

# A Case for a Standardized Public Consultation Process for New Legislation and Development Projects in The Bahamas

Joint position statement from:



## Introduction – The Importance of Public Consultation

Despite a global and regional movement toward open and more inclusive governance, subsequent governments of The Bahamas not established a regular process, practice or culture of seeking meaningful input from the public on legislation, policy, development and spending. We, as a group of civil society and private industry organizations, feel that there is a significant opportunity to strengthen the democracy of The Bahamas and improve the inclusiveness and effectiveness of our policy making by adopting a standardized open process of public consultation.

In most modern democracies, Public consultation is recognized as an important part of the policy-making process and used to provide people in all walks of life a chance to get involved in the work of government. The value of engaging the citizenry in consultation on legislation, policy making and new developments using public funding and resources has been shown globally to increase accountability, effectiveness and efficiency in policy making. It results in greater democratic and inclusive laws and policies.

Public Consultation brings several functional benefits:

- it allows government to tap the widest source of information possible which improves the quality of the decision reaches
- it alerts policy makers to any concerns and issues not picked up through existing evidence or research
- it helps to monitor existing policy and decide if changes are needed

The United Kingdom’s 2016 cabinet consultation policy states that, “Public consultation is not simply about more open government. It is about making policies more strategic and effective by listening and taking onboard the views of the public and interested groups. Public consultation should promote a two-way communication process, in which all parties listen and contribute views, information and ideas, in a

process of critical reflection and dialogue. Both provide opportunities for genuine listening, respectful of all views and opinions”. It further holds that “Consultation should occur when policies can be influenced and views provided are able to be used to inform decisions.”

## **Public Consultation in The Bahamas**

Here in The Bahamas, there have been recent examples where input from civil society and private industry has influenced legislation and policies for the better, including The Freedom of Information Act, The VAT implementation, relief efforts for Hurricanes Joaquin and Matthew, The Disabilities Act and amendments to the Employment an Industrial Labor Relations Act.

However, in many of these instances, public input came about solely as a rushed reaction to government decisions first heard on the floor of Parliament. Often, there is little time or opportunity provided to prepare and issue substantive feedback. In the sporadic instances where consultation has been sought, there have been inconsistent practices regarding the structure, timing, scope and depth of the process.

This lack of straight-forward, transparent and proactive processes for public consultation does not support a positive and fact based dialogue to establish policies designed to best serve the general interest of the nation. Instead it can make policy making efforts contentious and oppositional. It also breeds a culture of pessimism and detachment of the Bahamian people, reinforces the growing public mistrust of government and discourages civic participation in the democratic processes of the nation.

This undermines the fundamental premise of The Constitution of The Bahamas a sovereign democratic state working in the interest of its people. Public input is recognized as a critical need in the future success of the country. Even the Bahamas National Development Plan 2040 has put forth the objective that “The Bahamas must promote greater civic engagement and education at all levels of society to strengthen democracy”.

## **Civil Society Recommendations for A Standardized Public Consultation Process**

In the interest of fostering more inclusive, democratic and transparent legislative and development processes, civil society and private industry recommends that the Government adopt a regularized and standardized process of public consultation when proposing new legislation or revising existing legislation that will have an impact on the public and in development projects that utilize public funds and/or land and may impact the environment. This policy should include the following aspects and considerations based on recommendations from The Commonwealth Parliamentary Association.

1. **Issuance of Green Papers** -a discussion document drafted by the Ministry or government department dealing with the particular issue in order to show the way that it is thinking on a particular policy. The Green paper should include several alternatives which can be considered on the path to a final decision on the best policy option. The Green paper should be made publicly available online and through the media and social media so that anyone who is interested can give comments, suggestions and ideas. The Government can further direct the green paper to a diverse set of groups that hold a particular focus, geographic locale or knowledge basis related to the issue at hand to gain more specific input.
2. **A clearly defined and sufficient time line for public review and input**- Dates and steps for public consultation should be clearly stated and advertised. A minimum of 3-6 months period of public

review is recommended. Materials that are easy to access and understand should be made available for the public to learn about the legislation or development. Any public hearings or town halls should be promoted sufficiently in advance via multiple media and be planned in coordination with civil society, community development and private industry groups related to the issue at hand. Where applicable, Members of Parliament representing specific areas and groups that are affected should be present at public meetings to observe and engage with the public.

3. **Issuance of White Paper-** After the period of public consultation and prior to tabling of the Bill in Parliament, a stronger more in-depth report should be generated by the Minister or government department to which it relates and presented to Cabinet and the Public which would include specific proposals for legislation. The white paper should reflect the result and impact of public consultation and any further relevant information that has been used in forming recommendations and outline its implications for future legislation. The White paper would be posted for final public review and Ministry or department can receive any additional feedback.

In addition to the aforementioned practices, the following Principles, based on the 2016 UK Cabinet consultation policies, should guide efforts of Public Consultation.

#### **A. Consultations should be clear and concise**

Use plain English and descriptions in consultation documents. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. Avoid lengthy documents when possible and consider merging those on related topics.

#### **B. Be clear about the purpose of Consultations**

Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage.

#### **C. Consultations should be informative**

Provide the public with enough information to ensure that they understand the issues and can give informed responses. Include validated assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

#### **D. Consultations should only be part of a process of engagement**

Elected representatives and government official should practice ongoing informal iterative and collaborative consultation in the execution of their duties. Results of government efforts and expenditures should be offered in open, collaborative approaches utilizing digital technology. Consultation is not just about formal documents and responses. It is an on-going process.

#### **E. Consultations should last for a proportionate amount of time**

The length of the consultation should take into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

#### **F. Consultations should be targeted**

Consider the full range of people, business and voluntary bodies affected by the policy, and whether representative groups exist. Utilize Civil Society and knowledge and industry specific groups if appropriate to secure initial validation and determine the scope of outreach. Ensure groups affected by the policy are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.

#### **G. Consultations should take account of the groups being consulted**

Consult stakeholders in a way that suits them. Utilize community institutions and settings to disseminate information and gather responses. Adopt responsive technological solutions to communicate and receive input. Civil society may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action.

#### **H. Consultations should be agreed before publication.**

Seek collective agreement before publishing a written consultation, particularly when consulting on new policy proposals. Consultations and the results of consultations should be published on government web portals and reported in the media in a timely basis. Here are two good examples of a format for listing consultations from the Canadian Government website:

<https://www.canada.ca/en/services/defence/nationalsecurity/consultation-national-security.html> and <http://justice.gc.ca/eng/cons/past-anter/index.html>

#### **I. Consultation should facilitate scrutiny.**

Publish any consultations and results in the same location as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.

#### **J. Government responses to consultations should be published in a timely fashion.**

Publish responses within 6 weeks of the consultation or provide an explanation why this is not possible. Where consultation concerns a statutory instrument, publish responses before the instrument is tabled in Parliament. Allow appropriate time between closing the consultation and tabling for public review.

#### **K. Consultation exercises should not generally be launched during election periods.**

Ultimately, as a collective of Civil society and public industry organizations, we embrace the inherent value and strength of a transparent and democratic process of public consultation in the development of national policy and legislation. We urge the government to formally adopt the guidelines and practices presented to ensure inclusive, fair and open governance that is representative of the interest and input of those who live and work in The Bahamas.

We are available for any questions about these recommendations and will make ourselves available to serve as a collective resource toward furthering these concepts.