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The legislative process in Suriname, is the quality of legislation adequately ensured throughout the legislative process?

Marijke E. Rommy

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CHAPTER 1 INTRODUCTION

1.1 Background

From government's point of view, legislation is primarily a means to realize certain objectives; legislation is also a tool to develop and implement, in general, government's policy (Donner, 2004, p. 1). It is then obvious that legislation that is defective in one way or another, can harm the government's accountability, and confuse and frustrate those who have to implement the rules as well as those who have to obey them or are dependant of them.

Defective legislation can also cause for citizens to seek judgment by attending international organizations because on national level their sense of justice was diminished, or for international organizations to give judgments against a member state because of contradictory or conflicting legislation.

With defective or poor legislation is meant legislation that does not fully comply with the procedures and the elements for screening as prescribed in the "Instructions for drafting legislation".[1]

In Suriname, we have experienced all these situations, which makes it interesting to perform an assessment of the process of legislation to find out if, and how these situations can be minimized through safeguarding quality standards of legislation throughout the process.

The term "quality" is closely related to the broader concept of the rule of law and administrative quality (Voermans et al, 2000, p. 5). Quality itself was defined as fundamentally relational: it is the ongoing process of building and sustaining relationships by assessing, anticipating, and fulfilling stated and implied needs[2]. In the relation government – citizens, the government is constantly working to reach a higher level of performance. "In the Netherlands, the quality of legislation is based on the extent to which a regulation complies with certain conditions like effectiveness and efficiency, simplicity and clarity and accessibility" (Voermans et al, 2000, p. 5). In the Netherlands as well as in Suriname, these conditions are laid down in instructions for drafting legislation, and can be traced back to the basic principles of the rule of law concept.

[1] Bulletin of Acts and Decrees, 1992 no. 75
[2] http://www.quality digest,com/html/qualitydef.html

The initiative to draft new legislation can start within the government or by a member of parliament[3]. The focus in this research paper is on legislation initiated within the government. In this case, a bill is drafted within the responsibility of usually one ministry, however, depending on the subject, more than one ministry can be responsible for regulation. While all ministries bear responsibility for the quality of their legislative proposals, the ministry of Justice and Police has the primary responsibility for the constitutional and administrative quality of the proposals[4]. For this reason, the proposals need to be sent to the Ministry of Justice and Police for screening; actually, this does not always happen. In addition, there is no system of control to make sure that the ministry of Justice and Police screens the proposals before they reach the next stage.

In the process prior to the debates in parliament, all proposals need approval of the Council of Ministers before they reach the Council of State for advice. The membership of these two public bodies, as well as that of parliament, has a political basis while no qualifications, like for instance a legal background, exist to be eligible for their membership.
Formally, the ministry of Justice and Police is responsible for the constitutional and administrative quality of legislation; furthermore, this ministry is responsible for legislative policy in general[5].

To gain insight in requirements for a properly structured legislation process, a comparison with the procedures of lawmaking from the Netherlands will be drawn.
History learned that as a colony of the Netherlands the entire legal system as well as the institutions of government were effectively transplanted from the Dutch model and carried on post-independence. Suriname, together with the Netherlands Antilles, has been part of the Kingdom of the Netherlands until Suriname became independent in 1975. This piece of history explains the similarities in our legal system with that of the Netherlands and the Netherlands Antilles. For this reason and since the Netherlands have a long history of legislation experience, I consider a comparison with the Netherlands useful.

[3] Constitution of the Republic of Suriname, Bulletin of Acts and Decrees 1987 no.116, articles 75 and 78
[4] Decree Duty Description Departments, Bulletin of Acts and Decrees 1991 no. 58
[5] Ibid

Chapter 2 paragraph 2.1 shows how in the process of lawmaking of the Netherlands, that goes through more stages, the legal quality of proposals of legislation is ensured.
The comparison of the two systems is not too much in depth. It just shows on the one hand, how, after Suriname's independence, things have, or have not developed, in a democratic state that promotes the rule of law concept, with regard to the process of lawmaking. On the other hand, it will show what else can be done to improve the procedures.

1.2 Research problem and research questions

As stated above, defective legislation in this research is meant to be legislation that does not fully comply with the procedures and the elements for screening as prescribed in the above-mentioned "Instructions for drafting legislation". Since problems with legislation mostly don't show when the act is adopted, but later in practice, it is important that the process contains safeguards to minimize this possibility of defective legislation.

The problem is that on the long run defective legislation can harm the image of a government on national as well as on international level. On national level, citizens may finally lose confidence in their government for example as a result of frequently occurring problems regarding legislation. On international level the government may lose its confidence of the international community, this may be due to conflicting regulations, for example because international conventions were not taken into account while adopting new legislation. On national level the political consequences may result in disturbing of the public order and finally in rejection of the government. On international level actions to harm the economy of the country are not imaginary. All of this will on the long run harm the development of the country.

One of the ways through which the quality of legislation can be affected, is through the process of preparing a proposal. In this process, various institutes, formal as well as informal, have a part. I will focus on the formal institutes and their roll in the process, to answer the research question namely:

> which institutional and procedural measures should be taken to ensure the quality of legislation throughout the process of lawmaking in Suriname.

The following sub-research questions will be answered:

1. How often have proposals come through in cooperation with the ministry of Justice and Police?
2. What are the main reasons for not following the formal procedures?
3. How does the process compare with the process in the Netherlands?

For governments legislation is one of the tools through which certain policy objectives can be realized, but an act is obviously also a legal document, that consequently can cause far-reaching legal implications, which may also result in lawsuits.
It must be clear that the kind of legislation that mostly runs risks to be defective due to poor procedures consists of legislation containing measures used as policy instrument by the government; for example legislation regarding trade and industry, traffic, licensing systems, allocation of land, social housing, tax and so on. These are the kind of issues governments revise more frequently due to policy changes.

