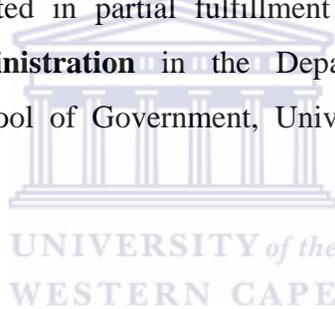


AN ASSESSMENT OF THE DRAFTING OF THE 2005 OVAMBANDERU CONSTITUTION: ‘PROCESS AND INSTITUTIONAL CAPACITY’

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A Research Report submitted in partial fulfillment of the requirements of the **Masters in Public Administration** in the Department of Economics and Management Sciences, School of Government, University of the Western Cape, South Africa.



Supervisor: Professor J.J. Williams

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TITLE: AN ASSESSMENT OF THE DRAFTING OF THE
OVAMBANDERU CONSTITUTION: ‘PROCESS AND
INSTITUTIONAL CAPACITY’

By: N. Kaukuata-Tjitunga

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ABSTRACT

This research report sets up a model of policy development at Traditional Authority level in Namibia that is then used in examining the Ovambanderu constitutional case. Reference to the Generic Model, as used by de Coning (2000) and the Moore (1995) Strategic Triangle is not new or original to this thesis. These models have been used elsewhere and were considered as appropriate for this case study due to the complexity of the issues under consideration.

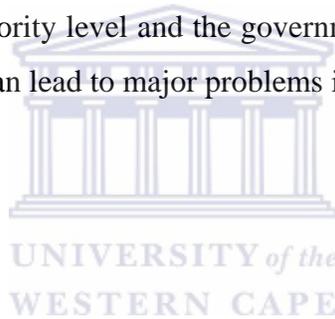
This study attempts to demonstrate the importance of applying public policy models and theories to policy making in Namibia. Firstly, the author has applied the generic model to the Ovambanderu case to elicit information pertaining to the process followed in drafting the constitution. Secondly, the Moore Strategic Triangle was used in furthering discussion on the importance of considering phases and stages in the public policy process, which touch on such aspects as political feasibility, substantive value and administrative feasibility (Moore, 1995). The emphasis here was on the importance of dynamism in the policy-making process, not as a once off event but as an ongoing process.

This research report shows that public policy/constitution making needs specialised skills in order for it to be a success. Capacity needs to be sourced and used

appropriately, while objectives of the policy/constitution are communicated clearly to the stakeholders. Again the fear amongst the community that once a policy/constitution is implemented it becomes binding and difficult to change needs to be addressed by clearly informing people that a policy remains a statement of intent until it is put to use and once it is implemented there is always room for improvement on issues that may create problems for the affected parties.

Another important lesson is the fact that public policy making has been and remains a process as it involves bargaining, issue prioritisation, issue filtration, advocacy, reporting and consultation before decisions are made.

The Ovambanderu constitutional problem has now set a scene for better policy planning at Traditional Authority level and the government needs to consider this as a serious phenomenon that can lead to major problems if ignored.



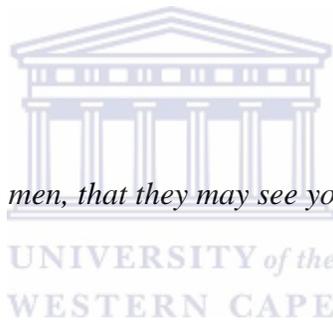
DEDICATION

This research report is dedicated to the memory of my late **Mother** and **Father**,
FRANCINA NGAJOZIKE KATJIPOTU-KAUKUATA (1939-1982) AND
IMMANUEL JAPAUERUA VIRORE KAUKUATA-TJITEMISA (1925- 2006).

May their souls rest in eternal peace.

Matthew 5: 16

*Let your light so shine before men, that they may see your good works and glorify
your Father in Heaven*



In the name of the Father , the Son and of the Holy Spirit, Amen.

AN ASSESSMENT OF THE DRAFTING OF THE OVAMBADERU
CONSTITUTION: ‘PROCESS AND INSTITUTIONAL CAPACITY’

Naomy Kaukuata- Tjitunga

KEYWORDS

1. Constitution
2. Public policy
3. Consultations
4. Public values
5. Self-interest
6. Public policy process
7. Political feasibility
8. Administrative feasibility
9. Substantive value
10. Public choice.



DECLARATION

I declare that *An assessment of the drafting of the Ovambanderu constitution: 'Process and Institutional Capacity'* is my own work that has not been submitted for any degree or examination in any other university and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Full name: Naomi K Kaukuata – Tjitunga.

October 2008

Signed:



ACKNOWLEDGMENTS

My first acknowledgments and gratitude go to my supervisor, Prof J.J. Williams, who assisted me from the initiation of this thesis through to its end. May his resourcefulness spin off to those who appreciate the work he does with diligence.

I secondly record my indebtedness to all the other lecturers of the School of Government, UWC, and especially to Prof Bardill, Prof de Coning and Prof Mphaisha who inspired me in their teaching of the following models: Public Policy and Change Management, Public Policy Management and Analytical Research Methods.

My third debt of gratitude goes to His Royal Highness (the late) Paramount Chief of the Ovambanderu Community Mr. Munjuku Nguvauva 11 who accorded me the opportunity to gather information from his people for the purpose of this thesis.

I fourthly wish to thank the following people for their contribution to my research report in terms of information sharing relating to the Ovambanderu constitutional process, the history of the Ovambanderu people and all relevant secondary data needed in the preparation of this research report: His Royal Highness Chief Nguvauva II, Mr. Kauku Hengari, Mr. Ngondi Muundjua, Mr. Uahavi Kauami, Mr. Mbanjanda Nguvauva, Honorable Killus Nguvauva, Mrs. Karikondua Nguvauva, Dr Rukee Tjingaete, Mr. Cecil J Nguvauva, the former regional Councillor of Otjombinde Constituency, Mr. Uaonga Hoveka, the current Regional Councillor of Otjombinde Constituency, Mr. Matti Ndjoze and Senior Councillor Mr. Arnold Ripuree Tjozongoro.

My final gratitude goes to the School of Government library staff and, lastly, to my lovely children (Saapi, Uerii, Uatjavi, Ruja and Puu) for their continued support and encouragement, which has impacted positively on my studies. May the Holy Spirit guide them.

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CHAPTER ONE

1. INTRODUCTION: PUBLIC POLICY AND CONSTITUTION MAKING

The 2005 Ovambanderu constitution which was adopted with the hope to implement it in the same year was received with mixed feelings by some members of the community and could not be implemented as planned. A faction within the Ovambanderu community opposed implementation of the constitution for reasons only known to it. In pursuance of its interest, this anti-constitutional group applied pressure on the Ovambanderu Traditional Authority, and demanded the withdrawal of the adopted constitution, and proposed the drafting of a new one.

As the drafting of a new constitution appeared to be impossible, owing to factors such as time and cost, the Ovambanderu Traditional Authority refused to accept their proposition. The Authority felt that the constitution was valid and implementation had to take place. This became a conflicting situation between two: a group associating itself with the Authority and its constitution and another disassociating itself.

As failure in the implementation of a constitution or public policy, warrants a scientific study to explicitly determine the actual causes of the failure, this study focused on studying the constitutional process, and the institutional capacity organized, in respect of this task. Since both these aspects have a particular bearing on policy/constitution making and, if not properly organized, problems at implementation are in most cases inevitable. In spite of that, constitution- making is an intellectual pursuit that can be susceptible to human error; therefore, a study of this nature was considered necessary to stimulate thorough thinking on this constitutional problem.

Because of the above considerations this research report took the form of an analytical and conceptual undertaking, which showed concern in an ideological and neutral spirit in

trying to suggest idealisation in public policy/constitution making in any given democratic society, with a clear focus on Traditional Authorities in Namibia (the case of the 2005, Ovambanderu constitution), which turned out to be highly contested.

In acknowledging the fact that a constitution subscribes to the characteristics of public policy, theories and models applied in public policy making are used as a basis for evaluating the Ovambanderu constitutional process and institutional capacity. The two main theoretical foci are the Generic Model of the Public Policy Process (de Coning, 2000) and the Strategic Triangle (Moore, 1995), which look at institutional capacity. This study is an academic work whose primary aim is to contribute to the body of knowledge in public policy/constitution making in Namibia.

The researcher being a student in Public Administration, majoring in public policy making, found the Ovambanderu constitutional case a relevant case that can be used to provide the mass (the things of life) while the theories on public policy/constitution making as advanced by social scientists provide the significance (ideas or theories) for an easy understanding of the subject (public policy/constitution making processes).

Therefore, the research focused on the importance of applying public policy models to constitution making so as to ensure transparency and compliance with societal values and principles (de Coning, 2000) in Namibia. At the same time the research acknowledges the fact that the masses are capable of jeopardising a public policy/constitution process for many reasons such as political differences, personal interest, little and sometimes no understanding of public administration and so forth.

1.1. HISTORICAL BACKGROUND OF THE OVAMBANDERU COMMUNITY

This research report is about the Ovambanderu constitution, which was drafted in 2005, and which became a problem and a discussion paper (just after its adoption in October 2005) instead of being a guiding principle and a unifying tool for the community. This

section provides an abridged historical background of the Ovambanderu community, to give a better understanding of this group.

The Ovambanderu community is an ethnic group, which resides predominantly in Namibia, with few living in neighbouring Botswana, Angola and in South Africa. This study focuses on those who live in Namibia.

The Ovambanderu, like other Bantu people, migrated from Central Africa and entered Namibia from the north. Their main area of settlement in Namibia was Omusorakuumba, an area between Gobabis and Windhoek. By the time they moved to Namibia the Ovambanderu community was under the leadership of Chief Nguvauva (1765-1830), Arnold Tjozongoro, oral history, June 2007).

The community was well organized and respected the monarchical structure of leadership. Munjuku Nguvauva 1 succeeded his Father (Chief Nguvauva) and ruled the Ovambanderu people (from 1860 to 1870). During the same period, the ovaHerero (a tribe which shares the same language with Ovambanderu) was under the leadership of Chief Tjamuaha. (Arnold Tjozongoro, oral history, June 2007).

The Ovambanderu community speaks Otjimbanderu (a language slightly different from the Otjiherero language spoken by the ovaHerero people in Namibia). They observe similar cultural norms as the Owambo and ovaherero tribes in Namibia, which include: the respect for the milk of the calabashes, respect for the parental line (oruzo), respect for the maternal line (eyanda) and respect for numerous kinship connections.

Until the time of the great Chief Kahimemua Nguvauva (who succeeded his father, Munjuku Nguvauva 1) and Chief Keharanjo Nguvauva (father of the late) Chief Munjuku Nguvauva 11) the Ovambanderu community has been acknowledging the leadership of the Nguvauva clan as authentic and allowed the Nguvauva descendants to rule. With due respect to legitimate leadership in the Ovambanderu community, (the late) Chief Munuku Nguvauva 11 who was born in exile in Botswana came to be installed as the Chief of the

Ovambanderu people in Namibia on the 10th of October 1960 and he remained the chief until his death on 16th January 2008. (Chief Nguvauva 11, oral history, June 2007)

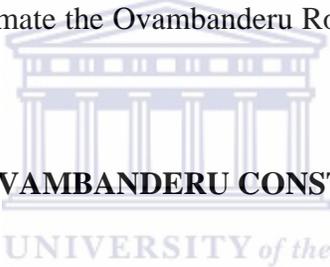
The Ovambanderu Traditional Authority, known as the Ovambanderu Royal Authority, succumbed to a history of suffering and atrocities committed against it, first at the hands of the Nama tribe under the then Nama Chief Jonker Afrikaner, and again under the Germans between 1896-1904, which led to the killing of Chief Kahimemua in 1896 and the displacement of most of the Ovambanderus to neighbouring Botswana and South Africa. (Arnold Tjozongoro, oral history).The Ovambanderu community now has a population of about 47 000 to 50 000 people. (Chief Munjuku Nguvava11, oral estimation)

Traditional Authorities are important governance systems at the sub-national level and serve the interests of the local people as well those of the government. The Ovambanderu Royal Authority, which is part of the total structure of the Traditional Authorities in Namibia, is subject to the legal and constitutional framework of the country. Such frameworks include the 1990 Constitution of the Republic of Namibia, the Traditional Authority Act, Act 27 of 1995, the Traditional Authority Act, Act 13 of 1997, Traditional Authority Act, Act 25 of 2000, the Council of Traditional Leaders Amendment Act, Act 31 of 2000 and the Traditional Authority Act, Act 27 of 1997. This legal framework makes provision for the making of constitutions at Traditional Authority level. (Constitution of the Republic of Namibia, 1990, Government Gazette of the Republic of Namibia, 1998)

History reveals that prior to independence the leadership structure of Traditional Authorities including that of the Ovambanderu was very simple. It consisted of the chief and a few headmen, normally less than ten per constituency structure. The structure became complex only with the new legislation mentioned above. The new laws make provision for the position of the Chief, one senior councillor per constituency, ten junior councillors reporting to the senior councilor, women and youth representatives, other organs such as the council of prophets of the Ovambanderu Community, leaders of the Commandos of the Green Flag and the secretariat. (See Ovambanderu constitution, 2005,

Appendix B).It is against this backdrop that the Ovambanderu constitution was envisaged, with the following objectives in mind:

To unite all Ovambanderu in Namibia, Botswana, South Africa and elsewhere, to uphold, promote, protect or defend and maintain the culture, language, cultural artifacts, traditional values of the Ovambanderu, to make provision for co-operation with other traditional communities in the country, to promote research into and restatement of the customs, traditional practices, history and cultural heritage of the Ovambanderu, to promote at all times the interest of the Ovambanderu and to articulate their problems and yearning, to promote and heighten interest among the Ovambanderu about historical events in the history of the community and to honour and commemorate important historical and cultural occasions, to document the Ovambanderu traditional models of governance and create unity from disunity, to legitimate the Ovambanderu Royal Authority (Ovambanderu Constitution , 2005).



1.2. BACKGROUND TO THE OVAMBANDERU CONSTITUTIONAL PROBLEM

In a desire to meet the above stated objectives as well as to satisfy the needs and quests of the majority, the Ovambanderu Royal Authority embarked on drafting the 2005 Ovambanderu constitution. A mandate was granted to a committee consisting of 12 people drawn from the community, to lead the constitutional process.

The process started with meetings and consultations, which took about 10 years, but unfortunately the work of the committee did not seem to have met the expectations of some stakeholders. The community experienced problems which resulted from the adoption and implementation of the 2005 Ovambanderu constitution, which turned out to be a bone of contention for the entire community.

As this was the first written constitution for the community in more than a hundred years, the problems emanating from it, constrained the functions of the Ovambanderu community. It became a major challenge to the Authority of the Nguvauva Royal House.

In particular, the community experienced problematic situations, which were difficult to handle such as: a temporary division into two factions: the one faction that associated itself with the constitution and the other faction that disagreed with the constitution. The opposing (anti-constitutional) group became known as the Concerned Group and abstained from important community activities and annual events such as the commemoration of the fallen heroes, community meetings and community general assembly organized as per the directives of the Chief.

Further problems resulted in three court cases: on the 8 May 2006 and on 13 April 2007 which ruled in favour of the Concerned Group followed by a final verdict passed by the Supreme Court on the 14 July 2008 in favour of the Pro-constitutional group. Clear evidence of quarrels and squabbles within the Ovambanderu community had been widely reported in the media. The Otjiherero radio station on its special early morning programme 'Keetute' and the daily government funded news paper ('The New Era') entertained the public with unpleasant reports about this prolonged conflict. This has been very painful to the Ovambanderu leadership and the community at large as both groups used to speak ill of the other, even at solemn occasions such as funerals.

As from October 2005 when the constitutional problem started, the Ovambanderu community work was in disarray. Both the (pro-and the anti constitutional group) failed to work together for the development of the people they both represent. This division turned into a major cause of disgrace to both the leadership and the community at large. (Authors' own observation and information gathered from the media).

2. STATEMENT OF THE RESEARCH PROBLEM

Ironically, the 2005 Ovambanderu constitution, which was initiated with the idea of creating unity amongst the community, resulted in disunity. Remarkably, the constitution became a statement of intent, and could not be implemented until the two competing groups reached consensus. The Anti-constitutional group claimed that there was poor

consultation in the process and inappropriate institutional capacity for drafting the constitution, and therefore demanded for the withdrawal of the constitution. Contrary to that demand the Pro-constitutional group was adamant and stuck to the idea of implementing the constitution. But still implementation could not take place; instead the community experienced a protracted war of words between the two groups which lasted for almost two years. Therefore, this study aimed at determining the kind of process followed and the type of institutional capacity organized to deal with that noble task, so as to be in position to suggest mechanisms, which could enable the community to resolve the conflict and implement the constitution.

3. OBJECTIVES OF THE STUDY



The following objectives guided the research:

- To assess the kind of process and institutional capacity organised in drafting the Ovambanderu constitution through the application of the following models: the generic model (de Coning 2000) and the Moore (1995) Strategic Triangle
- To provide recommendations that would lead toward the resolution for the Ovambanderu constitutional problem

4. BASIC RESEARCH QUESTIONS

First research question: How did the drafting of the Ovambanderu constitution take place in terms of the constitutional process? (This question was simplified so that it could elicit information regarding agenda setting (problem structuring, forecasting, adoption and implementation)).

Second research question: what kind of institutional capacity was organized in respect to the drafting of the Ovambanderu constitution? This question was phrased in such a way that it could elicit information on the credentials of the drafters of the constitution, financial capacity of the Ovambanderu Traditional Authority and on cost and benefits analysis done.

