given the Constitutional independence of the Ombudsman but, to perform the functions assigned to the post adequately, the Auditor-General must be given *de facto* independence.

The Constitutional Need for Independence

- 5.6 The independence of Parliament, the Ombudsman and the Auditor-General has a particular bearing on their relations, as defined by the Constitution, with the Executive.
- 5.7 Article 63(2)(f) of the Constitution gives the National Assembly the power to:-
- “receive reports on the activities of the Executive, including para-statal enterprises, and from time to time to require any senior official thereof to appear before any of the committees of the National Assembly to account for an explain his or her acts and programmes.”
- 5.8 The Ombudsman [Article 91(b)] has the duty:-
- “to investigate complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services.”

- 5.9 The Auditor-General is required by the Constitution [Article 127(2)] to audit the State Revenue Fund.
- 5.10 If the constitutional responsibilities of the Parliament and its two associated bodies are to be conducted with true independence, it is important that any potential source of conflicts of interest that could jeopardise this independence is eliminated.

Current Staffing Arrangements

- 5.11 Parliament and its associated bodies are all served by their own staff. The independence demanded of Parliament, the Auditor-General and the Ombudsman is not reflected in the arrangements that exist for the administration and personnel management of their offices. In all three cases, staff are members of the public service, and are subject to:-
- (a) the grading and salary system applying to the whole public service;
 - (b) involvement of the Public Service Commission in the recommendation of appointments, promotions, discipline, dismissals, remuneration etc;
 - (c) the involvement of the Office of the Prime Minister in the preparation of recommendations regarding organisational structure, the number of posts and the grades attached to the posts;
 - (d) the approval of these organisational and staffing recommendations, and revenue budgets, by the Cabinet.
- 5.12 The independence of these bodies is thus jeopardised, as their effective operation could be impeded by the direct involvement of parts of the Executive which might, at other times, be the subject of critical scrutiny. It is a basic principle of good management practice that a manager is given as much authority as possible over the resources available to achieve desired outcomes. If anyone else has authority over some of those resources, and particularly over staff, the manager has a ready-made excuse when outcomes are not achieved and thus accountability is undermined. Complete separation of management accountability from the Executive is therefore necessary if the independence of Parliament, the Auditor-General and the Ombudsman is to be guaranteed.

Proposals for the Parliamentary Service

- 5.13 To overcome these difficulties it is proposed that the staff of the Parliament, the Ombudsman and the Auditor-General should no longer be members of the public service, subject to the procedures of the Public Service Commission. They should be appointed as members of the Parliamentary Service to the Office of the Parliament, or to the Office of the Ombudsman, or to the Office of the Auditor-General. Three Parliamentary Service Commissioners, one of whom should be a Public Service Commissioner, should be appointed on terms and conditions equivalent to the Public Service Commissioners. The functions of the Parliamentary Service Commissioners should be to stand back from the day to day matters of personnel management and exercise oversight of the staffing arrangements of the three "Parliamentary Offices". This oversight should include:-
- (a) the approval of the organisational structure and establishment of each Office, subject to the opportunity to consider the advice of the Department of Public Service Management of the Office of the Prime Minister, or an alternative source of professional advice determined by the Commissioners after consultation with the Speaker, Chairman of the National Council, Auditor-General and Ombudsman;
 - (b) the approval of personnel regulations for each Office, subject to the opportunity to consider the advice of the Department of Public Service Management of the Office of the Prime Minister, or an alternative source of professional advice determined by the Commissioners after consultation with the Speaker, Chairman of the National Council, Auditor-General and Ombudsman;
 - (c) monitoring the implementation of these personnel regulations; and
 - (d) acting as the final board of appeal for the grievances of members of the Parliamentary Service.

- 5.14 In keeping with its constitutional responsibility, the National Assembly should determine the Annual Budget of the three offices, after consultation with the National Council and due consideration of the advice of the Minister of Finance on the impact of these budgets on the overall financial commitments of the State.
- 5.15 The most senior staff in each Office would be responsible for preparing proposals for the organisational structures, establishments, personnel regulations and annual budgets of their Office. It is anticipated that personnel regulations would be based upon those applying to the public service, but amended in the light of the particular needs of the three offices. Those senior staff would also be responsible for all personnel management functions, subject to the oversight of the Parliamentary Service Commissioners as outlined above.
- 5.16 In the fullness of time, a constitutional amendment should alter the appointment procedure for the Auditor-General so that the recommendation to the President is made by the Parliamentary Service Commissioners rather than the Public Service Commission.
- 5.17 The Auditor-General and Ombudsman should be invited to prepare proposals for the establishments of their Offices in the light of their democratic responsibilities. These proposals should be reviewed by Parliament and appropriate resources sought from the budget. There is a need for urgent attention to the entirely inadequate levels of staffing on which the Ombudsman service is currently operating. The service is largely being used as an appeal machinery for public servants, and attention should be given to promoting and advertising the service to the general public in all the regions. The broadcast media could provide an invaluable channel of publicity for the service.