Our basic legislation on for instance civil law and criminal law is still based on that of the Netherlands, which also counts for the majority of the amendments in the concerning codes. This means that we benefit from the fact that most issues to be amended in the basic legislation from Suriname, already have been thoroughly discussed in the Netherlands; usually there is also practical experience with that legislation available. However, while the Netherlands are developing towards Europe, Suriname is becoming more involved in the Caribbean Community. These developments certainly influence legislation from both countries, which probably will have consequences for Suriname. This is meant in the sense that, regarding other than the basic legislation, Dutch regulations on certain topics may be too European for Suriname to adopt. Benefiting the Dutch procedures will not be possible in those cases. Discussing these consequences any further will take me too far from the research topic that is focused on the formal procedures.

1.3 Research method

The research describes how the quality of legislation is assessed throughout the legislation process in the Netherlands; criteria that can be used to improve the legislation process in Suriname, is derived out of the assessment.

Then the formal process of how a proposal should reach parliament is described, focusing on how these procedures contribute to optimal realization of the quality requirements as they are determined in the instructions for legislation drafters.

An inquiry was carried out, covering at least a four-year period, to find out which part of the total amount of proposals that have been sent to parliament during that period of time, was processed in cooperation with, and screened at, the Ministry of Justice and Police. On the basis of this inquiry, interviews with the heads of the legislation departments were held to find out if there were specific reasons for not cooperating with the Ministry of Justice and Police.
Because not all ministries are always involved in the process of revising legislation or proposing new regulations, an assumption was made that only four or five ministries would be interviewed as a result of the inquiries. After an explanation on the inquiry, the first question was on the cooperation with the ministry of Justice and Police during the drafting process. The second question was on the awareness of the quality requirements defined in these instructions as elements on which the screening is focused.

Because the Ministry of Justice and Police give advice, and the responsible ministry does not have to follow the advices, I also questioned how they usually dealt with the advices since not every ministry returns the proposal, after revision, for a second screening to Ministry of Justice and Police.

In making a comparison with the procedure of the Netherlands, I selected elements in the institutional provisions there that could be used in the system in Suriname to better secure the quality of legislation.

Finally policy proposals are formulated, addressed to the Minister of Justice and Police regarding institutional provisions to safeguard the quality of legislation throughout the process of lawmaking.

1.4 Scope and limitations

In general, the term legislation is used in more than one way; in this research and especially in the inquiry, the focus is on legislation in the meaning of formal, collectively binding, acts.

"There are various ways of assessing legislative quality. For example, from the point of view of the effectiveness of the procedures, the lawfulness of the rules or the consequences of these rules" (Donner, 2004, p. 1).

In this research, I will focus on the process of lawmaking, starting with an idea within a ministry and ending with the debates in parliament, the National Assembly, showing among other things, where in the process the draft undergoes screening, what kind of screening, and by whom. This process will be compared with the process of the Netherlands.

The idea is that by focusing on the process conclusions can be drawn on the effectiveness of the process itself, but it will also make it easier to determine what further steps are necessary to find out where the weak links are.
This research is about institutional provisions to safeguard legislative quality throughout the process of lawmaking; it is not about functioning of the present institutions.

Although the leading view of the Government regarding the relation between legislation and policy seems to be that legislation is a tool, policy-driven view, and not the other way around, law-driven view, this aspect will not be part of the discussion.
The assumption that in the Netherlands legal quality is better ensured throughout the process, is also based on formal aspects regarding the institutions involved in the process of lawmaking in the Netherlands. Also for the comparison counts that this is about the formal aspects and not about the functioning of the institutions in practice.

1.5 Chapter outline

Chapter 1 provides background information on the subject and a glimpse of what can be expected in the research, while it contains information about the research problem and questions, its method, and the scope and limitations.

In chapter 2, the research subject is placed in a theoretical background, namely the concept of the Rule of Law, while elaboration on the requirements to ensure legislation quality is provided, and finally some developments with regard to the importance of legislative quality are given.
In chapter 3, the process of lawmaking in Suriname and the institutions that are involved are described extensively while chapter 4 provides the results of the field work.

In chapter 5, an analysis of the lack of procedural safeguards within the legislative process in Suriname is made, while chapter 6 contains concluding remarks, including proposals to the Minister of Justice and Police.

CHAPTER 2 REVIEW OF THE THEORETICAL BACKGOUND

2.1 The Rule of Law concept, some basic remarks

In contemporary debates on foreign policy, the rule of law is a much-discussed concept. As Thomas Carothers stated in his article Rule of Law Revival: "One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles"(Carothers, 1998, p. 1).

However, in this research the concept is conceived more narrowly in the sense that it refers to the way the Suriname Government promotes it in national politics. Politicians advocating the rule of law refer to, among other aspects, to government's respect for the law and to independent and impartial judges.

As indicated in the introduction the term "quality", is closely related to the term "rule of law", which characterizes a certain type of legal-political regime.

> The rule of law does not have a precise definition, and its meaning can vary between different nations and legal traditions. Generally, however, it can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power (Yu and Guernsey, p. 1).

Lon Fuller, an American legal scholar, identified eight criteria, which help to understand the rule of law because they outline the types of rules, or formal constraints, that societies should develop in order to approach legal problems in a way that minimizes the abuse of the legal process and political power (Yu and Guernsey, p. 1). In his book The Morality of Law, Fuller mentioned the following criteria:

1. Laws must exist and all, including government officials, should obey those laws.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct the conduct was passed.

4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.
7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule (Yu and Guernsey, p. 1).

