Strengthening parliamentary democracy in SADC countries

Namibia country report

Talitha Bertelsmann-Scott

Series editor: Tim Hughes
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The South African Institute of International Affairs' Strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria.
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Acknowledgements

The author would like to thank the South African High Commission in Namibia for assisting her in setting up the research trip that forms the basis of this report. Her thanks also go to Tim Hughes for his valuable input and insights.

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Preface

The roots of parliamentary democracy in Southern Africa are spreading and deepening despite operating in sometimes infertile soil. All countries in the Southern African Development Community (SADC) region now operate some form of parliamentary democracy. While a majority of countries exhibit textbook constitutional, electoral and parliamentary architecture, the operation of these institutions is highly disparate. Some labour under the threat of civil war, constitutional flux, and monarchical fiat; others have operated consistently and constitutionally for decades. While there is little fundamental region-wide disagreement on the mechanisms for achieving a democratic polity, there is far less agreement on the appropriate powers, role and composition of legislatures; and still less discussion, let alone agreement, on the appropriate relationship between parliaments and ‘the people’. Indeed the longevity of some parliaments in Southern Africa is no indicator of their constitutional strength, nor the strength of public engagement with them. Established parliaments can operate in an exclusive and exclusory manner. Established parliaments can also become susceptible to (un)democratic reversals, particularly with respect to a strong executive and single party dominance. Conversely, newly elected parliaments can forge innovative and healthy public participation programmes, thereby strengthening and deepening democracy.

This series of reports forms part of the South African Institute of International Affairs’ (SAIIA) three-year research, conference and publications programme examining parliamentary democracy in SADC countries. Its normative objective is to contribute to strengthening parliamentary democracy throughout the region. Specialists in all 13 SADC countries were contracted to conduct primary and secondary research into the state of parliamentary democracy and to make recommendations on how parliamentary democracy might be improved, strengthened and sustained.

Specialists were tasked with researching a number of key themes. The first was to provide a country-specific overview of recent and current constitutional, electoral and parliamentary practice. This included ‘nuts and bolts’ issues such as the electoral system, constitutional provisions for the executive, legislative and judiciary and party political configurations. The organisational structure of parliament, including assembly rules, the roles and powers of committees, the status of the speaker, whips, members, as well as the functioning of parliament as
an oversight actor, were examined. These questions go, *inter alia*, to the status and credibility of parliament with the electorate.

The second theme was to conduct primary research into provisions for public engagement with parliament. There are two dimensions to this relationship. The first is the mechanisms and modalities parliaments use to convey and publicise their activities to the electorate and civil society in general. These may range from the publication of Hansard to the parliamentary web site. The former serves as a recordal of fact (after the fact), but the latter may also serve to publicise future parliamentary activity and is thus a potentially powerful tool. The more textured research centred on the degree to which parliaments encourage and facilitate the participation of the public in their activities. This may range from the public affairs offices, to the holding of public committee hearings in distant and rural areas.

The other side of the public engagement equation is the channels and practices used by civil society to interact with and lobby parliaments ranging from advocacy, petitions and protests, to oral and written submissions.

Public parliamentary access is often characterised by an 'insider-group' and 'outsider-group' dichotomy. The insider-group is typically well-organised and funded, usually with a clearly identified constituency base and infrastructure. Insider groups may be issue specific, or cohere around markers such as class, race, religion and ethnicity. Such groups often develop effective methods and modalities of political mobilisation, support, lobbying, access and influence. Outsider groups, however, are often the mirror images of their more powerful counterparts. They may share common interests, or suffer from a common affliction or practice, but lack the resources and capacity to either mobilise effectively, or lobby for their interests. Outsider groups may be extensive in number and may even represent a numeric majority or plurality of the population, yet still operate on the margins of political and parliamentary engagement.

An important, or potentially important, linkage in this relationship is the media, and thus researchers were tasked with examining and evaluating their role. There may be an operational and political distinction between the parliamentary coverage of state-owned media, a national broadcaster and a commercial operator. Researchers were asked to evaluate briefly the effectiveness of these channels of communication and dissemination.

Finally, after workshopping their findings, researchers were asked to write a set of tightly formulated recommendations for strengthening parliamentary democracy in their respective countries.

We at SAIIA thank Talitha Bertelsmann-Scott for her research and for the application and industry with which she has tackled her work in sometimes
Strengthening parliamentary democracy in SADC countries
difficult circumstances. This country report will appear in abridged form in a compendium of all 13 SADC country case studies. Its findings and recommendations will be incorporated into a SADC-wide best practice handbook.

Lastly, we should like to express our deep gratitude to Ambassador Torben Brylle of the Royal Danish Embassy in Pretoria for his constant support and that of the Danish government in generously funding this project.

Tim Hughes
SAHA Parliamentary Research Fellow
# Table of contents

Executive summary ................................................................. 1

1. Introduction ........................................................................... 3

2. Namibia’s constitution ......................................................... 5
   - Provisions made for the executive ........................................ 6
   - Provisions made for parliament .......................................... 6
   - Provisions made for the National Council .......................... 8
   - Provisions made for the judiciary ..................................... 9

3. The electoral system ........................................................... 11

4. How a bill becomes law ....................................................... 15
   - The National Council’s role in the legislative process ......... 16
   - The judiciary’s role in the legislative process .................. 16

5. Civil society’s role in the legislative process ......................... 17
   - Civil society and the National Assembly ......................... 18
     - Participation through the speaker ................................ 18
     - Portfolio committees ................................................. 20
   - Civil society and the National Council ........................... 20
   - The media .................................................................. 22
   - The experience of specific NGOs .................................. 23
     - The Legal Assistance Centre ...................................... 24
     - Sister Namibia ......................................................... 27
     - The Namibian Society for Human Rights .................... 30
     - The National Democratic Institute for International Affairs 31
   - The business community .............................................. 32
6. The role of political parties

   SWAPO

5WAPO

   The opposition parties

      The DTA/UDF Coalition

      The Congress of Democrats

      The Republican Party

      The Monitor Action Group

7. Conclusion

Notes

Appendix: List of interviews conducted

References

List of acronyms
Executive summary

The South African Institute of International Affairs (SAIIA) is conducting a research project that seeks to examine the functioning of parliaments in the Southern African Development Community (SADC) region and in particular tries to identify how parliaments engage with the electorate and how the public engages with parliaments.

This report examines how the Namibian parliament engages with the public in its work and, in turn, how civil society actively participates in the legislative process. In order to gain an understanding of these processes, research in Windhoek and Walvis Bay was undertaken, during which a range of individuals and organisations were interviewed (see Appendix for a complete list of these interviews). In addition, a literature survey on the topic was conducted. A number of clear and significant trends emerged from the research.

In the first instance, it is clear that the Namibian constitution is revered throughout the country and that it makes excellent provision for a democratic society in which civil society plays a key role in the legislative process. However, government has managed to limit the space created by the constitution, and in reality allows only limited interaction between itself and civil society. The massive majority that the ruling party holds in parliament has turned Namibia into a de facto one-party state, in which the only means of political survival is through the ruling party structure. Little room is left for an effective and dynamic opposition; and civil society participation is frowned upon, rather than encouraged.

Parliament itself, through the Office of the Speaker, is very active in promoting the participation of ordinary citizens, and large amounts have been spent on bringing parliament closer to the people. The present speaker is extremely dedicated to this cause and has many plans in the pipeline to connect the people to the legislative process. However, one is left with the impression that in order for his efforts to be meaningful, a great deal of work has to be done on civil education in general and on the attitudes of individual members of parliament (MPs) and others in government in particular. It is to be hoped that his engagement with the public is not merely a window-dressing exercise, but for it to be meaningful, both MPs and citizens alike need to be convinced of the potential benefits to legislation – and therefore to the country at large – of civil society participation.

The opposition in Namibia is currently extremely weak, and has steadily lost
support over the past few elections. Combined with a decline in voter participation, this means that little political debate occurs, apart from internal processes within the ruling party. The opposition currently does little to engage the public, to report back to constituencies or even to make a meaningful contribution in parliament. It seems as if the only time the opposition hits the headlines is when it is splintering into even smaller and more meaningless units. Its spirit has been broken and a certain defeatist attitude has crept in. Smaller parties have accepted that with the vast resources available to the ruling South West Africa People's Organisation (SWAPO) elite, it will be almost impossible for them to meaningfully contest any election campaign.

Two trends are noticeable in civil society: on the one hand, very few organisations actively try and engage with parliament in the legislative process and yet, on the other, the few that do have become passionate about participation and the potential benefits it could bring to the people of Namibia. However, greater engagement depends on a well-educated and informed civil society, which to a certain extent is not the case in Namibia. Therefore, what few non-governmental organisations (NGOs) there are focus and spend a large part of their resources on civil education and training. Financial constraints are always at the forefront of difficulties experienced by civil society, especially in its drive to reach as many isolated regions of Namibia as possible.

In sum, Namibia has good potential for a parliament that actively engages with civil society; however, in practice, a great deal has to be done in order to convince all sides of the benefits of constructive civil participation and to equip all potential participants with the necessary tools to make such engagement meaningful.
1. Introduction

Namibia is a geographically large (800,000km²), sparsely populated country of some 1.6 million people. The country attracted little interest from colonial powers, in part because of its arid geography and inhospitable coastline, dubbed the Skeleton Coast, due to the high number of shipwrecks it claimed. In time Namibia attracted Portuguese, Dutch, British and German settlers who made contact with local ethnic groups and through missionary stations established a firm presence and trade routes in the country. The ethnic groups present in Namibia at the time included San, Khoikhoi, Bantu, Herero, Nama, Damara, Ovambo and Kavango.