6 ESTABLISHING A STRUCTURE OF PARLIAMENTARY COMMITTEES

6.1 Parliamentary Committees play an important role in scrutinising the legislative proposals, policies and performance of governments throughout the world. They have been seen in operation in all the countries visited. Even countries such as Trinidad and Tobago which, like Namibia, have small chambers, are able to develop a functioning set of Parliamentary Committees of all kinds. Generally it was found that most Parliaments sustain a mixture of committees:-

- (a) Standing Committees which subject government bills to detailed scrutiny. Ideally, these committees concentrate on the practical details of bills and avoid political controversy as the second reading is the time for political debate on a government's political objectives. The purpose of the Standing Committee is to ensure that the Government's objectives are workable and that the bill gives practical expression to them.
- (b) Select Committees which provide continuing scrutiny of government policies and the work of ministries and identify areas of concern which require special reports. These committees are usually based on the structure of ministries within government and "shadow" the work of individual ministries or groups of ministries. In almost every country, the Public Accounts Committee is the most important select committee. One important function of Select Committees is to maintain continuing scrutiny of policy areas. Ministers and public servants giving evidence to them therefore know that a Select Committee may very well later decide to check what really happened against what was said would happen.
- (c) Special (or ad hoc) Committees, which may be permanent or temporary, which deal with special areas of government or concern. For example, in the United Kingdom, the Upper House has committees on the European Union and on delegated legislation.
- (d) Committees which deal with Parliament's, or a chamber's, own business and procedures. This report leaves such committees to one side, as the view is taken that they are exclusively the province of members themselves to decide.

The Existing System

- 6.2 In the Namibian Parliament, the committee system is poorly developed. Only two Select Committees function at all in the National Assembly - the PAC and the Ombudsman Committee. Both have only recently begun to be effective and their meetings have frequently been inquorate. They have both had to catch up with the reports of the two parliamentary agencies. For example, the PAC only began to meet in 1994 and sat right through the year considering the Auditor-General's annual reports for the years since independence.
- 6.3 Government bills do not go into a Standing Committee stage as their clauses are debated on the floor of the chamber. Ministries often undertake extensive pre-legislative consultations prior to the preparation of bills. This admirable practice can involve public meetings. Nevertheless, the process usually takes place outside parliamentary scrutiny and the public gaze and a means ought to be found to bring it within the Parliamentary system.
- 6.4 There are three main reasons for the weakness of the committee system. The first is that both houses of the Namibian Parliament are relatively small and have too few members to constitute adequately a system of large committees. This problem is made worse by the fact that 40 members of the National Assembly are Ministers or Deputy Ministers. Secondly, the opposition parties have comparatively few members (19 between them) and have their own difficulties in supplying members to serve on committees.
- 6.5 Thirdly, Parliament has been under-staffed. It has not had the resources to provide clerks for committees to organise their sittings, take minutes and draft reports. Nor does Parliament have at its command specialist staff who can provide evidence and data, suggest witnesses and brief members on the issues to put to witnesses. The admirable work of the PAC has been made possible only by the willingness of the Auditor-General to provide the secretarial assistance that the Committee has required.

- 6.6 It is common in most countries for the audit office to provide resources to give professional support to the PAC. For example, 25 per cent of the resources of the UK National Audit Office are devoted to servicing the British PAC. It is believed that close links between the Auditor-General's Office and the PAC are valuable, but there is concern that Parliament's own resources should be such that the PAC has its own clerking and drafting arrangements.
- 6.7 The powers of both chambers with respect to the Executive are not closely defined in the Constitution. The National Assembly is entitled to "reports on the activities of the Executive", and may require "any senior official" to appear before a committee to account for his or her activities and programmes. Below, it is recommended that these powers are widened and extended to the National Council, in the first instance by way of convention.

Principles for the Revised Structure

- 6.8 The following **recommendations for change** in principle are proposed:-
- (a) Parliament should establish a structure of permanent Select Committees, operating in both chambers to "shadow" and scrutinise groups of ministries and associated public bodies;
 - (b) Joint Select Committees of both chambers should be considered;
 - (c) Select Committees should be responsible for considering and examining bills as well as the traditional work of scrutiny of government policy, as the division between Standing Committees and Select Committees would be wasteful of human resources in the Namibian context;
 - (d) The relevant Select Committee should have the power to designate any bill to be brought before it for detailed clause-by-clause scrutiny;
 - (e) Whenever the Government decides that extensive pre-legislative consultation is required, that process should take place within the Parliamentary framework, either by being undertaken by the relevant Select Committee itself, or where this is not appropriate, by making the full report of the consultative body, including minutes and evidence, available to the Select Committee when the bill in question comes before it;
 - (f) Select Committees in both chambers should have powers to summon Ministers as well as senior officials to give evidence before them, as well as to require access to official documents and data and to take evidence from external experts, individuals, community representatives and others who may be affected by a bill's proposals; and
 - (g) Ad hoc and Special Committees should be set up as and when either chamber finds it necessary.