These elements seem clear and understandable but they are actually difficult to implement in the real world because governments are often compelled to prioritize one goal over another to resolve conflicts in a way that reflects society's political choices (Yu and Guernsey, p. 2). Recognizing this, Fuller suggested that societies should balance the different objectives, which is a very logic and non-avoidable thing for governments to do, because, as is indicated above, historical and cultural differences between nations make it impossible to formulate criteria that work for all in the same way.

After an assessment of these eight criteria in relation to the process of lawmaking, especially the criteria's 4, 5, 6 and 7, seem to be of importance during the stages of drafting, screening and the debates in parliament. It is clear that once the proposal is adopted, the stage to care for reasonable clarity of the text or to avoid contradictions has passed for that specific piece of legislation.
The other elements need to be considered in the stage of implementation of legislation or as aspects, which are part of general government policy, which is beyond the scope of this research.

2.2 Requirements to ensure quality of legislation throughout the process

To gain an understanding in what is important in a properly structured process of legislation, relevant documents from the Netherlands, their procedures and the instructions as assessment framework, give an insight.

In 1990 the first policy document regarding general policy on legislation from the Netherlands, View on legislation, (Zicht op wetgeving), which is still very authoritative, was

presented in the Dutch Lower House. In Chapter 3, Improving the process of legislation, the following is stated:

> "The process of legislation should be structured in a way that, within social, administrative and political possibilities, it contributes to optimal realization of all of the following quality requirements for government action:
> - lawfulness and realization of principles of law;
> - effectiveness and efficiency;
> - subsidiarity and proportionality;
> - feasibility and enforceability;
> - mutual harmonization;
> - simplicity, clarity and accessibility" (View on legislation, 1990, p. 8).

It is therefore necessary to translate quality criteria like efficiency and effectiveness into procedural elements such as cooperation, structuring and controlling of procedures and care for sufficient qualified personnel (Rules and Risks, 2000, p. 5).
How the process is structured is diagrammatically presented in the next section.

Out of practice we learn that the requirements are often related to one another, while there is no specific order in these categories; sometimes some overlapping can occur, and at other times, a certain tension between two or more quality requirements may exist. As I have mentioned above regarding the rule of law principles, also for the quality requirements counts that it is important to find a good balance (View on legislation, 1990, p. 33).

It is important that the quality requirements are observed in all the different stages of the legislation process, by all institutions involved (View on legislation, 1990, p. 9).
They are for at least two levels of importance: first, to answer the question if legislation is necessary, and then, while the contents of the proposal is determined (View on legislation, 1990, p. 23).

Although proposals should be prepared in a careful manner, a speedy process, because of a certain government policy, is often necessary and does not mean that the quality will be

affected. A balance between carefulness and speed is important and possible, while carefulness should be held high under all circumstances (View on legislation, 1990, p. 33).

With regard to feasibility, enforceability and effectiveness, it is important that the legislator finds optimal connection with social processes. Preparing of legislation should therefore also be geared towards linking up with social processes (View on legislation, 1990, p. 33).
We see this implemented in the legislation process in the Netherlands through the various stages and ways of formal and informal possibilities of consultation and advice (View on legislation, 1990, p. 34).
Further elaboration on this aspect will take us too far; for the purpose of this research it is important to see that these aspects are an important part of the process of legislation and neglecting them may affect the quality of legislation.

2.2.1 The legislation process in the Netherlands

In the Netherlands, various tools are available for legislation lawyers, of which the basic document, the Drafting instructions for drafting legislation, was issued in its present form for the first time in 1993. The Guide for legislation (Draaiboek voor de Wetgeving), published for the first time in 1985, consists of a comprehensive and systematic outline of the procedure.[6] In this document, there is also a categorized list of all other tools such as the aforementioned Instructions for legislation drafters[7], legislation models and instruments, available for legislation lawyers.

This chapter will show the formal institutions that have a part in the legislation procedure to be passed, of an act, not being a Kingdom act, submitted by the government. Chapter 6 from the Instructions for legislation drafters contains specific instructions on the formal stages in the process, while every stage of the process is broadly described in the Guide for legislation.

The descriptions of the process in the Guide for legislation show among other things:

- in chapter II paragraph 1, explicit attention is paid for consultations in the (inter)departmental stage, followed by screening;

[6] Sdu Uitgevers, Den Haag 2002
[7] Stcrt 2002,97

- in section 10 of the paragraph we find, among other things, that a proposal cannot reach the Council of Ministers without consensus with Justice;
- there are wide possibilities for advice before the bill arrives in the Council of Ministers.

The diagrammatically presented information is derived from Appendix A I to the aforementioned Guide for legislation, and shows all the steps that are possible in the process. According to chapter II of the Guide, the following stages are prevalent:

- (Inter)departmental preparation,
- Seeking for (administrative) advice and consultations,
- Advice by for instance:
  - advisory bodies
  - interest groups
  - experts
- Screening,
- Notification,
- Debate by Council of Ministers,
- Advice Council of State,
- Preparation further report and presentation,
- Debate in the Lower House,
- Debate in the Senate,
- Passing and publication.

STAGE	**AUTHORITY**	**DETAILS**
1. (Inter)departmental preparation	Ministry of Justice Legislation Department Sector Policy on Legislation Quality Joined Advice center Intended legislation	Finalizing consultations Screening Eventually reporting on impacts
2. Preliminary bill		Apply restrictively
3. Preliminary bill	Secretary council of ministers Ministry of General Affairs	In general not necessary, if yes, consultation with Secretary council of Ministers