At the Berlin Conference of 1884, Namibia became a German territory and remained so until just after the First World War, when it was entrusted by the League of Nations to South Africa to administer. (The German occupation proved to be one of the bloodiest in African history. Between 1904 and 1908, German settlers and the German Army killed over 80% of the Herero and around 50% of the Damara and Nama tribes.)

Namibia proved to have rich mineral resources, which were exploited by large multinational corporations and the South Africa government. During the many years of South African administration, the Namibian economy became integrated with that of South Africa. Pretoria followed policies of apartheid in Namibia similar to those in South Africa, which left the majority of the Namibian people poor and underdeveloped.

In a rebellion against the administration of South Africa and its apartheid policies, an extensive war of independence was fought against South Africa, predominantly by the South West Africa People's Organisation (SWAPO) and its military wing, the People's Liberation Army of Namibia (PLAN). South African government forces, however, were well resourced and technologically sophisticated and generally managed to maintain the upper hand against SWAPO.

It took many years of sustained international pressure on South Africa for it to finally agree to end its administration of Namibia. In 1969, the United Nations (UN) declared that the area would be called Namibia and no longer South West Africa. And in 1971, the International Court of Justice declared South Africa's occupation illegal. In 1978, the UN passed Resolution 435, which called for democratic elections and independence. South Africa started to suffer military
defeats in the late 1980s and, with sanctions and a volatile political situation at home, it could no longer sustain its occupation of Namibia. In 1989, South Africa agreed to implement Resolution 435. Elections were held the following year.

Independence itself was a peaceful event, with elections that were deemed free and fair. A record 95% of Namibians turned out for their first democratic elections, which elected a broad spectrum of parties that were left in charge of finalising the constitution and leading Namibia into the 21st century. The majority was held by the SWAPO party, which was now trying to transform itself from a liberation organisation into a political party.
2. Namibia’s constitution

Namibia’s constitutional history is a fascinating one. Independence was effectively granted through UN Resolution 435. Apart from calling for the independence of Namibia and democratic elections, the resolution set certain preconditions for the eventual constitution of the independent state of Namibia. In other words, complete outsiders wrote many founding aspects of Namibia’s constitution:

*The constitution played a central role in the founding of an independent Namibian state. The transition itself was structured and guided by a prior international agreement which had to result in a ‘strong’ constitution being concluded before actual independence.*

The foundations for the independence settlement were already laid in 1978, when talks were held among South Africa, SWAPO and a contact group comprising Canada, France, Germany, the United Kingdom (UK) and the United States (US). The meeting resulted in Resolution 435; however, it would still take more than a decade before the agreement was implemented. The elections and constitution became the two pillars of the negotiations surrounding independence.

By placing certain preconditions on the constitution of Namibia, it was hoped that the country could avoid lengthy civil wars and political disaster of the kind that were a regular feature elsewhere in Africa.

The first democratic elections finally took place in November 1989. There was a massive turnout of the electorate and seven political parties each won some of the constituent assembly’s 72 seats. These delegates then finalised the country’s constitution. No deviation was allowed from the constitutional principles that were negotiated before the elections.

With the adoption of the constitution, Namibia finally achieved independence on 21 March 1990. The constituent assembly was renamed the National Assembly, and Sam Nujoma, as the leader of the majority party (SWAPO), was entrusted with executive power.

The final constitution makes provision for a republic that is democratic and secular. The state consists of three equal organs that are responsible for their respectively independent functions: they are the executive (or government), the legislature (or parliament) and the judiciary (the courts).
Provisions made for the executive

Executive power rests with the president, the prime minister and the cabinet. The president is both head of state and of government and also commander-in-chief of the Defence Force. The president appoints the prime minister and ministers. The original constitution stipulated that the president cannot hold office for longer than two five-year terms. However, it was amended to allow Nujoma a third term:

It was agreed that the Constitution, which stipulates that a President may serve no more than two consecutive terms, could be exceptionally amended to allow Nujoma to seek a further mandate, since the incumbent had initially been appointed by the Constituent Assembly, and had only once been elected President on a popular mandate.²

Rumours abound that Nujoma will seek a fourth term in office, despite his own assurance to the contrary. Public opinion seems to be divided over whether this would be a bad thing or not. Many feel that although changes to the constitution are not desirable, the stability that Nujoma lends to the political climate far outweighs the dangers of constitutional amendments. However, others argue that it would be better for Nujoma to resign, but still to control the party from behind the scenes. It is interesting to note that people outside of the SWAPO structure are convinced that he will try and obtain a fourth term, whereas SWAPO loyalists argue that this is not an option. If Nujoma were to seek a fourth term, it would be a simple matter of passing the amendment through parliament, as SWAPO’s two-thirds majority is all it needs for a constitutional amendment.

Representatives of one NGO commented that Nujoma is seen as the only person who can ensure stability among the various ethnic factions present in Namibia. His struggle history lends him credibility among all Namibians. Any successor would probably ignite tribal tensions among the various larger factions of SWAPO.³

Provisions made for parliament

The constitution determines that legislative power rests with parliament, which consists of two chambers, namely the National Assembly and the National Council. The National Assembly comprises 72 elected members and no more than six members appointed by the president. Elections are held every five years,
but the president can dissolve the National Assembly before the end of a term. The president may only appoint cabinet ministers from this chamber. Deputy ministers are also appointed from this chamber.

As the representatives of the people of Namibia, MPs in parliament are responsible for making laws in accordance with the provisions of the constitution. These laws regulate the state and its people and exercise control over the executive. In achieving the checks and balances required by the constitution, parliament is assisted directly by the Office of the Ombudsman and Office of the Auditor-General, each of which presents an annual report to the National Assembly.

The constitutional functions of the National Assembly, as laid out in an official parliamentary publication, are as follows:

The functions of parliament include: the legislative, budget, control, representative, electoral and public relations function.

The Legislative Function:
• To debate and pass bills into law, subject to the review of the National Council and the approval of the President
• To consider bills and hold public hearings of draft laws
• To amend draft bills and make recommendations for appropriate legislative reform

The Budget Function:
• To provide for how much money will be spent by the government and for what purpose
• To exercise control over ministries to ensure that government money is spent in accordance with the Appropriation Act

The Control Function:
• To ensure equitable power distribution
• To enable the people of Namibia the right to present petitions on matters of concern
• To ensure that Ministries execute their role in accordance with the Constitution and law
• To hold the Ministers accountable for their actions by providing the opposition with the right to put parliamentary questions
• To enable and support the work of the watchdog institutions such as the Ombudsman and Auditor-General
The Representative Function:
• To represent the people of Namibia and manage conflicting interests of these people
• To ensure that minority views and interests are protected
• To continuously maintain a link between the electorate and government
• To act as agents for the electorate

The Electoral Function:
• To elect certain persons in accordance with the Constitutional provisions

The Public Relations Function:
• To ensure open and transparent debate of national issues
• To uphold the Constitution and represent the Nation
• To enable all views to be debated and discussed in an effort to ensure that decisions are transparent.

However, in recent months, it would appear that parliamentarians have increasingly become slack in their duties. A recent report in The Namibian states that:

... to all intents and purposes, [Parliament] is something of a circus these days, what with Party Whips neglecting their responsibilities and the Deputy Speaker and secretarial staff apparently unable to count to establish timeously whether there’s a quorum or not ... Perhaps more worrying than the fact that most of them won’t be missed, is the evidence of a rapidly diminishing work ethic.

Provisions made for the National Council
The National Council was inaugurated in 1993 and consists of two representatives from each region, appointed for a term of six years. It serves as an advisory body to the National Assembly.

The members of the National Council are first elected directly to the regional councils and then nominated from these councils to serve at the national level in the National Council. The president may also appoint members of the National Council to serve as deputy ministers. The functions of the National Council are as follows:
Strengthening parliamentary democracy in SADC countries

The Constitutional functions of the National Council include: the legislative, budget, control, representative and public relations function:

The Legislative Function:
- To review bills passed by the National Assembly and propose amendments where relevant
- To debate and approve bills so that they may be referred back to the National Assembly and then to the President for signature

The Budget Function:
- To review the Appropriation Bill

The Control Function:
- To scrutinise and review Ministerial action, with a view to hold Ministers accountable for their action

The Representative Function:
- To represent regional constituencies at National level
- To reflect the views of the constituencies in debating issues of regional and national concern
- To interpret and advise constituencies of government policies and legislative developments

The Public Relations function:
- To represent the regional constituencies at national and international level
- To debate and negotiate positions on behalf of regional constituents
- To inform constituents of developments in Parliament and ensure that decisions taken are transparent.

Provisions made for the judiciary
The judiciary comprises the Supreme and High courts of Namibia, which are responsible for the review of legislation and adherence to the rule of law. The judiciary also ensures that the law is interpreted and executed in accordance with the provisions of the constitution. Namibian law is based on Roman-Dutch law and still uses South African cases as precedents. Despite having a sound constitution and legal foundation, the legal system often fails Namibia’s citizens. According to the 2003 report of the Namibian Society for Human Rights (NSHR):
... there was a huge backlog of court cases. Of the more than 54,000 cases handled by the lower courts countrywide, some 32,000 cases remained pending by December 31 2002. Speaking in the National Assembly on October 24 2002 then Deputy Justice Minister Albert Kawana admitted that nearly 3% of the some 30,000 cases handled by the lower courts between 1990 and 1999 did not receive a fair trial.
3. The electoral system

Namibia currently employs a combination of the proportional and plurality electoral systems. Regional and local authorities are elected according to the first-past-the-post (FPTP) system (i.e. the constituency system), whereas the National Assembly is elected through proportional representation (PR). In the case of the presidential elections, a candidate must receive more than 50% of the votes cast in order to secure the election.