The Role of Select Committees

- 6.9 Parliamentary Committees are the principal means by which Parliaments around the world call to account and scrutinise the behaviour of the government, ministries and public bodies. Parliamentary Committees are the principal arenas in which proposed legislation is scrutinised in detail.
- 6.10 Parliamentary Committees have the great advantage of being removed from the political and other pressures of the chamber. They offer time and space for more considered debate and scrutiny. By convention, they are removed from political conflict and encourage a bipartisan approach. For this reason, the chairperson of major Select Committees, like the PAC, is normally a member of the largest opposition party in the popular chamber, as is the case in Namibia.
- 6.11 If those who hold ministerial office also sit on select committees the formal separation of powers between Executive and Parliament is negated. It is recommended that Ministers should not sit on committees under the revised structure. It is necessary to establish a committee structure which is economical in its demands on backbench members of the National Assembly as well as the resources of the state.

- 6.12 The following recommendations are based on the principle that the work of members of both houses should be regarded as a full-time occupation. Both houses sit infrequently at the moment. It is recommended that the schedules of both houses be reformed, with specific allocation of time for the sittings of Parliamentary Committees. It should be as much a duty for a member to attend a session of any committee to which she or he has been allocated, as to be in place for a sitting of the chamber.
- 6.13 Secondly, the size of committees should be reduced to between six and nine members, depending on the importance of the committee's work. It is likely that small, well attended committees will become more effective, not less. The proposed committee sizes reduce the need to ask members to sit on more than one Select Committee.
- 6.14 It is therefore **recommended** that the following be considered:-
- (a) the PAC and the Ombudsman Committee should consist of nine members;
 - (b) other Select Committees should normally have six members; and
 - (c) members, especially minority party members, should be able to sit on more than one committee.
- 6.15 It is further recommended that the committee work of the National Council should focus primarily on the regional and local policies of government, in line with the proposal that the Council should take on the frequently observed role of a second chamber - that is, acting as the representative body of the regions.

Committee Structures: An Illustrative Proposal

- 6.16 It is the prerogative of members of both chambers to decide exactly what committee structures should and can be established. However, to illustrate how the above proposals could be put into practice, a possible structure is set out below. It is stressed that this set of suggestions is purely for the purposes of debate.

National Assembly	
PAC	9 members
Ombudsman	9 members
Economic and Industrial Affairs (to shadow Trade and Industry; Mines and Energy; Fisheries and Marine Services; Environment and Tourism)	6 members
Educational, Cultural and Social Affairs (Tertiary Education and Vocational Training Basic Education and Culture; Youth and Sport; Information and Broadcasting; Health and Social Services)	6 members
Public Services and Home Affairs (Home Affairs; Public Services Commission; Prisons and Correctional Services; Security Intelligence Agency)	6 members
Foreign and Defence Affairs	6 members
Joint Committee of both houses	
National Development (National Planning Commission; Agriculture, Water and Rural Development; Resettlement and Rehabilitation; Labour and Human Resource Development; Works, Transport and Communication)	10 members
National Council	
Committee of the Regions (Regional and Local Government; regional aspects of the policies of other ministries)	13 members
Justice *(with co-opted experts)	5* members
Delegated Legislation Scrutiny Committee (if necessary; dependent on the scale of delegated legislation and concern)	5 members

Composition of Committees

- 6.17 It is recommended that the political balance on Select Committees in both chambers should be broadly in proportion to the party political representation. In the National Assembly this would result in a 4:1 ratio of majority party to minority party members. However, it is also recommended that this should be subject to a minimum of two minority party members on each committee to allow for more representation of minority parties on Select Committees. This would reinforce the bipartisan nature of the committee work and would deflect any accusations of "bias" which might otherwise undermine the objective and non-political spirit which it is hoped will animate the Select Committees.
- 6.18 On this basis, all the Select Committees of the Assembly would have two minority party members; on the PAC and Ombudsman Committees, one of them would also normally be the chairperson.
- 6.19 Given the constituency and regional basis of representation in the National Council, it is suggested that membership of Committee of the Regions, if established, should first of all be determined on the basis of one member per region, and only secondarily on grounds of political balance. For this reason, it is suggested that the Committee of the Regions should have thirteen members, to allow each region to be represented. Members could alternate and specialise if they wished. Again, it would be desirable to establish a minimum quota for minority party members on this and any other National Council committee.
- 6.20 As for the Joint Committee, supervising ministries whose remits raise regional questions, it is suggested that six members are appointed from the National Assembly (four majority party; two minority); and four from the National Council).