Third research question: How does the constitution differ in content from the previous oral one? (This question was easy to answer and was put the way it is here) (See attached questionnaire, Appendix A)

Fourth research question : What can be done to solve this problem ?

5. RESEARCH ASSUMPTIONS

The following assumptions were tested through this study:

- A constitutional process, which follows the required stages of public policy making such as agenda setting, forecasting, adoption, implementation and evaluation, can lead to the framing of an acceptable constitution. Implementation will not be a problem since the majority of the people will respect and honor the end product.
- Proper institutional capacity ensures that the end product is of great value to the stakeholders.

6. RESEARCH METHODOLOGY

A triangulated method combining qualitative, quantitative methods and general observation was employed in collecting the data. Quantitatively, about 305 questionnaires were distributed to the Ovambanderu community at random so as to get the general feeling of the affected community. As for the qualitative method interviews were held with some influential members of the community and office bearers, the majority of them rendered

their full cooperation in answering questions posed to them. The final method used was observation by which the researcher had to attend general meetings organized by both the Pro-constitutional and the Anti-constitutional groups through which plenty of data has been collected.

6.1. Population

The population for this study comprised the following categories of people: the Supreme Council members of the Ovambanderu Community who numbered about 50 people including His Royal Highness (the late) Chief Nguvauva 11, the councillors, the Secretariat, the general field marshals of the Green Flag and the Prophet of the Ovambanderu Community. A few other Ovambanderu Community members were also interviewed for the purpose of this study.



6.3. Sample and Sampling procedure

A sample of about 305 members of the Ovambanderu Community was drawn from the defined population. This population was drawn from the following regions and districts: (regions) Epukiro, Aminius, Rietfontein, (districts) Gobabis and Windhoek. These were the regions where most Ovambanderu people reside. The five areas identified for this study constituted about 70% of the total area where the Ovambanderu community was represented by the time of this study.

6.4. Research instruments

Data was collected through a structured questionnaire, general observation and focused group discussions.

On general observation: the researcher attended meetings organized by both groups (the pro- and anti- constitutional groups) and read minutes of some of the meetings held in her absence.

The questionnaire consisted of the following kinds of questions: a set of dichotomous questions, a few open-ended questions, and a set of scaled questions. The questionnaire had two main sections. In section **A** the respondent had to indicate his/her position in the Ovambanderu Community mentioned in the Population above, while section **B** contained the questions to be answered (see attached questionnaire, Appendix A).

6.5. Procedure

After pilot testing and adapting, the questionnaire was administered to the 305-target population mentioned above. The researcher met the respondents personally in order to explain the purpose of the research and to guarantee anonymity of the answers. The researcher also assisted the respondents in completing the questionnaires as it was written in English, a language that could not be understood by most respondents.

6.6. Data analysis

The data was computerised and the processing was ensured by the use of the Statistical Package for Social Science (SPSS) at the University of Namibia. The open-ended questions were manually transcribed and interpreted qualitatively.

CHAPTER TWO

2.1. LITERATURE REVIEW OF PUBLIC POLICY AND INSTITUTIONAL CAPACITY TO DRAFT A CONSTITUTION

This part of the thesis provides a theoretical framework and the review of the literature on the issue of policy/constitutional process and institutional capacity. This forms the basis for the analysis of the Ovambanderu constitutional process and institutional capacity.

As mentioned in Chapter One of this research report, theories and models of public policy form the theoretical framework for this case study. The purpose of a theoretical framework, therefore, is to conceptualize the applied framework so as to justify its relevance to the testing of the research problem and the research assumptions.

Public policy/constitution making requires a clearly defined process in any democratic society, including Namibia. This kind of exercise could prove futile and may end in misunderstandings and disputes if not given the particular attention it deserves. De Coning (2000), states that public policy/constitution-making exercises of the mid-1990s require participation and public choice, which involved direct representation, empowerment and active decision-making. He also stressed this point by saying that policy-making processes should incorporate opportunities to exercise choices and explore rational options. This is based on the assumption that public policy requires interpretation of societal values, which are usually followed by projects and programmes managed by society. Paine (2002) also remarked that a public policy or constitution is not an act of government but of people constituting government, which means that participation of the masses in the policy process remains imperative. This brings us to the definitions of public policy/constitution and further discussions of policy/constitutional processes.

2.1.1. Public policy defined

In studying the Ovambanderu constitutional case, the following working definitions were used, as provided by scholars in public policy/constitution: public policy/constitution refers to the principles that guides actions related to society as whole. These principles may be explicit (clearly and fully expressed), through law or formal actors of government) or implicit which means implied but not directly expressed. (Bardill, 2005).

Public policy/constitution involves choices related to the allocation of scarce resources to achieve goals and objectives (dye, 1995 as cited in Bardill, 2005).

Public policy/constitution is labeled as a broad field of government activity for example, foreign policy, education policy and so forth (Bardill, 2005). It is broad field in the sense that it encompasses a lot of things, which need to be carried out in order for that policy to be a reality.

Again, public policy/constitution is a specific course of action taken collectively by society or by a legitimate representative of society, addressing a specific problem of public concern, which reflects the interests of society or a particular segment of society. Enough interest has to be represented so that the policy is supported and can be implemented effectively (Buchholz as cited in Bardill, 2005).

Public policy is a process involving a number of related stages (context, formulation, implementation, output and outcomes) (Bardill, 2005; 3-4.)(6) an explicit or implicit single decision or group of decisions, which may set out directives for guiding future decisions, initiate or retard action or guide implementation of previous decisions (Haddad, 1995)

The above definitions include many aspects, which have to do with issues such as the policy/constitution content, process, objectives and values of society, representation, societal interest, effective implementation and public choice.

Furthermore, public policy/constitution can be defined as those plans, positions and guidelines of government, which influence decisions by government. There are various forms and types of policy/constitution. Among these are: broad policy/constitution, which enunciates or expresses clearly the government/institution-wide directions (e.g. the Ovambanderu constitution).

basically, the constitution can be defined as “the form in which a state is organized”; “the form of the supreme government in the state”; a system of government; a framework of rules defining the functions, “composition and interrelationship of the institutions of government, and the rights and duties of the governed” and “a legal document which defines the structure of the state, the powers and capacities of its main organs and the interrelationships among its various institutions” (Parker, 2007). The Ovambanderu constitution therefore is a form in which the community is organized. The constitution serves as its supreme government, its system of government which contains its rules and functions and which shows the total structure of such a system. Therefore it owned by the Ovambanderu people who need to love, cherish and associate with it.

There are also specific policy/constitution developed for particular functions, sectors (e.g. economy) or issue areas (e.g. child welfare) and, operational policy that guide decisions on programmes and project selection. The descriptions above justify the nature of the Ovambanderu constitution.

The above categories of public policy/constitution can be broken down as follows: distributive, which defines the target population and the nature of benefit to be provided, regulatory, regulation of social behavior or the regulation of individual freedom (e.g. the Ovambanderu constitution), redistributive, aimed at responding to losers for direct and

indirect compensation and, self-regulatory, society has more influence than the governance system (Mohair, 1991).

Furthermore, in the Namibian context, public policy/constitution is defined as ‘a statement of intent’. Whatever government chooses to do or not do gets incorporated into a blue print which is normally referred to as a policy document. Since independence, government has adopted an open and transparent way of public policy making. Institutions were put in place to smooth the policy processes e.g., parliament, national council, regional and local councils. Appropriate discussions take place when a policy/constitution is to be made, interventions and input from civil society organizations are always welcome and interest groups advocate for what they value in society regarding a particular policy/constitution proposal. A policy/constitution remains a bill until it is fully debated for it to be made an act of parliament or a public policy. The same applies to the Ovambanderu constitution lengthy debates needed to take place within the community before the final version of the document becomes a constitution.

in respect to the forms government policy/constitution can take, it is reflected most typically in legislations, regulations and programmes called policy/constitution instruments (Manitoba, 2001). The same applies to the Ovambanderu constitution.

In sub-Saharan Africa, including Namibia, “public policy/constitution has emerged in the context of responding to a specific social struggle around a number of issues such as inequity, poverty, social justice, basic human rights and obligations and duties of society and the state to ensure the welfare of the citizens” (Tshibuabua, 2007: 20). Tshibuabua’s dictum has relevance to the Ovambanderu constitution as it was aimed at responding to the need for an institutionalized system of governance for the Ovambanderu community.

2.1.2. Public policy process

At its most basic level, public policy/constitution making operates under the assumption that decision-making ought to be a rational process. Therefore, analytical methods are

assumed to enhance rationality in the policy/constitution process (Heinemann, 1997, Haddad (1979). In the case of the Ovambandeu constitution making the process needed to ensure rationality which is an important asset in policy/constitution making. This is to say that, decision-making is guided by the decision maker's values, political consideration, public support and mass values. For example, elected public officials must get public support for re-election. (Heinemann et al).

From the above, it is clear that public policy/constitution is at the heart of any political process involving bargaining, compromise and vested interests (Bardill, 2005). Therefore rationality is important.

Coupled to the issue of rationality is that a public policy/constitution process ought to be made democratic and transparent (Bardill, 2005), (de Coning, 2000). Some may argue that ensuring democracy in the public policy/constitution process is time-consuming, as it requires extensive consultations with stakeholders who sometimes jeopardize the process because of misunderstandings or conflicting interests. Some thinkers also argue that democracy can also be divisive in some instances as too much participation can result in too much talks and little work done. In order to avoid those fears, specialized skills and knowledge are a prerequisite. For example, in the case of the Ovambanderu constitution, experts could be hired to do the work in the shortest possible time rather than relying on own expertise and prolonging the process over years.

Beside expert knowledge and skills, consideration of the following activities can make the policy/constitution making process much easier: focusing on the central issue that is to be resolved; looking at the problem and finding the appropriate analytical method without simply fitting the problem to your method; making the method simple and or even designing one's own analytical methods which make provision for logic, common sense and experience; stick to the policy of uncertainty; consider factual information from different sources; make analysis very simple and easy to understand; involve as many people as possible and remember to advocate their position as well. (Patton and Sawicki,

(1986) cited in Bardill (2005). This is exactly what ought to have happened in the process of drafting the Ovambanderu constitution.

In a nutshell, policy/constitution analysts, public policy/constitution specialists and political scientist recommend participation as the best method for improving the public policy/constitution making processes and ensuring rationality. For instance, Cloete (2000) suggests that participation involves direct representation, empowerment and active decision-making. Therefore, the public policy/constitution making process is expected to incorporate opportunities that would allow for the exercise of choice and exploration of rational options as mentioned earlier on.

The doctrine of participation has been developed and supported at the level of governance for example, the Namibian government encourages the culture of participation in many spheres of governance, e.g. when public policy/constitution is to be made, lengthy debates take place, which take different forms such as bargaining, advocacy, lobbying and decision-making. In essence, this is a good example for those organizations that intend to come up with initiatives similar to that of the government, e.g. the Ovambanderu Royal Authority.

Mannheim (1950), as cited in Cloete (2000), defines participation as more than the sum total of effects produced by media or propaganda. This means that in a democracy, any sign or indication of differing opinion requires participation before a decision is made. Therefore, decision makers need to take into account the mood and attitude of the people to avoid those forming groups or choosing sides, which may end up jeopardizing the particular, decision-making exercise. This is so because once the attitude of the public hardens due to poor consultation, it becomes difficult for the authority to manipulate and make them comply with a decision that appears to be imposed on them. It is at this juncture when public policy/constitution making specialists acknowledges the fact that public opinion is a formal articulation of the belief and the views held by the public at large about a political issue (Anderson (1979) cited in Cloete (2000) Grindle (1980) and

Heinemann et al). That is why it is referred to as public policy/constitution because it is meant for the public.

Now, the question of who needs to participate in a policy/constitution process is also crucial and as Cloete (2000) stated NGOs, Churches and Interest groups have so far shown keen interest in participating in public policy/constitution processes. The same point is raised in the work of Grindle and Thomas (1980) de Coning (2000) and Dror (1978).

Interestingly, participation in policy/constitution process can be an easy exercise if it follows proper application of public policy/constitution-making models, which are either state centered or society centered as can be seen in figures 1.1, 1.2, 1.3 and 1.4 of this research report. In the case of society-centered approaches, society applies methods of lobbying, advocating for public opinion and voting through pressure groups to influence decision-making. Government stimulates debate about what it does by creating space for participation and, networking, information-sharing sessions and focal points (Cloete (2000)). In the society-centered approach society plays the leading role while in the state-centered approach government or the authority takes charge of the process. This is to say that part of the obligation of a constitutional committee, e.g. the Ovambanderu constitutional committee, was to create space for participation so that the Ovambanderu community could play a clear role to advance their thoughts on issues that were either needed to be included or excluded from that public document (the constitution). This in turn could have helped to ameliorate the process from initiation through to implementation.

Yet at the same time, Haddad (1979) suggests that an empirical study aimed at looking at what contributes to the failure in implementing a particular policy/constitution needs to be guided by a serious consideration of the following two dimensions: Actors in policy/constitution process (who were they?), The policy/constitution process (what happened, when, how and why?). This means that the most important variables to the public policy/constitution making process are the actors and the process itself, for example, the constitutional committee, members of community, the leadership, the actual activities e.g. meetings, how often these meetings were held the methods applied e.g. focus group

discussions, consultations, interviews, etc. and, the reasons for the chosen methods of consultation. These are prerequisites to any public policy/constitution making even at Traditional Authority level and should have been considered by the Ovambanderu Royal Authority too.

This brings us to the issue of synoptic and incremental approaches as in the work of Haddad (1979), Grindle and Thomas (1980), de Coning (2000) and Dunn (1994) who suggest that new models of public policy/constitution making make provision for public interest. These scholars acknowledge that some authorities stick to the norm of self-interest but those norms are unacceptable and can easily put an institution in disrepute, as it is the case with the Ovambanderu Traditional Authority which failed to implement its constitution in time as planned. Haddad, Grindle and Thomas and others, also wished to include in the policy process models the distinction between contemporary models such as the rational model (which subscribes to the same norms as those of the generic model in the work of de Coning (2000) as can be observed in the analysis of the Ovambanderu constitutional case study), the incremental approach, the rational –comprehensive model, the rational self interest model and the synoptic model.

In furthering discussion on the synoptic and the incremental approach Cohen and Lindblom (1979) cited in Haddad (1979) see the synoptic approach as that policy-making method that entails one single central planning authority for the whole society, which combines the economic, political and social control into one integral planning process, which makes integration impossible or unnecessary (this model is regarded as the elite stage model in the work of de Coning (2000, see figure 1 on page 22 of this report).

Grindel and Thomas (1980) and Haddad (1995) assume that some problem solvers operate under the assumption, firstly, that the problem at hand does not go beyond human cognitive capacity and no social conflict and value should be considered and secondly, that the problem solver has adequate incentives to stay with the synoptic analysis until it is completed and the incremental planning is of no use. It is because of such assumptions that some institutions overlook the societal values and base their decisions on the perception

that society would always demonstrate complacency. The difficulty is just that policy/constitution making has become a class struggle and thus a protracted process that takes much time and an overuse of resources. (See the elite / mass model on page 25 for an illustrative example). The Ovambanderu case is a typical example of such a struggle.

In contrast to the above the incremental approach to policy making as can be seen in the Wissink's stage model as shown in de Coning (2000), Dunn (1994) policy/constitution process model and in the de Coning (2000) generic model which relies more on the interaction rather than the complete analysis of the situation to develop a blueprint for solving problems. The incremental approach assumes firstly, that policy/constitution options are based on highly uncertain and fluid knowledge and are in response to a dynamic situations, ever-changing problems and evolving context and secondly, that no correct solution can ever be found or technically derived from a diagnosis of the situation (Haddad et al). The approach stresses that sweeping and drastic reform should be illuminated at all cost. Thirdly, incremental and policy/constitution adjustment can be made and fourthly, policy/constitution adjustment can only be made if they are aimed at improving the situation or addressing an urgent problem. The approach further suggests that any changes made must be tentative, temporary and open to revision as the dynamics of the situation evolve. In fairness, the Ovambanderu constitutional committee needed to bring this idea to the attention of the community and its representatives. Sensitizing this point could have silenced those who were under the impression that once the constitution is implemented it becomes immutable and no changes could ever be made to it.

As for the rational model, it appears in the work of Herbert Simon (1960) as cited in Haddad (1979). In advocating for this method Herbert (1960) attempts to suggest better ways and skills which could be appropriately applied in designing public policy by recognizing that policy /constitution options must be rational and not just politically oriented. Owing to that recognition Herbert et al. and his contemporary thinkers such as Heinemann et al. suggest that the following elements be considered in the policy/constitution process: societal values, problems and their causes, alternative cause of

action, cost benefit analysis (selection of policy/constitution on the basis of maximum social gain), announcement of the policy and mobilizing support, implementation and review. The repletion of facts here, stress the point that the Ovambanderu constitutional committee need take cognizance of the fact that rationality regard societal values guide any decision that affect the society.

The above considerations appear in the work of most specialists in public policy re-emphasis through the different models they developed over time. But as for Bardill (2005) a policy/constitution can only achieve maximum social gain when the value it achieves maximizes greater happiness than many other policy/constitution alternatives. Here the concept of utility plays a major role; ‘the greatest happiness to the greatest number of people’ as in Mills, Betham and their contemporaries. The greatest number of the Ovambanderu people ought to have been happy with the end product (the 2005 Ovambanderu constitution).