4. Requests for advice		
5. Bill in administrative pre-processing	Secretary at the ministry of coordinating minister	
6. Bill in pre-council	Council adviser General Affairs, as secretary	Presentation form signed by coordinating minister; 10-days term.
7. Bill in Council of Ministers	Secretary, Council of Ministers	If in pre-council, automatically to Council, if not, presentation form. 7-days term.
8. Council of State for advice	Queen's Secretariat	Presentation letter with accompanying exhibits as prescribed
	Council of State, Sec. Legislation Department	Presentation letter with accompanying exhibits as prescribed
9. Further report	Ministry of Justice, Secretary, Council of Ministers,	If far-reaching criticisms, consultations with Legislation Dept., back to Council of Ministers
	Queen's Secretariat	Sending to Queen's Secretariat
10. Submission Lower House	Secretary General Lower House	Sending to Secr. Gen. Lower House with accompanying exhibits as prescribed
	Secretary General of Senate of the State General	Copy to Secr. Gen. Senate of the Senate General
11. Memo with corrections	Legislation Section Secr. Gen. Lower House of State General	Throughout whole debate
12. Report		Composed by secretary standing parliamentary committee
13. Memorandum after Report 14. Further Report 15. Memo after further Report		
16. Memorandum of amendments		Throughout whole debate, If radical changes, consultation Council of State
17. Amended bill	Legislation Section (as 11)	After one or more memo's of Amendments
18. Technical consultations		Before or during the plenary meeting
19. Plenary meeting	Secretary General Lower House	
20. Amendments	Legislation Section	Throughout whole debate

21. Voting		
22. Proceedings in the Senate	Legislation Section	Submitting bill by chairman Lower House to chairman Senate
23. Preliminary report and Memorandum of reply 24. Report and memorandum on report 25. Final report		
26. Plenary meeting 27. Voting		

2.2.2 The Drafting Instructions as assessment framework

In the Netherlands the Instructions are an important assessment framework for the institutions to ensure quality of legislation, which are:

- The Minister of Justice,
- The State Council, and
- Parliament (especially the Senate) (Borman, p. 85).

The six quality requirements mentioned in the Instructions are derived from the policy document View on legislation from 1991 and are further elaborated in the instructions, which made them known and applicable in practice (Borman, p. 88).

While, due to unity in government's policy, the screening results from Justice, which may differ from opinions from other ministers, are not made public, those of the State Council are public (Borman, p. 88).

The screening by the State Council differs on at least four essential points of the screening by Justice:

- the independent position of the State Council,
- the stage of the legislation process wherein screening is done,
- the public character of the advices,
- the fact that more time is available for screening (Borman, p. 88).

Borman explains as follows. The screening results by the Ministry of Justice are ultimately part of the whole of political considerations that is the basis of a proposal for legislation.

Arguments of legislation quality do count in the Council of Ministers, but they cannot always be decisive. Screening by the State Council is different; in all cases the State Council should give a independent opinion, even if there is no political support. In addition, the Council of State gives its advice directly after the Council of Ministers.

Another important point is that the Prime Minister, "in accordance with the feeling of the Council of Ministers", adopts the drafting instructions, and all the amendments. The supplement is not without meaning, Borman explains, because in this way it is expressed again that all ministries are bound by the Instructions. According to him there is good reason to state that the Instructions give the normative framework for legislation quality of the central government; they take a central place in "legislation law" in the Netherlands.
Although the Instructions are adopted by the Prime Minister, the Minister of Justice is responsible for general legislation policy, nowadays legislation quality policy, and thus for the contents of the Instructions (Borman, p. 74).

2.3 Some developments regarding quality of legislation

As a democratic state under the rule of law, the government has accepted that the only way to exercise executive power against society is through legislation made through people's representation (View on legislation, 1990, p. 17). It is obvious then how important the quality of legislation is to government's quality and government's policy in general, because governance by defective legislation, in the end, will affect the credibility of legislature and with that of the government as a whole (View on legislation, 1990, p. 7).

The Dutch Legislation Review Committee[8] considers the process of legislation one that is highly integrated with policy. As stated in their report, to implement certain elements of policy, regulations are necessary, which, from the policy point of view, makes legislation a tool to policy. On the other hand, they show that the Instructions for legislation drafters consist of criteria that regard policy, especially criteria like effectiveness and efficiency, implementation and enforcement. Although policy and legislation are strongly integrated, legislation has its own legal dimension that cannot be traced back to policy. As one single regulation becomes part of the "legal complex", this means that a proposal should be in line

[8] Rules and Risks, January 2000, page 15

with general principles of law and current legislation, with international and national legislation as well as with the legal technical rules. They conclude that when insufficient attention has been paid to the legal reality, on the long run this will have repercussions on the efficiency of government's policy.

While, especially in the Netherlands, but also in the Netherlands Antilles, quality of legislation is getting a lot of attention since the 1980's, it is my opinion that in Suriname the significance of legislative quality in the broad sense as well as the implications a lack of quality can cause, is not yet broadly recognized.

2.3.1 Developments in Suriname

In a state decree from 1991, "Decree Duty Description Departments", that provides for description of responsibilities of the ministries, article 5.1 sub c, determines that every ministry is responsible for the preparation of legislation on issues regarding that ministry, and further more that this should happen in close cooperation with the Ministry of Justice and Police.

Among many other responsibilities, according to article 6.1 sub c of the aforementioned state decree, the ministry of Justice and Police should take care of legislation and provide legal advice to the state.

As mentioned above, in 1992 the "Instructions for drafting legislation" were declared by ministerial order. This document provides instructions for drafting legislative proposals to i.a. legislation lawyers. In its preface, the then minister of Justice and Police stated that the aim of this document was to promote quality and uniformity of legislation. Furthermore, he stated: … "that drafters should constantly be aware of the conditions that count in a democratic state under the rule of law regarding i.a. legitimacy of government action and protection of civilians". The instructions have never been revised since and are still valid.

In the introduction, reference is made to a narrow conception of legislative quality, which in my view relates to the drafting and screening stage of the proposals, where in instruction 201, the following quality requirements are taken into consideration:

1 implementation and enforcement,

2 effectiveness and efficiency,

3 mutual harmonization and harmonization with treaties and agreements with international institutions,

4 simplicity and clarity,

5 accessibility and manageability (Instructions for drafting legislation, 1992, p. 83).