The Powers and Procedures of Committees

- 6.21 Select Committees must take on an inquisitorial and policy analysis role. To do so effectively, they require the powers set out above to enforce the attendance of relevant witnesses, including Ministers, Deputy Ministers, Permanent Secretaries and other public servants, as well as people from the private sector and civil society. They must be adequately serviced in two ways. Firstly, by a Committee Clerk and staff, to organise schedules of meetings, witnesses and work, to minute their work and draft their reports and, secondly, by specialist advisers who have qualifications and experience in the areas under scrutiny. In the United Kingdom, committees recruit special advisers on an ad-hoc basis and it is recommended that committees in Namibia follow this example.
- 6.22 In the case of the PAC, the close cooperation which already exists between the Auditor-General's staff and the PAC is welcomed. It is recommended that the Ombudsman should establish such a relationship with the Ombudsman Committee and that allowances for this special role should be made in determining the overall funding of both offices.
- 6.23 It has already been recommended that parliamentary time should be specifically allocated to committee work, so that it becomes part of normal parliamentary life. Further, it is suggested that the offices of the Speaker and National Council Chairman should liaise with party whips to determine the composition of the committees; that members themselves should be invited to volunteer to work on particular committees; and that their choices should be met as far as practicable. (This recommendation relates to proposals for developing the role of National Assembly members in particular; see paragraph 4.15) In some countries the study groups visited, the whips use their powers of patronage over the membership of committees to strengthen their disciplinary powers over members or to remove expert members from committees. This is an undesirable extension of the powers of whips, and it is recommended that the Speaker of the National Assembly and the Chairman of the National Council should have the final say on who sits on which committee.
- 6.24 As far as is possible, the convention that opposition members should chair the more important committees ought to be followed, as it already is, for example, in the case of the PAC. However, it is equally important that such committees should be chaired by appropriately skilled and knowledgeable members with an ability and reputation for objective judgements. In other words, it may on occasion be more appropriate to choose a majority party member who commands the respect of Parliamentarians and public servants rather than a less well regarded minority party member. By leaving the final right of appointment to the Speaker or Chairman, any interpretation of convention would be in good hands.

- 6.25 The culture within which committees work is as important as the resources they possess. As far as is possible, they should be regarded as impartial and objective bodies, on which members follow a largely bipartisan approach and seek consensus in their reports. This is a counsel of perfection as party political considerations can never be wholly removed from committee deliberations, nor is it necessarily beneficial that they should be. But members of the majority party should feel that their scrutiny, and perhaps critical judgements, are protected in this aspect of their parliamentary duties.
- 6.26 It is hoped that members of the majority and minority parties alike will be able to scrutinise government laws and policies critically and constructively, without feeling disloyal or being regarded by their party as disloyal, if (on the one hand) they are SWAPO members who criticise elements of government legislation or policy, or (on the other hand) are minority party members who give their approval.
- 6.27 Equally important is the attitude of the public service towards Parliament and its committees. This subject is discussed above (See paragraph 4.6). It is of supreme importance to the spirit and operation of parliamentary democracy in Namibia that ministries and public bodies of all types come to regard the scrutiny of their work by Parliamentary Committees - and by individual parliamentary members too - as an integral and routine part of the "normal channels" of accountability, scrutiny and transparency by which ministries and public agencies are brought into the democratic structure of government.
- 6.28 "Normal channels" cannot remain simply top-down hierarchies of command. They must enable ideas and complaints, criticisms and proposals to flow upwards from the public through their elected representatives; and Parliamentary Committees must become one of those bottom-up channels. Further, as stated in paragraph 6.8, it would be a major move forward if Parliament were to share responsibility for the executive's pre-legislative consultation exercises and inquiries with the responsible ministries, thus bringing them at once into the parliamentary process and public gaze. Pre-legislative committees are a feature in several countries visited.
- 6.29 Public Accounts Committees abroad frequently have a range of powers, including the requirement that the Government of the day must reply to their comments within two months. It is recommended that a similar rule be established in Namibia in relation to the reports of the PAC and Ombudsman Committees. It is further recommended that time be set aside for debate on the floor of the respective chamber of any Select Committee report as a normal requirement, and that the relevant Minister or Deputy Minister should reply to the debate.

Select Committees and the Public

- 6.30 In most democracies, the meetings of Select Committees are open to the general public. The study groups wish to preserve this vital link between the committees and the citizens of Namibia. It was found that public hearings allowed people with relevant expertise or specialist interest to keep up with the development and scrutiny of public policy, with overall benefits for the nation as a whole, since they are frequently able to feed their accumulated knowledge back into government policy making.
- 6.31 It is recommended that all sessions of the Committees at which evidence is being taken should be open to the public, with the proviso that a committee may rule that certain evidence of a sensitive or confidential nature should be heard in camera. It is hoped that members of the committees will not be encouraged to "play to the gallery", or seek to score political points, as this could undermine the objective quality of their work.
- 6.32 The custom elsewhere is for Committees to sit in private when members are discussing, drafting and considering their reports. This is necessary to allow members to make political concessions in the spirit of objective consensus. It is therefore recommended that these discussions should not be held in public.
- 6.33 It is also recommended that the reports of Select Committees should be published and made available to the public after being laid before Parliament. The published material should include the evidence and data submitted to the Committee.

7 STRENGTHENING THE WORK OF MEMBERS OF PARLIAMENT

- 7.1 Members of the Namibian Parliament have not been adequately resourced in the first years of democracy in this country. In all but one of the countries visited, Parliamentarians were far better supported than they are in Namibia. As has been noted, the new plans for resourcing Parliament are sufficient to provide the resources required to carry out their functions. Information, research and policy analysis should be made available within Parliament in three different ways:-
- (a) to Parliamentary Committees, to enable them to carry out their work of scrutiny and analysis of government legislation and policies;
 - (b) to the majority and minority parties, to enable them to carry out their duty to scrutinise legislation and policies and to offer the public constructive alternatives; and
 - (c) to individual members, to enable them independently to fulfil their representative and scrutiny roles.