The National Assembly’s election is run according to the list version of PR. Parties can nominate candidates for the 72 seats available and decide on the ranking of their candidates. After the votes have been counted, the party receives its percentage of the 72 seats equal to the percentage of votes cast in its favour during the elections.

The Electoral Commission, which is chaired by a judge or former judge of the Supreme Court, supervises the elections.

The Electoral Commission, the highest electoral body in Namibia, initiates and supervises electoral processes in the country. It operates totally independently from any Government institution, although it is answerable to the head of state. Furthermore, the Commission is legally obliged to submit an annual report to the President and the Speaker of the National Assembly in respect of its activities performed during the preceding year, or in respect of any other matters relating to elections.8

Since independence, there have been several elections at the different levels, and all of them have been declared mostly free and fair by local and international observers. Since the first elections held in November 1989, two discernible trends

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<th>National Assembly</th>
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<td>SWAPO</td>
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*The CoD only came into existence after 1994. See the discussion in Section 6.
have emerged: first, that SWAPO has steadily increased its support at both the national and regional levels; and, second, that voter participation in elections has steadily declined. Both of these trends are illustrated in the tables above.

The number of women representatives at all levels still falls short of the SADC target of 30%.

At the national level, 29% of parliamentarians currently in the National Assembly are women, while 71% are men. In the National Council, only two (8%) of the 26 members are women, while 92% are men. Yet women constitute 51% of the population and 52% of the electorate in Namibia.\(^9\)

A large percentage of the people interviewed blamed the party list system for the lack of democracy in Namibia. (See discussion in Section 6.) However, activists who are trying to promote the participation of women in politics argue that the party list system is the best way of implementing affirmative action for women:

Over the past three years the women's movement lobbied government and political parties to retain the party list system, fearing that with the new system, women's numerical representation of over 40% at the local level would drop drastically to the 4% women that we currently have at the regional level, where elections take place in constituencies.\(^{10}\)

According to a business leader interviewed, only about three of all the municipalities are well run, and there is little involvement of the electorate with municipal government:
The Walvis Bay municipality is well run, but this is an exception in Namibia. Other municipalities that are doing well include Swakopmund and Windhoek. The party list system excludes popular input. People feel quite far removed from their representatives.\textsuperscript{11}

This sentiment was echoed throughout the interviews conducted. Organisations and individuals interviewed were divided on whether the decline in voter turnout was due to general satisfaction with the government or whether the apathy reflected a lack of political freedom. The NSHR and the Forum for the Future argued that a great deal of political fear still exists among the electorate. No opposition was tolerated by SWAPO during the struggle years and the perception is that this intolerance still persists today. It is also argued that there is a general misunderstanding of politics and that there is a very low level of civil literacy among citizens. The Forum for the Future reported that citizens generally do not understand politics or are disillusioned by infighting in political parties. They need to be empowered in order for them to participate. Ideally, civil education should be introduced at school level; however, currently no such programme exists.\textsuperscript{12}

In stark contrast, people interviewed within government and SWAPO structures argued that the Namibian people are generally content and feel no need to participate in elections. Low voter turnout is seen as a stamp of approval for the governing elite. There is therefore little or no effort from government to educate the electorate or to try and increase voter participation.

According to one interviewee, interest in SWAPO is on the decline – very few people currently attend its rallies and meetings. However, apathy does not translate into greater support for the opposition parties. SWAPO is expected to once again win with a resounding majority in the next elections and Nujoma to stand for a fourth term. The interviewee was not convinced that a fourth term would necessarily be a bad thing: “If this is what the people want, then it is a democratic choice exercised by the people.”\textsuperscript{13}
4. How a bill becomes law

Currently there are two ways in which bills can be introduced to parliament. A minister can propose new legislation, which would be called a government bill, or an ordinary MP, individual citizen or NGO could suggest to parliament that new legislation is necessary, which would be a so-called private member’s bill. However, it is very seldom that this kind of bill is introduced, with the attorney-general recalling only one such case. Most people or organisations would lobby a particular ministry for legislative changes.\footnote{14}

Once a minister introduces the idea of a new bill, the attorney-general must make sure that the proposed law will be in line with the constitution. A team of lawyers will then draft the bill in proper legal terms and submit it to the cabinet Committee on Legislation (CCL) for approval. (The CCL consists of the attorney-general, the minister of justice and one other cabinet member.) The Law Reform and Development Commission (LRDC) assists in this process. The LRDC is a statutory body with responsibility for conducting research and making recommendations for legal change. Most of the lawyers that work for the LRDC have other permanent jobs, and bills can often be delayed due to staff non-availability or shortages.\footnote{15} The bill is then presented to cabinet, which has to approve it before the Ministry of Justice can finalise its drafting. It is then once again given to the CCL and the attorney-general for approval. It is only at this point that the bill is tabled in parliament for its first reading.\footnote{16}

Since the CCL has to give its approval and the cabinet has to approve it in principle before a bill is even tabled in parliament, it means that these two bodies are extremely powerful in deciding the nature and content of legislation. Currently, 44 of the 72 MPs also serve in the cabinet – which effectively makes it an executive parliament. By the time a bill is tabled, most of the important decisions have been taken and only minor input from parliament is allowed for. This then means that the portfolio committees have an even smaller impact, and by implication, public input to bills is very limited.

As Dianne Hubbard explains:

\begin{quote}
When a minister is proposing a specific bill, he or she meets with the Cabinet Committee, accompanied by other invited members of government who will help to explain, motivate and comment on the bill. The proceedings are not open to the public, nor is there any public record
\end{quote}
of them. And yet this is probably the most significant decision-making forum in the entire legislative process.\textsuperscript{17}

However, in theory, the portfolio committees scrutinise the bill in detail. They analyse it clause by clause and invite experts and interested parties to make submissions and suggestions on the proposed legislation. After these committees have finished their work, the bill is presented again in parliament for final approval. Once it has been approved, the bill is sent to the National Council for review.

**The National Council’s role in the legislative process**

The National Council follows similar procedures to the National Assembly in reviewing the bill. It also has portfolio committees that can scrutinise the bill in detail. These committees can also invite public input and sometimes hold hearings in regional areas. The National Council can then take three different kinds of action: it can confirm the bill as it is, it can make suggestions for changes, or it can object to the bill in principle. In the last two cases, the bill is sent back to parliament. The National Assembly does not have to agree to any of the changes that the National Council suggests, but it must vote on the bill again after it has heard the suggestions made. If the National Council objects to the bill in principle, the National Assembly has to vote on this. A two-thirds majority is then needed for the bill to go forward.

However, according to some civil society actors interviewed, the National Council has effectively become a rubber stamp of the National Assembly and does not as a rule send back legislation. In any case, SWAPO holds a two-thirds majority in parliament and can easily ignore any comments made by the National Council. Like most institutions in Namibia, the National Council is at present pro-SWAPO and would rarely oppose a bill proposed by the cabinet. The National Council passes most bills on to the president, who then scrutinises and signs them. Once this has been done, bills become Acts of Parliament, are published in the Government Gazette and become law.

**The judiciary’s role in the legislative process**

If the president should refuse to sign a bill or if any other concerned party feels that new legislation is not in line with the constitution, the courts can be asked to resolve the issue. The Supreme Court has the final say on whether a law is in line with the constitution or not.
5. Civil society’s role in the legislative process

As Khaxas and Frank of Sister Namibia point out:

_The Constitution of the Republic of Namibia, adopted in 1990, includes a Bill of Rights that gives ‘(a)ll citizens ... the right to participate in peaceful political activity intended to influence the composition and policies of the government’; the right ‘to participate in the conduct of public affairs, whether directly or through freely chosen representatives’, and to form and join political parties, to vote and be eligible for election (Article 17)._\(^{18}\)

Civil society participation in the legislative process is therefore not hampered by law in Namibia, and in fact the constitution encourages participation by citizens in the law-making process. However, the translation from principle into practice is often not present. A number of organisations interviewed and other literature point to the large gap between the official position on participation and the actual situation. Although there are numerous civil society organisations (CSOs) in Namibia, only a very few are involved in the law-making process or attempt to influence government policy. Government itself does not encourage NGOs to participate, as they are generally seen to be in opposition to government rather than potential allies and supporters.

According to Tonchi:

_[the] existence and participation of civil society organisations in Namibia is a constitutional right. For this reason, a number of civil society organisations have mushroomed since independence. Today, after 12 years of independence, one can count not less than 500 active civil society organisations in the country. Due to the immense underdevelopment experienced at independence, most of these organisations are involved in development-related activities. Only a few of them are specialised interest groups and have had a greater impact on Namibia's functioning democracy._\(^{19}\)

Tonchi argues further that the lack of participation is due to an unsuitable climate for such participation:
Namibia country report

Civil society organisations that disagree with the government are severely castigated and marginalised. Civil society in general is viewed with suspicion and is seen as foreign controlled. Despite its abnormal relationship with civil society organisations critical to its policies, the government has not impeded the activities of such organisations.²⁰

However, there is a subtle line between actively impeding the activities of NGOs and undermining their programmes and activities. Not being open to suggestions and criticisms should in itself be seen as an impediment. Khaxas and Frank summarised the situation as follows:

With democratic governance still in its infancy in Namibia, there is a general lack of knowledge and understanding about the constitutional division of powers as well as about government policies and international agreements, not only among the population but even among lawmakers themselves. Further, there is a growing anti-democratic trend for the ruling party SWAPO, with its current two-thirds majority in the National Assembly, to become identical with the state. During the many years that SWAPO led the struggle ‘to be born a nation’ it was recognised as the sole authentic representative of the Namibian people by the United Nations. This denied recognition to other social players and created an exclusivist mindset prevailing in the ruling party, which has yet to democratise and overcome the siege mentality that criticism or opposition signals an enemy force that must be crushed. The unresolved fate of hundreds of ‘disappeared’ party members accused of being spies during the years of exile nurtures a culture of fear among the perpetrators, today’s political elite, and the survivors. Character assassination has replaced physical torture as a means of stilling open and critical debate.