These quality requirements are derived from the "Drafting instructions for drafting legislation" from the Netherlands. Apart from these requirements the instructions consist of more than 200 articles regarding aspects on the material part of a proposal, as well as aspects regarding spelling and grammar, and the outline of proposals.

2.3.2 Developments in the Netherlands

The above-mentioned policy document "View on legislation" deals with constitutional and administrative quality of legislation and with that also with the quality of government policy in general (View on Legislation, 1990, p. 1). The Dutch government, aware of the fact that defective legislation can frustrate government policy, gave priority to the plan in this document, which held further development and implementation of the general policy on legislation, focussing on improvement of the constitutional and administrative quality of government policy (View on Legislation, 1990, p. 8).

In 1998, the Dutch government decided to make inquiries periodically on the quality of legislative institutes and the process of legislation at every ministry. To do so the Legislation Review Committee was installed.[9] In its first report from January 2000 the commission concluded that in general a lot goes well in the process of legislation in the Netherlands, but there are threats for the quality of legislation due to, among other things, an increasing pressure on time and on government policy, relatively low weight of juridical dimension, but also due to factors like a lack of directing and structuring of the legislative process, and insufficient involvement of legislative lawyers in preparing European policy. To deal with these threats, the commission made some recommendations of which the most were adopted by the cabinet (Van wetten weten, 2002, p. 4).

In September 2001, the Academy for Legislation was established. One of the direct reasons for the establishment of the Academy was a recommendation by the Legislation Review Committee. In the first information guide of the academy, the following was stated:

[9] "Van wetten weten" april 2002, page 4

> Constant attention must be paid to the quality of legislation. The parties involved in the legislative process must continually work on their knowledge and skills ……..all those involved in the legislative process must always be aware of the substantive and procedural requirements that legislation must fulfill. The Academy therefore has the primary aim of making the best possible contribution to the improvement of the quality of legislation (Information guide of the Academy of Legislation, 2001, p. 2).

2.3.3 Developments in the Netherlands Antilles

Also the Netherlands Antilles were engaged in activities which, among other things, concern quality of legislation in broader terms. In January 2002, the "Landsverordening Organisatie Landsoverheid" (National Ordinance Organization National Government) (LOL) entered into force (Carolus, 2006, p. 7). According to this act every ministry has one or more directories, responsible for the preparation of policy and the preparation of proposals for legislation. Above these directories of the various ministries there is a Legislation and Legal Affairs Department (Directie Wetgeving en Juridische Zaken, DWJZ), placed under the ministry of General Affairs and Foreign Relations, which is responsible for the preparation of general national regulation (Carolus, 2006, p. 7).

According to Mr. Norwin R. Caroles, Director of the directory DWJZ, the principle to leave preparation of policy as well as preparation of proposals for legislation with the various directories is an excellent one, because of the necessity of close collaboration and interrelation between policy and legislation (Carolus, 2006, p. 8).
In the context of the LOL the legislation function of the DWJZ is to be explained as one to guarantee a central screening of all prepared proposals of all directories.
The screening by DWJZ is especially focused on the constitutional quality of the proposals (Carolus, 2006, p. 8).

Legislative lawyers working in the various directories are functioning within a certain hierarchy that might make it difficult to consider things strictly, as it should be. Their ability to criticize strictly judicial has to compete with the demand for loyalty against their superiors (Carolus, 2006, p. 9). This obviously shows the importance of the central screening by DWJZ, which is functioning independent within the process of legislation. Because of this,

the legislation lawyers of the DWJZ directory are better able to balance the policy aspects with the constitutional quality properly. The independence of the DWJZ lawyers also makes it possible for them to say “no” more easily to other directories when they want to push through certain policy measures in a way that is legally or legal-technically not right (Carolus, 2006, p. 9).

Because of the central screening function of the DWJZ, also the final responsibility for the text of the proposals as a legal document is not with the separate directories, but with the DWJZ, which, as stated above, is under the political responsibility of the Minister for General Affairs and Foreign Relations, who is also the Prime Minister.

According to Mr. Carolus, the additional value of the central screening is that this guarantees the legal rationality and consistency in the contents of national legislation.

CHAPTER 3 THE LEGISLATION PROCESS IN SURINAME

3.1 Overview of the legislation process, step by step

In Suriname we have the aforementioned Instructions for drafting legislation from 1992, as the formal tool specially constituted for the drafting process. Apart from the models in these instructions, there are no other formal models or prescriptions to be observed.

As stated above, I will focus on legislation initiated within the government, though some acts, for instance budget acts, are not taken into consideration.

For a new act, or the amendment of an act, the prescribed procedure is as follows.

1. Preparation of a proposal within the ministry that is responsible for the subject that needs regulation or amendment; depending on the case, the proposal may be discussed within one or more other ministries.
2. Screening of the proposal and its explanatory memorandum by the Ministry of Justice and Police; depending on the case, the proposal may be submitted to one or more other ministries for advice.
3. After processing of the observations and criticisms, the proposal together with its explanatory memorandum, is presented by the responsible minister to the Council of Ministers.
4. The Council of Ministers takes a decision, embodied in a missive by the Vice President, Chairman of the Council of Ministers.
5. The responsible minister presents the proposal and the accompanying documents, including the missive, with 15 copies, to the President of the Republic, Chairman of the Council of State, for discussion in the Council of State.
6. The President sends the advice from the State Council to the responsible minister, inviting him to do the necessary and to make further arrangements to have things determined.
7. After the advice of the Council of State, the responsible minister presents the proposal, having taken into consideration the advice by the State Council, including the Explanatory Memorandum together with 70 copies, to the President.
8. The President sends the final version of the proposal for approval to the Chairman of the National Assembly.