A Proactive Information and Research Service

- 7.2 Existing plans envisage a staff of 15 for the parliamentary library and this proposal is welcomed. There are 38 "backbench" members of the National Assembly and 26 National Council members. The ratio of about one library worker to about 4.5 backbench members is good by comparison with the ratio elsewhere. In Trinidad and Tobago, for example, four library workers serve 67 members of two houses. In the United Kingdom, the ratio between research staff in the House of Commons library and MPs is 1:10. These cannot be direct comparisons, as circumstances differ greatly. But the Namibian proposal is a sign of commitment to adequate research and library services.
- 7.3 The delays in developing Parliament's library services open up new opportunities. It is recommended that the Office of the Parliament reject the passive model of a "library" based solely on print. Instead, it is recommended that the Office adopts a more active model for the information and research resourcing of Parliament. So these resources should be based from the outset on computer and CD-ROM data collection and retrieval wherever possible, making use of existing and future international data resources, supplemented by printed material as necessary. The centre's data bank should include legislation, regulations, law reports, official data and reports, all other public business, and material on the private sector, including international data on industries and businesses which are vital to Namibia's future.
- 7.4 Such electronic resources are expanding at a remarkable rate and Namibia's Parliament could thus be "plugged into" enormous reservoirs of retrievable information. It would be worth considering the possibilities of cooperation between nations, in southern Africa at least, at a similar stage of information resources and needs, as there would certainly be economies in joint provision.
- 7.5 This is a visionary concept, but not foolishly utopian. In India and Costa Rica, information services are already computerised and members can plug into their libraries through computers in their homes and portable "laptop" computers. Both countries provide their members with allowances or free computers to make them more effective. In Costa Rica, 20 members can be retrieving information through the parliamentary computer service at any one time. Other countries, such as Britain, are developing computer systems in their libraries.

The Importance of Policy Analysis

- 7.6 It is also recommended that another basic principle for the new information resourcing be adopted and it should be organised around an active commitment to providing members and the public with first-class policy analysis as well as basic information. The major role of the information service should be to provide an all-round analysis of every bill, as it is presented to the National Assembly for scrutiny for the use of members, the Parliamentary Committee and the public. This is normal practice in many of the countries visited. Similarly, the "library", or information and research centre, should provide members of Parliamentary Committees with relevant policy analysis of the subjects into which they are inquiring.

- 7.7 Instead, therefore, of appointing a “Chief Librarian”, Parliament should appoint a **Chief Policy Analyst** to direct the work of the new information resource centre which should serve both chambers. In turn, Parliament should abandon the term “library” and find the right terms to describe the actuality of this new policy information and analysis centre.
- 7.8 As recommended above, the centre should also be at the disposal of Parliamentarians in two distinct ways. First, it should service the political parties in the National Assembly, broadly in proportion to the number of back bench members each has. The parties would be obliged to determine among themselves how to share these officers but, if necessary, the Speaker and Chairman of the National Council could adjudicate between opposing claims.
- 7.9 While backbenchers of the ruling party must be properly resourced **as a group** to perform their scrutiny and reviewing roles, Parliaments around the world make special provision for resourcing the largest opposition party in the popular chamber. Given the emphasis on national unity, there has been a tendency in some quarters to state that the duty of opposition parties is also to “support the Government”. It is important to recognise, however, that opposition itself is a function of true democratic unity. In Britain, the leader of the main opposition party is actually designated, “Leader of Her Majesty’s **Loyal** Opposition”, and the party receives additional resources for its parliamentary duties as the recognised opposition. Constructive opposition frequently improves government policies and actions and should therefore be given adequate resources.
- 7.10 Finally, research staff should be at the disposal of individual members, of whatever party, to provide the information they reasonably ask for.
- 7.11 One advantage of the proposed separate status of the Offices of the Parliament, the Auditor-General and Ombudsman is that these institutions will be able to recruit the specialist staff they require with more flexibility than is possible now. But it must be recognised that it will be difficult for the Office of the Parliament to recruit the specialists in, say, the law, economics, social policy, agriculture, etc, that committees and members are likely to require.
- 7.12 There is no advantage in blindly filling posts with staff simply to achieve establishment levels. Instead, it is recommended that the Office of the Parliament meet the demands for specialist staff by use of consultancies as well as permanent appointments. The Office of the Parliament can draw on external agencies, such as the National Economic Policy Research Unit (NEPRU), seconded experts from abroad (as the Auditor-General’s Office, the Office of the Prime Minister, several ministries and public bodies already do), specialist staff from the University of Namibia and from a variety of other sources. The point is to supply expert knowledge and analysis when and where it is needed and not simply to swell the staff serving Parliament.