The lack of understanding of or respect for constitutional democracy is evidenced in mounting attacks on judges and the independent media as well as the ongoing campaign for one-party rule through the reservation of government posts for party loyalists.²¹

Civil society and the National Assembly
 Participation through the speaker

The official view is that:

"The Speaker represents the National Assembly in all its powers,
functions and dignity within and outside the Chamber and s/he is also responsible for presenting the Parliament Budget Vote in the Chamber. The Speaker assumes the highest seat in the House and is the primary presiding officer, responsible for the control and order of the House. In executing these functions the Speaker ensures that the Standing Rules and Orders are applied and adhered to.\textsuperscript{22}

For these reasons, the speaker can and should play a significant role in bringing parliament closer to the people. In the case of the current speaker, Moses Tjitendero, the general opinion is that he is genuinely doing his utmost to have as much civil society participation as possible. However, according to some civil society leaders, his efforts are far removed from what is actually needed to promote democracy in Namibia.

According to some of the NGOs interviewed, parliament – especially the speaker – tries hard to bring its work closer to the people, but the Office of the Speaker often lacks insight into what is needed. On the one hand, the speaker provides education on the workings of parliament to communities through donated computers; however, on the other hand, it is often still impossible to get hold of the order sheets on a daily basis.\textsuperscript{23}

The speaker himself paints a rosy picture of parliament's and his own interaction with civil society. All parliamentary sittings are open to the public. Also, the media – print and broadcast, state and independent – are widely used to broadcast the activities of parliament to the people. In addition, the speaker goes on a yearly tour of the country on a so-called parliamentary bus. Through this bus, which is very well equipped, the people of Namibia have the opportunity to ask the speaker questions and through a video link-up they can talk to the prime minister and other MPs. Because the Namibian parliament is a mere 13 years old, with no parliamentary tradition in the country, great emphasis is placed on educating civil society about the functions, duties and opportunities of parliament.

The speaker is also a great advocate of information technology and wants to promote its use as widely as possible. He would also like to establish a dedicated radio channel to report on parliamentary activities. And he wants to physically enlarge the parliamentary building in order to allow for greater participation from civil society. Tjitendero is slightly concerned about the increased workload of parliamentarians due to the demands of the African Union (AU) and the New Partnership for Africa's Development (Nepad), but believes that parliament can create a sufficiently enabling environment for participation by civil society through research staff and access to the internet. He seems to be genuinely
Namibia country report

dedicated to promoting interaction between parliament and civil society. Perhaps Tjitendero is slightly naive as to the situation he is dealing with, specifically in terms of SWAPO dominance and the lack of genuine democracy in Namibia.24

Portfolio committees

Portfolio committees are supposed to be the vehicles for public input into the legislative process and to allow for detailed discussion among MPs, which is not always possible in the National Assembly. They provide an opportunity for MPs to scrutinise proposed bills in detail and to allow experts and interested members of the public to provide their input. Anyone is allowed to attend portfolio committee hearings. The meetings are advertised in the local newspapers, more or less a week in advance.

According to Hubbard:

Whilst the concept of Parliamentary hearings is a very positive one, there is a question mark over the strength of the committee influence. Up to now, it is fairly rare for bills to be amended once they reach parliament – perhaps partly because the ruling party controls a two-thirds majority of the seats in the National Assembly.25

Despite some significant interest and participation in the portfolio committees, the CSOs interviewed do not see them as the best or only way in which they can influence government policy or indeed the legislative process. As indicated above, by the time the bill reaches the committee process, most of the important decisions have been taken. It would be of more use if civil society could have input at the CCL level. As Hubbard points out:

... what is difficult about the overall process is that the most crucial portions of it – the movement between the original draft bill and the bill which is ultimately tabled in Parliament – is so inaccessible. Once a bill is tabled, and thus available to the public once again, the time for action is short and it is more difficult to re-open genuine debate on points that are in some respects already ‘decided’.26

Civil society and the National Council

In 2000, the National Democratic Institute for International Affairs (NDI) (see below) and the National Council carried out an extensive survey on public
participation in the legislative process. With regard to the National Council, the report of the survey stated:

The constitutional role and functions of the National Council provide a practical framework for taking the Parliament of Namibia closer to the people. Since members of the National Council are directly elected from regional councils, the institution is unique in the legislative process, as it is the only legislative institution with membership representing geographical constituencies in Namibia. Within this context, the National Council provides a forum for regional debate and consensus, thereby contributing to increased public participation in the legislative process.

The survey, however, found that people were frustrated by the lack of communication between the members of the National Council and the regions:

However, there was equally a unanimous view that little and sometimes no public participation was taking place when these elected representatives or officials travelled to the regions. It was observed that often the regions are lectured by some government official, often in a hurry, or an elected representative who is not ready to take a position on a particular issue.

Public hearings often occur at short notice and despite the fact that they are held in the regions, they are often still very far away from the majority of the people. In addition, it was found that the elected representatives would rather listen to the advice of ‘experts or consultants’ and that public hearings were mere window dressing. However, portfolio committee hearings were still seen as the most effective way of facilitating wider participation in the legislative process.

The survey further found that access to information about the legislative process was limited. Documentation sent out by parliament seldom reaches the general public. The only consistent source of information is radio, television and newspapers. This implies that the public can only give limited input, as they are not properly informed.

In the final analysis, it would seem as if the National Council should be an excellent vehicle for public participation in the legislative process and that the institutions to involve civil society exist, but work imperfectly. It will take serious commitment by all the actors involved to make participation both effective and relevant.
The media

Many analysts consider the media to be the fourth pillar of any democratic state, together with the legislature, executive and judiciary. They are supposed to perform a watchdog role over the other three. Freedom of the press is enshrined as a fundamental human right in the Constitution of Namibia. The media therefore clearly have a very important role in disseminating information to the people of Namibia. The proceedings in parliament are covered in a variety of media, including television, radio, newspapers and on the internet.

The state-owned national broadcaster, the Namibian Broadcasting Corporation (NBC), runs programmes on parliament on both TV and radio. The NBC radio services reach about 90% of the Namibian population and its television service reaches about 45%. The state-owned newspaper, New Era, reaches about two per cent of the population. There are a number of privately owned newspapers in Namibia, including The Namibian (reaching 10% of the population), Die Republikein (7%), The Windhoek Observer (4%) and Allgemeine Zeitung (1%). The portfolio committee hearings are advertised in these newspapers, which also give regular coverage of proceedings in parliament.

According to the editor of Die Republikein, the newspaper has survived the transition from South African administration to SWAPO rule, and has established itself as an independent, critical publication that has a good working relationship with government. In 1996, the controversial Privileges and Immunities Bill on media freedom was tabled in parliament. Great concern was expressed by several journalists that two clauses in particular would curtail media freedom, as they would have made it a punishable offence for the media to report from any confidential document or parliamentary committee. However, as the result of a letter explaining the potential dangers of the clauses written by the editor of Die Republikein, the prime minister personally ensured that they were scrapped. This is a rare example of civil society being able to influence directly the content of a bill.

Community radio stations are only now beginning to broadcast in Namibia, with the majority based in Windhoek or in the north of the country. These stations could allow far more coverage of parliamentary affairs – and in local languages, what’s more – however, it will take a while for them to establish themselves.

The Media Monitoring Project Namibia’s (MMPN’s) annual report paints a bleak picture of the state of the media in Namibia. It reports frequent and sustained attacks by government against the independent media. The NBC has effectively become a government mouthpiece. The president took over the
Strengthening parliamentary democracy in SADC countries

portfolio of minister of information and broadcasting in September 2002 and promptly took all foreign programmes off the air in favour of reruns of SWAPO rallies. However, after significant public outcry, this decision was reversed.

It has become a trend throughout Namibia that, as soon as criticism of the government surfaces in the press, it is branded as foreign and unpatriotic. Furthermore, contact between the government and the media has become more limited:

*It has become increasingly difficult for the independent media to get information or comment from the power structures. Government used to host weekly Cabinet briefings for the press and the diplomatic corps. This practice was suspended just before the 1999 elections.*

In an attempt to silence the increasingly critical *The Namibian*, government withdrew all state advertising from the newspaper. However, it remains the most widely read paper in the country. The editor reports that the ban on advertising did not affect the paper's revenues significantly.

It is interesting to note that parliament does not feature as one of the top ten topics in either the NBC television or radio news, whereas it certainly does in all the newspapers. Considering that more people have access to radio and television broadcasts and that only about 10% of the population read the newspapers, it follows that Namibians in general are not that well informed about proceedings in parliament.

There also seems to be little room for critical analysis of political developments in Namibia. Again according to the MMPN report, Namibia leans towards hierarchical journalism. This means that a person is only deemed authoritative if he/she holds an official position. The opinions of ordinary people about current affairs are seldom heard. The NBC regularly quotes the president rather than the voices of ordinary citizens, which "means that one person is sourced nearly as often as the widest group of sources".