9. The proposal, after an inquiry, is debated in the National Assembly.
10. After approval of the legislative proposal, the Chairman of the National Assembly returns a copy of the approved act to the President.
11. The approved act is passed by the President and sent to the Minister of Interior Affairs for publication in the Bulletin of Acts and Decrees[10].

3.2 Preparation within a ministry

According to article 1 of the Decree Duty Description Departments[11], the general administration is divided in several departments. Each department or ministry has to fulfill certain sub areas of the government's task. According to article 5 paragraph 1(c), each ministry is responsible for the preparation of legislation concerning the sub areas that particular ministry has to fulfill; this should happen in close cooperation with the Ministry of Justice and Police. To fulfill this task, each ministry has lawyers working in a legal affairs department or a legislative department. In addition to legislation prepared by those lawyers, experience has shown that external consultants are used to advise on, and prepare legislative proposals.

Practice has shown other ways a proposal for legislation is prepared within the responsibility of a ministry, namely through departmental or interdepartmental working groups. In departmental working groups, lawyers and other professionals from different departments at one ministry are brought together to study on a subject and to prepare the needed regulations.

Interdepartmental working groups are formed when more ministries are responsible for the issue that needs regulation, or when specific expertise on the issue is needed, or because deliberations from a broader perspective are necessary for instance due to an extensive group of stakeholders.

For the same reasons working groups can consist of public officers as well as participants of the private sector. Depending on, for example, the impact of the proposed regulations on

[10] This step by step overview is derived from a document for internal use, explaining the legislation procedure in Suriname, developed over the years since the 1992 Instructions for legislation drafters, by legislation lawyers of the Ministry of Justice and Police.

[11] Bulletin of Acts and Decrees 1991 no. 58

society or on the complexity of the regulation, the choice is made which is the appropriate way to have the draft prepared.

3.2.1 Screening by the ministry of Justice and Police

As stated above, all departments are responsible for the preparation of legislation regarding their department, which needs to be done in close collaboration with the Ministry of Justice and Police.

According to division, 5.2 Screening, from the Instructions for drafting legislation, the following documents should be submitted for screening to the Ministry of Justice and Police:

a. all legislative proposals and state decrees;
b. complicated ministerial memoranda of amendment on legislative proposals in discussion at the National Assembly;
c. management resolutions holding collectively binding regulations, which are of a complicated or far-reaching character.[12]

3.2.2 The Council of Ministers

According to article 122 of the Constitution one of the duties of the Council of Ministers is, to prepare products of legislation, and proposals regarding administration of legislation. Because of this duty, every proposal for legislation needs formal approval, contained in a official letter, missive, from the Council of Ministers before the responsible minister sends it to the President of the Republic of Suriname as President of the Council of State, for advice by the Council of State.

Also according to the Standing Orders for the Council of Ministers[13], article 2 (4) (a), one of the duties of the Council is to deliberate on and decide upon bills regarding collectively binding regulations.

Article 4 of the Standing Orders, makes it possible to have experts participating in the deliberations.

[12] Instructions for drafting legislation, Bulletin of Acts and Decrees, 1992 no. 75, Instruction 200
[13] Bulletin of Acts and Decrees, 1987 no. 5

3.2.3 The Council of State

According to article 115 of the Constitution one of the duties of the Council of State is, to give advice to the government regarding general policy matters, regarding the contents of legislative proposals as well as agreements under international law, whereof approval from the National Assembly is required.

According to article 1 of the Council of State Act[14], the Council consists of at the most fifteen members, while, according to article 4, the conditions one has to meet to become a member are as follows:

a. to be a national of Suriname;
b. having reached the age of thirty years;
c. not being excluded of the right to vote and the right to stand for election.

The question if these conditions can be qualified as appropriate for a country that advocates the rule of law concept is beyond the scope of this research.

3.2.4 Parliament

According to article 75 of the Constitution, the President presents legislative proposals to the National Assembly. Before a proposal is discussed in a meeting, which is open to the public, an inquiry takes place.

According to Chapter III, "The preliminary inquiry and the consultation with the government", article 15 of the Rules of Procedures of the National Assembly[15], the preliminary inquiry takes place in an internal meeting, while article 17 provides that for every legislative proposal a Committee of Reporters is chosen and announced in a public meeting.

The Committee of Reporters delivers a preliminary advice that serves as a guideline during the preliminary inquiry. Article 20 and the following, provides that the Chairman of the National Assembly may attend the meetings of the Committee. The preliminary report is signed and immediately sent to the President. During the deliberations, the Committee may have further consultations with the Government. If the information that is provided by the

[14] Bulletin of Acts and Decrees, 1988 no. 95
[15] Bulletin of Acts and Decrees, 1990 no. 43

Government makes it necessary, the Chairman of the National Assembly appoints another preliminary inquiry before the final report of the Committee is sent to the President.
According to chapter IV, “The public meeting and the national plebiscite”, under “Deliberations regarding the proposal”, article 65 provides that the debates are two folded: in the first place, the subject in general is discussed, and secondly the articles and the motivation for the proposal is subject of the debates.
According to the articles 58 and 59 of the Constitution, the preconditions for a person to be eligible for membership of the National Assembly are:

- being a resident,
- possessing the nationality of Suriname,
- being at least 21 years of age, and not be disqualified from voting on the following grounds:

a. disqualification on the right to vote based on a final judgment;
b. lawful deprivation of ones liberty;
c. loss of the right to dispose of one’s property because of insanity or disability by final judgment.

Also for this membership counts that the question if these conditions can be qualified as appropriate for a country that advocates the rule of law concept is beyond the scope of this research.