Liaison on Provision of Information

- 7.13 The new service should of course be compatible with existing computer systems in the public service. It is recommended that Regional Councils and other public bodies should be linked into the computer/CD-ROM network from the very beginning and that members with computer skills and resources should also be able to have access.

Openness in Government

- 7.14 In no way are these proposals designed to replace information, data and analysis from relevant ministries or public bodies. Ministries introducing bills into the National Assembly should firstly be obliged to provide copies of bills at least 10-12 days before they are to be read and secondly, to provide full commentaries on those bills for use by members. These commentaries should “de-mystify” the legal language of the draft legislation, as well as setting out in simple terms the objectives of the bill and the means and resources by which they are to be achieved.

Empowering Members of Parliament

- 7.15 Individual members of both chambers are poorly resourced for their duties as representatives of the citizenry. The long-term goal is to build a Parliament in which members perform their duties as full-time representatives and do not hold other jobs. They would then be fully remunerated on this basis. In the meantime, scarce resources should be allocated to members with care. Allowances can be abused and members on the study group tours saw this for themselves. The recommendations made here are designed to develop members' salaries in line with their growing workloads and are targeted with care.
- 7.16 It is recommended above (see paragraph 4.15) that members of the National Assembly should build representative roles and expertise in particular areas, such as organised labour, industry, etc, and that as the committee structures grow, their expertise and experience could be developed within the context of their committee work. It is for this reason that it is suggested above that the majority of Select Committees should be placed in the National Assembly as is common in most democracies.
- 7.17 There would have to be a prohibition on members receiving external remuneration or other rewards or benefits from private and business interests, trade unions, and other pressure or interest groups. But it is common for Parliamentarians in many countries to benefit from information from external interests and even to introduce legislation into Parliament on their behalf. There is no harm in such liaisons so long as they are openly declared. Such links would help to develop an active "civil society" within which citizens could engage with Parliament and the Government in Namibia.

Allowances for Parliamentary Duties

- 7.18 There are certain common needs which should be met for members of both houses who, for example, currently have to pay from their own pockets for any secretarial assistance they receive. It is recommended that all members should be provided with shared secretarial services. They should also receive free telephone and mailing facilities for all activities which relate directly to their parliamentary or representative duties. Such facilities would be available only at the parliamentary buildings in Windhoek, not from their own homes.
- 7.19 Members are not adequately compensated for the actual costs of attending Parliament. It would be best if the state provided a pool of appropriate housing facilities at Windhoek for their use, but at least allowances should meet a reasonable level of housing and lodging costs. Similarly, the costs of travel to and from Parliament should be adequately paid for by the state.
- 7.20 As the committees develop, those members who serve on them could be remunerated by way of sitting allowances, with the chairpersons receiving additional fees which reflect their additional responsibilities. Members undertaking research which requires travel should be compensated for the travel and other costs which arise. The committee secretariats should administer the scheme for meeting such costs, and all such research work should be approved in advance.
- 7.21 As argued above, it is vitally important to make a reality of the constituency roles of National Council members. They represent one of the few formal links between the public and Parliament. On the firmer base of an effective Regional Council system, members would require allowances for the costs of travel and administration, to enable them properly to fulfil these roles and represent their constituencies.
- 7.22 It is recommended that offices should be set up for National Council members in every region, staffed by a secretary, even in their absence at Parliament, for at least three days a week, and that this provision be widely publicised. The secretaries should be part of the Parliamentary Service. Members should receive free telephone and postage for all their representative work from these offices. They should also receive either the use of publicly-owned cars, or allowances or loans to assist them in the purchase of an appropriate car, or allowances for the use of their own cars, for the performance of their representative duties.
- 7.23 In return, they would be expected to be available at their designated regional office for a fixed number of days over a fixed period of the year.

- 7.24 Codes of conduct should be drawn up within Parliament to guard against abuses that can result from paid lobbying. It is better that this be done at this stage rather than later, when the dangers of abuse become a reality. If members are to be better resourced, then they must not be open to the suspicion of abusing their privileges and the codes of conduct should provide both them and the public with the necessary protection.

Parliamentary Questions

- 7.25 Within the framework and culture of scrutiny, Parliamentary Questions (PQs) can play a key role. They represent another, more immediate way of calling the executive to account and obliging Ministers, ministries and others to explain themselves to the public.
- 7.26 They frequently degenerate into part of adversarial party politics and cheap point-scoring. Politicians naturally seek to evade questions which will reveal imperfections and mistakes, and much depends on the tenacity and ability of the questioning Parliamentarian.
- 7.27 Parliamentarians fail to use PQs as effectively as their counterparts in more developed parliamentary systems. At the same time, the Executive is less accustomed to supplying straightforward answers. Too frequently they erect walls against inquiries rather than provide answers and the balance has to be shifted. Again, this is in part a question of culture. Parliamentarians have to become more confident in their use of their powers to question the Executive and tear down “bureaucratic walls”, and more persistent in their pursuit of satisfactory answers. The bureaucracy must acknowledge the primacy of Parliament in a democracy like Namibia. Public servants exist to serve the public and their representatives, not to rule them from within bureaucratic forts.
- 7.28 One proposal which could be considered is to open up the right to ask supplementary questions to members other than the original questioner.