**The experience of specific NGOs**

According to Daniels:

*Namibian civil society is not well organised and does not utilise the public space provided by the Constitution. Coupled with the co-option of a large number of community activists in government positions, this has increased the imbalance in power relations. Namibians are very reluctant*
to speak out on issues of public interest due to the fact that they could be labelled as ‘unpatriotic’ and many are dependent on politicians for their livelihood.\textsuperscript{35}

In many ways, there seems to be a lack of connection between the provisions made by parliament, the speaker and government for civil society to participate and the ability of civil society to actually reach its goals in lobbying and in the legislative process. Despite the country’s liberal constitution and the best efforts of some actors to truly democratise Namibian society, real action and change seem to often fall through the gap.

This observation is made on two levels. First, the behaviour of parliamentarians and government officials seems not to reflect the spirit of the constitution. Within the space created by the constitution for government and parliament, room has been found for undemocratic thinking and practices. This is probably due to the immense power imbalance between SWAPO and the rest of the political parties.

With power comes a certain arrogance that allows for little opposition, criticism or outside participation. In addition, the fact that SWAPO still seems to maintain attitudes and practices that were necessary during the independence struggle, rather than transforming itself into a true political party, means that constructive criticism is not a concept encouraged within the party.

On a second level, the gap between constitutional provisions and true participation is noticeable in the ability of civil society to participate. Even with the best intentions possible, the speaker cannot force constructive participation if citizens have a low level of understanding of the legislative process and their rights as citizens. It seems as if this situation suits the ruling party, as little is done to promote civil education at school level.

The experience of some of the active NGOs in Namibia, as gleaned from interviews, illustrates the above.

\textbf{The Legal Assistance Centre}

The Legal Assistance Centre (LAC) is a public-interest law firm dedicated to human rights. It was established in 1988 and was initially primarily concerned with apartheid human rights abuses. Since independence, it has become involved in numerous cases and now also focuses on research and policy development. It also does community education.

In general, it is seen as an NGO that has a good working relationship with government; however, it recently gained quite a negative reputation (from the
government’s perspective) from its involvement in the Caprivi Strip secession case. In addition:

Serious confrontational incidents have occurred between the government and the LAC on the construction of the Epupa Hydro Electric Power Plant on the Kunene River. The LAC had supported the Ovahimba’s objection to building the hydropower plant in the area, as the whole scheme would submerge their ancestors’ graves. The LAC decided to assist the Ovahimba in their fight by providing legal advice. The government, however, denounced the LAC as unpatriotic and that its motives emanated from across the borders.36

The LAC’s most effective lobbying has been within the realm of gender and family issues. In this field, it is seen quite favourably by government. It forms part of (and serves as mouthpiece for) an umbrella organisation called Multi Media Campaign (MMC), which is chaired by the minister of information and broadcasting. The MMC was closely involved in drafting the Domestic Violence Act, which recently became law. It also played a role in commenting on and influencing the drafting of the Maintenance Act and the Combating of Rape Act. During the debate on the Domestic Violence Act, some MPs showed a shocking lack of knowledge regarding domestic violence. One MP argued that women bewitched their husbands with African juju and herbs so that they could not maintain an erection and therefore the Domestic Violence Act should also protect men against the witchcraft practices of women.37

The fact that these acts now finally exist is a major victory for a number of NGOs that have been lobbying for many years to reach this point. Although all three acts can have a significant impact on the well-being of women in Namibia, there seemed to be little urgency from the side of government to finalise them. Generally, the legislative agenda is unpredictable. Lobbying for the Combating of Rape Act started well before independence, but it finally took media attention on some brutal rapes in Windhoek to move MPs to finalise the bill. According to Hubbard:

[The government] gave law reform on domestic violence a higher priority after a particularly horrific case where a man allegedly murdered his wife, the mother of two small children, and then dismembered her body and cooked some of her body parts. The case similarly inspired a highly-visible public outcry, which – although not the first such case or the first such demonstration – gave significant impetus to law reforms on domestic
violence. The ability of the government to respond to particular incidents and public sentiments is praiseworthy, but the process is somewhat unpredictable since some 'public outcries' seem to capture the government's attention, but not others.\textsuperscript{38}

This points to the very important role that the media have to play in pushing MPs towards listening and reacting to public sentiment. The NGO community should make use of this tool in its campaigns for legislative changes.

From interviews with the speaker, MPs and government officials and from literature on proceedings in parliament, one gets the impression that participation in the legislative process is encouraged and well catered for. However, in practice, participation is not that simple. As Dianne Hubbard from the LAC explains:

\begin{quote}
I can say that the biggest obstacle in our work is getting accurate information from Parliament on a variety of issues. Since we find this so difficult as persistent lawyers, it must be well-nigh impossible for the average citizen. To give just one small example, it is difficult to find out what is on the agenda for debate in advance, and since many agenda items are postponed, it is hard to be present for debate on a particular issue without wasting enormous amounts of time going to Parliament on days when the scheduled debate does not in fact happen. As a result, few members of the public ever observe the proceedings (and the televised summary does not give the true flavour of what goes on).\textsuperscript{39}
\end{quote}

However, a greater obstacle is the official process of introducing a bill in parliament. As explained above, a great deal of the work on the bill occurs outside parliament. The CCL and the cabinet itself have a far greater influence than the portfolio committees can ever have, and yet the deliberations of the former bodies are not open to the public, nor are any public records kept of their meetings. And yet the portfolio committees could play an important role in fine-tuning bills. According to Hubbard:

\begin{quote}
On the plus side, we have had successful contact with some of the Parliamentary Committees (together with other members of civil society), where we managed for example to secure multiple amendments to the Combating of Rape Act. We have on a number of occasions distributed lobbying materials, and seen from the gallery that these were being read by individual MPs.\textsuperscript{40}
\end{quote}
Strengthening parliamentary democracy in SADC countries

Based on the experience gained on how difficult it was for a well-organised legal team to make a submission to parliament and to actually influence the debate, the LAC is now in the process of writing an advocacy manual that it will distribute to NGOs and MPs. The hope is that this manual will give NGOs the tools to influence the legislative process and will give MPs insight into why public participation is necessary and useful.

This manual will form part of the many other civic education publications and activities that the LAC is already involved in. It is the LAC’s experience that people are very keen to form part of the legislative process, but do not have the necessary tools to participate effectively. In its experience, people are sometime afraid to make submissions, as they are not sure that they can articulate their concerns accurately or they feel intimidated by the formal procedures of parliament:

At the moment, we are trying to spread out the responsibility for helping the public understand the law by strengthening our community education programme. We already train community volunteers who can serve as resource persons in their communities, and we make extensive use of radio ... The goal is to encourage more people to have the confidence to present informed opinions on law reform proposals, and to ensure the people understand their rights under the laws which are already in force.41

The LAC also tries to fill the gap in research material that is available to both MPs and members of the public. When it does become involved in lobbying on a certain bill, it provides detailed background research to support all its suggestions. It finds that the only party that has on occasion contacted it for research support is the Congress of Democrats (CoD). SWAPO has enough funds to employ its own team of lawyers, but the Democratic Turnhalle Alliance/United Democratic Front (DTA/UDF) Coalition certainly does not. The LAC publishes its research in newspapers and also circulates short pieces to MPs directly.

Sister Namibia

"Sister Namibia is an autonomous, non-governmental women’s human rights organisation that works towards a society liberated from patriarchal domination in which all people have equal rights and opportunities and live in peace, prosperity and dignity."42 Furthermore:

|The organisation’s aim is to increase awareness among women, men and
Namibia country report

young people of the ways in which political, social, cultural, legal and economic systems of power control girls and women; and to oppose and challenge racism, sexism, homophobia and other discourses and practices that divide and oppress people. Sister Namibia was the first organisation in Namibia to become active in defending the human rights of lesbians and gay men.43

The fact that Sister Namibia campaigns actively on the rights of lesbians has made it very difficult for it to have a constructive relationship with the Namibian government, since President Nujoma has frequently described lesbians and gays as ‘unnatural’ and ‘against the will of God’. Members of his cabinet have made similar statements. Government officials interviewed stated clearly that they cannot be seen to work with a lesbian organisation, as it would simply not be proper.

Members of Sister Namibia “have been regularly harassed and kept under surveillance by Namibian government leaders. Women’s human rights defenders in Namibia who are active members of Sister Namibia, are subject to multiple layers of oppression based on their gender, sexual orientation and defence of human rights for lesbians”.44

Sister Namibia has nevertheless been very successful in promoting the rights of women and has played a key role in augmenting the presence of women in politics in Namibia. Its representatives argue that the specific economic position of women hampers them from participating in any form of politics:

The vast majority of women eke out a living as subsistence farmers, domestic workers or hawkers in the informal sector, while taking full responsibility for the reproductive work in their own households, often as single mothers who receive no maintenance payments from the fathers of their children. This depletes women’s resources for political participation in terms of money, time, energy and mobility.45

Its most high-profile campaign so far, and one that has stretched over many years with several different activities, is the 50/50 campaign. This calls for 50% female representation on party nomination lists and in zebra style, i.e. one female nomination followed by one male nomination, followed again by one female nomination, and so on. It is based on the global 50/50 campaign that was launched in New York in parallel to the UN Beijing Plus Five Review. It also builds on the Namibian Women’s Manifesto that was drafted in 1999 and that, among other things, called for 50% female representation in the Namibian government. The idea was to unite women across Namibia, regardless of party or ethnic
Strengthening parliamentary democracy in SADC countries

affiliation, in order to develop and lobby for legislative changes that would allow for gender balance in government positions.