So far, the term ‘value’ has been used often in this paper and it does not mean anything other than the belief that something is good and desirable. While aspiration, another overused word, means the desire to achieve something that is currently out of reach. The work of contemporary pioneers in public policy/constitution teaches us that the rational model is an ideal type, but it is difficult to apply practically but deserves to be made known to students of public policy as it provides a basis for a new model which can be applicable depending on type of policy/constitution and the environment that influences it.

2.1.3. Institutional arrangements

When making public policy, the process is managed and its management requires the identification of institutional capacity that is capable of dealing with the policy or the constitution (de Coning, 2002). However, in Namibia, we have a problem, as we lack institutions to guide this process, and experience has shown that capacity building for policy management can be supported at the following three levels: Level 1- Macro-institutional environment, which pays attention to issues of systematic elements and

governance; Level 2- intergovernmental relations or the relationship between organizations; and Level 3- the legal framework (Moore, 1995). The institutionalization of policy/constitutional capacity at all levels of governance has attracted attention internationally (de Coning, 2000), and it is an important area for policy makers.

The institutionalization of policy/constitutional capacity at an organizational level takes into account the location option of the institutionalized capacity, how it is organized, how it is designed, as well as human resource capacity (Moore, 1995). It also pays attention to the relationship between the line and staff functions, as well as the relationship with professional and analytical supports e.g. analysis, monitoring, implementation and evaluation. In the case of the Ovambanderu constitution making, the sourcing of capacity could be pertinent as this is an important task and the Ovambanderu Royal Authority lacks public policy/constitutional capacity.

Organizations and macro-level policy/constitution-makers need to take note that the following location options exist: centralization, the authority does everything with little involvement from society or the sub-national level of governance ,decentralization, the regional and local level of governance is empowered and given a mandate to spearhead the policy process , ad hoc arrangements, an outsider e.g. consultants are contracted to spearhead the policy/constitutional process , coordination capacity and multiple advocacies, proper co-ordination is ensured by putting up all relevant structures for policy making interest groups, stakeholders and even the authority are updated on the progress of the policy process well in time and their input is valued and incorporated.(de coning, 2002). High-level public managers ought to stimulate these public participation mechanisms. This could be so pertinent to the Ovambanderu constitution making, considering the lack of policy-making capacity mentioned earlier on.

Through identifying and arranging the institutional capacity, one looks for different kinds of skills relevant to drafting a constitution or making public policy. These include: organizational development, human resources development, relationships with research and policy institutions, information management, monitoring and evaluation and financial

capacity. All these are public policy/constitution related issues (Mutahaba and Balogun, 1992, as cited in de Coning, 2002). The question here could be: can the Ovambanderu Royal Authority confidently pass an examination on all the above requirements? If the answer is no, then the only solution is to outsource for better capacity.

Again, Moore (1995) proposes that an organization needs to develop a strategy that declares its overall mission or purpose in terms of public value. The same strategy should offer an account of sources that support and ensure legitimacy and that will be tapped to sustain society's commitment to the enterprise and explain how the enterprise will have to be organized and operated to achieve its declared objectives. If the ruling system document of the Ovambanderu community (mentioned in chapter 3 and 4 of this research report) can be considered as the strategy that declares the overall mission of the Ovambanderu community, it could have been a good source of information relating to overall value of society and would increase the community's commitment to accepting the refined strategy (which is the Ovambanderu constitution). Moore (1995), as cited in de Coning (2002), provides a model with three strategic areas that need to be adopted in order to ensure a successful policy strategy. These strategic areas have been triangulated in order to show that they are of the same weighting. These are substantive value (ensured through quality policy analysis), legitimacy, and operational and administrative feasibility.

With regard to substantive value, the organization needs to produce products (e.g. the Ovambanderu constitution) of value to the overseers, the clients and beneficiaries (Ovambanderu community) at a low cost in terms of money and authority. Secondly, a legitimate and politically sustained strategy ensures that both money and authority from the political authorization environment is attracted. Thirdly, a strategy is administratively feasible if the authorized valuable activities can actually be accomplished by existing organizations with help from others who can be induced to contribute to the organizational goal (Moore, 1995). If all of the above were considered, then the Ovambanderu constitution-making process would not have been a problem unless if the anti-constitutional group had other motives.

As for the identified institutional arrangement, provisions need to be made which are of an enabling nature. Maddox and Fuguay (1981: 115) define public opinion as consisting of articulated groups of attitude and viewpoints held and expressed by individuals and different groups in society and not a particular societal thought. This links up with the issue of value discussed on page 20 of this research report.

2.1.4. Stages in public policy/constitution process

Public policy/constitution making is not a once off exercise, but it is indeed a process that proceeds through certain phases and stages. Bardill emphasized that public policy/constitution- making is an on-going process and not just an event or an intention. The four main phases in the policy/constitution process are the following: scanning and analysis of the external environment, globally and domestically, identification of the challenges and opportunities for the institutional policy process, policy/constitution implementation and policy/ constitution output (Bardill, 2005).

These phases can be broken down into stages and it is advisable for policy-makers to approach these stages in an iterative fashion rather than as a step-by-step exercise. (See Dunn, the Wissink's stage model and the generic model on pages 26, 27 and 28 of this research report). This means that issues which are likely to arise at a later stage must be taken into account in earlier stages in the process for example; problems detected earlier on must be taken into account to avoid possible implementation problems. Bardill (2005) further mentioned that it is also imperative for policy/constitution makers to establish clear criteria and indicators for monitoring and evaluating the process as well as mobilizing support.

The stages mentioned above are not necessarily compulsory in the policy/constitution-making process, but it is sensible to follow them as they ensure cost-effectiveness and the engagement of a large number of people in the process. Grindel and Thomas, Haddad, de coning and others, highlight the fact that there is a general agreement that the quality of policy is determined by the extent to which it is discussed and debated while being

developed. This takes us to the idea of rationality recounted by Heinemann (1997), who further suggests that in order for the policy/constitution to ensure rationality, actors in the process need to be informed to understand their roles and values.

Knowledge of the policy/constitution process is imperative as it raises the consciousness on important aspects such as active participation, public choice, representation, empowerment and active decision making in the process (de coning, 2000). Through these, opportunities are created for participants to exercise choices and explore rational options.

In a nutshell, there are three main elements of policy/constitution system, namely: policy/constitution stakeholders, policy/constitution environment and the public policies/constitutions (Dunn, 1994). All these elements need consideration when a policy/constitution is to be made, as they play a major role in the policy process. The policy/constitution environment can be considered by looking at the crime rate, inflation rate, unemployment, discrimination and urban squalor, while policy/constitution stakeholders can include the following categories of actors policy analysts, citizens' groups, labor unions, political parties and, agencies as mentioned elsewhere in this research report. Public policies include law enforcement, economic policies, welfare, personnel and urban policies. This whole policy/constitution system is the sum total of subjective human products plus an objective reality as manifested in observable actions plus the products of the policy/constitution systems. The aspects of discrimination and unemployment are quite relevant to the Ovambanderu constitutional-making process, and an empirical study ought to reveal information pertaining to those aspects as they can potentially contribute to a constitutional problem such the one of the Ovambanderu community. When unemployment becomes a problem people compete for positions even in smaller organizations such as traditional authorities in search of better opportunities.

In addition to the above, it can be noted that think tanks form part of the pressure groups aimed at making significant contributions to public policy/constitution making. Dror (1971) says think tanks are the bedrock of policy science. He cited examples of their significance in the work of the Brookings institutions and the rand corporation in the

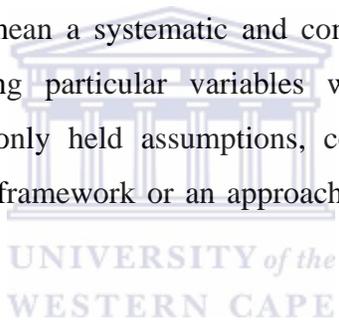
United States of America in which they pioneered the new invention in policy making. Even though they are scarce in most countries, they are quite significant in policy research. In Namibia, for example, the Namibia Economic Policy and Research Unit (NEPRU), as well as the Institute for Public Policy Research contribute significantly to public policy research in economic policies and other areas.

To elaborate more on policy/constitution making, de Coning (2000) states that there are no grand theories on public policy/constitution. Policies are “jelly like” in nature and must be regarded as “seashells” with no apparent beginning or end. They are kinetic and fragile (Starling, 1997). Heinemann (1987) in de coning et al. stated that public policies are future oriented. They are aimed at promoting the general welfare of the society and not a particular group in society unless stated otherwise. As such, the Ovambanderu constitution aimed at promoting the welfare of the Ovambanderu community alone and not the whole Namibian society.

Furthermore, Wildavsky (1979) observes that ‘policies’/constitution are not eternal truth, but rather hypotheses, subjects to alteration and to the devising of new and better ones until these in turn are proved unsatisfactory. Cloete (2000) makes a similar observation when he says that the policy/constitutional process is complex set of events that determines the actions government will take and the social, political, economic and physical conditions that may change in society. Cloete et al further confirm that the public policy/constitution is disorganized and has no apparent beginning or end and, the boundaries that exist between the stages are uncertain. Therefore, the policy/constitution can reach implementation but the process can continue. Policy/constitution change and innovations is vital as well as initiation. Consequently, it should be noted that no policy/constitution is ever complete. This confirms the statement made earlier that the incremental approach to public policy/constitution is the motto and should be made known to all stakeholders in public policy making. This could have been the best approach to the Ovambanderu constitutional case.

2.1.5. Models applicable to analyzing the policy process

After the identification of institutional capacity, it is important that a clear public policy/constitution making process is designed and agreed upon to answer the following questions: What has happened? Why? What will happen next? And what intentions are viable? etc. In order for this to be a reality, public policy management suggests particular models that can easily represent, stimulate, explain, predict, experiment and test a hypothesis. Dunn (1994) de Coning (2000) defines policy /constitution models as “simplified representation of selected aspects of a problem situation constructed for a particular purpose”. These experts suggest that public policy/constitution models are guided by political concepts, theories political paradigms, and ideologies. Concepts refer to those abstract ideas that can be used as thinking tools to illustrate particular attributes of a given aspect while theories can mean a systematic and comprehensive explanation and prediction of relationships among particular variables whereas the paradigm is a “collection of patterns of commonly held assumptions, concepts, models or theories constituting a general intellectual framework or an approach to a scientific activity,” (de Coning and Cloete, 2002).



As for the generic model identified for the research projects it oversimplifies some aspects, which are found to sometimes impute the policy/constitution process in contemporary Africa and abroad. The most relevant variables considered in this model help explain the relationship amongst aspects and help analyze the Ovambanderu constitutional case as per the theories presented in the research project.

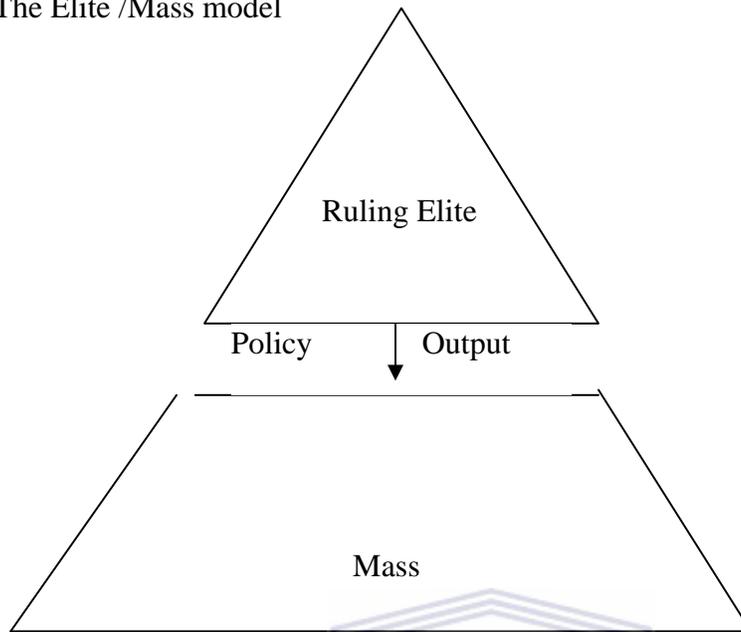
Policy/Constitution management models fall into two different categories those that are applicable to analyzing policy/constitution content and those that are applicable to analyzing the policy/constitution process. Hogwood and Gun (1994), as cited in de Coning (2002), say that we are all model builders, as we need to see some patterns in the world around us and tend to interpret everything in terms of perceived pattern. Therefore related assumptions help us to answer questions such as: What happened? Why? What will happen next? How can the future process be influenced? And what interventions are available that

can influence the process? These kinds of questions were asked when soliciting information on the Ovambanderu constitutional process to examine the kind of constitutional management undertaken in the process and to attempt and create a framework for an improved constitutional process in future.

As mentioned earlier, policy/constitution making is a process and is subject to change depending on initiatives by interest groups. Interest groups can apply pressure on policy/constitution makers concerning their own preferences and interests. This would force the policy makers to effect change on the policy/constitution to come up with one that can be favourable to clients and stakeholders. The Ovambanderu constitution may thus need redrafting. There is no certainty about that. Yet if examples from specialists in public policy/constitution are to be followed a few changes to some of the clauses are inevitable.

Figure 1 below represents the assumption that the elite have the power to decide on the policy. By implication, the value and interest of the elite is more important than that of the masses (de Coning, 2000) (Haddad, 1979). These are commonly held assumptions and can be revealed through the analysis of failed policies. The Ovambanderu constitution making, for example, might have suffered from such an assumption which is why it was felt imperative to assess its process through this study. And if it was the case then discussions around this constitutional problem should be directed towards improved models that give room for participation and articulation of public interest. Recent literature addresses this assumption differently by pointing out that the masses are not necessarily passive and ill-informed, thus the role of the policy/constitution makers should instead be that of acting as catalysts for policy/constitutional change. The difference that is pioneered by contemporary policy/constitution specialists can be seen in Figures 2, 3, and 4 on the next pages, which in a way condemn the elite model and justify its irrelevance to policy/constitution making in contemporary Africa and beyond.

Figure1. The Elite /Mass model



Source: de Coning (2000)

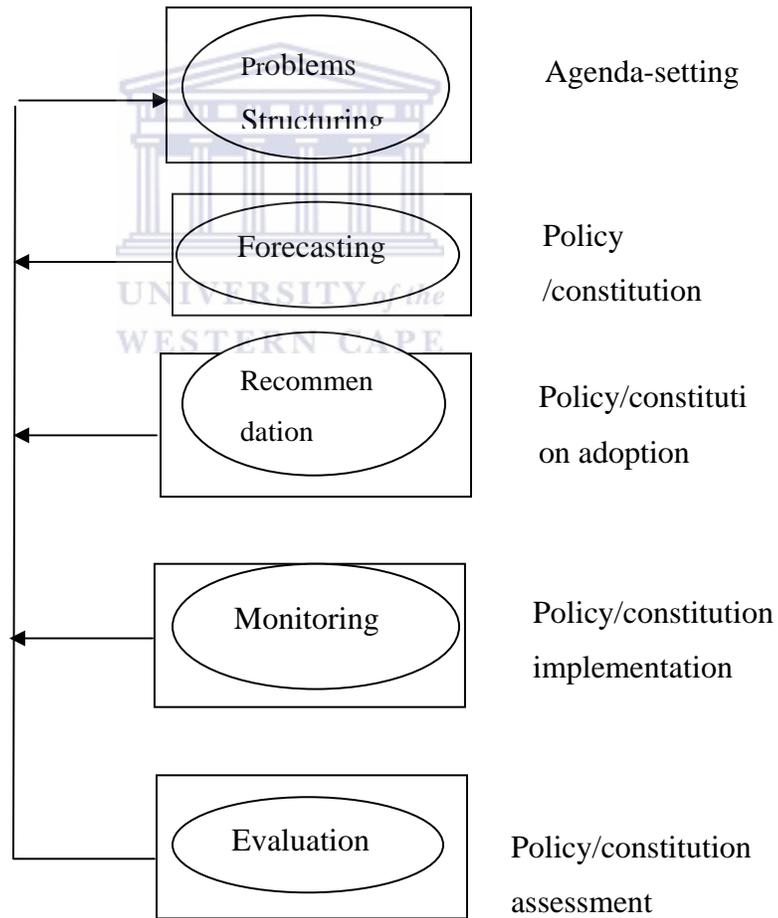
Dunn's policy/constitution model makes provision for much more elaborate and successive stages in policy making, which are internationally recognized as being much more representational than the elite and group model (Dunn 1994).

Upon analysis of the Dunn policy/constitution-making model, one can notice that such a model can be more appropriate for suggesting the kind of stages that can be followed in analyzing policy process as it breaks down the policy/constitutional process into descriptive stages which may result in a clear policy/constitution output. Dunn (1994: 16) discusses the amount of work that needs to take place at the different stages as follows: "Agenda setting (elected officials place the problems on the agenda Policy/constitution formulation (officials formulate policies to deal with the problem e.g. orders, court decisions or legislative acts) , policy/constitution adoption (a policy/constitution alternative is adopted with the support of the legislative majority, consensus among agency directors, or a court decision), Policy/constitution implementation (the adopted policy/constitution is carried out by administrative units of government which mobilize financial support and

human resources to comply with the policy , Policy/constitution assessment (auditing and accounting units in government determine whether executive agencies, legislature, and courts are in compliance with statutory requirements of policy/constitution achieving its objectives)” Dunn (1994 : 16)

This is the kind of model that has relevance to policy/constitution making even at Traditional Authority level and if it were considered and applied to the Ovambanderu constitutional process the final document would serve as the best constitutional model for other Traditional Authorities in Namibia.