CHAPTER 4 EMPIRICAL RESEARCH

4.1 Results from a five-year period

To prove the assumption that Justice and Police do not screen all proposals, an inquiry was conducted.

Table 1 shows a five-year period of which the first years covers the former government term. Because of the concern that defective legislation may harm the government on both, national and international level, the following acts, not qualified as collectively binding, are not relevant for the purpose of this inquiry:

- budget acts,
- acts regarding international agreements and
- acts regarding authorization of the government.

These acts are therefore not counted in the tables.

The table shows that from the seventeen ministries, only three to four are yearly involved in preparing new legislation, or amending legislation.

TABLE 1: ADOPTED ACTS PER MINISTRY PER YEAR

MINISTRY	**2003**	**2004**	**2005**	**2006**	**2007**	
JUSTICE AND POLICE	0	7	3	2	4	
INTERNAL AFFAIRS	0	0	1	2	0	
REGIONAL DEVELOPMENT	1	0	1	1	0	
DEFENCE	0	0	0	0	0	
FOREIGN AFFAIRS	0	0	0	0	0	
PLANNING AND DEVELOPMENT COOPERATION	0	3	0	0	0	
FINANCE	5	4	6	1	0	
TRADE AND INDUSTRY	2	2	0	2	0	
AGRICULTURE, CATTLE BREEDING AND FISHERIES	0	0	2	0	0	
NATURAL RESOURCES	0	0	1	0	0	
LABOUR, ENVIRONMENT AND TECHNOLOGICAL DEVELOPMENT	0	3	0	1	0	
SOCIAL AFFAIRS AND PUBLIC HOUSING	0	0	0	0	0	
EDUCATION AND PUBLIC DEVELOPMENT	0	0	0	0	1	
PUBLIC HEALTH	1	0	1	1	0	
PUBLIC CONSTRUCTION	0	0	0	0	0	
TRANSPORT, COMMUNICATION AND TOURISM	0	2	0	2	0	
REGIONAL DEVELOPMENT	0	0	0	0	0	
TOTAL	**9**	**18**	**15**	**12**	**5**	**59**

SOURCE: LEGAL DEPARTMENT OF THE NATIONAL ASSEMBLY

TABLE 2: RELATIONSHIP SCREENED AND NOT SCREENED LEGISLATION

	2003	2004	2005	2006	2007	
	0	0	1	2	0	
	1	0	1	1	0	
	0	3	0	0	0	
	5	4	6	1	0	
	2	2	0	2	0	
	0	0	2	0	0	
	0	0	1	0	0	
	0	3	0	1	0	
	0	0	0	0	1	
	1	0	1	1	0	
	0	2	0	2	0	
Total	**9**	**11**	**12**	**10**	**1**	**43**
Screened	**6**	**8**	**5**	**5**	**1**	**25**
Not (“)	**3**	**3**	**7**	**5**	**0**	**18**

In table 2, also the ministry of Justice and Police, as the screening authority, as well as the ministries with “0-activity”, are left out of the table.

To discover which acts on the list of the National Assembly were screened by Justice and Police, the administration of the Legal Department from this ministry was consulted. Because all documents sent to the Legal Department are filed in a special program, it was quite easy to trace back the documents on the National Assembly list.

The most important information table 2 provides is that just a little more than half of the proposals were screened, while the ministry of Justice and Police as is required did not screen the remaining part, a little less than half of it.

4.2 Interviews

The next steps in the inquiry were interviews with the heads of the legislation departments of five of the ministries with relevant legislation activity during the period of inquiry.

The interviewees were afterwards informed about the results of the inquiry on adopted acts and the part that was screened in relation to the total amount.

In order to determine the importance of the instructions to the legislation lawyers and their awareness of the quality requirements, the following core questions were put before the interviewees.

Question 1: How is the cooperation with the ministry of Justice and Police during the process of drafting?

Two of the interviewees indicated that, depending on the complexity of the subject, support is asked during the preparation of the draft. This could be by representation of the Ministry in a interdepartmental working group or just by consulting one of the legislation lawyers about a specific issue of the subject to be regulated. One interviewee mentioned that support is always asked when sanctions are part of the proposal.

All interviewees are of the opinion that screening by the Ministry is important. The policy on all the ministries is to always sent proposals for screening, however, due to political pressure it may happen that this is not done some times, or, that the different stages are squeezed together in the sense that while the screening at the Ministry proceeds, the proposal is sent to the Council of Ministers for advice. One interviewee stated that although it is not mandatory, because as she understands, it is not laid down anywhere, the proposals are sent to the Ministry.

All interviewees were surprised to hear the results of the inquiry regarding the relation between screened and not screened acts; something should be done about that, they meant.

Question 2: How do you use the Instructions; are you familiar with the quality criteria set out in number 201 of the Instructions for legislation drafters?

All the interviewees only use the Instructions when they experience a problem with an issue while drafting. They count on what they know from experience and they use other proposals as models. Two of them mentioned the lack of training courses for legislation lawyers, because most of the drafters only enjoyed an on the job training.

None of them was familiar with the quality criteria laid down in number 201; they all needed to look it up to see what it was about. However, all do consider some of the criteria like enforceability, when they prepare regulations.

Question 3: How does your ministry deal with the advices after screening by Justice and Police?

All interviewees responded that they mostly adopt the recommendations, especially with regard to the legal-technical matters.

Two responded that they contact the Ministry to talk about the recommendations they don't agree on. One prefers to discuss things in person with a legislation lawyer in stead of having to revise a proposal based on what is written in a document by the Ministry.

One interviewee mentioned that there is a need for regular meetings for legislation lawyers, as it used to be some decennia ago. This is a way to share and built up knowledge since Suriname has no legislation experience.

CHAPTER 5 ANALYSIS OF PROCEDURAL SAFEGARDS

In chapter 2 the basic concept of this research namely “quality of legislation” was related to the “rule of law concept”, which is strongly advocated in the national politics of Suriname.

Chapter 3 showed that in the mandatory stages for the process of a bill, initiated by the government, to become a collectively binding act, the following formal institutions have a part:

- Responsible ministry, for preparation,
- Ministry of Justice and Police, for screening,
- Council of Ministries, for advice and back to the responsible ministry,
- Council of State, for advice and back to the responsible ministry,
- President of the Republic, to send the bill to Chairman of National Assembly,
- National Assembly.

After the preparation of the responsible ministry, lawyers of the ministry of Justice and Police screen the proposal. All other institutions involved in the further stages give their advice to the government, from a political point of view, while their final advice is based on a political compromise, since various political backgrounds are represented in those institutions. At the end of the process in the National Assembly, there is also a political debate.

For a government to implement certain policy objections, the advices are crucial, but regulations are also legal documents, and the only stage were formal advice is given regarding the legal dimension of the proposal, is by the Ministry of Justice and Police. An independent body involved in the screening, advising activities throughout the whole legislation process is lacking since the screening Ministry of Justice and Police, which also screens its own proposals, is part of the Government.

Since this is the formal procedure, it is of great importance that the responsible ministry, as well as the Ministry of Justice and Police, are properly equipped to do the job, and that the

procedures are followed strictly, so that the constitutional and administrative quality of the proposals can be ensured throughout the process. The inquiry showed, however, that the procedures were not always followed; only a little more than 50% of the adopted legislation during the period 2003-2007, was screened.

The conclusion to be drawn is that due to a lack of procedural safeguards, the constitutional and administrative quality of the proposals is not ensured throughout the process of legislation, which is not consistent with a democracy based on the rule of law.

By comparison, in the Netherlands we see that there are three institutions involved in ensuring quality of legislation and all these three institutions consist of lawyers, while one, the Council of State, is an independent body.
We also see that it is not possible to enter the stage from the Council of Ministers before consensus is reached with Justice. The results of the screening need to be filled in on the form used by the Council of Ministers.

Another point is that within the procedure there has been little attention for consultations in the (inter)departmental preparing stage. Chapter V, paragraph 5.1. from the Instructions for legislation drafters, only mention the possibility that more than one ministry may be responsible for a certain subject, in which case the preparation is done by more ministries. Consultations of for example interest groups are not described, while also the preparation stage within the responsible ministry has remained unexposed. In fact, the quality requirements were adopted as they were first described in the “View on Legislation”, as mentioned above, but a process of describing and translating these requirements into procedural measures, never took place in Suriname. As indicated above, the Instructions have never been revised since 1992.

Compared with the Netherlands, we see that the Instructions, and consequently the Guide for legislation, have been revised several times. Consultations and advice from external groups or bodies, as well as the departmental preparation, is broadly described by the Guide for legislation in the stage before screening by the Ministry of Justice. Over the years, quality

criteria like efficiency and effectiveness were translated into procedural elements such as cooperation, structuring and controlling of procedures, and care for sufficient qualified personnel.

CHAPTER 6 CONCLUSIONS AND PROPOSALS

CONCLUSIONS

1. The quality of legislation is not adequately ensured throughout the process of legislation in Suriname, because the process is not structured in a way that, within social, administrative and political possibilities, it contributes to optimal realization of all the quality requirements as they are laid down in the Drafting Instructions since 1992:
   - the quality requirements are not translated into procedural elements, like cooperation, controlling of procedures, and care for sufficient qualified personnel, consequently:
   - the quality requirements are not well known by legislation lawyers,
   - formal procedures are not always followed, which can result in legislation with a lack of juridical dimension, or in contradictory regulations, consequently: this will affect the credibility of legislature and with that of the government as a whole:
   - this may have consequences on national as well on international level.

2. The process of legislation in Suriname is not fully in line with some basic principles of the Rule of Law concept:
   - Since the government as a democratic state under the rule of law has accepted that the only way to exercise power against society is through legislation made through people's representation, principle of legality, a legislation process that is not properly structured may affect government's credibility, since a properly structured process is the basis for a good product.

3. The above mentioned conclusions and my experience as a legislation lawyer support my opinion that in Suriname the significance of legislative quality is the broad sense as well as the implications a lack of quality can cause, is not yet broadly recognized.

PROPOSALS TO THE MINISTER OF JUSTICE AND POLICE

Convinced that a properly structured process will improve the chance of a good product, the following proposals are given.

ORGANIZATIONAL SAFEGUARDS

1. Establishment of a central legislation directory to ensure the weight of the juridical dimension and professionalism, and to promote consistency in regulations; the directory should be responsible for a general legislation policy and jointly responsible for preparation of legislation and screening.

   To recognize legislative aspects of policy in an early stage, and to emphasize the importance of the juridical dimension, the director should be part of the highest policy staff of the ministry.

   It is important that mutual exchange and harmonization with decentralized (legislation) lawyers is taken care of, and that an independent legislation screening of all proposals of legislation is guaranteed.

   Due to the delicacy of the juridical dimension with policy, it is important that primary lawyers will be working at the directory.

2. Establishment of an interdepartmental working group to advice the Minister on amendment of the Drafting Instructions for legislation drafters (1992), and to further

- translate the quality criteria in procedural elements for the different stages of the legislation process;
- develop models in the interest of harmonization of legislation;
- develop a form that can control if screening by Justice was done and consensus was reached;
- develop checklists and supporting instruments for legislation lawyers.

INFRASTRUCTURE

- To ensure cooperation, to improve legislation processes and to built up knowledge, it is desirable to use protocols for the legislation procedures, containing models and mandatory steps in the processes.

- To promote cooperation and disseminate knowledge, a learning environment should be created to stimulate legislative lawyers to a higher level.

Word count: 9.363

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