However, despite a very good start, the process was somewhat undermined when leading SWAPO women withdrew their support from the manifesto because of the inclusion of the rights of lesbian women.46

The campaign rests on three pillars, namely research, training and lobbying. The research has analysed several case studies of how other countries have dealt with the inclusion of women in power structures. It has also taken an in-depth look at the Namibian Electoral Act to understand in which ways it could be changed to promote women’s participation.

The training involves several women from each of the different regions of Namibia. These women are trained in the basic elements of the Women’s Manifesto and the principles of the 50/50 campaign. They then go back to their regions and hold their own workshops, which aim at empowering women to understand the political process, their rights and ways in which women can participate.

As far as lobbying is concerned, Sister Namibia introduces ordinary women from the various regions to the parliamentary process and takes them on a tour of the building. It also tries to establish links with women MPs. Lobbying also takes place in the media and through petitions and marches to parliament.

However, during the years of campaigning, the organisation has experienced several problems. In the first instance, it was difficult to recruit women from the north. This is the traditional stronghold of SWAPO and it can only be assumed that women in this area were indoctrinated not to support the campaign: "Reaching out to the north proved difficult in all three phases of our campaign as this is a ruling party stronghold and many resident are suspicious of NGO activities of a political nature, which are quickly seen as party-political and therefore a threat to the ruling party, SWAPO."47

In addition, the constant attack on gays and lesbians by the ruling party hampered the project, as some organisations that are affiliated to SWAPO withdrew from the campaign. Also, the minister of women’s affairs refused collaboration due to the lesbian issue. Response from MPs was also disappointing, with only opposition parties attending contact meetings. Sadly, the Parliamentary Women’s Caucus proved disappointing too, as meetings with it failed to materialise, as did meetings with the Parliamentary Standing Committees on Governmental Affairs, and Human Resources and Gender Equality. However, some response was received from the Parliamentary Standing Committee on Petitions, which was obliged to recognise petitions handed in by the campaign.

Despite these setbacks, the campaign has been amazingly effective in raising
awareness of women’s representation as an issue. Every person interviewed knew about the campaign and most were in favour of it. Government officials said that they were aiming for 30% representation, as SADC commitments require. Copies of Sister Namibia’s publication were also seen in many offices, as were its campaign posters and pamphlets.

The Namibian Society for Human Rights

The Society for Human Rights has been active in Namibia since independence. The basis for its formation is sufficient for it to be at odds with the current SWAPO government. Its founder members are mostly ex-SWAPO detainees, who claim that their human rights have been violated during the liberation struggle. Although the Society for Human Rights is quite active, some of their claims could not be corroborated. This aspect has reduced its credibility among the population. Nonetheless, the organisation has thus far kept the human right spirit alive in Namibia. When a high-profile opposition leader was recently assassinated in Namibia, a quick telephone poll carried out by the NSHR found that people expected independent journalists to be the most likely targets of assassination attempts for political reasons, followed closely by activists and opposition leaders. Although this poll has largely been discredited for its unscientific basis and its dubious usefulness, it does point to a climate of political fear and intolerance in Namibia.

Phil ya Nongoloh of the NSHR sees the gap between civil society and parliament as being “like the gap between earth and the moon. The only real contact between the two occurs through the radio and TV. The independent community radio stations do a good job in informing the people of Namibia about current issues that should be debated”.

Of great concern is that political intolerance is greatly on the increase. According to the NSHR’s 2003 report, “the general civil, cultural, economic, environmental, political and social human rights situation in the country deteriorated even further between 31 July 2002 and 31 July 2003”. The main reasons cited for this deterioration include the increase in HIV infections, malaria and tuberculosis, poverty, food shortages and unemployment.

As with most other African states, HIV/AIDS has become a great concern. Namibia’s male life expectancy has dropped to 42 years. However, on a positive note, a nationwide rollout of anti-retroviral therapy finally started in 2003 with the help of the Global Fund.
A further cause of concern is that a third of Namibia's budget is spent on salaries, as a staggering 49% of the workforce is currently employed by government. Evidently this has some serious implications for the future growth of Namibia and on the political climate within the country. In the first instance, little of the budget can be allocated for capital expenditure. Also, education and other social services suffer under the restricted funds left in the budget. In a country where civil society education is of critical importance, the lack of funds further exacerbates a culture of political apathy.

Some civil society leaders interviewed expressed the concern that a culture of fear still exists among the electorate, which has its origins in the freedom struggle. As we have seen, during those years, no opposition to SWAPO's actions was tolerated and it is felt that this same pressure to support SWAPO at all costs has not disappeared in the new democracy. Second, the fact that the state is the largest employer implies that little opposition to SWAPO is likely, as it is the basic provider to the majority of the Namibian people.

The greatest reason cited for deteriorating civil and political rights in the Human Rights Report is therefore the fact that the state is the biggest employer, and that Namibia is virtually a one-party state.

Furthermore, the high incidence of intolerance of critical views, constant erosion of the independence of the judiciary, perceived or real [government] control of inter alia Offices of the Ombudsman, Auditor-General, Prosecutor General and Electoral Commission and other democratic institutions of the State did not support the allegations that Namibia is a democracy. Weak opposition and civil society organisations coupled with political affiliation of certain trade union federations with the ruling party reinforced this state of affairs.50

The National Democratic Institute for International Affairs

The NDI is an NGO funded by the US Agency for International Development working towards strengthening and expanding democracy worldwide. It provides practical assistance to civic and political leaders advancing democratic values, practices and institutions, and works with democrats in every region of the world to build political and civic organisations; safeguard elections; and promote citizen participation, openness and accountability in government.51

The present study has shown that the difficulties experienced in Namibia in achieving true participation by civil society lie in weaknesses in parliament that do not allow for effective participation and, second, weaknesses in civil society that
render it incapable of participating. Since 1990, the NDI has become involved in several programmes to address these two issues.

Recently, NDI's activities to strengthen the infrastructure of Parliament include management training and computer training for MPs and parliamentary staff. NDI is assisting in the development of a parliament web site, which contains legislative documents, links to other government web sites, contact information for MPs and explains the functions of each of the committees in Parliament. To enhance legislative and outreach skills, NDI provides training to MPs on legislative research and analysis, bill summaries and constituency outreach. NDI organises study missions for MPs to other countries in the region to observe their legislative processes, which can be used as models.

The NDI works with local non-governmental organisation partners to increase the interaction between civil society organisations, MPs and parliamentary committees in the legislative process. In its work with civic groups on public policy issues, NDI provides training on government ethics, the national budget and the media. NDI consults with groups regularly and offers guidance about parliamentary disclosure, the national budget process, advocacy, lobbying and media coverage of Parliament. NDI is working with community radio stations to increase their capacity to provide their listeners with news about important public policy issues. With NDI assistance, community radios now have the capacity to broadcast debates in Parliament and listeners can respond and transmit their views to Parliament via the radios.52

It is a great pity that the NDI is currently winding down its presence in Namibia. However, many of its programmes will be continued by the Namibian Institute for Democracy (NID).

The business community

The various chambers of commerce in Namibia are all united in one organisation, the Chamber of Commerce of Namibia, with headquarters in Windhoek. Branches are based throughout the country, but liaise closely with Windhoek. Currently, the president of the organisation is from Nampower. In fact, a very large percentage of the executive is from the public sector. This reflects the nature of economic activity in the country. As outlined above, 49% of the workforce is employed by the state.
Strengthening parliamentary democracy in SADC countries

The dominance of the public sector in the Chamber of Commerce means that it is very sympathetic towards SWAPO. According to one business leader interviewed, “public servants need to be party loyal to secure top positions”. This restricts lobbying to issues that SWAPO sympathisers would agree with and very few opposition views are brought forward under the umbrella of the chamber. The business leader interviewed compared the current situation to that of the Afrikaanse Handelsinstituut during the apartheid era: the chamber is in danger of becoming a rubber stamp of government policy and a limited organisation with limited potential benefits to its members: “Business has to align with SWAPO, else they won’t be able to get anywhere. The business community does not have enough clout to influence the political debate.”

Viewed more positively, the chamber can be seen as an ideal lobbying avenue, as the organisation has close ties to the ruling government elite. However, SWAPO is too big to allow for significant influence from the chamber – many other organisations and interest groups are in a similar position of being dominated by SWAPO loyalists. In the end, we would go so far as to say that influence ultimately depends on personal relationships with the president.

The Chamber of Commerce is in the process of creating a special office within parliament for lobbying purposes, but is currently experiencing monetary constraints, which may delay this project. In the interim, a special appointee is charged with liaising with parliament. The president of the chamber has a once-yearly interview with the Namibian president, during which he/she raises issues of concern. Current issues include those of cross-border trade, specifically trade with Angola, which is dropping due to old laws that are imposing heavy tariffs on Namibian exports; and value-added tax and other taxes that are hampering trade with South Africa. The chamber is encouraging government to take these issues up with its South African and Angolan counterparts.

Two to three times a year, parliament sends delegations to the major economic centres, like Walvis Bay, to discuss issues of concern with the business community. Recently, a delegation sent to Walvis Bay focused on development issues, the maintenance and expansion of the harbour, and the upgrading of the airfield and airport buildings. Such delegations are not concerned with technical issues and there are no public hearings on bills, but discussions rather focus on broader policy issues, like privatisation. Through these delegations, the individual members of chambers build up close associations with interested MPs. It is through these close relationships that the most effective lobbying takes place.