Simultaneous Translation

- 7.29 Some Members of Parliament in both chambers do not have the command of the official language of government to be able to perform their roles effectively. In other countries visited, such as India and Zimbabwe, where a diversity of languages are in daily use, there is simultaneous translation of speeches. This enables all Parliamentarians to perform their duties on an equal footing. It ensures that minorities and regions are properly represented. It is recommended that urgent attention be given to the installation of a similar system in Parliament here.

8 RELATIONS WITH THE MEDIA AND CIVIL SOCIETY

- 8.1 Several Parliaments which were visited have Broadcasting Units which provide for broadcast media coverage of parliamentary debates and proceedings. Usually, they themselves instal and operate remote-controlled TV cameras and microphones in the chambers and have rules of coverage designed to protect the dignity of Parliament and members. All debates and proceedings are filmed. The Unit may be directly organised and run by the Parliament (as in the United Kingdom) or contracted out to a private operator (as in Ireland). In all cases, the unit makes its films and recordings available to broadcasting organisations, with rules for their use. For example, that it is confined to news and current affairs programming and not used, for example, in entertainment or satirical shows.
- 8.2 The key principle is that all the material should be made available to broadcasting organisations without any film being withheld or censored.

A Parliamentary Broadcasting Unit

- 8.3 It is recommended that Namibia institutionalise the electronic coverage of debates and proceedings. An ad hoc joint committee of the two chambers should be created to decide on what basis this should be done. The joint committee would need to consider whether to use NBC as the broadcasting agency or put the operation out to tender. It would also need to consider the rules to protect the integrity of filmed material and the dignity of Parliament, and to prevent official censorship or interference with the supply of film and recordings.
- 8.4 The question of broadcasting direct extracts from the speeches and interventions of Ministers and MPs on television and radio news and other programmes has to be resolved. It is common for such extracts to be broadcast in other countries. There is often a limited legal privilege attached to such broadcasts, to avoid legal complications with libel laws, etc. These direct broadcasts are an important element in communications between politicians and the public and it is recommended that they commence in Namibia.
- 8.5 There are various other aspects to be considered. Is there sufficient goodwill in Parliament for this proposal, or is a controlled experiment needed first? What space and other resources would be needed? Would it be feasible to use automated equipment to save money? Should material be sold to raise revenue?

Democratic Role of the Media

- 8.6 There is a limited understanding within the media of the role and complexity of issues faced by Parliament. Equally, many in the political class fail to appreciate the proper role of the media. Ministers and Parliamentarians frequently express their discontent with media coverage, even though both television, radio and the press exercise self-censorship over certain matters which would be fully exploited by western media. Both sides however need one another in a healthy democracy, especially one undergoing processes of development. The media, for example, have a vital role to play in communicating basic information of value to society. But it is equally important that they perform a role of scrutiny and investigation, parallel to Parliament's more formal scrutiny role.
- 8.7 There is an urgent need to create a better understanding on both sides regarding the democratic role the media can play and the acceptance that media coverage will, and must, be critical if it is to perform that role effectively. The media make mistakes in every country in the world. As long as they are willing to correct these mistakes, these too should be regarded as part and parcel of a normal and robust democratic relationship. Public awareness and understanding would be greatly enhanced by making the work of both Parliament and the Executive more transparent by opening up access to information.
- 8.8 Public regulation of the broadcast media is common in most countries of the world. So too often is government or political party manipulation of the media. However, if television and radio are to play a role which ultimately enhances the quality of democracy and self-confidence in society, they cannot be reduced to the status of official "mouthpieces". It is essential to found their operations on a basis which insists that they conform to explicit standards of reporting and behaviour, while at the same time preserving their essential independence from both the Executive and Legislature.

- 8.9 NBC has managed to remain editorially independent of government thus far. The radio service is notably lively and encourages very open debate in all the significant languages of the country. But the NBC is vulnerable to pressures as it is under-resourced and has suffered a de facto cut in revenue. Important issues, concerning the management and Board oversight of NBC need to be addressed if it is to develop the organisational maturity needed
- 8.10 The press enjoys a wide degree of independence, though the total distribution of the main newspapers at around 60,000 is very small and most newspapers are obviously operating on limited resources.
- 8.11 The media have a particular responsibility to work with all three branches of the system of government to improve understanding in a multi-lingual country. Parliament should address how its proceedings can be made more accessible not only to its own members (see paragraph 7.29) but also to all the citizens of Namibia.
- 8.12 The dangers of a dominant party in any democratic country have already been described in paragraph 3.7. It is not healthy for the Executive to possess unchecked powers of appointment to public bodies which have democratic significance, such as the NBC board. In the United Kingdom, it was found that appointments to the BBC Board of Governors are made by the Prime Minister and Home Secretary, subject to certain "conventions". One convention, for example, is that of political balance between the chairperson and his or her deputy. Another allows for regional representation and another for business people to be balanced by trade unionists. It is recommended that similar conventions be adopted for appointments to the NBC and other boards responsible for the oversight of functions in which there is a direct public interest, although legal rules defining political and other forms of balance, subject to judicial review as in the USA, would ultimately be more appropriate.
- 8.13 Rules of balance would take into account political, gender, regional and "interest group" considerations in the composition of public and para-statal bodies. These rules would ensure that the bodies represented a diversity of interests, reduced the danger of particular interests or viewpoints being given an unfair advantage and increased the acceptability of their actions. They would play an important role in creating equity and balance in civil society. There is a case for making appointments subject to scrutiny by the relevant Parliamentary Committees. If given the force of law, the appointment process would also be subject to judicial review.