Figure2. Dunn’s policy–making model



Source: Dunn (1994)

In a more simplified manner, the Wissink's stage model in Figure 3 on the next page shows that policy processes have many activities, which are often ignored in contemporary models even in the Dunn (1994) model above. These activities include such things as becoming aware of the problem through civic education and interaction, putting the problem on the agenda, and identifying the problem with stakeholders, etc. Furthermore, decisions are made public in the process. Special provision for the allocation of resources is made, followed by designing and initiating the programme of action. This was chosen when scientists tried to make the work of public policy/constitution making easier in attempting to refine the work of their pioneers. They kept the originally proposed stages but added a stage or two for thorough discussions at each analysis. (See figure 3 below). This model has relevance to the Ovambanderu policy /constitution making as it makes provision for civic education, a stage that opens the minds of the stakeholders (in a form of capacity building) before expecting them to make tenable contributions to the drafting process.

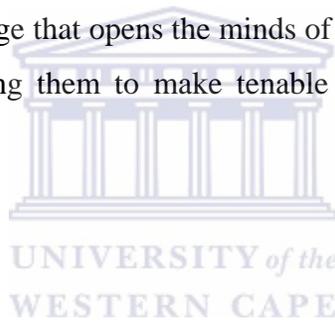
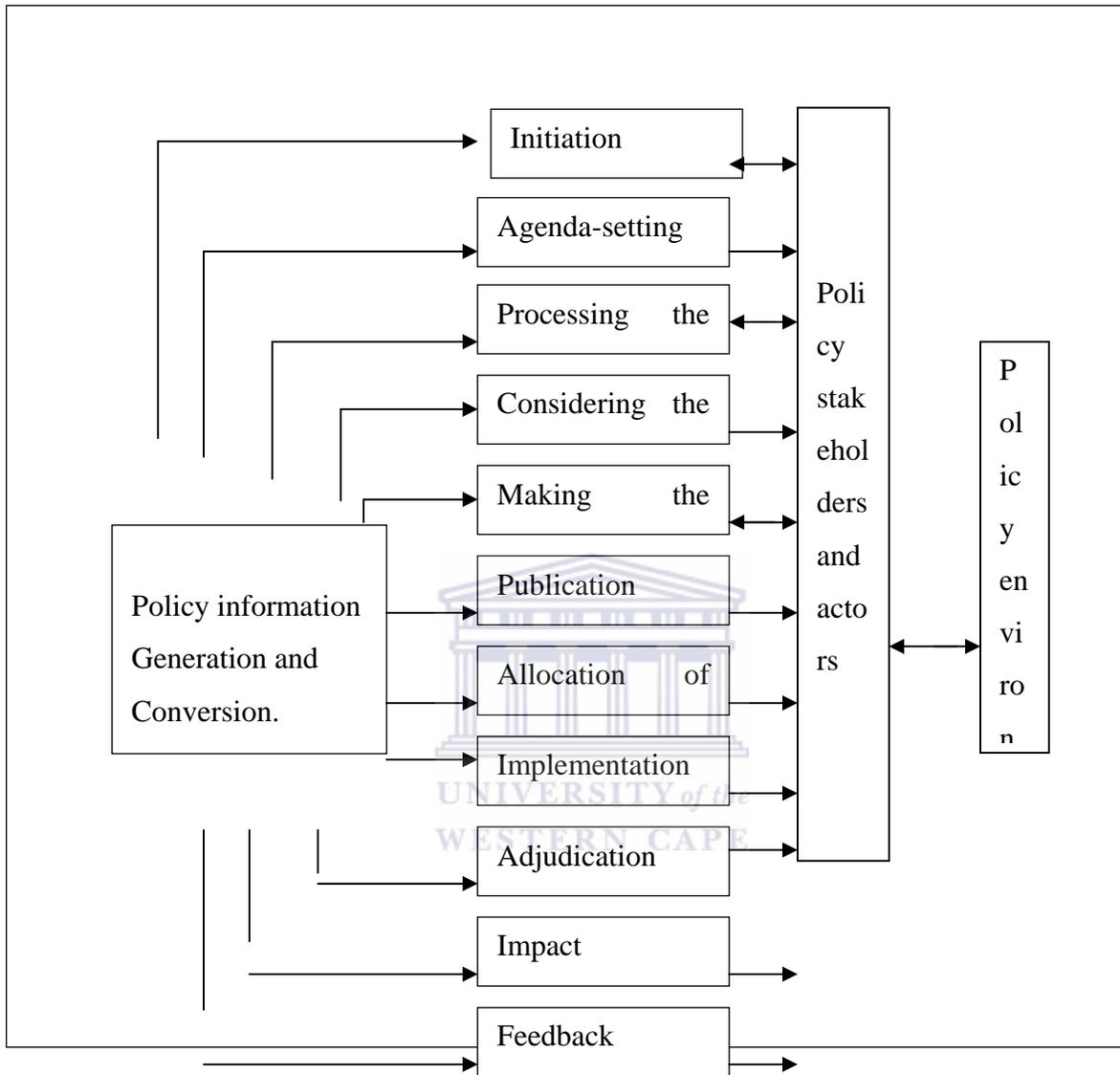


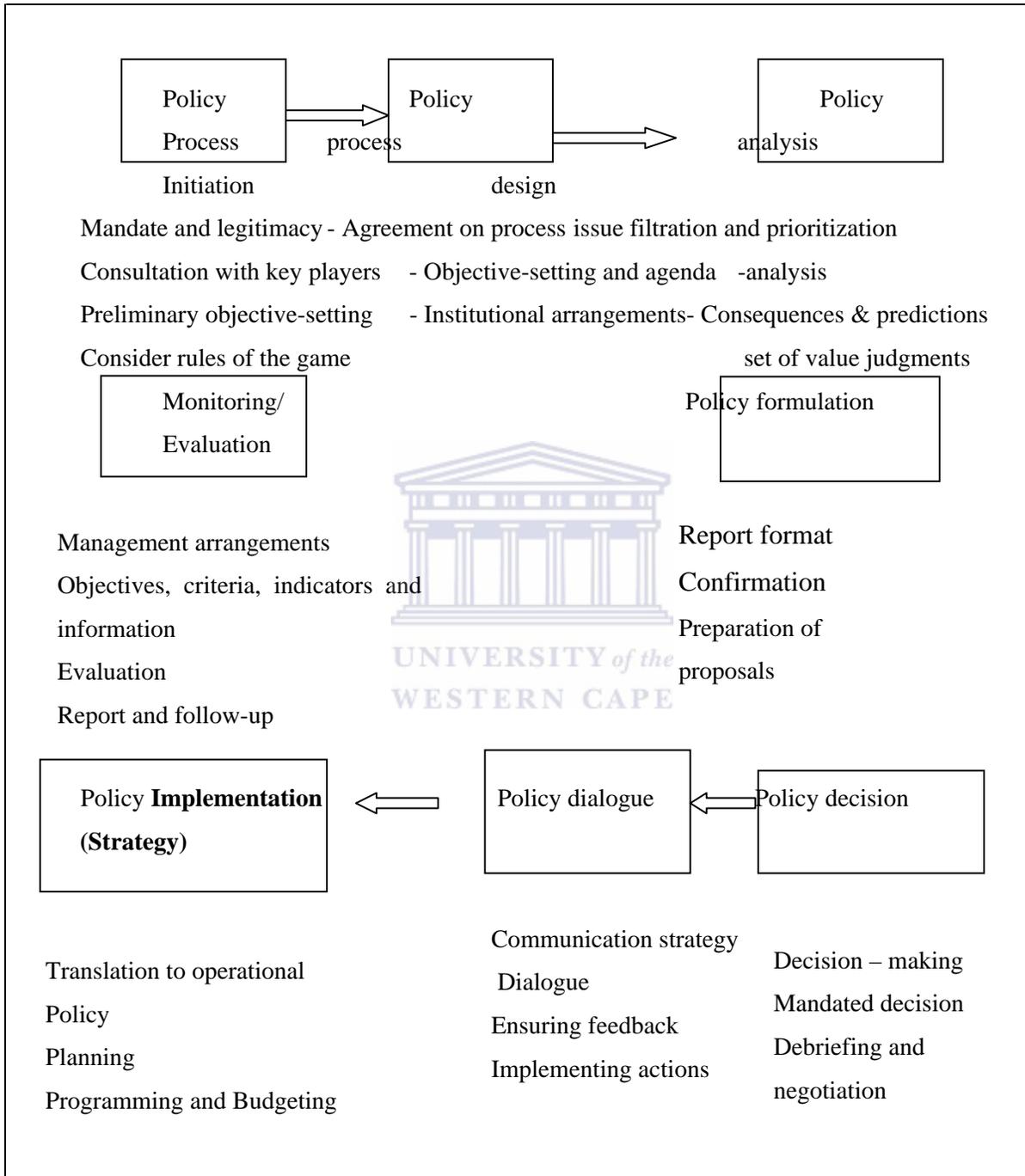
Figure 3. Wissink's stage model



Source: de Coning (2002)

Figure 4 below presents a generic model as in de Coning (2002). This model includes most of the areas that are pertinent in the policy making process. It is very useful and will be elaborated further in the section below. Stages are many more than those in the Wissink's stage model and more elaborate. This advanced policy model was relevant to Ovambanderu constitutional process owing to the nature of the problem to be addressed. The Ovambanderu constitutional process is a delicate undertaking and requires sensitivity when dealing with it.

Figure 4. Some key considerations in the Generic Model



Source: de Coning (2002)

2. 2.STAGES IN THE GENERIC MODEL DE CONING (2002)

2.2.1 Policy or constitution initiations: the development of the Ovambanderu Constitution (2005)

As mentioned previously this study looks at the following key elements of the Ovambanderu constitutional process: the mandate of those who have initiated the constitution and put it on the policy/constitution agenda; and the role of policy/constitution specialists in the policy/constitution process and consultation with stakeholders (de Coning, 2000 and Bardill, 2005). The model requires that initiation of the policy/constitution proposal needs to be mandatory and legitimate. Preliminary objectives must be set and the rules of the game need to be considered at this stage.

2.2.2. Policy design

The study looks at whether there was an agreement on the Ovambanderu constitutional process. It also looks at the involvement in the decision making process and at who was assigned to do what and in what capacity. This stage makes provision for further work such as the objective setting and agenda, the making of institutional arrangements and the planning of the policy/constitution or project in the case of a project proposal.

2.2.3. Policy analysis

The study looks at the manner in which issues were considered, whether the drafters have prioritized the issues, did an option analysis, predicted the consequences and made value judgments (Dunn, 1994, and de Coning, 2000. This is the stage where so much has to take place. Dunn (1994) makes a clear illustration on how policy analysis ought to take place and this study endeavors to establish whether most of these stages were considered during the Ovambanderu constitutional process. On the issue of option analysis Haddad (1997) as

mentioned earlier on group the processes of option analysis as follows: systematic, incremental, and Ad hoc and importation.

With regard to the systematic mode Haddad et al state that the systematic mode is characterized by three options: generation of data, formulation and refining of options. Data normally come from professional knowledge.

On the incremental mode the policy makers try to improve the policy/constitution by acting out and adjusting the present difficulties incrementally. This is to re-emphasise that the Ovambaderu constitution, which created problems, now needs to be adjusted incrementally.

The ad hoc mode refers to a situation when a problem is outside the system but may have some bearing on it, so some adjustments can be made on the current system.

Importations refer to those innovative ideas imported from outside the country. The actors contributing to these can be foreign specialists working in the country. Sometimes a foreign policy/constitution gets adopted successfully if it meets the requirements. A close study of the Ovambaderu constitutional case can reveal information related to that.

Furthermore, policy/constitution options can be evaluated on the basis of desirability, affordability and feasibility. See discussions on Moore (1995) 's Strategic Triangle on the below.

2.2.4. Policy/constitution formulation

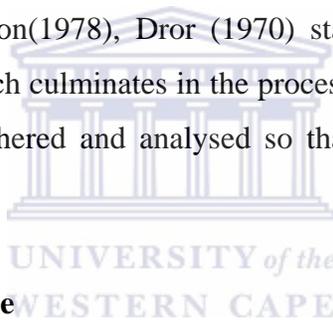
The study also looks at the kind of reporting format, the confirmation made and how the Ovambaderu constitutional proposal was conducted.

Bardil (2005) stipulates clearly that the policy/constitution document should include all or most of the following seven elements:

An introduction; broad rationale, purpose and scope indicating the main stakeholders involved or consulted in the document preparation; an analysis of the policy/constitutional context; a situation analysis; the broad goals and anticipated outcomes of the policy/constitution, as well as the values and vision which underpin them; key strategic initiatives and activities through which these goals will be achieved; the arrangements for monitoring, evaluation and review; the key resource implications and strategies for addressing them.

2.2.5. Policy/Constitution decision

The decision-making processes need to be studied, as they take different forms, for example, through consultation, mandate decisions, debriefing and negotiation. Haddad (1995), de Coning(2000), Anderson(1978), Dror (1970) state that the decision making stage is the most crucial stage which culminates in the process after all information related to the policy/constitution was gathered and analysed so that a totally optimal policy is designed and selected.



2.2.6. Policy/Constitution dialogue

Information relating to further dialogue on the draft Ovambanderu constitution and feedback regarding implementation plans ought to have been solicited. Here a communication strategy is designed to ease the dialogue, ensuring feedback and implementing actions.

2.2.7. Policy/Constitution implementation

Here the study looks at whether there were suggestions on translating the Ovambanderu constitution into an operational policy/document, taking into account the following aspects which make implementation much easier: planning; programming; budgeting of prioritized projects; management and monitoring.

2.2.8. Evaluation

The study looks at management's arrangements regarding objectives, criteria, indicators and information to evaluate reporting and follow-ups. In essence, discussions in this study are linked to the idea that public policy/constitution making has an oval form just as the oval images in Figure 5 below. This is to say that the process never comes to an end as the policy/constitution is influenced by the dynamic nature of human intellect. All stakeholders do not always applaud changes in the public policy/constitution, but still, they are inevitable. Therefore, evaluation aims at improving policy in terms of revealing what went wrong in the drafting process or at implementation level. Such revelations may assist analysts in making informed and rational decisions.

Figure 5

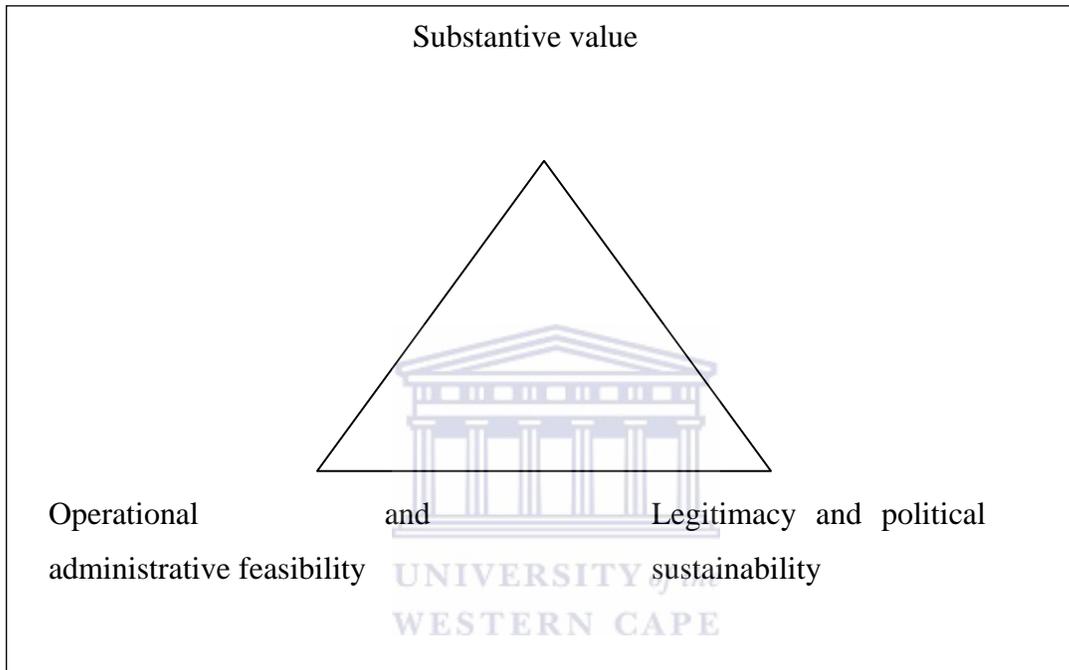


Source: Hayes (1999)

Public policy/constitution making is a new concept in Namibia, and the majority of people seem to know little about policy/constitutional processes. As a result, policy/constitution advocates need to bring to the attention of the framers the issues of importance such that of the public policy/constitutional cycle shown in figure 5 above. This implies that if this was considered seriously at the initiation of the Ovambanderu constitution perhaps some of the queries might have been minimised much earlier than waiting until the conflict aroused which has become daunting to the entire community. Therefore, it should be noted that the Ovambanderu constitutional case could not be an exception to the idea that the policy making process has an oval shape as in Hayes (1999).

On the aspect of substantive value, political feasibility and administrative viability Figure 6 below shows how those factors can be considered in a triangular form as provided by Mark Moore (1995).