However, close relationships with ministries are seen as more important than those with MPs. In the case of Walvis Bay (which is the third most important growth area in Namibia), the relationship with the Ministry of Fishing is of the
utmost importance to the business community, as 70% of the town’s economy is based on the fishing industry. Given that Walvis Bay is the ministry’s only area of concern, a very close relationship exists. Through relationships such as this, the chamber feels as if government allows business interests to prevail. The interaction between the various ministries and the chamber involves very little ideology or rhetoric.
6. The role of political parties

SWAPO

Ever since the ruling SWAPO party managed to secure a two-thirds majority in the National Assembly of Namibia, the role of opposition parties has increasingly become marginalised and questionable.

In any democratic dispensation the main task of opposition parties is to serve as a check-and-balance to the ruling party, and by doing so present the ordinary citizens with political alternatives. The attractiveness of these alternatives depends, first of all, on its popular appeal and viability and, secondly, on the potential or capacity of opposition parties to transform themselves into ruling parties.  

On both these counts, the opposition in Namibia is not faring very well. Since independence, SWAPO has managed to gain significant ground amongst voters that previously did not find a home in the party. The two main opposition parties, the CoD and the DTA, can each only attract around 10% of the voters, in comparison to the 76% of SWAPO. This has significant consequences for the country.

The post-colonial perception of politics within the ruling parties, and among sections of their grass-roots supporters, often shows a blatant lack of democratic awareness and forms of neo-patrimonial systems. Tendencies to autocratic rule and politically motivated social and material favours or disadvantages are obvious ... The result of such general conditions is that the new system has little transparency. Those in power are at best prepared to be accountable only to themselves. Nonconformist thinking is interpreted as disloyalty, if not equated with treason ... A sustainable democracy calls for the consolidation of socially institutionalised and legal framework conditions, which enable the process of open political communication regardless of the persons in power. The challenge lies exactly there: the real test of a democracy is how peacefully and constitutionally a country carries out a change in its political leadership.
The culture of patronage has become so excessive that President Nujoma even announced that he would not tolerate any competition for his post, which will become vacant at the end of 2005. Candidates aiming for the post were accused of being driven by personal ambitions and self-aggrandisement. By appointing his successor, Nujoma hopes to hold on to power by continuing to exercise control behind the scenes. It is expected that he will stay on as head of SWAPO.

Many people interviewed during the study blamed the party list system for the political problems in Namibia. The top 30 on the SWAPO election candidate list are directly nominated by the president. One has to question whose interests these people serve – those of the people of Namibia or of the president? Allegiance to the party is seen as the main function of all parliamentarians. The party retains the right to dismiss any MP that does not toe the line. According to a civil society leader: “In this sense, it is misleading to say that Namibia is a democracy. It is ruled by a party mafia.” These sentiments were also expressed by the member of the business community interviewed: “There is a mafia hierarchy within SWAPO, which listens to very little outside input. The trade unions are not of great political influence and quite ineffective.”

In addition, concerns were raised that the Namibian electorate and political parties have not been able to move beyond independence struggle rhetoric. Voting is still predominantly based on past credentials and very little attention is paid to prospective policies. Any opposition is attacked in terms of who the criticising person is, rather than what the person is saying. The result is that: “In a country with too strong party political influences, one doubts the fairness of debating and participation in the legislative process.”

In this context, a journalist interviewed argued that democracy in Namibia no longer embraces all political parties, but that what democratic debate there is actually occurs within the SWAPO structures. In order to influence policy, one has to be a party member. Another concern raised was that the SWAPO leadership consists of ageing struggle leaders and that little is done to ensure that upcoming young leaders find their feet in the party and are adequately educated in democratic processes: “SWAPO should introduce a quota system for new intake to the party – affirmative action for the youth.” Another civil society leader echoed these sentiments: “[T]here is great fear within SWAPO and everyone tries to remain on the right side of the top leadership. Little room is left for young SWAPO leaders to move up. New ideas are not welcome.”

Although there seems to be nothing to balance the power of SWAPO within Namibia, Windhoek is actively participating in regional organisations like SADC and the AU, and it also forms part of the Nepad initiatives. Perhaps some of
SWAPO's worst practices could be inhibited by Nepad's peer review system: "Although the peer review system brings some hope that some of the most dire practices of SWAPO will be placed under the spotlight – it is appalling to think that leaders from other countries exercise a greater control over elected leaders. There is no responsibility to the electorate." 61

The opposition parties

According to one civil society leader interviewed, "the opposition is useless, lazy and fragmented". 62 It certainly has not been able to make any inroads into SWAPO support and there is no real hope that it will be able to do so in future elections.

The DTA/UDF Coalition

The DTA/UDF Coalition seems to be on a slippery downward slope. The opposition secured 46% of the support during the independence elections, with the DTA's total being 28.6%, and now the DTA combined with the UDF can only win the support of around 10% of the electorate. During the most recent elections, it lost much of its support to the CoD (see below).

After the 1999 elections, a dispute ensued in parliament over which party should be recognised as the official opposition. Both the DTA/UDF Coalition and the CoD had gained around 10% of the vote. The speaker, however, chose to announce the DTA/UDF Coalition as the official opposition. The naming of the official opposition does not only imply recognition in parliament, but carries financial implications. The CoD was outraged by this decision. The speaker then decided not to recognise an official opposition, but rather to recognise the DTA/UDF Coalition as a senior party, as it had been represented for a longer period in parliament. By accepting this arrangement, the DTA/UDF Coalition effectively gave up its right to be consulted by the ruling party, as is the norm in most other parliaments. SWAPO now does not have to consult with the opposition and all the opposition parties find it increasingly difficult to make their voices heard during sessions. 63

The leader of the DTA/UDF Coalition, Katuutire Kaura, described the financial difficulty that his party was in. Due to these financial constraints, Kaura and his colleagues cannot report back to their constituencies, as they lack the staff and vehicles to be able to reach people in remote areas. He says that he therefore makes use of funerals and other social occasions to speak to the people. He seemed resigned to the fact that his party was probably not going to gain much
more support during the forthcoming elections, as the odds were entirely stacked in favour of the ruling party.

The Congress of Democrats

The CoD was established in protest against President Nujoma seeking a third term in office. Ben Ulenga resigned as high commissioner to the UK in protest against Nujoma's plans, and was also opposed to Namibia's military involvement in the Democratic Republic of the Congo. He launched the party in March 1999.

With the launch, there was considerable hope that there would finally be a political party that could challenge SWAPO. The fact that the CoD only managed to secure 10% of the vote was a huge disappointment to many observers and Namibians alike.

This disappointment was exacerbated by the fact that the CoD managed to gain votes at the expense of the DTA/UDF Coalition rather than SWAPO. Many blame the poor showing on the effective manner in which SWAPO discredits any opposition, while others were disappointed with the CoD leadership. It also seems as if the party has now fallen into financial difficulty and is getting involved in much the same kind of infighting as the DTA/UDF Coalition.

The Republican Party

A new political party, the Republican Party, is aiming to address the issue of politics running along ethnic lines instead of being concerned with policies. Although not yet represented in parliament it hopes to attract voters from all walks of life by presenting them with sound policies, rather than appealing to them with emotional rhetoric. It will be most interesting to watch the progress of the party, as, at the moment, it still seems to be dominated by politicians who served under the previous government.

During the interview with the Republican Party, it became apparent that the farming community of Namibia is following developments in Zimbabwe very closely. Its members are divided in their opinion as to whether a strong opposition - like the Movement for Democratic Change in Zimbabwe - is not ultimately to blame for land-grabbing policies. They believe that in the Zimbabwean case, white farms were occupied and distributed to war veterans in an effort by the governing party to remain in power and in favour with the electorate. Some farmers in Namibia would rather stick to the status quo and allow SWAPO to remain largely unopposed and for Namibia to remain a de facto one-party state, as it is perceived that this will ensure long-term stability.
This position has been reflected in the media too. In a recent article in The Economist, the same argument can be found:

But even though Mr Nujoma and Mr Mugabe are close allies, few expect Zimbabwean troubles in Namibia, or anyhow not just yet. Unlike Mr Mugabe, Mr Nujoma does not feel threatened by his feeble domestic opposition, so he does not need to use land reform as an excuse to crack heads. Diplomats in Windhoek argue that Mr Nujoma's frequent outbursts belie his government's moderate policies. He often rants against homosexuals, for example, but has done little to persecute them.\footnote{64}

The Monitor Action Group

The leader and only parliamentary representative of the Monitor Action Group (MAG), Kosie Pretorius, is a true relic of the past. He was a cabinet member under the apartheid government and somehow managed to survive the three elections since independence. He is the only MAG MP. In fact, the MAG did not receive enough votes to have an MP, but finally got in on the leftovers.

Pretorius has an interesting approach in that he has decided he has neither the funds nor the energy to canvas more votes, so instead tries to convince his fellow MPs of the soundness of his position. He believes that he has been quite successful in this process, but this is obviously not measurable.

Pretorius also believes that the decline in the opposition is due to funding. He has quoted Robert Mugabe in saying that the ruling party has no excuse for losing an election, as it has all possible resources at its disposal. The small amount of state resources the opposition gets causes infighting amongst the DTA/UDF Coalition, whose members frequently want to break away or realign in order to get more of the little money that there is.
7. Conclusion

The Parliament of Namibia was established by one of the most liberal constitutions in modern history. Several avenues exist in theory for civil society participation in the processes of government. However, participation can only occur if there is a willing, informed and capable civil society on the one hand, and a willing and proactive government on the other. The present study has found that in both these aspects, Namibia still has a long way to go, and is therefore still some way from being a true participatory democracy.