Civil Society

- 8.14 Civil society in Namibia is still fractured and dependent on the state for much of its resources. On the other hand, the role played by NGOs in consultation processes is often very full and far-reaching (e.g, the 1993-94 consultation exercise on the training and rehabilitation needs of disabled people). The trade unions and churches are active, though necessarily overshadowed by the activities of the Executive by comparison with their pre-independence role.
- 8.15 By creating direct channels of communication with different interest groups in Namibia, Parliament can play an important role in fostering the development of a vibrant civil society.

9 RECONSIDERING THE ELECTORAL SYSTEM

- 9.1 It has been suggested that there is a need to review the effects of the national electoral system in Namibia, now that there has been five years' experience of its operation and two elections to Parliament. Namibia can be congratulated on the overall fairness and scrupulous administration of the recent elections and on the absence of systematic corruption, abuses and intimidation.
- 9.2 The principle of proportional representation is fundamental to the two main principles of representative democracy; namely, popular control and political equality. The "first past the post" system that operates in the United Kingdom and India can give parties a majority in Parliament on a minority of the votes actually cast. This deprives some parties of seats they would be entitled to on their share of the vote. It results in situations where the in-built advantages of some parties in particular areas means that votes cast by electors can have no bearing on the outcome, and effectively excludes parties from a proportionate share in power at the national or regional level.
- 9.3 However, Namibia's existing "party list" proportional system for elections to the National Assembly has strong centralising effects. First, votes are counted on a national, not regional, basis. Second, the position of candidates on the party lists is determined centrally and so gives power to central party managers effectively to determine who sits in Parliament as the party's representatives. Third, members of the National Assembly who resign from their party, or who are dismissed by their party, may be removed from the chamber and replaced by an alternative member of the party.
- 9.4 Thus, though the system fairly represents the shares of votes cast for each party, members are in effect representative not of voters but of the party machine, and are dependent on its goodwill for their places in Parliament and their continued membership of the National Assembly. Thus, there is no direct link between voters and their formal representatives.
- 9.5 This state of affairs inhibits their ability to perform the central task of legislators, calling the executive to account and scrutinising its actions and policies. An independent-minded party member, though loyal, may prove too troublesome for party managers and be expelled from the party, and hence from Parliament.
- 9.6 In general, the study group Parliamentarians feel that there should be a debate about changes to the system which would provide a balance. The best system is one which combines proportionality with a constituency, or territorial, representation. The existing system could, for example, be simply changed from a national to regional system, with electors voting in regions, not nationally, and party lists being drawn up at regional, not national, level. Costa Rica employs a system which combines proportionality with constituency representation. In Germany and New Zealand, too, the electoral systems provide a territorial element. There, electors vote in constituencies first, for a set of "constituency" members. Then other MPs are added to the popular chamber, to provide proportional representation for each of the regions. This is called the "Additional Member System (AMS)".
- 9.7 An immediate change is not recommended. Changes in other countries have usually taken place on the basis of an independent commission considering all the options open, their advantages and disadvantages, and all their effects, and publishing a report of the options available. In Jamaica, a Parliamentary Commission is considering changes to the "first past the post" system there. In New Zealand, a commission report was followed by two referendums in which the public were given the final choice between two rival systems - the new AMS scheme or the existing "first past the post" system.
- 9.8 More immediately, however, there is evident resentment about the composition of the Electoral Commission, especially among minority party members. This is another of those significant public bodies to which appointments need to be made subject to conventions designed to create wider acceptability.
- 9.9 Currently, nominations for members of the Electoral Commission, which is headed by a judge, are made by the President in consultation with the Office of the Prime Minister; that is, within the Executive. In future, appointments ought, perhaps, to be made after formal consultation with political parties represented in Parliament and should display a clear political balance. It is understood that the existing Commission members were actually appointed after informal consultations of this kind, so the change would simply formalise the process and make it more open.

- 9.10 The first Director of Elections was appointed by the President after his name and qualifications were submitted to the National Assembly. Again, a more formal process would be desirable. The Director might, for example, be appointed by the President on the advice of the Judicial Service Commission and in consultation with political parties represented in Parliament.
- 9.11 It is important to stress that there is no evidence of abuse of power in current appointments. However, an open and accountable system would not only guarantee impartiality and balance; it would confer legitimacy on commissions and boards of importance and so provide them with the degree of public confidence which is vital to their success.

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