Figure 6. The Moore's 1995 Strategic triangle



Source: Adapted from Moore (1995)

The triangulated feature of the public policy/constitutional process which ensures sustainable capacity can be simplified as follows: **Firstly**, substantively. The study expected to generate information relating to the amount of work that has had to take place at the analysis stage, which would have ensured a substantive value of the policy/constitution. **Secondly**, political feasibility. Political implications, which might have impacted negatively or positively impacts on the proposed document, needed to be looked into and this could have been realised during the meetings, briefings and consultations. The Ovambanderu people come from different political backgrounds, interests and aspirations and that warrants systematic consideration so as to avoid conflict of interests. **Thirdly**, administrative feasibility. Data collected with the aim of looking at administrative

feasibility should have revealed whether those who would administer the policy/constitution would have liked the constitution, for example the members of the Ovambanderu secretariat. It needs to be clarified if people would have been proud of the document and regarded it as their own.

Additionally, it can with all certainty be acknowledged that analysts or policy/constitution makers need to follow a series of intellectual activities, which Dunn (1994) refers to as political activities. These activities include: initiation of the policy/constitution, structuring of the problem, formulation of policy/constitution proposal, adoption implementation and evaluation. He further says that these activities are visualized as a series of interdependent phases arrayed through time. It is also of paramount importance to note that policy analysis is a multi-disciplinary field that requires knowledge in related fields such as governance, management, organizational development, leadership styles, etc (Rondinell, 1987, as cited in de Coning, 2002). Mokgro (1993) supports this point by saying that a rich body of knowledge is needed in public development management as it contributes to understanding of policy/constitution function in an organizational setting. Again and to repeat what was eluded to before, the Ovambanderu constitution making should not scare people off by assuming that it was a once-off event and that the constitution would never be amended at later stages. Factual information changes as a result of the dynamism of life and that on its own instigates change in any intellectual activity. This sometimes happen so smoothly that those affected do not appreciate it.

The background to the study, the analytical tools, theories and models discussed in this chapter make provision for a substantive discussion in the subsequent chapters. This serves to illuminate analysis of the research findings which are the backbone of this research report and which serve to assist the analyst in connecting cross-mental boundaries so as to come up with a plausible analysis of the Ovambanderu constitutional process.

Therefore, Chapter Three presents, interprets and analyse the findings as per the data revealed through research questionnaires.

CHAPTER THREE

3. DATA PRESENTATION , INTERPRETATION AND ANALYSIS

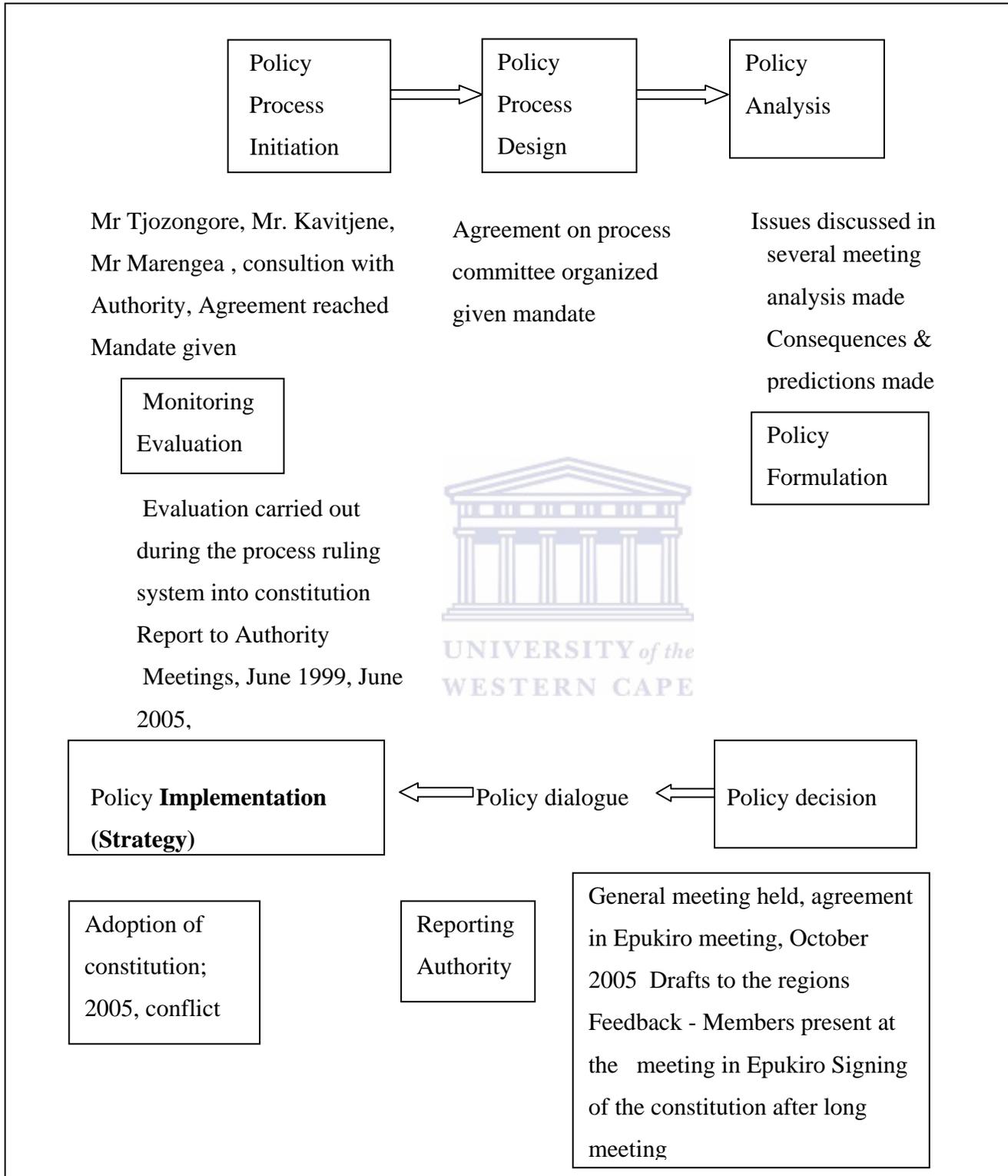
3.1. Application of the generic model (de Conning, 2000) and strategic triangle (Moore, 1995) for the presentation, interpretation and analysis of the Ovambanderu constitutional process and institutional capacity

Chapter Three presents interprets and provides an in-depth analysis of data, backed by theories and models presented in Chapter Two of this study. The presentation shows the actual finds and responses from the interviewees in tabular form followed by interpretation and analysis to show what ought to have happened in an ideal policy/constitutional process. This chapter also provides an analysis of the institutional capacity organized in respect of the drafting of the Ovambanderu constitution and how it has impacted on the constitutional process. The generic model by de Conning (2000) and strategic triangle of Moore (1995) form the basis for a thorough examination of both the process and institutional capacity of the Ovambanderu constitutional matter as said earlier on in the preceding chapters.

3.2. Major stages and activities in the Ovambanderu constitutional process

Figure 8, on the next page, shows the key issues considered during the Ovambanderu constitutional process in to a generic type of model, as discussed in the preceding chapters. The Model depicts a comprehensive set of phases in the constitutional process and stipulates the key issues addressed during each phase and it is followed by illustrations of the actual responses from the respondent in tables 1 to 15 in the next section on this chapter.

Figure 8: The Ovambanderu constitutional process into a generic type of Model



Source: Reseachers own findings

Data collected by use of questionnaires is presented in table form (from table 1- to table 15) below while data gathered from focus group discussions and secondary information (unpublished documents) is summarised briefly in the subsequent part of this chapter.

3.3. Data gathered by use of questionnaire

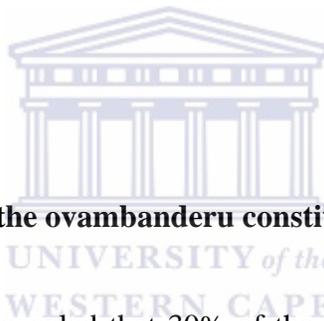
From a total of 305 questionnaires, which were distributed to the following regions and districts: Epukiro, Aminius, Rietfontein, Gobabis and Windhoek, only 201 were returned, representing a return rate of 65.9%.

As can be seen in Table 1 below, out of the 201 respondents one respondent indicated Paramount Chief (Chief according to the Traditional Authority Act 25, 2000), nine were councillors, five members of the Secretariat, nine general field marshals of the Green Flag, nine Prophets of the Ovambanderu (Ozondangere zOvambanderu), and 168 ordinary members of the Ovambanderu community. Only one respondent did not indicate his/her position.

Table 1 **Research participants' position/role in the community**

		What are you?			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Paramount Chief	1	.5	.5	.5
	Councilor	9	4.5	4.5	5.0
	Secretariat	5	2.5	2.5	7.5
	General Field Marshal of Green Flag	7	3.5	3.5	11.0
	Prophet of Ovambanderu	9	4.5	4.5	15.5
	Member of the Ovambanderu Community	168	83.6	84.0	99.5
	Not stated	1	.5	.5	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research



3.3.1. Source of ideas in drafting the ovambanderu constitution.

Data contained in Table 2 below revealed that 30% of the respondents indicated that the idea for the constitution came from the His Royal Highness the Chief of the Ovambanderu community while 3% indicated that the idea came from the councillors of the Ovambanderu. Forty-three percent (43%) indicated that the idea came from some members of the community and 20% indicated Government while only one person gave no indication.

The responses to this question shows that the intention of coming up with the Ovambanderu constitution was rooted in the majority of the Ovambanderu people themselves. They had intentions of institutionalizing their governance system. Therefore, the action of drafting the Ovambanderu constitution seems to have been a legitimate and goal oriented one as the idea came from members of the Ovambanderu community and was endorsed by the legitimate authority (the Ovambanderu Royal Authority). With regard

to legitimacy, de Conning (2000) mentioned that initiation of a public policy needs to be mandatory and legitimately exercised. De Coning et al. also suggests that the initiation of a public policy needs to be done with the involvement of key players and that appears to have been the case with the Ovambanderu constitution, as members of the community appeared to have been involved. Pioneers in public policy /constitution making such as Anderson, Brady and Bullock in Bardil (2005) argue that public policy/constitution is goal oriented or purposeful course of action followed by an actor or a set of actors in an attempt to deal with a particular public problem.

Source of idea of drafting the Ovambanderu Constitution

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	The Chief of the Ovambanderu Community	62	30.8	31.0	31.0
	Councilors of the Ovambanderu Community	6	3.0	3.0	34.0
	Some members of the Community	85	42.3	42.5	76.5
	Government	42	20.9	21.0	97.5
	Not stated	5	2.5	2.5	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Table 2

Source: Own research

3.3.2. Specialists in drafting the constitution

Data presented in Table 3 below shows that 83% of the respondents indicated YES, 14% of the respondents indicated NO and 3% did not state anything on the issue of whether specialists were invited to assist in framing the constitution.

Majority of the respondents believed that the constitutional committee was composed of specialist in the field and had the required capacity to draft the constitution. But as said earlier on policy/constitution capacity is determined by many factors, e.g. knowing that the

process ought to be rational and not just politically oriented as stated by Haddad (1979). In a rational process the following factors are considered; societal values, alternative causes of action, cost benefit analysis, having the skills of mobilizing support etc. These must have been lacking at this stage that is why even though the composition of the committee was done on merit (considering the required qualifications and experience) the process became questionable at some stage.

Again, capacity as mentioned in the literature review, public policy management requires proper capacity (de Coning, 2000). Such capacity could be sourced either from within the institution itself or from outside as it takes into account aspects such as time, accountability, interest, passion etc .By implication the Ovambanderu Traditional Authority need to tap from capacity outside their domain. Agencies such as the Institute for Public Policy Research), Namibia Economic Policy Review Unit, the University of Namibia, etc, are autonomous institutions that could be put to use to help write such highly specialized document. They are independent institutions and hopefully they might have performed much better than a committee. Absolute independence is usually impossible, but centralized policy units are likely to perform well in a pluralistic environment such as in Namibia.

Table 3

Did the OTA invite constitution specialists to help in drafting the Constitution?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	166	82.6	83.0	83.0
	No	28	13.9	14.0	97.0
	Not stated	6	3.0	3.0	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research

3.3.3. Agreement on the process of drafting the constitution

This was a straightforward question in which 91% of the respondents indicated YES and 7.5 % indicated NO, while only 1.5% abstained.

A majority of the respondents were positive about the agreement on the process to be followed in drafting the constitution. They had acknowledged the fact that there was an agreement on the constitutional process. Agreeing on the process before the actual drafting starts is very important as it ensures high quality and timely discussions on the policy/constitution.

Table 4

Was there agreement on the process in drafting the constitution?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	182	90.5	91.0	91.0
	No	15	7.5	7.5	98.5
	Not stated	3	1.5	1.5	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research

3.3.4. Prioritisation of the issues

Information presented in table 5 suggests that 68% of the respondents indicated that issues were prioritised while 29% indicated that they were not prioritised. If this was a true reflection of what really happened then the claim that some issues such as the change in the position of the senior chief was done anonymously would not hold water because during issue prioritization all new proposals are brought to the attention of the stakeholders who should agree or disagree with them before they are endorsed.

Issue filtration, prioritisation and option analysis, which is the study of the policy consequences normally allowing for value judgment to be made. The Ovambanderu constitutional process appeared to have done this as the majority of the people seemed to have been happy with the way issue was prioritized as per the responses. However, for an improved identification of issues, prioritization, generating alternatives and suggesting the course of action, an independent entity could identify issues, analyze options, forecast risk and conduct a feasibility analysis in a much better way and be in position to expose hidden agendas and allowed for consensus building. (Bardill, 2005). Such practices assist in ensuring efficiency and effectiveness. The more information gathered, the wider the scope of the inquiry.

When issues are being prioritised a thorough discussion takes place, which can be successfully conducted if the following elements are considered: generation of policy relevant information, policy claim, policy warrant and policy backing, policy rebuttal and policy qualifier (Dunn, 1994, and des Gasper, 2000). Through these four elements of policy argumentation, policy-makers or analysts illustrate how information can be used to recommend solutions to possible policy problems.

Under normal circumstances, discussions conducted this way allow for conceptualization of issues (Dunn, 1994), des Gasper, 2000). This does not necessarily mean that the exercise of policy argumentation was left out in the Ovambanderu constitutional process but it is imperative to note that models such the Toulmin's model assists in making an argument much clearer.

Table 5

Did consultation allow issue prioritization in the proposed Constitution?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	136	67.7	68.0	68.0
	No	58	28.9	29.0	97.0
	Not stated	6	3.0	3.0	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research

3.3.5. Agreement on the reporting format

Data pertaining to the reporting format in Table 6 reveals that 45% indicated Yes and 51% No while 5% did not answer the question. This gives an indication that the constitutional format was overlooked in the constitutional process. This can become a potential danger if some stakeholders choose to be critical. It is therefore imperative to make sure that before the document is finally prepared; an initial discussion paper is produced and given to stakeholders for input on the reporting format.

The initial document is usually referred to as the green paper, which is actually the second final document before the white paper or the actual policy/constitution document. The discussion paper needs to be thoroughly discussed so that changes can be made to ensure that the final document meet the required standard of the stakeholders (Bardil et al).

Table 6

Did stakeholders agree on the report format of the proposed Constitution?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	90	44.8	45.2	45.2
	No	102	50.7	51.3	96.5
	6	1	.5	.5	97.0
	Not stated	6	3.0	3.0	100.0
	Total	199	99.0	100.0	
Missing	System	2	1.0		
Total		201	100.0		

Source: own research

3.3.6. Confirmation whether the constitution was good

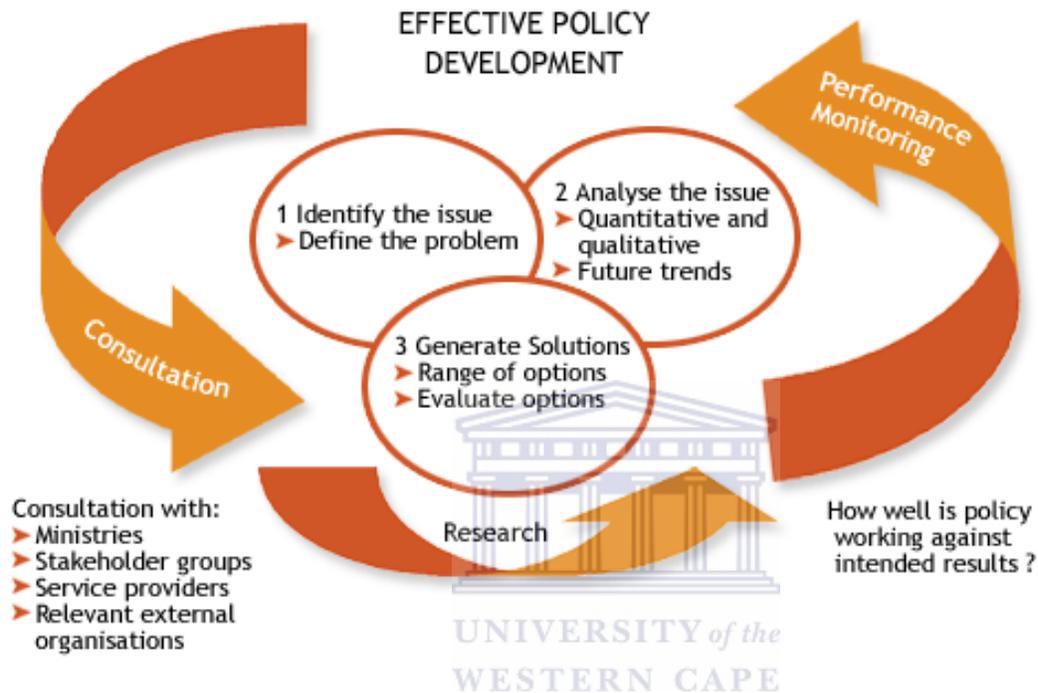
Table 7 below shows that 33% of the respondents indicated YES, 62, 2 % NO, while 4.5% did not answer the question. To decide whether the constitution is good can be a tricky thing and requires certain important aspects to be considered. The document can be good to those who understand and admire its contents and can be bad to those who fail to understand and may be rejected it for a particular reason. Therefore, a decision related to this ought to be influenced by consultations, mandate decisions, debriefings, negotiations, etc. (de Coning, 1995). However, in the case of the Ovambanderu constitution, data revealed that information was mostly shared in general meetings and no negotiations or debriefings took place.

Moreover, dialogues, which could have secured feedback and decisions on implementation strategies, needed to be taken during the dialogue stage. These methods of consultation are undoubtedly imperative and should not have been overlooked. Through that the constitutional committee could have gained the political support of the majority.

To reiterate the importance of public policy cycle, it is worth mentioning here and reemphasizing that policy management, policy framing, policymaking or public policy

development are never once-off events. It is a dynamic and an ongoing process, and can follow the steps mentioned earlier in the literature study or even in the steps of figure 7.

Figure 7



Source: (UK Cabinet Office, 1999)

Figure 7 above, repeats what was said in the paper earlier on that effective policy development requires the following stages: identification of the issue, analysis of the issue, and generation of solution. All these stages need to be monitored and there need to be consultations at each stage.

In support of the above dictum, Manitoba (2001) stated that consultation must be wide open, working with individuals and organisations so as to avoid risk management at the end. This serves to justify the idea that policy/constitution-making is a concerted effort of any institution in an attempt to establish the structures of the institution and framers must avoid failure in making provisions for any eventualities that may arise as a result of the

new policy. As in the case of the Ovambanderu constitution the community ended up paying heavy legal costs amounting to more than N\$300,000-00 merely due to misunderstandings that could have been avoided earlier on. This again re-emphasises the point that a constitution is one of those policy documents that has major implications therefore works of this significance must be undertaken with ample care.

Cloete(2000), de Coning(2000), Bardill(2005), Gasper(2000), Dunn(1994),and Heineman (1997) argue that public policy/constitution process is not a once-off event. It is a process that needs to be monitored and evaluated constantly so as to rectify any problems, which may arise as a result of the new policy. By implication, a public policy can be changed at any time if the need arises or a new policy can be made in order to rectify problems that emanate from the enactment of the old policy instead of the framers confusing the system by challenging their own work.



Table 7

Did stakeholders confirm that the Constitution is good?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	66	32.8	33.0	33.0
	No	125	62.2	62.5	95.5
	Not stated	9	4.5	4.5	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research

Table 8 overleaf shows that 60% of the respondents indicated general meetings as the method used in sharing information with stakeholders, 5% indicated all mentioned methods were used, 7 % indicated consultations and general meetings, 3% indicated mandate decisions, 4% indicated debriefings, 2% negotiations, 5% consultations and debriefings, 5% consultations and general meeting, 1% negotiation and general meetings, 4% consultations mandate decisions and general meetings, 5% consultations, debriefings,

negotiations and general meetings, 2,5% debriefings, negotiations and general meetings, 5% consultation, debriefings, negotiations and general meeting and 7% did not give any indication.

These responses are not so attractive for the Ovambanderu constitutional process as general meetings can be the appropriate platform for sharing information with the community. But most importantly, information sharing sessions such as briefings, consultations, negotiations etc. can be encouraged. Through this is enough interest is better represented. This is so, because some people are shy and may not always have the audacity to share their feelings in large meetings such as the general meeting. But in cases where capacity is limited in terms of money and time, general meeting remains an alternative.

Furthermore, participation is very important and as indicated earlier on it ensures transparency and people's choice is receiving attention. As mentioned in Chapter Two of this research report; policy/constitution specialist such as Haddad (1995), Grindel and Thomas (1980), de Coning (2000) advocate for discussions and debate to ensure a quality policy/constitution. Therefore, the Ovambanderu constitutional committee needed to look at that properly.

Table 8

How was information shared with stakeholders and beneficiaries?

		Frequency	Percent	Valid Percent	Cumulative Percent	
Valid	Consultations	3	1.5	1.5	1.5	
	Mandate decisions	7	3.5	3.5	5.0	
	Debriefings	8	4.0	4.0	9.0	
	Negotiations	4	2.0	2.0	11.0	
	General meetings	121	60.2	60.5	71.5	
	Not stated	14	7.0	7.0	78.5	
	Consultations & mandate decisions	2	1.0	1.0	79.5	
	Consultations & debriefings	1	.5	.5	80.0	
	Consultations & general meetings	10	5.0	5.0	85.0	
	Mandate decisions & general meetings	3	1.5	1.5	86.5	
	Negotiations & general meetings	2	1.0	1.0	87.5	
	Consultations, mandate decisions & general meetings	8	4.0	4.0	91.5	
	Consultations, debriefings & general meetings	1	.5	.5	92.0	
	Debriefings, negotiations & general meetings	5	2.5	2.5	94.5	
	Consultations, debriefings, negotiations & general meetings	1	.5	.5	95.0	
	All the above	10	5.0	5.0	100.0	
	Total	200	99.5	100.0		
	Missing	System	1	.5		
	Total		201	100.0		

Source: Own research

3.3.7. Consensus ensured during interaction

Table 9 below shows that 32.7 % of the respondents indicated YES, 59.3% indicated NO while 8% did not state anything. The majority of the respondents said there was no consensus. This means that there was no agreement on the adoption and implementation of the constitution.

Yet, even if there was no consensus, what the constitutional committee failed to do was to sensitize the point that a policy/constitution remains a living document subject to changes or amendments at any time. If this had taken place, the problem of opposing implementation by some members could not have been experienced whereas the majority of people liked the constitution implementation could take place without hindrances.

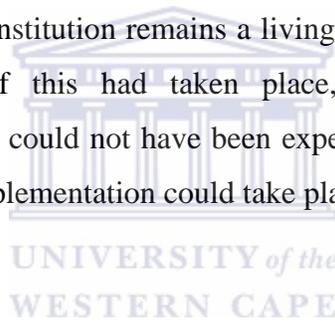


Table 9

Did the interaction allow for consensus?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	65	32.3	32.7	32.7
No	118	58.7	59.3	92.0
Not stated	16	8.0	8.0	100.0
Total	199	99.0	100.0	
Missing System	2	1.0		
Total	201	100.0		

Source: own research

3.3.8. Consultation

Data in Table 10 below shows that 29% of the respondents indicated consultations as very successful, 15% successful, 49.2% not quite successful, and 5.5% did not state their views.

The majority of the respondents believed that consultations were not quite successful. This shows that they were not quite happy with the amount of consultation rendered in the constitutional process. However, and taking into account that some stages in policy/constitutional process were overlooked as mentioned earlier on, the fact remains that a policy/constitution can be improved at any point and at any time. Therefore, its adoption and implementation could go on anyway.

Stages in the policy /constitutional process are not necessarily rigid; some can be avoided if there is a need for that. The document made by the people for the people can be changed by the same people if the need arises. Therefore, implementers should have been guided by the believe that policy/ constitution development or making goes in cycle form, the document is jelly like and has no definite beginning and no end (de Conning, 2000).

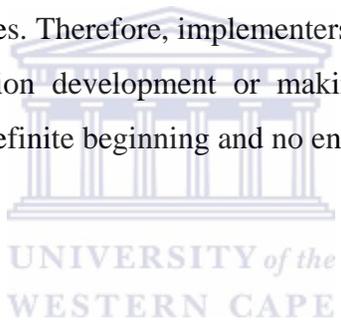


Table 10

How successful were the consultations?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very successful	59	29.4	29.6	29.6
	Successful	31	15.4	15.6	45.2
	Not quite successful	98	48.8	49.2	94.5
	Not stated	11	5.5	5.5	100.0
	Total	199	99.0	100.0	
Missing	System	2	1.0		
Total		201	100.0		

Source: Own research

3.3.7.1. Motivate the answer

Table 11 below shows that 29% of the respondents indicated that there was too much consultation, 1% indicated laws now govern the tribe, 1% indicated there were disagreements in titles given to management, 6.5% indicated that the Chief signed the constitution as it was agreed upon by the community and 62 % did not give a response.

Here respondents were somehow confused by the question. Majority of the respondents did not provide motivation for their responses to Question 10 about the amount of consultation and its impact. But the responses given in the main question reflected their feelings on the amount of consultation made.

Table 11

Motivate the answer

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Too much consultation	58	29.0	29.0	29.0
	Because our tribe is now governed by the laws as by the constitution	2	1.0	1.0	30.0
	Because there were disagreements on titles given to Management members	2	1.0	1.0	31.0
	chief signed the constitution as it was agreed up by the community	13	6.5	6.5	37.5
	Not stated	125	62.5	62.5	100.0
	Total	200	100.0	100.0	

Source: Own research

3.3.8. The difference between the oral and 2005 Ombanderu constitution

Table 12 below, shows that 19% of the respondents indicated no deference, another 19% indicated not much, 10% a lot, another 10% indicated that the new constitution gives too much power to the Nguvauva clan, 1% too rigid, 6% do not know, 35% not stated.

From the responses in this question, the written constitution seems to differ from the oral constitution. A majority of the respondents referred to the abolition of the senior chief position as one of the differences on new constitution. This could have been dealt with easily if the issues were properly prioritized as mention earlier on in this research report.

Table 12

How does the constitution differ from the previous oral one?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Not at all	38	18.9	19.0	19.0
	Not much	38	18.9	19.0	38.0
	A lot	20	10.0	10.0	48.0
	Gives too much power to the Nguvauva clan	20	10.0	10.0	58.0
	Too rigid	2	1.0	1.0	59.0
	Don't know	12	6.0	6.0	65.0
	Not stated	70	34.8	35.0	100.0
	Total	200	99.5	100.0	
Missing	System	1	.5		
Total		201	100.0		

Source: Own research

3.3.9. Management and monitoring of the constitution

Table 13 below shows that 18.1% indicated YES, 3.5% indicated NO while 78.4% did not give a response. This question appeared to be tricky as majority of the respondents had little background of what a public policy/constitutional process entails. Most of them chose to leave the question unanswered.

In actual fact, the policy/constitutional process from its initiation to implementation requires management and the management thereof goes along with monitoring and evaluation. For this purpose an independent organ could have been hired to provide the service of monitoring and evaluation. This justifies the point that the process never come to an end it goes on and on as long as the document is valid. The sourcing of capacity outside the institution as mentioned in Chapter Two as per Moore's (1995), idea, provide for better relationships between line and staff functions therefore such capacity could be sourced. This lives no room for one to point out that the Ovambanderu Traditional Authority lacks policy capacity anyway.

Did Ovambanderu community agree on management and monitoring of the Constitution?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	36	17.9	18.1	18.1
	No	7	3.5	3.5	21.6
	Not stated	156	77.6	78.4	100.0
	Total	199	99.0	100.0	
Missing	System	2	1.0		
Total		201	100.0		

Table 13

Source: Own research

3.3.8.1. Substantiate the answer

None of the respondent made an effort to motivate the answer to the above question questionnaires were blank for this question. This question appeared to be difficult do answer.

Table 14

What is the main problem?		
	Frequency	Percentage
Senior Chief Position	136	68
Implementation	7	3.5
All powers to be vested in Nguvauva clan	1	0.5
The Process confused many people	5	2.5
Don't know	4	2,0
Not Started	48	23.5
Total	201	100

Source: Own research

3.3.10. The main message that has created division

Table 14 shows that 68% of the respondents indicated that the main message that has created division is the Senior Chief Position, 3, 5 % indicated implementation as the problem, 0, 5% indicated all powers to be vested in the Nguvauva clan, 2, 5% indicated that the process confused many people, 2% indicated that they did not know and the remaining 23, 5% did not state their position.

As per the responses the main message that has led to the constitutional problem was the change in the naming of the senior chief position to becoming senior councillor. This was the feeling of the majority, and if it is the case, the blame still goes to the constitutional committee that lacked the capacity to raise the level of trust amongst the community members and stakeholders who can be potentially affected by the proposed changes such as that of senior chief position. This has to do with political viability, administrative feasibility and substantive value as stated by Moore (1995). If people are mobilized and made to understand the reasons behind any kind of change they might be in better position to deal with the proposed change, but if their feelings are ignored, they can potentially revolt against the change.

Therefore, the constitutional committee needed to mobilize the Ovambanderu community and sensitize them on possible change, engage them properly in making decisions related to the proposed changes, make value judgments to test their inspirations before making final decisions.

If this had happened in the first place, the policy/constitution would have had a substantive value as everyone would have wanted to associate himself with it.

Table 15

What can be done to solve the problem?		
	Frequency	Percentage
Chief must take final decision	59	29
New Conclusion	62	31
Negotiations	16	8
Not Started	62	32

Total	201	100
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Source: Own research

3.3.11. The proposed solution to the problem

Table 15 above shows that 29% of the respondents indicated that the Chief must take final decision, 31% indicated that they want a new constitution, 8% indicated negotiation, 32% did not state anything. A majority of the respondents felt that final decision on the constitution lies with the Chief of the community. Here the respondents had a point as the Ovambanderu community operates under a monarchical system of governance, which vests all powers in the Chief.

Therefore, the Chief can suggest the best possible solution to a problem as indicated in responses. Most importantly, he must be accorded the due respect that all African monarchs and traditional leaders demand from African people. Moreover, the mindset of people needs to change. Awareness must be created about the dynamics of public policy/ constitution as mentioned earlier on. Those dynamics include most importantly the aspect of trust. The title senior chief can sound good to some people but if it not administratively feasible or viable it can contribute to failure in a way. Therefore, people could have been made aware of that.

3.3.13. Data gathered from focused group discussions

In addition to the raw data illustrated in tables 1 to table 15 above the following information was gathered through focused group discussions , meetings organized by both the Concerned Group (anti- constitutional group) and the Pro-constitutional group as well as secondary data (unpublished minutes of meetings and reports).

It appeared from information gathered that the intention of establishing a constitution was well rooted in the Ovambanderu community as there were various proposals from influential people within the Ovambanderu community, which then inspired most of the members including (the late) Chief Nguvauva himself. For example, the proposal made by Jefta Kahakihe Tjonzongoro, Morimunu Kavijtjene and Tjitambi Marenga in 1992, in which they suggested that the community needed a ruling system document as part of the institutionalisation of the governance system of the Ovambanderu Traditional Authority. The Authority agreed with the proposal (made by Tjonzongoro and his colleagues) and gave the trio a mandate to spearhead the process of drafting the ruling system, which they produced in 1992.

This ruling system document made provision for important aspects including, the historical explanation on the existence of the Ovambanderu ethnic group and the constitutional right of existence by any Namibian as enshrined in the Namibian Constitution (Article 9). The name of the Mbanderu leadership structure is to be known as the Mbanderu Royal Authority (Article 1) of the ruling system (see ruling system) and the supreme head of the Mbanderu People to be known as Ombara otjiuru tjoMbanderu (Paramount Chief of the Ovambanderu). The intermediary between the Mbanderu Supreme Head and traditional heads of communal regions/commercial urban district is to be known as Otjiruru Tjovahona (Senior Chief). (6) The traditional heads of a communal region are to be known as Omuhona Omunane (Chief) of the region (Name of the region), and the commercial and urban district representatives to be called Omukuramene po wOmbara (representative of the Paramount Chief), (Name of the district e.g. Windhoek). Additional members of the leadership are to be the Prophets, Councillors, the Elders Council, Women Council and the Youth council. (The ruling system of the Ovambanderu community, 1992).

Prior to the drafting of the ruling system and through applying customary law or the oral constitution, all decisions used to be taken anonymously by few leaders and endorsed by the chief. The community was then informed about those decisions, but this has been acceptable all the time. Some of those important decision included nominations of the

Ovambanderu regional and district representative positions including that of the chief that took place on the following dates:

Chief Munjuku Nguvauva 11 designated on the 15 .12. 1952, senior councillors Erastus Kahuure 01.01.1990, Gerson Katjirua 07.05.1972, (late) Hugo Kazapua 05, 08.1997, (late) Usiel Ketanga Kandapaera 13.02.1996, Ludwig Karumendu 01.01.1990, Salmon Hartley 01.01.1994. Councillors Joseph Uandja 17.03.1997, Benjamin Murangi 11.03.1975, Rehabeam Ngaujake 01.01.1990, Barminus Nguvauva 17.03.1990 (Government Gazette of the Republic of Namibia, 1998).

Despite this tolerable system of governance people felt the need for a more institutionalized system of governance. This was instigated by the another proposal made by the same three people who drafted the Ovambanderu ruling system script (Mr Tjzongoro, Mr Kavijtjene, and Mr Marenga) proposing a reworking of the ruling system document into a constitution in 1996. The Ovambanderu leadership welcomed the constitutional initiative again. This time, the proposal was linked to the perception that once the Traditional Authority Act, Act 27 of 1995 comes into effect, Government might require all Traditional Authorities to have a clear institutionalised system of governance. None of the members of the community opposed the idea of changing the ruling system script into the constitution. Therefore, a committee of twelve people was established to lead the process, namely: Kauku Hengari, Uaatjo Uanivi, Ngondi Muundjua, Kaitjoo Katjirua, Tjitjai Kavari, Ngunaihe Tjitunga, Virongo Ndjoze, Karihangana Unanivi, Kaveri Kavari, Vemupa Hauanga, Tjitambi Marenga and Jefta Kahakihe Tjzongoro. (Ovambanderu progress report, 2005) and (Ovambanderu constitution 2005).

The majority of the people welcomed the constituted committee. (The late) Chief Nguvava and the entire leadership endorsed the committee's working and membership. They provided the committee with terms of reference; orally (as usual) and the constitutional process started a week after endorsement (in January 1997), (Ovambanderu, annual report, 1997).

The constitutional committee started with a series of meetings mostly held in Windhoek as all committee members lived in Windhoek at that time. After a number of meetings and discussions on the contents of the draft constitution, the committee held regular meetings with the authority to brief them on developments. As the process stretched over a long period of about ten years, some members of the constitutional committee started to absent themselves from the meetings. This resulted in the draft constitution being finalized by a few members only. At the Gobabis meeting held in July 1999 a decision was taken that the committee should put the drafting of the constitution on hold due to some undisclosed challenges.

After some time and apparently, because of some leadership wrangles which started to emerge in the community, some members of the community applied pressure on (the late) Chief Nguvauva demanding the further work on the draft constitution. As a result, the constitutional committee resumed its business and called a meeting on 17 June 2005 (Progress report, 2005). In this meeting the committee members agreed to finalise the overdue draft constitution, which they did and then distributed the draft in the regions through regional representatives for input. Two reasons they advanced for failing to visit the eight regions were financial constraints and tight work schedules.

The following regions received the draft constitutions in June 2005; Epukiro, Aminius, Rietfontein, Otjinene, Opuwo and Erongo, (including Gobabis and Windhoek). Leaders in those regions were given four weeks to discuss the contents of the constitution and to pass their comments to the constitutional committee. When the drafts were returned, another meeting was held in Epukiro on the 1st of October 2005 to discuss the comments made by the different regions and to adopt the constitution thereafter. After elaborative discussions, (the late) Chief Nguvauva 11 signed the constitution on 1 October 2005. Later, (late) Chief Nguvauva 11 presented the document to President Pohamba on the 5th of October 2005 for adoption.

After that, is when the Ovambanderu constitutional problem begun. It took centre stage in community meetings and in small gatherings in and around the Otjombinde Constituency.

It later spilled over to basically all regions in Namibia and to the Mbanderu people living in Botswana. As the opinions of people differed on the issue, the Ovambanderu community ended up split as mentioned earlier. This continued for a long time, and was reinvigorated by parallel meetings held usually on the same days, same time, but in different venues. This pitted the Ovambanderu people against one another and the problem of political interferences could be noticed.

His Royal Highness (Late) Chief Nguvauva stood by his word in refusing to withdraw implementation of the constitution as he argued that normal procedures in Customary Law, which are confirmed in Section 3 subsection 7 of the Traditional Authority Act, Act 25 of 2000 state that the chief or head of the Traditional Community shall be the custodian of Customary Law of the Traditional Community which he /she leads. It is further stated that he/she shall perform his or her duties and functions in accordance with that Customary Law (Government Gazette, 2000).

Therefore, (late) Chief Nguvauva did not see the need for reversing his decision as customarily the Chief is the person to take final decisions on issues concerning the community, something that has been happening through all the years since he took office in 1960. According to him the adoption of the Ovambanderu constitution was not supposed to have been regarded as an exception.

Even though he maintained that he would not allow for the withdrawal of the constitution he suggested that changes could be made to those clauses which seemed contentious. But despite the above considerations, the Concerned Group (the anti-constitutional group) did not seem willing to indicate clearly which clauses it had a problem with but on close consideration, through interviews and questionnaires, some respondents indicated that their unhappiness was linked to the following two clauses in the constitution: Chapter 1, Subsection 3: the leadership structure shall be vested in the Nguvauva clan and system of authority shall be known as the Nguvauva Royal Authority and Chapter 2, Subsection 3: the Traditional Head of a communal region as well as commercial/urban district will be

known as Senior Traditional Councilor (Ozorata ozonene) (Ovambanderu Constitution, 2005)

Certainly, the concerned group's worry was linked to the fact that the ruling system document states the following: Article 1, Subsection 1.3: the system of Authority of the Ovambanderu people will be known as Mbanderu Royal Authority. The Supreme Head of the Mbanderu Traditional Community is termed Omumbanderu Otjiuru, which in status is equivalent to King. The traditional head of the communal region is called Omuhona Omunane (Chief) and that of the commercial and urban district is Omukuramene po uombara (Representative of the Chief). The intermediary between the Supreme Head (Ombara Otjiuru) and the Traditional Heads of communal regions (chiefs) and commercial/urban district (Ovakuramene po vo Mbara) is termed Otjiuru Tjovahona (Senior Chief) (The Ruling system of the Ovambanderu people, 1992).

With regard to the clause in the constitution which reads that the authority is vested in the Nguvauva clan, Article 7 of the ruling system states that Mbanderu Supreme Head according to the Mbanderu customary law is being chosen from amongst the descendants of the royal blood from eminent clans in the Mbanderu community whose authority so far has been vested in the Nguvauva clan. This by implication means that authority can be shifted from the Nguvauva clan to other eminent clans such the Handura, Kanguatjivi, Hoveka and Hengari and many others.

These differences in wording and ideas, as stipulated above, appeared to have been the main cause of the conflict and could be the reason why the Concerned Group pressed for the withdrawal of the constitution so that the process could start over again. The majority of the concerned group revealed that they wanted the senior chief position to appear in the constitution as it is in the ruling system. They also mentioned that the constitution needed to be vague on the issue of power sharing including the succession of the Paramount Chief, as the constitution now appeared to favour the Nguvauva clan and limit the powers of the other clans.

In addressing this, the concerned group claimed that: there was no democracy in the process that they were not given enough time to study the document and lastly some of them did not even see the document, as the process was short. Presumably, they did not get a chance to lobby for the constitution to remain vague on both those aspects with which they are dissatisfied. In their opinion the constitution is a public document and the public has to have its say about it.

Again, they emphasized the point that the constitution was drafted in favour of those in power who ignored the interest of the majority and as result the concerned group regarded the approach as having been a top down one. According to them the masses were not considered as stakeholders in the constitutional affairs.

3.3.12. Problems of Institutional capacity

The study reveals a lot of problems, which can be traced back to the issue of capacity. Firstly, the problem of financial capacity, that has forced the committee to speed up the process in the year 2005 by sending the draft constitution to the region without the committee being present for clarifying issues to the stakeholders and the problem of committee members being absent from meetings reluctantly and failing to attend to contribute to the drafting process. Committee members claimed that there was no money to finance the trips and members were not willing to work without remuneration, they became de-motivated to continue. This was clear evidence that financial capacity did not receive prompt attention at the planning stage. Moore (1995) recommends that capacity must be organized and sourced from outside the institution. Funds could be raised for such an undertaking if there was proper management.

Secondly, the problem of capacity was linked to political interference and mistrust. If the committee was sufficiently empowered, one of their tasks was to raise the level of trust amongst stakeholders, especially the affected people, who would have a problem in accepting whatever change would be proposed in the constitution. The rational models as advocated by contemporary policy specialists, including Haddad (1979) suggest that

decision-making ought to be rational. The policy/constitution maker therefore needs to consider the people's values and aspirations. Equally, the generic model, talks about something similar when suggesting that policy makers must dwell on issues at length so as to accommodate input from the affected parties, as policymaking is a political undertaking that is framed under competing interests.

Thirdly, as most of the stages in policy process were overlooked during the Ovambanderu constitutional process that was hastened because of factors such as time and financial constraints, It can be said with certainty that the end product could not be expected to be politically viable. It is also hard to imagine that such a constitution would be administered smoothly without problems and as a result a policy or constitution made this way can be regarded as lacking substantive value (Moore, 1995)

Overall, this chapter provides a clear and logical analysis of what seems to have happened in the process of drafting the Ovambanderu constitution. It reveals possible symptoms of failure in the policy process, which form the basis for further analysis of Ovambanderu constitutional process. The applied models namely, the generic model by de Coning (2000) and the Moore (1995) strategic triangle, are some of the best analytical tools that can reveal hidden assumptions and diagnosis beyond human cognition.

CHAPTER 4

4. LESSONS FOR CONSTITUTION AND PUBLIC POLICY FRAMING.

Chapter Four draws a few key lessons from the Ovambanderu constitutional process that might be of great assistance for an improved policy/constitutional process for the Ovambanderu community in future.

4.1. Lessons related to consultation

Poor consultation emerged as one of the biggest problems voiced by the majority of the respondents; they stated that they were not given a chance to discuss the changes made to the draft constitution (presumably by some committee members) e.g., Chapter One, subsection 3 of the constitution, which states that the power of the Ovambanderu community should be vested in the Nguvauva clan as well as the change in naming the Senior Chief to become Senior Councillor (Ozorata Ozonene).

Indeed, and as mentioned in the background to the problem and from the responses of interviewee the researcher was made to understand that the Concerned Group became emotional and difficult to appease after they became aware of such changes. In such a case and for the people who are conscious of democratic principles the opposing faction can become frustrated and emotional and claim their rights as stakeholders in decision making.

This behavior ties in with the belief of some of the public policy specialists such as Olowu (1996), Haddad, de Coning, Heineman, Grindel and Thomas and the rest who argue that if

there are fewer participants in the public policy/constitution making process and official channels for participation are restricted, such restrictions can lead to the use of non-democratic forms of mobilizing power including violent challenges to the government or institution. This appears to have been the feeling of the concerned group.

The Authority must see to it that those non-democratic forms of policy/constitution process never repeat themselves, it at all those concerns were genuine. Olowu(1998) mentioned problems related to this as follows: when Zambians aired critical commentary in the press about conflicting policy, President Kaunda acted as the princely arbiter in disputes, sometimes overruling cabinet or simply ignoring it. In Malawi President Banda demonstrated little tolerance towards differences in opinion over his policies. He also stated that, in some instances, such as Idi Amin in Uganda, it was not even possible to talk about a policy/constitution circle as the extreme unpredictability of life and arbitrariness of decision-making rendered the notion of policy obsolete.

This shows that in as much as public policy/constitution making is regarded as a process that never comes to a definite end and that can be improved during implementation. In some of the developing world the regimes of sub-Saharan Africa have frequently been authoritarian in character. Such regimes restrict decision making to a few individuals and groups. Therefore, policy/constitution framers must be careful on issues of consultation.

4.2. Lessons related to the use of policy/constitution models

In an open and democratic society such as in Namibia, the following models are recommended: the Dunn (1994) stage model, the Wissink's stage model and the generic model (de Coning, 2000) as discussed in the second chapter of this research report. All these models make provision for the following stages: Agenda setting (problem structuring), Policy formulation (forecasting), Policy adoption (policy is recommended for adoption), Policy implementation (policy monitoring) will implementation takes place), and Policy assessment (evaluation of the policy takes place). They are more inclusive than the Elite/Mass model. They allow for consultation with the stakeholders and the masses in the process as more activities take place than in the Elite/ Mass model, where the elite take

decisions and just inform the masses of what they have decided. The Generic model in de Coning (2000) was found to be more complex than the other three mentioned here, and that is why it was used as a yardstick for assessing the process.

It is against this backdrop that improvements on public policy/constitution making in Namibia and especially at Traditional Authority level seem inevitable.

4.3. Lessons related to policy/constitution making capacity

Another lesson drawn from the Ovambanderu constitutional process is that capacity is pertinent in public policy/constitution making in this country, especially at traditional authority level. As policy/ constitution making has only started to become a common practice at institutional level after independence, problems such as those experienced by the Ovambanderu constitutional committee and the Ovambanderu community at large can most likely be experienced by any other traditional authority in Namibia. Olowu (1998) defines capacity as the ability of any given instrument or machine to produce the intended result.

Furthermore, Olowu (1998) states that the United Nations Development Programme defines capacity as the ability of individuals, institutions and society to function, solve problems and set and achieve objectives in a sustainable manner. In other words capacity can be referred to as the ability of human resources to produce the intended result. The Ovambanderu constitutional committee needed to aim for better results.

Hence, the main criteria for assessing capacity include effectiveness, dynamic efficiency, and fairness in terms of cost sharing, incentive capability, financial feasibility and access to information. (Dunn, 1998, Grindel and Thomas, 1980, Olowu 1998). This study paid attention to these considerations.

In furthering discussions on effectiveness as an element of capacity building, it can be suggested with certainty that professionalizing the civil service enhances capacity for

policy framing, analysis, monitoring and evaluation. According to Olowu (1998) capacity can be improved by the creation of functional auditing systems, criteria for functioning legal systems, and opportunity for leadership and management development through pre and in-service training. If this was in place before the Ovambderu constitution was envisaged the drafting process could have been conducted without problems.

Other important factors that contribute to effectiveness are exchange of information, improved professional media and the enhancement of capacity of legislature which all create a better environment for policy/constitution making in a democracy. (Olowu, 1998, Haddad, 1995 and Bjorkman, 1995)

According to the above mentioned scholars in public policy/constitution, capacity cannot be effectively addressed without reform in the mode of policy making. They emphasise that there is a need for a readiness to move from monocracy and patrimonial elements associated with governance and in particular with policy making in Africa, to some form of institutional pluralism. This applies to any form of governance, be it national, local or traditional and the Ovambanderu governance is no exception. When people are trained, they become technocratic and intellectual as Bjorkman (1995) suggests and this is very important for policy/constitution making. The Ovambanderu community must pay pertinent attention to training its people in areas of public policy/constitution making so as to ensure that whenever they intent to come up with a policy/constitution they have their own trained people to deal with those tasks effectively.

Bjorikman (1995) defines intellectuals as those thinkers who deal with the production of ideas and symbols with regard to social construction of the society while technocrats are those individuals with a high level of specialized academic training who operate on the principles that most of the problems of society can be solved by scientific and technical means rather than through political will and little awareness of what ought to happen in society. If the Ovambandeu constitutional committee had the capacity to deal with problems by use of technical means, this confusion would have been turned into a challenge rather than a problem. This confirms that those called to solve problems or in

particular make policies/constitution must have specialist skills and scientific knowledge to deal with them.

Policy specialists can act just as medical practitioners do, which is to provide a paradigmatic domain for those who hold such values and exercise an unchallenged authority over policy related affairs. The problem of bureaucratic and political domination in the policy arena must be abolished with (Bjorkman 1995). This is a good lesson for the Ovambanderu Traditional Authority; political differences should never play a role in the policy arena. Even though this issue is not part of the research focus and was not properly assessed one could guess from some of the responses that politics and bureaucracy influenced some of decisions made during the constitutional process.

With regard to the efficiency factor on policy and constitution making and with particular reference to the Ovambanderu case, it can be noted that this factor was overlooked. The community experienced unexpected financial burdens owing to the in-fighting that resulted from the implementation of the Ovambanderu constitution. That became another problem, which the community needed to shoulder in addition to confusion.

The efficiency aspect in policy capacity is mostly linked to the idea of considering capacity of various options to satisfactorily address the key issues of problems (Bardill, 2005). Here the policy makers consider related elements such as: cost benefit analysis, forecasting, risk analysis, and feasibility analysis as mentioned earlier. These help decision makers to opt for the option that is more cost effective. If decision makers in public policy process are unable to maximize profit, they are expected to minimize cost and to use the resources carefully and equally address conflicting issues early in the process, before final decisions are made. In the Ovambanderu constitutional case this stage received little attention and consequently, it contributed to the high costs encountered later as discussed previously.

4.4. Lessons related to literacy

Another lesson is linked to basic literacy; the leadership and the ordinary community need some basic skills in policy/constitution-making processes as the majority of them are illiterate and mostly fail to participate and contribute to policy/constitution making. This brings in the issue of civic education. Wissink, cited in de Coning (2002) advocate civic education, in public policy/constitution making. These public policy/constitution specialists strongly urge that there is a need for local communities to be trained. Weak capacity, declining policy/constitution analysis and contribute to problems in the policy process.

With effective policy analysis and management capacity, a sustainable policy/constitution process is possible.

4.5. Lessons related to political trust

It is important to create political trust amongst the stakeholders, be it the community members, or the government. There are so many questions about ensuring political trust as these concepts mean different things to different people, and perhaps the quest for an exact definition is quixotic. But in the case of a policy/constitution made for a traditional authority e.g. the Ovambanderu Royal Authority the trust is ensured by being open and transparent in any undertaking that concerns the community.

The Ovambanderu constitutional process, therefore, needed to be transparent enough and allow for political trust. Bjorkman (1998) says that each administrative value may it be legality, accessibility; accountability or responsiveness has a procedural and substantive meaning. This is to say that in the procedural sense, and from the stakeholder's point of view, values require greater communication and interaction between stakeholders and decision makers.

4.6. Lessons related to the nature of the policy/constitution making process

Policy/constitution-making process takes time. It requires an understanding of the fact that policy making is an ongoing process that does not come to an end, it goes in a cyclical or oval form and can be changed at any time when the need arises. Therefore, the Ovambanderu constitutional process subscribes to the same norms and did not really end at the adoption stage. If there were some clauses that could be changed because of the people's values as mentioned above, those changes should have been considered without any fear, as part of the implementation process.

Public policy/constitution making is not an easy task. It requires a lot of effort in order for it to be a success. Without that, the intended effort will always yield negative results. Bardill (2005) states that problems associated with failure in doing option analysis mainly stem from lack of reliable information, time and cost constraints in investigating all options, risk involved in forecasting, and, the danger of information overload.

Despite the above factors, option analysis is a prerequisite for policy formulation as it helps reduce cost. Information is provided on time and the stakeholders accept the decisions as being of value to them, such stakeholders will be in position to shoulder a substantial part of the cost of the policy process. When option analysis is done, people make sure that the best option is supported. This best option must be the option that is viable and administratively feasible.

CHAPTER 5

5. CONCLUSIONS AND RECOMMENDATIONS

As mentioned in the preceding chapters, this research report resulted from the Ovambanderu constitutional problem which stems from the following three key issues. **Firstly**, competing conceptions and assumptions about the ideal policy/constitution making process for the Ovambanderu constitution. **Secondly**, problems emanating from misunderstandings on regarding appropriate changes to the contents of the 2005, Ovambanderu constitution. **Thirdly**, an attempt to remedy the dissatisfaction that came from the adoption and implementation of the said constitution.

This chapter concludes the research report and attempt to suggest recommendations that can be of great assistance in solving the protracted Ovambanderu constitutional process crisis.

5.1. Conclusions

5.1.1 The 2005 Ovambanderu Constitutional process became questionable after the adoption of the said constitution in October 2005. This study therefore reveals that the constitutional process that was initiated by the majority of the Ovambanderu community together with the leadership succumbed to some unpleasant hiccups constantly during the

drafting process which contributed to questioning implementation of the constitution by some stakeholders.

5.1.2 There are different reasons behind those hiccups and some significant ones have been identified through this research, which includes the following:

- Some stages in the constitutional process were overlooked.
- Some agenda points were not properly discussed at the issue prioritization and filtration stage.
- The constitutional committee failed to raise the level of trust amongst the community members before attempting to draft the constitution.
- The constitutional committee failed to sensitize the point that a policy /constitutional process does not have a definite end, it goes in cycle and the end product can be improved or amended at any time if the need arise, which means that implementation could have just taken place despite the unhappiness of a few, as those clauses that appeared to be the bone of contention could be discussed and dealt with at a later stage and in a better way than putting implementation on hold for the sake of trying to find a solution to the problem.

5.1.3. The Ovambanderu Traditional Authority lacks policy/constitutional capacity.

- Policy/constitutional capacity can source from outside the institution to make the constitutional process easy and manage able.
- The Ovambanderu Traditional Authority needs to build its own policy/constitutional capacity i.e. train its own people, and have a wing that is merely responsible for co-ordination and facilitation of policy/constitutional processes.

5.1.4. The 2005 Ovambanderu constitution must be implemented as planned.

5.1.6. Discussions in this report followed the following sequence:

The first part of this research report provides the background to the Ovambanderu constitutional process, the historical background of the Ovambanderu community, followed by the research problem, research assumptions and the research method. This part serves as the introduction of the paper.

The second part of the report provides a theoretical framework for assessing the policy/constitutional process followed by the Ovambanderu constitutional committee in drafting the Ovambanderu constitution, and shed some light on what ought to happen in an ideal constitutional process. In the same section, the report looked at the issue of institutional capacity, another important factor that needs to be considered when a constitution is to be drafted. The paper suggests the ideal constitutional capacity that can be sourced in order to make the constitution process a success.

The third part of the report presents the data collected to analyze the process and institutional capacity for the Ovambanderu constitution. This part illustrated the questions asked to interviewee and their responses, which are interpreted and analyzed to show what they mean and indicate the best mechanisms that needed to be applied at each stage as per the questions asked.

The Fourth part of the report suggests lessons for the improvement of Ovambanderu constitutional process or any other policy/constitution making process in Namibia, more especially at Traditional Authority level. In the same light the paper draws some lessons that the Ovambanderu constitutional committee and the Authority could learn from for the improved adoption and implementation of the 2005 Ovambanderu constitution.

Overall, the report puts emphasis on the issues of policy cycle. It stresses the point that any public policy/constitution remains a living document that can be changed at any time when the need arises. Therefore, implementation of such a policy/constitution should not be seen as challenge to any given community or affected society in any way. The constitution can

be as binding as it may appear to be but changes in any of the clauses can be made while implementation is underway.

The final part of the report concludes and provides recommendations for an improved policy/constitutional process for the Ovambanderu community.

5.2. Recommendations

5.2.1 Recommendations related to the policy/constitutional process and institutional capacity:

This research report suggests three recommendations which the Ovambanderu constitutional committee, through the Ovambaderu Royal Authority needs to consider, now that the implementation of the constitution is at stake. **Firstly**, the constitution has to be implemented while all stakeholders are sensitized of the dynamic nature of it. When the policy/constitution committee intends to undertake a cause of this nature, the first thing they need to do is to mobilize the community in order to raise its level of trust before they start with the actual exercise.

Mark Moore (1995) says a public policy/constitution can be made politically feasible through dialogue, negotiation and advocacy. And when it becomes politically feasible, administration becomes much easier.

With regard to political feasibility, Moore (1995) states that despite enthusiasm for the policy/constitution, all stakeholders need to be certain about the content of the policy/constitution. The idea can be welcomed but the primary objective ought to be the emphasis on raising the levels of trust amongst the affected groups, as some changes may impact negatively on the reputation of the constitutional committee. For example, suggestions that the rank of the chief be reduced to senior councillor raised tension and were not discussed properly before the final decision was taken

This stage was overlooked since perhaps the committee assumed that everyone would easily accept the change. Haddad (1995: 35) confirms the same opinion that “mobilizing

political support resonates most clearly when one thinks of the need to ensure that the providers and consumers of a new initiative embrace it with enthusiasm”. In the case of the Ovambanderu constitution the Ovambanderu leadership takes the position of providers while the community is the consumer. Therefore, both groups need to be aware of the objectives of the new initiative and embrace the benefits.

In such cases, Magee (1982) mentions that public policy is an adversarial process, characterized by the clash of competing and conflicting viewpoints and interests rather than an impartial, disinterested, or objective search for correct solutions for policy problems.

Secondly, when the need arises for whatever adjustments to be made to the constitution, the Ovambanderu Royal Authority must find capacity to deal with the review on those clauses that need to be changed. Another impetus to better public policy making processes highlighted above relates to the issue of sourcing for better capacity. The Ovambanderu Royal Authority needs to probe for better capacity in future. As indicated earlier, capacity can be sourced from think tanks, academia or institutions of high learning e.g. the University of Namibia–Department of Economics and Management Science. Technocratic and intellectual help is available there.

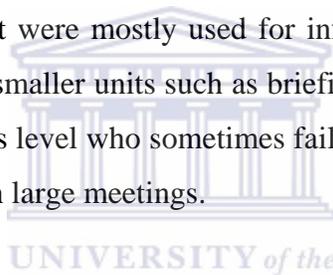
On the issue of advocating for a support system as alluded to earlier, steering committees, commissions by government or individual or private agencies can be organised to assist in the identification of policy / constitutional capacity that can be in position to equip constitutional committees with the necessary skills so as to avoid in future scenarios similar to those experienced by the Ovambanderu people. Such organized systems can provide monitoring systems for institutions that intend to embarking on policy initiatives more especially at Traditional Authority level.

Lastly, the Ovambanderu Royal Authority should see this error as a lesson for itself as well as other traditional authorities in Namibia. It is now of outmost importance to advocate for a support system that can be of use in any other public policy endeavors at traditional authority level so as to prevent this error reoccurring .

5.2.2. Recommendations related to stake holders involvement

The above mentioned recommendation can be supported by the following consideration: “The public policy choice perspective has a kinship with the pluralistic approach” (Larmour, 1999: 64). Therefore, in states where people are rational, self-interested, and opportunistic and maximizes, it is the furtherance of narrow interests, and not the public interest, which dominate. The weak and the poor are losers unless they can organize and articulate their interest.

That means that both the pluralists and public choice theories need to be considered in public policy/constitution making so as to produce and acceptable policy/constitution. For example, the general meetings that were mostly used for information sharing could have been supported people meeting in smaller units such as briefing sessions that can allow for participation of people at grassroots level who sometimes fail to attend larger meetings and sometimes feel threatened to talk in large meetings.



In a nutshell, participation must be the motto as it leads to better approaches for public policy making. Communities affected by proposed changes have the right to information, and they have the right to challenge whatever decisions affect them as well the right to be involved in the planning and decision-making processes. (Mitchell, 2007). But still, this does not necessarily have to create a loophole for the community, for example the Ovambanderu community, to challenge those in authority unnecessarily. This is to say that public demands should not be overlooked and whatever the authority intends to do needs to take a bottom up approach by first of all mobilizing support from the general public before acting.

The selected policy makers for a given task must learn to live in uncertainty. This is to say that no one knows everything and no one knows what other people need and value.

More importantly, the affected parties or the stakeholders need to know that the policy making process is not a once-off event but an ongoing process. As evaluation takes place (before, during and after implementation) to determine the impact of the policy, changes can be made based on the evaluation results. In the case of the Ovambanderu constitution, changes in the naming of the positions could be left to implementation and be discussed at a later stage. The most important aspect that needs addressing is the issue of incremental approach as suggested by Haddad (1979) and his contemporaries as well as rationality.

The aspect of rationality does not necessarily place a demand on the authority alone, but the entire community ought to be rational in whatever action it takes. They need to know that a policy or constitution is a product of intellectual being and not just a natural object like a mountain or a river. Human beings create the constitution with an end in mind. It is in the same spirit that human beings can change it as well and conceivably with help from God. The controversy here is the controversy of politics.



5.3. Recommendations for future research

In conclusion this research report recommends investigation in the following areas:

- Will there be peace between the two factions of the Ovambanderu community once these policy/constitutional problems come to an end?
- Does the House of Traditional Authority in Namibia has capacity to train and retain its own policy/constitutional capacity to deal with issues of public policy/constitution making at Traditional Authority level so as to avoid this kind of problems in future.
- Does the Namibian government regard the Ovambanderu constitutional problem a lesson for an institutionalized system of policy/constitution making at Traditional

Authority level? Or does government see that as human error that can be experienced anyway, despite the lack of such a system?

- Is this a case of tradition against modernity?



BLIOGRAPHY

Course reading and books

1. Anderson, J. E. 1978. **Public Policy- Making**. Ropert E. Krieger Publishing Company Huntington, New York
2. Bardill, J. 2005. **Public Policy and Change Management**. Course Reader. UWC. School of Government. RSA.
3. BJORIKMAN, J. W. 1998. **Budgetary Nexus: Analyzing Constraint**. MPPA lectures. The Hague
4. Cloete, F. 2000. “**Policy evaluation and assessment**” in Cloete F. and Wissink. H. 2000. **Improving Public policy**. Van Schaik. Pretoria.
5. de Conning, C. Cawthra, G. and Thring, P. 2002. **Cases in policy management: A fieldwork book of policy initiatives in South Africa**. P&DM.Parktown. DM Park Town, Johannesburg.
6. Dror, Y.1971. **Design for Public Science**. Elsevier. New York.
8. de Conning, C.B. 2000. **The nature and role of public policy (Chapter 1)** in Wissink. H. and Cloete. Cloete. F **Improving Public Policy**. Van Schaik. Pretoria.
9. de Conning, C. B. 2000. **Models of Public policy (Chapter 2)** in Wissink H. and Chloette. F. **Improving Public policy**. Van Schaik. Pretoria.
10. Dunn, N. W. 1994. **Public Policy Analysis: An introduction**. University of Pittsburgh. Englewood Cliffs, New Jersey 07632.

11. Fuguay, R. F. and Maddox, M. 1981. **State, Government, Local Government**. 4th Edition. New York

12. Gasper, D. 2000. Equity, equality and appropriate distribution- multiple interpretations and Zimbabwe usages. Macmillan. London.

6. Grindel, M. S. and Thomas.J. W. 1980. **Politics and Policy implementation in the Third World**, Princeton University Press, Princeton, New Jersey.

13. Haddad, D, 1995. **Education policy – planning process: applied framework**. United Nations Educational, Scientific and Cultural Organization, 7 place de Frontenac, 75700 Paris.

14. Hogwood, B.W. and Gun, L. A. 1994. Policy analysis for the real world. Oxford University Press. Oxford.

15. Heinemann, R. A. 1997. The world of the policy analyst. Rationality, Values and Politics. Chatham, NJ. Chatham Horn.

16. Larmour, P. 1990. Policy Transfer and Reversal: on line Volume 22. Issue 2. Pages 151-161.

17. Lindblom, C. E. 1959. **Public Administration Review**. Yale University Press. New York

18. Manitoba, M. 2001. **Decision CPRTC**. Ottawa Publishers. Canada.

19. Magee, D. 1982. **Advancing Liberty**. Competitive Enterprise Institute. New York.

20. Mitchell, Y. 2007. Translating policy into implementation. Constitutional Court. SA.

21. Mokgro, Y.1993. Ubuntu and the Law in South Africa. PER. SA.
22. Moharir, V. 1990. **Capacity Building Initiatives for Sub Saharan Africa.** Governmnet of the Netherlands, Ministry of Foreign Affairs. The Hague.
23. Moore, M. H. 1995. **Creating Public Value. Strategic Management in Government.** Harvard University Press. Cambridge.
24. Mutahaba, G. Baguma, Halfani, M, 1993. Vitalizing. Africa Public Administration for Recovery and development.: Kumarian. Connecticut.
25. Paine, T. 2002. **Comments on Governance and Market Discipline. Lessons from Euro' and the Authors response.** Journal of the Indian School of Political Economy. Volume. 14. No. 633-644.
26. Van Baalen, J. 2000. **Project Management and Public Policy Implementation.** In improving Public Policy (Cleote, F and Wissink, H, Eds). Van Schaik. Pretoria.
27. White, L, 1990. **Implementation of Policy in LDCs.** Lynne Rienner Publishers. Boulder Colorado.
28. Olowu, B.1998. **Redesigning Africa Civil Service Reforms.** The Journal of Modern African Studies 37.
29. Patton, M. Q. 1986. **Utilizing Focused Evaluation.** Thosan Oak. Sage California.
30. Theodoulou. S. Z. **Public Policy: The Essential Readings.** Prentice Hall Engelwood Cliffs. New Jersey.

31. UNDP. 1995. **Public Sector Management, Governance and Sustainable Human Development**. Management Development and Governance Division Bureau for Policy Program Support Unites Nations Development Division, New York.

Oral history

1. Chief Munjuku Nguvauva11 (Interviewed on the 5th June 2007)
2. Senior Councillor Arnold Tjongoro (Interviewed on the 20th of June 2007)

Policy Document

1. Government Gazette of the Republic of Namibia. 1998. Windhoek, Namibia. Volume
2. Traditional Authority Act No. 25. of 2000. Government Gazette: 22 December 2000.
3. Uk Cabinet Office. **Professional Policy- Making for the twenty first century**. Strategic Policy Making Team. Cabinet Office. UK. CAPE

Unpublished paper

1. Parker, C. 2007. Verdict. Constitutional Case of the Ovambanderu Community. Windhoek High Court. Namibia.
2. The Ovambanderu Constitution. 2005. Namibia.
3. The Ruling System of the Ovambanderu Community. 1992. Windhoek. Namibia
4. Shivute,C,J. Straydom, A, J,A, Mtambanegwe, A,J,A 2008. Case no 20/2007 delivered on 14 July 2008. Supreme Court of Namibia. Windhoek . Namibia.



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Appendix 2

QUESTIONNAIRE

This questionnaire aims to collect data that will be used to analyze the process followed by the Ovambanderu Royal Authority in drafting the Ovambanderu constitution.

The data collect through this questionnaire will be used for writing up a research project in partial fulfillment of the Masters in Public Administration.

Kindly answer the questionnaire.

Section A

Please complete section A before you proceed to section B

Please tick in the appropriate box.

Paramount chief (Chief according to Traditional Authority Act, 2000)

Councilor

Secretariat

General field marshals of green flag

Prophet of Ovambanderu (ondangere)

Member of the Ovambanderu community



Section B

Please answer all questions as requested in the first part of this questionnaire.

Questions

1. The idea of drafting the Ovambanderu constitution came from:

- (a) The Chief of the Ovambanderu Community
- (b) The Councilors of the Ovambanderu community
- (c) Some members of the community
- (d) Government

2. Did the Ovambanderu Traditional Authority invite a team of public policy/constitution making specialist to help in initiating the process of drafting the constitution?

Yes or No

3. Was there an agreement on the process to be followed in drafting the constitution?

Yes or No

4. Did the consultation allow for prioritization of issues, and prediction of outcome regarding the proposed constitution?

Yes or No

5. Did the stakeholders agree on the report format of the proposed constitution?

Yes or No

6. Did the stakeholders confirm that the constitution is good and relevant to the entire community?

Yes or No

7. Which of the following modes of consultations were used in sharing information with stakeholders and beneficiaries?(multiple response)

- Consultations
- Mandate decisions
- Debriefings
- Negotiations
- General meeting



8. Did the interaction allow for consensus (agreements on the contents of the constitution) building with stakeholders or their representatives?

Yes or No

9. In your opinion, how successful were the consultations referred to in question 8, looking at the long-term impact of the constitution on the well being of the Ovambanderu people?

Very successful

Successful

Not quite successful

Motivate your answer

.....

.....

.....

10. How does the constitution differ in content from the previous oral one?-----

11. Did the Ovambanderu community agree on the following implementation strategies?
(Multiple response)

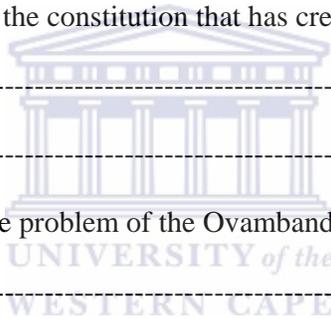
- Translating some of the of the constitution aspects into workable strategies?
- The management of the strategies
- The management and monitoring of the constitution

Substantiate your answer

.....
.....

12. What is the main message of the constitution that has created division?

13. What can be done to solve the problem of the Ovambanderu constitution?



The end