However, both sides are taking concrete steps towards this goal, although the extent and sincerity of the government’s commitment is questionable. In order to publicise the work of MPs, parliament relies to a large extent on the media. The press is welcome to attend all sessions and the NBC broadcasts highlights of the day’s proceedings during a half-hour slot in the evenings. Newspapers cover developments in parliament quite extensively. Also, all portfolio committee hearings are advertised weeks in advance in the major newspapers. The study has shown that media interest plays a crucial role in informing participants on both sides of parliament on the issues under discussion and often pushes MPs towards finalising work on bills.

Daily proceedings are recorded in Hansard. The speaker is dedicated to publicising the work of parliament through the internet and is also planning on developing more dedicated radio coverage of proceedings. This still means that only a limited section of the population has access to information about parliament – not all Namibians have access to the internet, televisions and newspapers.

With this in mind, and due to the fact that many regions and communities in Namibia are extremely isolated and geographically far removed from Windhoek, only a small segment of the population has real and daily access to parliament. Given that the ruling party is extremely wary of NGO criticism, no enabling climate has been created to push for greater participation in or understanding of parliament, either by NGOs or by the people at large. This means that the people and organisations that participate are a mere handful. Typically, such people are highly educated, urban based, extremely motivated and driven by ideological conviction. People in the rural towns who have little education and who struggle to make a living are the true outsiders, with women probably more so than men. Such people have no direct access to parliament, political parties do little if any
constituency work and the media do not give adequate coverage to either inform or encourage participation.

Efforts towards greater civil society participation are therefore solely driven by the few NGOs that do engage; however, their resources are limited. Opposition parties are doing little to promote their own cause, let alone that of NGOs. The government has the means, financially and physically in terms of numbers, vehicles and resources, to promote civil education; however, currently it is not interested in promoting critical voices.

One senses that Namibia is on a knife’s edge: on the one hand, the constitution provides for a strong democratic government, and yet the actors are not participating as the constitution envisages. Some MPs and NGOs are passionately promoting a government–civil society partnership that will work for the good of all Namibians, but they are few in number. The majority of Namibians are in danger of being overwhelmed by apathy and, more sinisterly, by a fear of the ruling elite. In order to rebalance the situation in favour of a strong, participatory civil society, the following recommendations should be kept in mind.

- The speaker should spend significant amounts of time and resources to ensure that proceedings in parliament become predictable, that information regarding bills, readings in parliament and portfolio committee hearings is provided, and that parliamentary activities take place according to schedule. This will allow NGOs to prepare more effectively and make their contributions more pertinent.
- Donor and state funding should be directed towards civil education at all levels.
- Ways should be found to engage MPs and other government officials more regularly and to build personal relationships between activists and officials.
- Broadcasts of proceedings in parliament should not merely cover the antics of MPs, but could perhaps present summaries of bills currently under discussion, together with some background information. Interactive radio and TV shows could allow for comments from citizens on bills.
- Opposition parties should reawaken to their crucial role in the consolidation of democracy in Namibia and actively try to support NGOs, especially those that are involved in civil education. Perhaps they could seek alternative sources of funding in order to allow for sustained constituency work.
Notes


3 Interview with Evelyn Zimba & Delia Rothsbotham, Legal Assistance Centre, 20 October 2003.

4 Parliament of Namibia, A Parliamentary Guide to All Members of the National Assembly, Windhoek.

5 No show, no pay!, The Namibian, 21 November 2001.

6 Parliament of Namibia, A Parliamentary Guide to All Members of the National Assembly, op cit.


9 Khaxas E & L Frank, Promoting women’s participation in politics and law reform by collectively developing specific demands for affirmative action legislation with regard to elections at all three levels of government. Revised paper first presented at the conference on Gender, Citizenship and Governance in South Asia and Southern Africa organised by KIT and Sakhi, in Cochin, Kerala, India, 15-17 October 2003, Sister Namibia.

10 Ibid.

11 Interview with Stephen Hywniak, Walvis Bay Chamber of Commerce, 20 October 2003.


13 Interview with Stephen Hywniak.

14 Interview with Mrs P Ithana, Attorney-General of Namibia, 24 October 2003.

15 Hubbard D, Gender and law reform in Namibia, Paper prepared for the Consultation Meeting on Gender and Governance, Royal Tropical Institute, Amsterdam, 23-24 September 1999.

16 According to the attorney-general, the NGO umbrella organisation participates during this initial phase by being invited to comment on draft bills. However, other CSOs interviewed argued that this organisation no longer exists.

17 Hubbard D, Gender and law reform in Namibia, op cit.

18 Khaxas E & L Frank, Promoting women’s participation in politics and law reform, op cit.


20 Ibid.

21 Khaxas E & L Frank, Promoting women’s participation in politics and law reform, op cit.
23 Interview with Evelyn Zimba & Delia Rothsbotham.
24 Interview with Moses Tjitendero, Speaker of Parliament, 21 October 2003.
25 Hubbard D, Gender and law reform in Namibia, op cit.
26 Ibid.
28 Ibid, p12.
29 However, the constitution does not include a right of access to information. Government has used this to withhold information.
31 Interview with Chris Jacobie, editor of *Die Republikein*, 22 October 2003.
33 Interview with Gwen Lister, editor of *The Namibian*, 24 October 2003.
36 Tonchi V, *Civil Society and Democracy in Namibia*, op cit.
38 Hubbard D, Gender and law reform in Namibia, op cit.
39 E-mail correspondence with Dianne Hubbard of the LAC.
40 Ibid.
41 Hubbard D, Gender and law reform in Namibia, op cit.
44 Ibid.
45 Khaxas E & L Frank, Promoting women’s participation in politics and law reform, op cit.
46 Ibid.
47 Ibid.
48 Tonchi V, *Civil Society and Democracy in Namibia*, op cit.
50 Ibid, p 11.
51 [http://www.ndi.org](http://www.ndi.org)
52 Ibid.
53 Interview with Stephen Hywniak.
56 Interview with Stephen Hywniak.
57 Regional Governor of Kunene, quoted in Mijiga F, *Public Participation in the Legislative Process*, op cit, p 7.
58 Interview with Chris Jacobie.
59 Ibid.
60 Interview with Liz Frank.
61 Interview with Phil ya Nongoloh.
62 Ibid.
63 Interview with Chris Jacobie.
Appendix: List of interviews conducted

20 October 2003
09h00 – Mr Stephen Hrywniak, Walvis Bay Chamber of Commerce
11h00 – Mr Adam Hartman, Namib Times
16h00 – Ms Evelyn Zimba & Ms Delia Rothsbotham, Legal Assistance Centre

21 October 2003
10h00 – Mr Moses Tjitendero, Speaker of Parliament
11h00 – Mr K Kaura, Leader of DTA/UDF Coalition
12h00 – Mr Gerry Munyama, Namibian Broadcasting Corporation
14h00 – Mr Phil ya Nongoloh, Namibian Society for Human Rights
15h00 – Mr J W K Pretorius, Monitor Action Group
16h00 – Ms Liz Frank, Sister Namibia

22 October 2003
10h00 – Mr Chris Jacobie, Editor of Die Republikein
11h00 – Judge John Walters, Prosecutor-General
14h00 – Mr W Haikali, Media Institute of Southern Africa
15h00 – Judge S Mtambanengwe, Acting Ombudsman
16h00 – Ms Jacquiline Pack, United Nations Development Programme

23 October 2003
09h00 – Mr N Hamunime, Namibian Press Association
10h00 – Mr Joseph Hengari, SG Mine Workers’ Union
11h00 – Mr Tangeni Nuukuawo, Friedrich Ebert Stiftung
14h00 – Ms Justine Hunter & Mr Theunis Keulder, Namibian Institute for Democracy
16h00 – Mr Jackson Mwalundange, Forum for the Future

24 October 2003
09h00 – Mrs P Ithana, Attorney-General
10h00 – Ms Gwen Lister, Editor of The Namibian
11h00 – Mr Henk Mudge, Republican Party
12h30 – Afternoon in parliament, visiting Research Department, Hansard Division and Committee Services
References


Hubbard D. 1999. Gender and law reform in Namibia, Paper prepared for the Consultation Meeting on Gender and Governance, Royal Tropical Institute, Amsterdam, 23–24 September 1999.


Khaxas E & L Frank. 2003. Promoting women's participation in politics and law reform by collectively developing specific demands for affirmative action legislation with regard to elections at all three levels of government. Revised paper first presented at the conference on Gender, Citizenship and Governance in South Asia and Southern Africa organised by KIT and Sakhi, in Cochin, Kerala, India, 15–17 October 2003, *Sister Namibia*.


NEWSPAPERS
*The Namibian*, MP rises to the occasion with erection claims, 30 October 2002.

WEBSITES
http://www.amnestyusa.org/women/defenders/namibia.html
http://www.ndi.org
List of acronyms

AU  African Union
CoD  Congress of Democrats
CCL  Cabinet Committee on Legislation
CSO  Civil society organisation
DTA/UDF Democratic Turnhalle Alliance/United Democratic Front
FPTP  First-past-the-post
LAC  Legal Assistance Centre
LRDC  Law Reform and Development Commission
MAG  Monitor Action Group
MMC  Multi Media Campaign
MMPN Media Monitoring Project Namibia
MP  Member of parliament
NBC  Namibian Broadcasting Corporation
NID  Namibian Institute for Democracy
NDI  National Democratic Institute for International Affairs
Nepad New Partnership for Africa's Development
NSHR Namibian Society for Human Rights
NGO  Non-governmental organisation
PLAN People's Liberation Army of Namibia
PR  Proportional representation
SADC Southern African Development Community
SWAPO South West Africa People's Organisation
UK  United Kingdom
UN  United Nations
US  United States
SAIIA's strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria.