CONTENT

Foreword

Foreword

Africa is often seen as a continent of human suffering, conflicts and war. The global development towards democracy and respect of human rights has also had an influence in the development of African countries. Building up a new civic society based on principles of democracy and justice creates basis on economic and social development. At the same time many problems and social contradictions have led to increased instability, violence and civil wars in various African countries.

KATU has given attention to conflict prevention in Africa since its establishment in spring 1997. KATU started a new project in 2000 that aims at assisting the Southern African NGO's to start regular cooperation with each other in the field of conflict prevention and finally establishment of a loose network on conflict prevention.

The main aim of this project was to establish a focal point for Southern African NGOs interested and / or working in the area of conflict prevention and resolution. This focal point will facilitate the provision of, and dissemination of information, as well as establishment of contacts and linkages between African and Finnish NGOs. The focal point will serve the Southern African NGO's (who have identified themselves as willing the join the loose network) in the fields of training, networking, and information sharing on various conflict prevention issues, and it also can strengthen the regional identity.

Based on this, KATU held a Regional Steering Group Meeting in Cape Town, South Africa on 3-4th December 2000. The meeting comprised one NGO representative from each Southern African Country namely Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe. This meeting further debated the concept, relevance, and modalities of a regional Conflict Prevention NGO network. The meeting set the rationale and grounds for a regional seminar to build the foundation for the establishment of the Southern African Conflict Prevention Network (SACPN).

The Southern African Conflict Prevention Network envisions a common understanding of conflict prevention theories, methods, and practices amongst actors in the region. Through a common agenda, the network envisions an empowered group of local practitioners, organisations, and national networks that can undertake successful collective peace-building interventions.

The mission of the Southern African Conflict Prevention Network is to develop and promote conflict prevention by:
- Providing a forum for research and reflection
- Providing expertise
- Empowerment of people through training, information sharing and advocacy.

In meeting these objectives the Network will be guided by principles of gender equality, human rights, justice, and respect for human dignity.

SACPN provides both regional and national conflict prevention training for NGOs from the region. In regional workshops the emphasis is put on defining and assessing common root causes of conflicts, and finding joint priorities and policies for NGOs and SACPN in their work to prevent the outbreak of violent conflicts.

In national workshops SACPN tries to assess the sore points of that specific country

and by inviting most of the key NGO's as well as other actors of that country to find out non-violent ways out of the situation.

SACPN organised two national conflict prevention workshops between December 2001 and June 2002.

The first one was organised together with DP Foundation in Bulawayo, Zimbabwe on 10-12 December 2001. Almost 100 people representing the wide range of NGO's and other civil society organisations, governments, political parties, research institutions and media participated actively in the proceedings.

The overall objective of the **Zimbabwe workshop** was to analyse and discuss the underlying causes of conflict in Zimbabwe from a national and regional perspective and to provide some basic modes of interventions that can be undertaken by Zimbabwe civil society to prevent further violence.

The following specific objectives were also set for the workshop:
- To analyses, the underlying causes of conflict in Zimbabwe from a national and regional perspective.
- To provide an environment of reflection on civil society's role in Zimbabwe's conflict.
- To provide and insight on conflict prevention and resolution interventions for Zimbabwean civil society.
- To enable participants to work on the analysis of the root causes of conflict in Zimbabwe.
- To enable participants to formulate possible conflict prevention interventions by Zimbabwean NGOs.
- To enable participants to understand historical, social, political and economic conflict resolution frameworks.
- To identify the NGOs involved in conflict and their initiatives and positions in conflict prevention.
- To develop and consolidate thick networks to deal with conflict prevention in the region.
- To promote self-empowerment and personal stewardship in conflict resolution.
- To promote dialogue between civil society, government and business around issues of conflict prevention.
- To enable participants to develop interventions and tools for conflict resolution.

SACPN organised together with the Swaziland Council of Churches (CSC) organised a workshop aimed at "Bridging the Political Divide" in Pigg's Peak, Swaziland on 21-23 June 2002.
The workshop was attended by almost 100 participants drawn from a cross section of the political scenario including civic society, legislature, government, and the media.

The **Swaziland workshop** was initiated on the backdrop of the growing rift among various players in Swaziland's political scenario over the last few years. With the spirit of peace and justice, the aim of the workshop was to raise for discussion perceived differences regarding Swaziland's current democratic and constitutional dispensation. Through the participation of SACPN's Regional Steering Group Members from across Southern Africa, the workshop adopted a regional perspective to Swaziland's prevailing political situation.

The objectives of the workshop were:
- To provide a platform for closer interaction amongst the different political players in Swaziland.

- To identify and build synergies amongst the political players.
- To discuss and establish some common understanding of Swaziland's current democratic and constitutional changes.
- To formulate resolutions for effective networking to reduce negative tensions.

This book is the final report of the both workshops. It includes all the speeches, comments and results of the group works.

KATU wants to thank all the participants in both workshops for building up such an active and positive experience. Special thanks should go to Yaliwe Clarke Kamuhuza from SACPN, Mildred Sandi from DP Foundation and Muzi Masuku from Swaziland Council of Churches as well as their many competent colleagues and assistants.

KATU also wants to express its sincere gratitude to the Ministry for Foreign Affairs of Finland for funding the workshops and the publication of this report.

Helsinki, September 2002

Anne Palm
Secretary General
KATU

Report of

Conflict Prevention Workshop in Zimbabwe

10-12 December 2001

Bulawayo, Zimbabwe

Contents

1   EXECUTIVE SUMMARY
OBSERVATIONS AND RECOMMENDATIONS

<u>Observation One</u>

There is a proliferation of indigenous NGOs involved in development and human rights organization.

Recommendation

There is a need to assist these NGOs to develop networking skills so as to leverage their resources and create high impact, whilst making it difficult for structures opposed to development and human freedom, to undermine NGO efforts.

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<u>Observation Two</u>

There is tension and high energy in civil society structures, but very little engagement with the power structures and economic forces in the region.

Recommendation

It is possible to prevent conflict if there is dynamic interaction in the golden triangle detailed below:
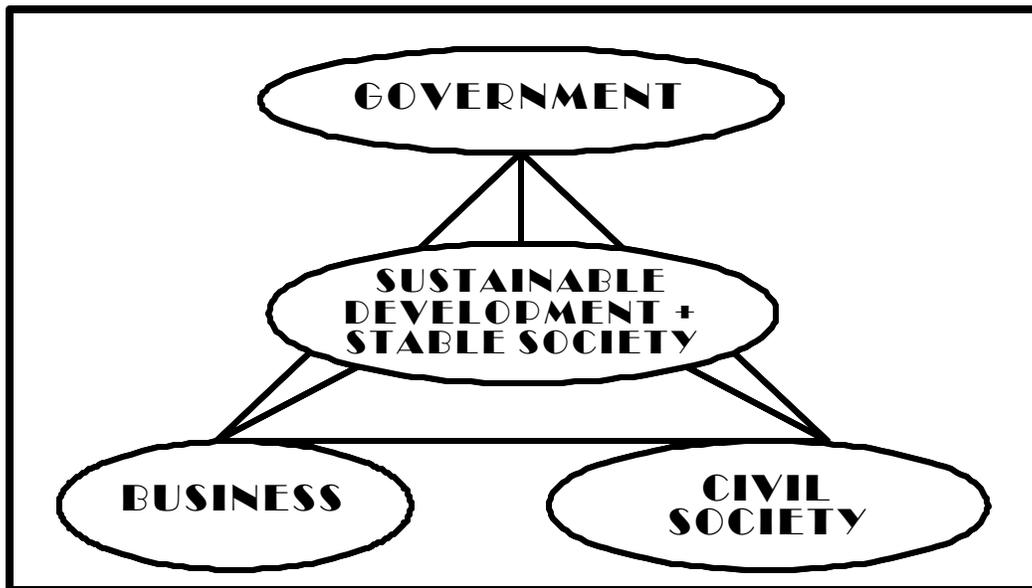
Civil society should not work in isolation. There is a need to capacitate civil society in the following key areas:

  a. Government policy formulation and effectuation, as well as lobbying skills to influence policies that are against development and human rights, as well as being a source of conflict.

  b. Business and economic policy formulation, as well as effectuation. There is very little interaction with the business community. Enhancement of knowledge and skills in this area may be required, including deal making skills to ensure the development of a productive and responsible business community to prevent conflict. This is because some of the key causes of conflict in the region are of an economic nature.

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Observation Three

The knowledge base of most of the civil society actors is social sciences, mainly sociology, psychology and anthropology.

Recommendation

There is a need to broaden the knowledge base to include humanities, philosophy, politics, economics, religion, business management, government and business policy.

****

Observation Four

Contact with key actors in power structures and business structures from which conflict emanate, is at best limited and superficial.

Recommendation

There is a need to employ the strategy of St Paul, one of the founding fathers of the Christian Religion. The strategy should be to transform the conflict generating structures from within, by influencing and dialoguing with their key actors. It is important to create conflict prevention forums, such as the one under discussion, to engage key actors in power structures. It was encouraging that power structures that are in conflict such as the War Veterans Association, the Affirmative Action Group, ZAPU 2000, MDC, ZANU and NCA were represented by some of their articulate key actors, who fully participated in the discussions.

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Observation Five

The time horizon of three days was too short to adequately deal with conflict prevention.

Recommendation

A duration of five to six days is recommended. This will make it possible to undertake meaningful unfreezing of participants and the development of shared concepts for the first three days. The participants can then grapple with the thorny issues causing conflict and generate possible conflict prevention solutions in the last three days of the conference.

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Observation Six

Although there are high energy levels in civil society structures in the region, they lack the relevant core competencies to influence issues and policies.

Recommendation

The relevant core competencies required to influence issues and policies in a way that prevents conflict are detailed below:

    a. Organizational skills for the gathering and monitoring of relevant intelligence around conflict issues.

    b. Lobbying.

    c. Deal making and negotiating skills around conflict issues.

    d. Mass mobilization around conflict issues.

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Observation Seven

There is a tendency of strategic donor partners to dictate the agenda to local civil partners.

Observation Seven: Recommendation

There is a need to redefine the strategic partnership relationship with international donors, in a way that the donor community is informed and sensitive to local contextual issues. Room must be left for local partners to redefine and contextualize agenda issues. The idea is to enable key NGO players to build an organizational eco-system, which includes government departments, government agencies, political and business organizations, as well as NGOs and religious organizations that can enhance the agenda of conflict prevention.

2 WORKSHOP OBJECTIVES AND CONTEXTUALIZATION

Overall Objective

To analyze and discuss the underlying causes of conflict in Zimbabwe from a national and regional perspective and to provide some basic modes of interventions that can be undertaken by Zimbabwe civil society to prevent further violence.

Specific Objectives

    ?? To analyses, the underlying causes of conflict in Zimbabwe from a national and regional perspective.

    ?? To provide an environment of reflection on civil society's role in Zimbabwe's conflict.

    ?? To provide and insight on conflict prevention and resolution interventions for Zimbabwean civil society.

    ?? To enable participants to work on the analysis of the root causes of conflict in Zimbabwe.

    ?? To enable participants to formulate possible conflict prevention interventions by Zimbabwean NGOs.

- ?? To enable participants to understand historical, social, political and economic conflict resolution frameworks.
- ?? To identify the NGOs involved in conflict and their initiatives and positions in conflict prevention.
- ?? To develop and consolidate thick networks to deal with conflic t prevention in the region.
- ?? To promote self-empowerment and personal stewardship in conflict resolution.
- ?? To promote dialogue between civil society, government and business around issues of conflict prevention.
- ?? To enable participants to develop interventions and tools for conflict resolution.

3 WORKSHOP CONTENT SYNOPSIS

1 WORKSHOP PRESENTATIONS

Presentations by Prof. Lovemore Mbigi covered the following topics / themes:

- ?? Overview of the Historical Roots of Conflict in Africa.
- ?? African Regional Realities: Overview of African Neo-Colonialism.
- ?? Survival and Prosperity Strategies for Minority Groups in Africa.
- ?? Power of Influence, Deal making and Networking in Africa.
- ?? Economic Marginalization and the Land Issue.
- ?? Economic Development and Integration in Southern Africa.
- ?? Conflict Resolution: Practical Pointers and Possible Solutions.
- ?? Design of Conflict Intervention Resolutions.

2 WORKSHOP VIDEOS

Business of Paradigms (Joel Barker).

3 WORKSHOP DISCUSSIONS

- ?? Post-Presentation Floor Discussions.
- ?? Discussion 1: Workshop Expectations.
- ?? Discussion 2: Historical Causes of Conflict and Possible Solutions for Conflict in Africa and Zimbabwe.
- ?? Discussion 3: Survival Strategies for Minority and Majority Groups in Zimbabwe and the World.
- ?? Discussion 4: Conflict Causes and Solutions.

4   WORKSHOP DISCUSSIONS

DISCUSSION 1 (FLOOR)

WORKSHOP EXPECTATIONS

What do you expect from this workshop?	
<u>EXPECTATIONS</u>	<u>EXPECTATIONS</u>
Understanding that conflict must be resolved.	Change – re conflict to positive.
Know our role and strategies for conflict prevention.	Educate lay people.
Solutions – practical pointers.	Tactics for conflict prevention.
Girl child – right.	Positive outcomes benefit all Zimbabweans.
How conflict manifests?	Build knowledge on conflict prevention.
Role of civil society.	Peace and sanity in Zimbabwe.
Month – Role.	Techniques and tools for conflict prevention.
Role of ego's.	Improved communication skills.
Recognition of role of individual andcommunity.	Build human dignity.
Skills/tools for conflict prevention.	Concessive behaviour change to help Zimbabwe.
Definition of and sources of conflict.	How and what to prevent conflict.
Role of spouses of MP's in conflict in Zimbabwe.	Practical role of civil society.
Network in rural areas.	How is Zimbabwe handling land issues?
Empower civil society to prevent conflict.	Strengthening dialogue.
Learn about Zimbabwe's conflicts.	Role of SACPN.
Role and tools for elderly.	Tools for community development.
How to enjoy human rights.	HIV/AIDS.
Tools of conflict prevention political parties.	Networking around human rights.
Sources of conflict.	Learn strategies of conflict prevention.
Share experience of conflict.	Reduction of conflict in Zimbabwe.

DISCUSSION TWO (IN GROUPS)

HISTORICAL CAUSES OF CONFLICT AND POSSIBLE SOLUTIONS FOR CONFLICT IN AFRICA AND ZIMBABWE

2.1   What are the historical causes of conflict in post-colonial Africa?

2.2   What are the possible solutions for conflict in post-colonial Africa?

2.3   What are the historical causes of conflict in post-colonial Zimbabwe?

2.4   What are the possible solutions to the conflict in post-colonial Zimbabwe?

Group 1

Historical causes of conflict in post-colonial Africa	Solutions for conflict in post-colonial Africa
Leadership – tribalism, racism, ethnicity, greed, inability to change and existing system. Inability to move from the political struggle to the economic struggle (address economic imbalance). Inadequate resources – poetry, allocation of resources. Artificial boundaries – acceptance of boundaries established by colonialist's powerlessness of disentrancement. Wrong perceptions – e.g. HIV being manufactured to eliminate a certain race – differences in perceptions. Halved, intolerance, religion difference. Creation of monopolies at the expense of the majority – (corruption). International anger.	Re-establish boundaries. Redefine whom we are when we want to go as people. African NGO's not to be dependant on international NGO's (civil society). Re-claiming resources (non confrontability). Being accountable and transparent (global accountability – move from village mentality). Creation of a source economy. Acknowledge the role of colonialist. Giving first preference to our own competent people/talent. Improve regional partnerships.
Historical causes of conflict in post-colonial Zimbabwe	**Solutions for conflict in post-colonial Zimbabwe**
Lancaster House constitution. The education – created the mentality of working for others – (not entrepreneurship). Unpopular colonial policies. Tribal and racial conflict (perpetuation) of the divisions that were created by colonialists. Unfair distribution of resources inequitable. Corruption and greed. Lack of home grown economic policies. Reassure from the international world. Foreign debt. Lack of tolerance of ethnic diversity.	Re-definition and revitalization of culture. Take control of our resources and destiny to develop our economy (wealth creation). Proper agenda to address the imbalance in resources allocation or distribution. Moral values (moral re-armourment redefining our moral values). Good governance. Re-writing the constitution to suit our needs. African – Zimbabwean centred education system, which promotes our cultural values and norms. Co-existence with the international community without disadvantaging ourselves. Embracing all cultures.

Group 2

Historical causes of conflict in post-colonial Africa	Solutions for conflict in post-colonial Africa
Poverty lack of technology, tribal wars, colonization wealth ownership, absolute power, greed, corruption, International interference, comradely philosophy, No effective networking, human rights violation, HIV/AIDS lack of transparency and accountability, nepotism weak states, social civil society, leadership crisis.	Poverty – creating our own wealth, equitable distribution of resources, women empowerment. Tribal wars – Ethnic management, do away with colonial boundaries. Colonization – Interstate tracks, African Union charter should be people centred laws should be domesticated. Absolute Power – Governance, Massive civic education, balance of power rule of law. Corruption – People should pay for their sins. International Interference – Develop a base to refine our product. Leadership crisis – should be massive and assertive. Absolute Power – Governance, Massive civic education, balance of power rule of law. Corruption – People should pay for their sins. International Interference – Develop a base to refine our product. Leadership crisis – should be massive and assertive.
Historical causes of conflict in post-colonial Zimbabwe	Solutions for conflict in post-colonial Zimbabwe
Oral history, cultural history, system of governance (inheritance), hero workshop, education discrimination (tribal), resistance of change, hypocrisy laws and constriction, empty promises e.g. land class struggle.	Cultural history – should be written, depreciative compatible culture in relation to civilization. System of governance – civic participation, two way system (democratized) a new democratic constitution, accountability and respect of human rights, effective parliamentary representation, and now partial civil service. Hero workshop – Regular of executive powers, devolution of power. Law constitution – Reduction of executive powers, devolution of power. Empty promises – Vote them out, voter education. Class struggle – civic education, resist oppressive systems. Deliberate unity to fight for one cause.

Group 3

Historical causes of conflict in post-colonial Africa	Solutions for conflict in post-colonial Africa
Leaders not wanting to relinquish power. Limiting terms of office of leaders and separation of power. Greed and externalization of funds Transparency and accountability of funds. Educating the voter. Poverty alleviation. Economic empowerment. Branding and development of our products. Chiefs are patronized when it comes to utilization of natural resources e.g. natural gases. Political patronage. Recognition of roles played by different institutions. Bad governance. Rule of just laws.	Tribal conflict perpetuated by the colonialist. Recognition of tribes – their diversity culture. Political – regular fair and free elections. Mistrust and misrepresentation of the masses by the leaders. Continuation of colonial era issues, which were, implemented during the post-colonial era e.g. tribal discrimination in education. Creating new and relevant devolution of power, education and politics. Grabbing of recourses belonging to ZAPU by ZANU. Humiliation of the Ndebeles people during the dissident era. Public apology by the government and compensation of victim's families. Development of the people in Matabeleland. Different political ideologies. Failure to deliver promises by the government. Accountability. Post-economic policies. Irrelevant economic policies. Marginalisation of the indigenous people. Selective ways of applying the law. Employment of youth from different regions. Discrimination at educational institutions (nepotism) misuse of power by leadership.
Historical causes of conflict in post-colonial Zimbabwe	**Solutions for conflict in post-colonial Zimbabwe**
Disrespect of culture values. Need for home-grown constitutions. Mismanagement of resources. Centralization. Lack of addressing youth issues e.g. youth being used as political tools. Land imbalance due to the fact than Zimbabwe is also an agro based economy i.e. killings, displacement etc.	Transparency and accountability. Knowledge of amendment constitutions and charters. Need for dialogue. More awareness campaigns. Depolarize the land issue and economic empowerment. Regional solutions – in Zambia land was not a problem since the colonialists did not grab all the land.

Group 4

Historical causes of conflict in post-colonial Africa	Solutions for conflict in post-colonial Africa
Bad governance – "Autocracy". Independence only brought political power with no economic empowerment. Political culture of maintaining power forever. Mismanagement of funds.	Need to be transparent and accountable in resource allocations. Affirmative action on gender equality. Merge Pre and Post colonial governance for prosperity. There is need for women to empower themselves politically in governance issues since they are not usually involved in causing conflict. The society must understand gender issues broadly. Education. Redress of imbalances. Transparency and accountability on economic issues. Home grown economic systems. Community driven policymaking and decentralizing. Tolerance and learning to co-exist.
Solutions for conflict in post-colonial Zimbabwe In Zimbabwe, South Africa, Namibia and Mozambique the colonialists settled on the land. There were some sentiments of land being tied to party policy. Lobbying by the civil society e.g. awareness campaigns introducing pilot projects, collective international co-operation to ensure proper redistribution.	**Solutions for conflict in post-colonial Zimbabwe** Since the imbalance has not been addressed there is strong need to ensure that the imbalances are addressed urgently and patriotically. Create structural systems bringing together all stakeholders.

DISCUSSION THREE (IN GROUPS)

SURVIVAL STRATEGIES FOR MINORITY AND MAJORITY GROUPS IN ZIMBABWE AND THE WORLD

3.1   What are the survival strategies for enterprising and successful minority groups in the world?

3.2   What should be the survival strategies for minority groups in Zimbabwe?

3.3   How can NGOs in Zimbabwe use these strategies to create conflict prevention interventions in Zimbabwe?

Group 1

Survival strategies for minority groups (world)	Survival strategies for minority groups (Zimbabwe)
Accommodate and adapt to the majority agenda. Lobby for constitutional laws protecting minorities i.e. protecting their cultural values and interests. Strive for economic empowerment Forging strategic alliances. Hardworking and well educated. Co-operative spirit and collective instinct for surviving. Success – an improvement in the social interaction, co-existence and improvement in the general standards of living of the generality. Understand the basis of conflict before cackling the problem.	Minorities are as follows: - Ethnic minorities. - Economic minorities. - Racial minorities. - Political minorities. Media strategy for publicizing their cause. Lobby for protection of minority rights. Attaining quality education. Need for affirmative action. Preservation of cultural values. Alleviate the problems associated with geographic location e.g. water in Matabeleland. Strive for being consulted on national policies. Lobbying for the representation of minorities in parliament.
Use of survival strategies for conflict prevention Social re-education. New approach in their programme. Strategic planning and evaluation of programme projects.	

Group 2

Survival strategies for minority groups (world)	Survival strategies for minority groups (Zimbabwe)

Networking.
Ability to assimilate into other societies.
Partnering.
We feel the question 3.1 has been adequately answered by or in the professor's presentation.
Means as a minority group use:
   - Cohesion.
   - Aggression.
   - The mentality that women are depended
     on man.
	Divide and rule strategy.
	Control of management training.
	Monopoly of knowledge.
	Being connected to politicians.
	Identifying our strengths and develop them as a minority.
	Unity in identity.
	Advocating for good leadership.
	Pride (self pride), love one another.
	Strive for good education.
	Awaken the giant within.

Use of survival strategies for conflict prevention	
Enhance partnerships. Leading by example. Creation of knowledge base cultivating on each other is strengthening. Sustainable projects in conflict resolution.	

Topics Suggested

- ??   Girl child rights.
- ??   Role of MPs spouses in conflict prevention in Zimbabwe.
- ??   Human rights.
- ??   HIV/AIDS.
- ??   Mass education especially in rural areas.
- ??   Role of media.
- ??   Disability.
- ??   Politician's role.
- ??   Development.

Expectations

- ??   Analysis of conflict sources and how it is manifested.
- ??   Proactive responses to conflict: tools, skills, strategies and practical pointers.
- ??   Strategies of conflict prevention from personal to global.
- ??   Knowledge skills and techniques of enhancing dialogue and development.
- ??   Analyze and design proactive responses to conflicts in Zimbabwe, building from traditions, culture, history and experiences.

??   Role and responsibility of civil society and NGO's and specifically SACPN – in conflict prevention in the region.

??   Different political ideology and failure to deliver promises by the government.

Official recognition of tribes – their diversity and culture?

??   Tolerance, regular fair and free elections.

??   Involvement of masses in policy and delivery of premises.

??   Equal distribution of educational resources.

??   Creating new and relevant education policies.

??   Major issues emanated from the colonial era.

??   Tribal conflict perpetuated by the colonialist.

??   Mistrust and misrepresentation of the mass by the leaders.

??   Continuation of colonial era issues, which were implemented during the postcolonial area e.g. tribal discrimination in education.

??   Grabbing of resources belonging to ZAPU by ZANU.

??   Humiliation of the Ndebele people during the dissident era.

Solution for conflict in colonial Africa

??   Limiting terms of office of leaders and separation of power.

??   Transparency and accountability of funds.

??   Educating the voter.

??   Poverty alleviation.

??   Economic empowerment.

??   NGO need to "conscientize" the minority through civic education.

??   Research to find the needs of the minority.

??   Use good lobbing tactics and avoid head on confrontation.

??   Strategizing.

??   Formation of alliances.

??   Develop strategies of identifying early-warning signs of conflict.

??   Create and lobby for positive relations, being aware of ethnic differences and create co-existence.

What should be the survival strategies for minority groups in Zimbabwe

??   Should not lose their identity and should regain lost ground.

??   Strive for constitutional recognition.

??   If one tribe must be recognized then all the other must be recognized too.

??   Educational syllabi should take cultural differences into consideration.

??   Economic empowerment.

Co-existence with the majority and maintain their identity

?? Networking.
?? Solidarity within the groups.
?? Advocate for economy, culture, and social and educational empowerment strategies.

GROUP DISCUSSION FOUR (GROUP)

CONFLICT CAUSES + SOLUTIONS

4.1   What are the causes of conflict around the land issue in Zimbabwe?

4.2   What are the possible solutions to these land issues?

4.3   What are the causes of economic marginalization and conflict in Zimbabwe?

4.4   What are the possible solutions to these marginalization issues?

4.5   What can NGOs do to deal with the conflict around the land issue and economic marginalization issue in Zimbabwe?

What is the cause of conflict around the land issue in Zimbabwe?

?? Historical factor – colonial legacy.
?? Methods of distribution.
?? Implementation of the redressing process.
?? Exclusion of the traditional custodians of the land.
?? Politicization of land issues.

What are the possible solutions to these land issues?

?? De-politicisation of the issue.
?? Restoration of cultural structures.
?? Inter-all-stakeholders consultation.
?? Use of established committees in conjunction with traditional leaders.
?? Planning.

What are the causes of economic marginalization and conflict in Zimbabwe?

?? Bad governance.
?? Uneven distribution of resources.
?? Political patronage (intolerance).
?? Unequal distribution of educational facilities – irrelevant curriculum.

What are the possible solutions to these marginalization issues?

?? Participatory and accountable governance.
?? Decentralization – constitutional devolution of power.
?? De-politicisation of state institutions.
?? Independent anti-corruption unit.

What can NGOs do to deal with the conflict around the land issue and economic marginalization issue in Zimbabwe?

- ?? Awareness campaigns.
- ?? Capacity building.
- ?? Monitor evaluation.
- ?? Healing the wounds thru reconciliation initiatives.

What are the possible solutions to these land issues?

- ?? Understand the land tenure-history of colonization.
- ?? Adequate education on land use.
- ?? Set independent land commission.
- ?? Systematic land reform.
- ?? De-polities the land issue and follow donor conflict (1998).
- ?? Government land is used by people.
- ?? Education on use of land – in puts and technology and management of land.
- ?? Partnership between NGOs and government in education.
- ?? Constitutional reforms to guide redistribution fairly and equitably.
- ?? Lawful reform from the amended constitution.
- ?? Devolution of power to all provinces/districts.
- ?? Weak, women disabled, etc to be given prime lands.
- ?? Dialogue among all stakeholders.
- ?? Political leadership must seat and resolve the land issue.
- ?? Traditional leaders to be involved.
- ?? Suspended elections before settlement on land and constriction.

Southern African Conflict Prevention Network

PEACE AND VIOLENCE	MONITORING
?? Adopt a non-violent approach to resolving disputes, focusing on women and youths who are usually used by politicians, through promoting dialogue mediation, negotiation and tolerance as means of reaching constructive solutions and trauma healing through family counselling.	?? Strengthens the SACPN network at regional level by creating a database.
?? Lobby for an independent commission to establish and maintain the code of conduct for political parties and after mediation timing of crises.	?? Network with all organizations whose work and aim promotes the above. Establish us as a visible organization.
?? Training of peace-monitors who can mediate at local level, document events and take steps to help victims of violence and creating a database.	?? Fundraise at local and international level.
?? National network (Zimbabwe) enhanced by participation of all organizations here present and commit ourselves to all that we agree here.	?? Comprehensive follow ups, which are time framed.

THEMATIC GROUPS

?? Land issues
?? Gender issues
?? Human rights
?? Minority
?? Disabled
?? HIV/AIDS
?? Economic marginalization

Group on Land Issues

Causes of conflict on land issues

?? Politicization.
?? Lancaster House Constitution – "willing buyer willing seller basis".
?? Lack of commitment by Government.
?? Lack of systematic/strategic planning.
?? Lack of empowerment (no access to bank loans).
?? Donor dishonesty – non-fulfilment of pledges and promises to donate.
?? Not gender, workers and youth conscious.
?? Bureaucratic red tape (land acquisition – act not implemented).
?? Inadequacy of information.

Possible solutions

??   Depolarizing the land issue – involve other non-political bodies e.g. chiefs civic organization.
??   Dialogue and dissemination of info to stakeholders especially marginalized groups.
??   Independent body on land redistribution comprising all stakeholders.
??   Access land to women and youth as well.
??   Establishment of land development commission that ensures the use of legality, rule of laws.
??   Capacity building of NGOs improves awareness and knowledge.

The Practical Next Steps

??   Proposals on how we (as individuals and organizations) can enhance the prevention and transformation of conflict in Zimbabwe and the region.
??   Proposals on how a network like SACPN can enhance the prevention and transformation of conflict in the Southern Africa region.

??   Arrange on conference to deliberate a multi –all stakeholders involved – land commission – lobby girt who identifies aggressively.
??   Education and awareness about colonial legacies and Lancaster house agreements and the implications.
??   Resource mobilization for the land programme (education of sanitary)

NGOs tasks on land

??   Promote dialogue among stakeholders through advocacy and civic education.
??   Lobby for transparency to accountability by organization tasked to distribute land.

SACPN 's role

??   Create regional exchanges programme.
??   Assist in lobby through SADC organizations (Capacity Building).
??   Lobby SADC to have a land desk.

Group on Gender issues

??   The social, political and economic rules that are described to men and women.
??   The problem of identity - a girl is a visitor.
??   We need to understand the policies.
??   Miss-approach – the property rights.
??   You cannot get land (Master Farmers).
??   Customary Laws (Chairman) to change.

Proposed Solutions

??   We need an autonomous minority of gender, which at all cost should be partisan.
??   The education policy – this is not by the natural gender policy.
??   Raising awareness, through education of both men and women.

??   Issue of signalling the children e.g. a girl or a boy.

??   Lobbying after organizations and government and educating through drama, songs, property funding and poetry.

??   NGOs to form strategic alliances.

??   More commitment.

??   A constitutional framework.

??   Gender mainstreaming to all national policies.

SACPN's role

??   Organization of regional gender workshops to share ideas.

??   We are stronger as a region than when we are as individual countries.

??   SACPN to be known as the watchdog monitoring indecisive government policies on its regional capacity e.g. legislation which does not suggest or which marginalizes the girl child.

??   To strengthen regional representation and to have country offices.

??   To establish exchange programme regionally and nationally which will expose more women?

??   This will assist in expanding the knowledge base.

Group on Human Rights

??   Civil society should launch an intermissive civil education on constitutionalism, which would embrace separation of powers and effective participation by the masses, collectively NGOs, government and all other stakeholders.

??   Need for a constitutional court to ensure that there is a complete respect of the rule of law.

??   A human rights bill which will embrace social, economic, political rights and as well as minority rights e.g. the disabled. Access to state information and comply with the African charter and UN Human Right Declaration.

??   The civil society must defect, network, and monitor the indicators of conflict.

??   Civil society to lobby in solidarity for effective dialogue with government and other stakeholders.

??   Ensure that the civil servants maintain their neutrality to save the masses without a partisan approach.

??   Through the constitution there must be an independent election monitoring body and legally allow international observer.

SACPN's role

??   SACPN should hold workshops, which include local and regional resource persons, to create easy networking within the country and region.

??   SACPN structures must be clear to enhance effective networking with local NGOs and gain legitimacy within the region.

Group on Minority

Zimbabwe and sub region
-       Minority being marginalized in terms of infrastructure.
-       No distribution of resources

Solution
- Promote equal distribution of resources – poor and under developed people and regions given priority.
- Participation by all in development processes that affect their stakeholders.

Language education
- Educated to promote acceptance and appreciation of their culture.
- Tolerant educational curriculum that includes vast cultures.
- Create conscious awareness of minority cultures.

Proportional representation
- Innovative thinking.
- Set policies and guidelines.
- Remove infelicity complex – participation at grass roots level – Makumbe John – participatory management.

Psychological
- Lack of drive
- Ambition

Group on Disabled

?? Identify organizations that deal with issues of disability.
?? Come up with common ideas that we want to lobby and advocate for in areas of conflict prevention.
?? Training on "conscientisation" in Zimbabwe and in the region for all key actors to change.
?? Negative attitudes to positive attitudes – moving away from the general paradigm that disability is inability e.g. excluding people with disabilities at all levels of decision making.
?? Teacher curricula should include people with disabilities – also this should be done in clusters to meet the needs of the disabled.
?? Issue of human rights to embrace the disabled.
?? Need to revisit all the statutes within Zimbabwe and the region so that we know what is there to enha nce the prevention and transformation of conflict.

SACPN'n role

?? As disabled persons, we want to be accommodated in all structures regionally.
?? Documentation and dissemination of information to an identified organization that deals with the disabled e.g. bbbying the here present organizations to include the disabled in their agendas.
?? SACPN to monitor the agendas of organization to see to it that its members in the region are taking including disability issues into their programme.
?? Mobilize resources to support the programme set up for the disabled – educational programme.

Group on HIV/Aids

?? If the minister of health were a woman, our health problems would probably be fewer.
?? HIV here and abroad affects everyone although not everybody is inflected.
?? Myths about the diseases
?? Denial

?? Stigma
?? Confidentiality (notification of the infection of one spouse to the other spouse – partner notification).
?? Denial of rights of access to information.
?? Use of condoms – religion, tradition, family values.
?? Negative effects on the economy (labour, investments, youths.
?? Survival of the family unity.
?? Military build up after attacks instead of raised expenditure on AIDS (which has more casualties than any war ever fought in Africa)
?? Sexual vengence!
?? "I will not die alone."
?? Discrimination – can you employ HIV infected housemaid.

Solutions

?? Civil education especially factual info e.g. cultural conflicts of sexuality through the school curriculum, industry, unions, etc.
?? Dramatizing aspects such ad denial.
?? Accommodating alternative methods of treatment e.g. herbal.
?? Media to enlighten people.
?? Religion and its effects.

SACPN'n role

?? Create projects that disseminate info on:
 ?? Definitions of identification of HIV and AIDS.
 ?? Expertise.
 ?? Best practice for dissemination.
 ?? Explore other causes of AIDS through HIV.
?? Condoms.
?? Cultural exchanges:
 ?? Interregional sharing of info e.g. does sleeping with a virgin prevent aids.
 ?? To break down resistance to change and information.
?? Lobby with SADC, AU for recognition of AIDS

Group on Economic Marginalisation

?? Colonialism (massive social dislocation).
?? ESAP (Economic Structure Adjustment Programme).
?? Corruption (in accountability).
?? Non-budgetary expenses.
?? Mismanagement of funds – lack of evaluation structures.
?? Geographic factors – drought, floods.
?? Acts of Law – (livestock act etc.).
?? Adequate communication infrastructure.

Possible Solutions

?? Decentralization of structures of distribution of wealth e.g. people centred budgets.
?? Creation of anti-corruption units or commission.
?? Empowerment through a people friendly constitution (we've inherited a Rhodesian law that intermeshes the interests of one race at the expense of the others).

5 KEY OBSERVATIONS

5.1 There is a proliferation of indigenous NGOs involved in development and human rights organization.

5.2 There is tension and high energy in civil society structures, but very little engagement with the power structures and economic forces in the region.

5.3 The knowledge base of most of the civil society actors is social sciences, mainly sociology, psychology and anthropology.

5.4 Contact with key actors in power structures and business structures from which conflict emanate, is at best limited and superficial.

5.5 The time horizon of three days was too short to adequately deal with conflict prevention.

5.6 Although there are high energy levels in civil society structures in the region, they lack the relevant core competencies to influence issues and policies.

5.7 There is a tendency of strategic donor partners to dictate the agenda to local civil partners.

6 KEY RECOMMENDATIONS

6.1   There is a need to assist these NGOs to develop networking skills so as to leverage the resources and create high impact, whilst making it difficult for structures opposed to development and human freedom, to undermine NGO efforts.

6.2   It is possible to prevent conflict if there is dynamic interaction in the golden triangle detailed below:
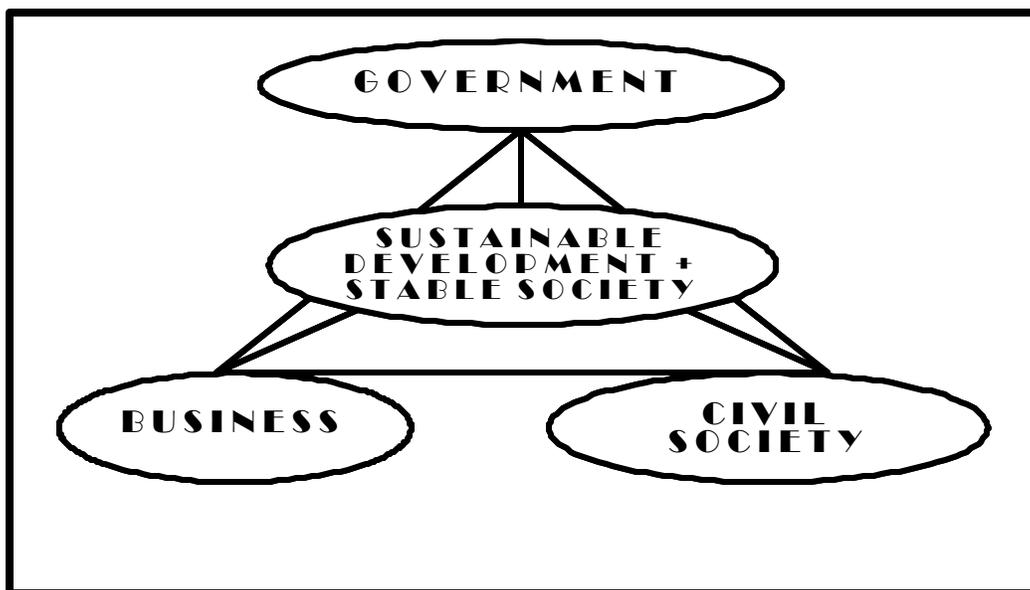
Civil society should not work in isolation. There is a need to capacitate civil society in the following key areas:

-    Government policy formulation and effectuation, as well as lobbying skills to influence policies that are against development and human rights, as well as being a source of conflict.

-    Business and economic policy formulation, as well as effectuation. There is very little interaction with the business community. Enhancement of knowledge and skills in this area may be required, including deal making skills to ensure the development of a productive and responsible business community to prevent conflict. This is because some of the key causes of conflict in the region are of an economic nature.

6.3   There is a need to broaden the knowledge base to include humanities, philosophy, politics, economics, religion, business management, government and business policy.

6.4   There is a need to employ the strategy of St Paul, one of the founding fathers of the Christian Religion. The strategy should be to transform the conflict generating structures from within, by influencing and dialoguing with their key actors. It is important to create conflict prevention forums, such as the one under discussion, to engage key actors in power structures. It was encouraging that the power structures that are in conflict such as the War Veterans Association, the Affirmative Action Group, ZAPU 2000, MDC, ZANU and NCA

were represented by some of their articulate key actors, who fully participated in the discussions.

6.5   Duration of five to six days is recommended. This will make it possible to undertake meaningful unfreezing of participants and the development of shared concepts for the first three days. The participants can then grapple with the thorny issues causing conflict and generate possible conflict prevention solutions in the last three days of the conference

6.6   The relevant core competencies required to influence issues and policies in a way that prevents conflict are detailed below:

- *Organizational skills for the gathering and monitoring of relevant intelligence around conflict issues.*
- *Lobbying.*
- *Deal-making and negotiating skills around conflict issues.*
- *Mass mobilization around conflict issues.*

6.7   There is a need to redefine the strategic partnership relationship with international donors, in a way that the donor community is informed and sensitive to local contextual issues. Room must be left for local partners to redefine and contextualize agenda issues. The idea is to enable key NGO players to build an organizational eco-system, which includes government departments, government agencies, political and business organizations, as well as NGOs and religious organizations that can enhance the agenda of conflict prevention.

6.8   Specific Recommendations: Economic and Land Issues

- Redefine ownership pattern and equation.

- Regional integration.

- Upgrading of peasant capacity, resources and focus.

- Diversification from tobacco into flowers, cotton, sunflower, groundnuts and game farming.

- Heritage tourism.

- Heritage cultural products.

- Industrialization.

- Dual logic relationship between small-scale and large-scale farmers.

- Development of large-scale black farmers.

- Emphasis on entrepreneurship.

7 KEY OUTPUTS

7.1 High attendance and participation of NGOs and power structures involved in conflict issues.

7.2 Promotion of dialoguing around conflict prevention strategies involving NGOs and relevant power structures, as well as key actors.

7.3 Promotion of networking around the prevention of conflict between NGOs and relevant power structures, as well as key actors.

7.4 Creation of public awareness regarding the role of ordinary citizens in conflict prevention.

7.5 Creation of focused interest and the attention of government in conflict prevention.

7.6 Creation of dialogue between government and NGOs around conflict prevention issues.

7.7 Creation of dialogue between government and NGOs regarding the redefining of their role and relationship.

7.8 Creation of capacity in NGOs, power structures and key actors in managing conflict prevention.

Conflict prevention workshop

Bridging the Political Divide

21-23 June 2002

Pigg's Peak, Swaziland

Abbreviations

	CSC	Council of Swaziland Churches
	EAC	European Advisory Council
	INM	Imbokodvo National Movement
	Legco	The Legislative Council
	NNLC	Ngwane National Liberatory Congress

SACPN	Southern Africa Conflict Prevention Network
SNC	Swaziland National Council
SPP	Swaziland Progressive Party

1   INTRODUCTION

1.1   Executive Summary

The Swaziland Council of Churches (CSC) in conjunction with the Southern African Conflict Prevention Network (SACPN) organised a three-day workshop aimed at "Bridging the Political Divide" in Swaziland. The workshop, held at Protea Hotel, Pigg's Peak, was attended by almost 100 participants drawn from a cross section of the political scenario including civic socie ty, legislature, government, and the media.

The workshop was initiated on the backdrop of the growing rift among various players in Swaziland's political scenario over the last few years. With the spirit of peace and justice, the aim of the workshop was to raise for discussion differences perceived regarding Swaziland's current democratic and constitutional dispensation. Through the participation of SACPN's Regional Steering Group Members from across Southern Africa, the workshop adopted a regional perspe ctive to Swaziland's prevailing political situation.

The workshop content was enriched by inputs of expertise drawn from within and outside the country. These were Thenjiwe Shimbira, head of the Political and Administrative Studies Department of the University of Swaziland, Mr Nkozo Hlatshwayo, a former Constitutional Law lecturer at the University of Swaziland and Professor Chuks Okpaluba, a Constitutional Law scholar of international repute who is currently based at the University of the North in South Africa.

1.2   Workshop Objectives

- ?? To provide a platform for closer interaction amongst the different political players in Swaziland.
- ?? To identify and build synergies amongst the political players.
- ?? To discuss and establish some common understanding of Swaziland's current democratic and constitutional changes.
- ?? To formulate resolutions for effective networking to reduce negative tensions.

1.3   Opening Remarks

Mr Muzi Masuku, CSC's head of the Justice, Peace and Reconciliation department, welcomed participants to the workshop and apologised for the delayed start. He thanked the guest speaker, Senator Arthur Khoza (Deputy Prime Minister) for honouring the invitation to officially open the workshop despite his other commitments.

He then requested Rev. Mandla Dlamini, CSC chairperson, to welcome participants and introduce the guest speaker, Senator Arthur Khoza who is the Deputy Prime Minister of the Kingdom of Swaziland.

1.4 Welcome Remarks
Rev. Mandla Dlamini, CSC Chairperson

Greetings and salutations to you Deputy Prime Minister, Distinguished Ladies and Gentleman, My brothers and sisters in Christ.

This evening is a very special evening to all of us gathered here, and to very many other faces that are not here. This is because it is a response to our Lord Jesus' high priestly prayer recorded and summed up in John 17 where he prayed: "FATHER YOU AND I ARE ONE I PRAY ALSO THAT THEY MAY BE ONE".

This workshop is of paramount importance. It has been convened to remind us of the importance of working together against all that which creates unhealthy distances between all of us as a nation. I do not even need to argue and explain how important, for we all know it.

However, I do not want to pretend that it does not sound and look ridiculously abnormal for Churches to convene a meeting that has a political agenda. It looks strange, it looks abnormal, especially to people who have not had the chance to read the Scriptures and discover that outstanding political leaders with sound political strategies came from the community of those who believed in God.
For instance

?? Joseph in the Old Testament came out with a brilliant plan for solving the problems of food and agriculture in Egypt.

?? Moses led the people of Israel from Egyptian domination and slavery into a free Israel. It continues to be the role of the church of God; to facilitate a peaceful existence of no matter how divided a people or nations.

As a church it is sometimes our painful duty to carry out the mandate of the Lord our God where he commands his church through the voice of the prophet Amos and says:

"Spare me the sound of your songs; I cannot endure the music of your lutes. Let justice roll on like a river and righteousness like an ever-flowing stream".

AMOS- 5: 23-24

This weekend and many other interventions are the church's appeal for meaningful dialogue between the diverse political formations in the kingdom and all stake holders. We believe that this country has lots of wonderful people with noble aims to see this beautiful Swaziland grow from better to best in its political social and economic aspects.

As a church we are appealing to all the children of this kingdom to grab every opportunity that brings everybody together to combine efforts of uniting the nation.
Our special appeal goes to all of you gathered here this weekend, both facilitators and participants, to make this historic step towards uniting the nation in its endeavour to develop the country. You are men and women of very remarkable expertise and experiences; do not dart at each other with these, instead fuse them together into meaningful strategies through which we may together

transform this nation into an economically advanced and a very politically and socially developed country.

Mr. Deputy Prime Minister, as a Council of Swaziland Churches we are very highly honoured that his Majesty's Government could delegate you to grace this occasion and accord us the official opening of such a humble forum. It is a gesture that assures us, as a church, that Government wishes to support all efforts of building this nation and we wish to register our profound gratitude to you personally and to the Government for such an honour. Without much ado Mr D.P.M. may I invite you to address this gathering?

I wish you God's richest blessings for this weekend and always.

1.5 Opening Speech
Deputy Prime Minister, Senator Arthur Khoza

First, thank you very much Cannon for the blessing. Second, I was tempted to offer my apology thinking it was already too late but we have sorted that out. I was encouraged by what somebody said centuries ago which holds true even at this moment, mainly that, great heights by man and women reached and kept were not achieved overnight, but when others slept they trolled through the land. That is why I'm here.

There comes a time in the life of man, a community or a nation when all else must be sacrificed or cast aside in order to secure the future; to ensure that tomorrow will be safe, happy, peaceful and prosperous. With regards to the constitution currently in effect in Swaziland, this is the time. Indeed, this is the time for those of us who are in this hall and those who are outside. Some may not even be aware that this is the hour, for there are persons who sleep peacefully through change.

Mr. M.C., our workshop, your workshop is about bridging the political divide where one cannot be divided and to me, this means a shift in positions, a change in approaches, revisiting of perceptions, a willingness to listen to the other side: It means readiness to get involved in dialogue, to give and take for the sake of the common good. Yes, it means both sides sitting down and talking in order to avoid polarization of attitudes or positions. It has been said that in politics there are no permanent friends and no permanent enemies. Most of us in this hall are witnesses to the fact, and we do not need to look very far or to scratch our heads to remember what happened. This attests to the dynamism of change through interaction and this is a factor that has to be taken into account when anybody wants to work to bridge the political divide.

Swaziland's political past shows that since 1963, dialogue has served us well, and that there is no reason why we should not solve our problems today as we have done in decades gone by. This was underlined by none other than his Majesty when celebrating his birthday earlier this year. We as a Nation have moved from the days of the Swaziland United Front, the Ngwane Nation Liberatory Congress, the Swaziland Democratic Party and the Swaziland Progressive Party Versus the Imbokodvo National Movement of 1964. We have gone through the 1973 Proclamation to the Nation, which repealed the Independence Constitution of 1968 to the establishment of the Swaziland Parliament Order of 1978. We have also gone through the retrogressive indirect representation in Parliament. Currently, we operate in terms of the establishment of the Swaziland Parliament Order of 1992, with direct representation in parliament through one-person one vote, and the secret ballot.

Commissions appointed to review the country's politics and its constitution have come and gone and now we have reached the constitution drafting stage. However, there remains concern that not enough has been done. Efforts have been made to include all shades of opinion in national exercises but not enough cooperation has been forthcoming. Direct talking has, however, continued among the three social partners, namely, the workers, the employers and government.

Clearly we cannot hope for the "winds of change" of the sixties, which compelled the Imbokodvo National Movement to embrace the African majority rule and one man one vote, lest it was cast aside as anachronistic. Nor can we wait for change to manage and to manipulate us, because that is what change does. If you can't manage it, it will manage you.

We have no choice but to spare no effort in bridging the political divide.

Master of Ceremonies, I believe in order for success to crown the endeavours of those who will get positively involved in bridging the gap, the right attitude is essential so that the right climate is created. In this connection, Master of Ceremonies, may I suggest that the following questions be regarded as pertinent:

> A. What is wrong and not, who is wrong; that is if we are going to decide on the question of bridging the political divide?
> B. What is right and not, and who is right?
> C. What of my best or our best can I/we give to Swaziland to ensure enduring or lasting peace, harmony and prosperity, and not how best to hoodwink Swaziland to become more powerful and richer?
> D. What can I/we do to provide fraternity and liberty in Swaziland and not what can I/we do to destroy Swaziland?
> E. What can I do to ensure inclusiveness in our forward march to building a happier, stronger and free Swaziland?

We belong together, we have a common present and we are bound together by common destiny.

Another requirement is for us to identify common features on both sides of the divide, which would serve as the launching pad or "common ground". Was it pointless talking about bridging if we cannot speak of a single feature, which the two sides could consider as common?

In this regard, it would appear that there is general "agreement" that the following ingredients cause no particular or special discomfort. I'm speaking about the features, or the factors or areas over which there appears to be a general agreement or acceptance. There is of course the question of details and definitions. Many people spend so much time on definitions. They do it over and over again. I am not saying that it is unnecessary, it isn't, because those who have taught will know, students grasp things differently.

The areas over which I think it would appear that there is general agreement are:

> 1. All Swazis have happily agreed there's need for national peace and stability. I think all Swazis believe that anything that disturbs peace and stability is hostile.
>
> 2. It seems to me, all Swazis are agreed on the position of the King; that Swaziland is to be a constitutional monarchy. It is a question of definition. What do you mean by constitutional monarchy? Do you need an executive monarchy? All those things!

However, I am not aware that there is an element in the Kingdom of Swaziland that is anti-monarchy.

3. As to tolerance and pluralism, there is ample evidence that there has been tolerance, maybe on both sides, maybe not to the same level or degree, but there has been tolerance. Pluralism! My definition means there will exist groups in your community or society with whom you do not agree; but you do not wish them away, and you don't destroy them; they exist and you tolerate them.

4. Democracy

I have not come across any sane person in the Kingdom of Swaziland who says we do not want democracy here. The question is what do we mean by democracy? I am not about to discuss it; but it is something that seems very sexy, appealing. Some would spend days on end to find democracy. The question is; what kind of democracy will work here? Someone would say: ***"What do you mean"***? There are no different kinds of democracy. I am merely saying that it is generally accepted that there are principles of democracy; you cannot have a blue print anywhere. Take the best of constitutions, part of which would work elsewhere. Others will not apply because a constitution that would work is one that whilst including the accepted principles of democracy, will accommodate the unique local circumstances. Someone would say: ***"Which are those"***? A Swazi would not ask that question; except that even Swazis would say at some point that this has been unique, but we can do without it now. You can only raise such an argument where you sat down and agreed to talk about what is wrong and what is right, because times change. I have not come across a single person in Swaziland, who is concerned about the future of this country who says ***"lets go back to the 1920s"***; nor have I come across a Swazi who says ***"let's mark time, let 's mark the moon"***. In fact, I recall vividly that in April 1986, his Majesty at the Somhlolo National Stadium said of customs; ***"I will allow them to evolve with time"***. That says something about change. Master of Ceremonies, I know I do not want to go into philosophy, I did study it, and there are various schools even about change.

There are those who say, there is no such thing as change. There are those who say you cannot cross the same river more than once. In other words, things change every second. You cross a river, you never cross it again. Realistically, if those who speak about democracy say the principles are; to have elections at regular intervals, which are free and fair, and all those who qualify can vote. It is a principle, let us say the rule of law, and it is an interesting one, especially at our time.

Independence of the judiciary and press freedom, those are principles of democracy. The other things are tools of democracy, but then we could need to sit down and see if we agree on these definitions, which ones do we go with, that is what I was referring to when I spoke about unique local circumstances.

We can all agree, we have always done it this way as Swazis, but times have changed, how do we do it now, do we retain it, do we discard it?

?? Free-market economy.
We are encouraging that and I don't think there's any lobby, which discourages that. I mention this, simply because there are these things I think we need to take as students of maths, we know, as given and we build on that.

?? Bill of Rights.
I think there would appear to be some misunderstanding. I need to say how I view this myself. In 1992, a Tinkhundla Review Commission submitted recommendations to the Sovereign, and one of it's members who was dealing with mechanisms which would deepen the roots or facilitate the democratic process in the kingdom stated that there should be certain entrenched clauses in the future constitution. One of those was a Bill of Rights. When I read the report of the constitutional review commission, I did not understand it to mean that the Swazis have changed their minds on the Bill of Rights and now say they don't need it. I understand that portion to mean that, there is the fear of the unknown, to say that, yes, lets have a Bill of Rights, but it should not say no, to Swazi culture. Now, I do not know of any Bill of Rights in the world where the Bill said no to the culture of the given nation, because if you read the Universal Declaration of Human Rights, it does recognize the culture. So I would personally say that without a bill of rights you cannot start speaking about all the principles of democracy that are referred to it. If you did, you'd be daydreaming.

Therefore, Master of Ceremonies, in my humble view, a starting point exists if we are going to talk. Talking of course, does not mean the like-minded sit down so many times a month to talk about the same thing, it means speaking to the other side. It happens in many countries through various ways. There is no standard method. It happened across the border, where the people believed the two would never sit down to talk, but did. Those who read newspapers would recall that; even those who view television would recall too that after their first meeting, one of them said: ***"One thing we discovered was that, none of us had horns"***. We should not find this an impossible task, certainly not in the 21st century, since we are, in Swaziland, one large family in one culture, we should definitely be interested in both the process and the product.

Master of Ceremonies I speak about process and product because, sometimes when people shift goal posts, they would say, no we are not interested in pr ocess, we are interested in the product. Now, I am suggesting that we willy-nilly need to be both interested in the process and the product.

I have no idea what the product will be, but I think that depending on the root of the draft constitution, maybe one last chance exists. In other words, it is justified to continue talking about what should happen, what this divide politically is and what do we do in order to narrow down the objective so as to bridge the political divide? When I speak about the root, Master of Ceremonies, it is not clear yet what is going to happen once the draft constitution is on the table or desk: Will it go via a proclamation? Will it become a bill and go to parliament for debate? This will mean, if it is the latter, that it will be published. Allowing for further debate, parliamentarians should be getting ready to debate it, free to introduce a mandate. That is what I do not know at this moment. Assuming it is the latter, then I would say there is justification for continuing the debate because it is our future that is involved. It is the future of our children that is at stake. It is the future of generations yet unborn because it is better to leave a piece of defining legislation, which allows for amendment, because it is wrong for any one generation to believe and try to make others believe that one generation has the monopoly of wisdom. And I trust that if we finally have the defining legislation in respect of which some people may say without fear of contradiction ***"the people have spoken"***, we will have a document which we will have every reason to celebrate, even when sceptics would have lost hope.

In Swaziland today we do have people who believe that it is better to travel than to arrive, we have people who believe in looking at the mountains and who say "that marks the end of the world".

1.6 Discussion, Questions and Comments

After the DPM speech, the following issues were raised during discussions:

Law and Order

Participants expressed concern about deteriorating law and order. They also noted that it would be difficult to arrest the persons who flout court orders because they control the law enforcement agencies. In response, Senator Khoza stated that some individuals flout court decisions. He denied that court decisions were flouted by the system. *"I am not aware of any decision taken at government level that court decisions will be flouted",* he said. He recalled that His Majesty the King when he opened parliament early this year said that court decisions must be respected. *"If any individual flouts court decisions, then the court of the land should deal with that individual or that group".* He also said *"The persons can be identified".*

Shaking Foundation

A participant noted that it was difficult to move forward because *"the foundation is shaking"*.

In response, the DPM observed that forums like this one were addressing that concern and further advised that people should stand up and do something if the foundation is shaking.

Constitutional Framework

Participants argued that a constitutional framework cannot claim to be unique if it does not meet the basic international standards of human rights. Senator Khoza stated that Swaziland was unique in many respects, including the institution of the monarch, which has two roles – Ingwenyama and King.

Culture

It was observed that bad cultural norms need to be removed.

Senator Khoza agreed that culture needs to evolve. Customs, which are no longer relevant should be discarded. He advised that a platform was available for Swazis to recommend for discarding of customs with the Ingwenyama through Swazi Law and Custom.

2 PRESENTATIONS AND DISCUSSION

2.1 Introduction of SACPN
Ms Yaliwe Kamuhuza, SACPN Coordinator

Ms Kamuhuza explained that the workshop was important to the Southern African Conflict Prevention Network (SACPN) as it formed the basis for the realization of the organisation's mission to support local initiatives that promote dialogue and reflections amongst various political players.

Ms Kamuhuza explained that SACPN was established in Maputo, Mozambique in July 2001 at a first regional seminar. In pursuance of the prevention of violent conflict, SACPN last year held a workshop similar to this one in Bulawayo, Zimbabwe to discuss the tensions they were already experiencing prior the elections. The workshop discussed the land issue and the discrimination of minority groups from the perspective of the countries in Southern Africa as well as the people of Zimbabwe.

"By supporting the Council of Swaziland Churches, SACPN wishes to help facilitate a local initiative to bridge the political divide among stakeholders in Swaziland," she said. She also told the participants that SACPN was particularly interested in the resolutions of this workshop that shall result to networking and reduce negative tensions in the country.

Ms Kamuhuza said that through similar interventions, SACPN seeks to expose the unique and important role of civil society in building a culture of peace at community level through numerous educational, negation and mediation interventions. She said that SACPN hopes to capture, document and share knowledge and expertise being developed by NGOs in Southern Africa.

The SACPN representative concluded by saying that as a network they acknowledge the role played by Government in peace, hence the network has established links with the Southern African Development Community (SADC) and the COMESA with the hope of linking into peace initiatives of governments especially peace talks.

2.2 Democracy and Democratisation
Ms Thenjiwe Shimbira, University of Swaziland

This morning I would like to share a few ideas with you about democracy and democratisation.

What I am going to attempt to do is to talk in broad terms about some of the fundamental principles of democracy, its universally acceptable principles, relating this somewhat to the African experience.

As you all know, the subject of democracy tends to be shrouded in a lot of controversy, as many people talk about democracy without actually defining what it means, and yet talk about it passionately for a variety of reasons that will emerge during the course of our discussion this morning.

On the other hand, those that attempt to define democracy find themselves with so many definitions that in the end may create some degree of confusion.

This presentation will not really pursue the issue of a definition of democracy that we can all agree with, as such. What I will do is to proceed from the premise that there are certain universally accepted fundamental principles of democracy as well as institutions that need to be created by a society that aspires towards democracy.

Secondly, this presentation will try to underline the fact that democracy is a process and that like all other processes, it must begin somewhere. And, also that as a process, democracy evolves over time. As some people have observed, democracy can never be perfected, as there is always room for further improvement To that extent, democracy has been referred to as a state of "becoming" and never a state of "being". What this means in practical terms is that nations and people must

continuously face up to the challenge of refining their democratic values, their democratic principles as well as their democratic institutions in order to ensure a better future for generations to come.

I think many of you would agree with me that one of the major controversies surrounding the subject of democracy in recent years has been the issue of its feasibility. Some people, for example, have questioned the feasibility of democracy in Africa. Their argument is that there are certain cultural, economic and other obstacles that have worked against the democratisation process in Africa. Others have even gone so far as to argue that democracy is an alien concept, one that has been imposed from outside.

My argument this morning is that there are numerous African values that are compatible with the very foundations of democracy in its various aspects; i.e. democracy as a political as well as a social concept. The foregoing point underlines the universality of the principles of democracy to which I alluded earlier.

The specifics of democracy, on the other hand, relate to its institutions and practices. Whilst the principles and the norms are universal, the institutions which inform democracy may vary in time and space, although the norms and principles actually do not change that much.

To show that democracy is not an alien concept, many people in the pre-colonial Africa, for example, experienced a measure of democracy even in their own local villages as well as in the broader communities in which they lived. Many of these communities were found to have embraced democratic values and practices such as the consultative process, a measure of accountability, procedures for ensuring social justice, etc. This point has been well documented by historians and others working in this area.

As a universal form of rule, therefore, with specific manifestations, we may benefit from using Nzongola -Ntalaja's formulation that will help us to think of the concept of democracy in three (3) major ways. These are democracy as:

1. A value
2. A process
3. Practice

Democracy as a Value

As we all know, values are all those things that we find to be essentially good, and hence treasure and hold dear in our hearts. Democracy can thus be understood as a moral imperative, or a moral value, if you will. Democracy may be said to be a moral value in the sense that it is a basic human need; i.e. it is a necessity for all freedom loving human beings. We need to underline the importance we attach to defining democracy as a moral imperative by asking ourselves the question: what is so imperative about democracy?

In other words, why is it imperative for us to seek to embrace democratic values and norms and practices in our societies? It is imperative in that democracy represents that which all human society has always aspired towards; i.e. human beings permanently aspire for a better life as well as a better social, economic and political order. This is a sociological fact and I think that sociologists here will attest to this fact. In all human societies, people always feel the need to improve their material conditions of life and to feel freer all the time.

This means that as a moral imperative, democracy also implie s tolerance. As people go about seeking to improve their economic, social, political and other conditions, they have to exercise tolerance for all kinds of diversity.

I will divert a little bit to underline the importance of tolerance as understood in democratic philosophy. Democratic philosophy proceeds from the premise that no one individual, no one institution or government has a monopoly over what is right or true. According to democratic philosophy, truth is a matter of conscience (of individual conscience for that matter). What is right is also a matter of individual conscience.

This creates problems for some people, for they wonder; if all of us, say, fifty of us here, may assume fifty different positions on any issue regarding what is right or wha t is truth, then how would we proceed as a society in the light of the diversity that is so readily apparent?

Democracy recognizes this diversity in human society and that is why it preaches tolerance. Because none has monopoly over what is truth or right, then all have to tolerate each other's point of view.

That is why in the final analysis democracy is about debate, consensus and compromise; i.e. we must engage in dialogue until we reach some kind of compromise, or a consensus. The democratisation process therefore must be characterised by consensus building, among other things. Conceptualised in this way, democracy also entails a degree of co-operation as well as a willingness to be educated about the other existing points of view. The latter is the role of civic education that involves the creation of structures where citizens can debate issues until they reach a compromise that they can all live with. It is notable that much social and political strife in many African countries has resulted from intolerance and the absence of structures for constructive debate of national issues.

Democracy as a Social Process

As a social process, democracy is a human construction, indicating the way in which a given society has chosen to live. The question is; how can we begin to understand democracy as a social process? We all know that like all other social processes, and like all other forms of human construction, democracy is never perfected. There is no type of human construction that can be said to be perfect because even human beings themselves are not perfect. However, we should not use human imperfection as an excuse to fail to aspire for what is essentially good.

Democracy as a social process therefore entails a continuous process of promoting equal access to fundamental human rights and civil liberties. By this we mean, for example, the fundamental rights to life and security. This includes the rights and freedoms such as freedom of religion, freedom of assembly, freedom of expression, of the press, of association etc. These extend to economic, social and cultural rights, and also the right to self-determination.

It is important to note that as a social process, democracy should seek to enhance the rights of people towards self -determination, and, because of the strong link between democracy and the quest for human freedom, it is very difficult for many people to think of democracy without the notion of the protection of fundamental human rights.

A detailed discussion of the issue of human rights is a subje ct of another day. But all I want to say

here is that in order for democracy to thrive, democratic tradition, philosophy and practice inform us that with every exercise of one's human rights, there should be a corresponding obligation. It is important to mention this because I have heard many people in similar forum such as this, pointing out the possible dangers of infringing upon the rights of others in the process of exercising one's own rights. Once these democratic values are embraced and become a way of life, a society of citizens who are aware of both their rights and obligations, is born.

So, thus defined, democracy becomes a social process in which people strive to expand these rights as well as seeking to expand the space in which these rights are promoted and defended.

The democratisation process that is currently underway in many countries, in Africa for example, is an indication of the foregoing; i.e. that democracy is about people seeking to expand their fundamental rights and also to improve all aspects of their lives. In other words, these democratic struggles are a logical consequence to what many people refer to as the none-fulfilment of the expectations of independence. This may indicate that many people in Africa are disillusioned about the fruits of independence, and hence the democratic struggles are a reaction to what people perceive as a failure of the post-colonial state to realize the national project in many of these countries. In this context, the national project could refer to the attainment of genuine independence as well as the correct interpretation of the people's aspirations.

Hence, for example, people are seeking national integration in those African countries which are torn apart by tribal and ethnic conflicts. Similarly, in many African countries, democratic struggles have centred around issues of economic development, participation in decision making, social justice, among others.

So I am suggesting that if one relates the democratisation process to the African experience, one can see clearly how in the final analysis, democracy is a social process aimed at the betterment of human society.

One scholar has succinctly captured this idea by saying that: ***"enhancing democratic rights is the only way of averting human tragedy"***.

Democracy as political practice

This is the best known feature of democracy. It refers to the specific manner of organising and exercising power in accordance with certain universal norms and principles.

As political practice, democracy can be understood at two levels:

I) Level of principles
II) Level of institutions

Principles

There are four fundamental principles towards which all democratic governments should aspire:

- <u>Legitimacy</u>
  This means that legitimate power and authority should emanate from the people who exercise it through popular assemblies such as the legislature.

- Concept of the Rule of Law
  The concept of the Rule of Law seeks to explain that in democratic governance, the exercise of power should not be arbitrary. In other words, power should be limited in its mode of operation. What this means in practice is that the parameters of state power and sphere of government authority should be defined and limited to allow space for other social actors. This space is very important because there are certain activities that are best left to other societal actors such as the family, interest groups, pressure groups, etc.

  The Rule of Law also implies procedural stability that enables citizens to come to know the rules of the political game so that these are not changed arbitrarily and without the due process of law.

- Accountability
  This principle seeks to underline the idea that rulers are chosen by and are accountable to the people. The governed must approve not only the way rules are made, but the rules themselves. The principle of accountability also gives effect and true meaning to the whole notion of governors being the true representatives of the governed.

- Right of citizens to participate in management of public affairs
  This democratic principle seeks to allow for a free transparent system and also to uphold representation. In practice this implies the right of citizens to participate in free and fair elections as well as to organise freely so as to be able to influence the course of events that impact on their lives.

Institutions

Democracy is unlikely to thrive and mature without the creation of certain institutions that promote its continued practice. Democratic institutions, therefore, are to ensure that the procedures of government are compatible with democratic principles. These include the decentralization of government structures, the notion of the separation of powers as well as the system of checks and balances in the operations of government. What is important to note, is that institutions are unlikely to perform without an independent vibrant civil society and a free press, because it is through the vigilance of civil society that the democratic dream is kept alive.

In conclusion, it is quite clear that the quest for the attainment of democracy is at the heart of all human endeavours, dating back many generations. Indeed, civil society has a moral obligation to give meaning to this endeavour as well as to nurture it, for the common good. If this responsibility is neglected, moral decay and apathy will gain ground in civil society, creating a vicious cycle of indifference where everyone stands to lose.

2.3 Discussion

During discussion, the following issues were raised:
- ?? Lack of tolerance
- ?? How the Tinkhundla democracy can be reconciled with the universally recognised democracy.
- ?? How much space should be granted civil society.
- ?? There is general apathy among Swazis and there is a need to involve ourselves.

In response, Ms Shimbira observed that:
- ?? It was for the workshop to decide what to do with the lack of political tolerance
- ?? She said the workshop should also decide how to reconcile the two different democracies
- ?? She also explained that civil society could create space through all forms of social organisations and interest groups.
- ?? Explaining the difference between a citizen and subject, Ms Shimbira explained that in certain usage of the terms, a distinction is made that a citizen has political rights while a subject does not have those rights; whilst in other conceptualisation, such a distinction is not necessarily made.

2.4 Swaziland Constitutional Framework

Mr Nkonzo Hlatshwayo, University of Pretoria

Introduction

The Theme of the Conference, which was endorsed by the Deputy Prime Minister last night, is quite appropriate for this occasion: **Bridging the Political Divide** . However, in order to bridge this divide, you must have frank and honest debate. Participants should be entitled to state their views as frankly as possible without any fear of repercussions. Swazi constitutional developments are very much like a journey taken by the slowest of all animals, and which has the capacity to convince its beholders that it is different from the animal they might have seen a few minutes before – the chameleon to be precise. "*It is ever changing but never really changing".*

Force of Tradition

All commentators on the Swazi political system readily acknowledge the importance of Swazi tradition. On the face of it, constitutional developments in this country are informed and inspired by the force of tradition, which apparently pervades every facet of social life in this kingdom. The most important constitutional decisions are anchored on tradition, such as the appointment of the head of state and the prime minister.

The most important constitutional changes are initiated and finalized in a traditional setting, at Ludzidzini. The appointment of the most important commissions is announced at Esibayeni. But is Swazi tradition at the heart of the constitutional developments that this country has seen and experienced in the last forty or so years? The appointments of the most important commissions are announced at Esibayeni. But is Swazi tradition at the heart of the constitutional developments that this country has seen and experienced in the last forty or so years?

Development of the Swazi State

Few people realize that the Swazi state is a very recent phenomenon, which is hardly two centuries old and left to exist by sheer chance in the face of dynamic forces that were at play in the sub-region during its formation and development.

The chief architects of the Swazi state were obviously the Dlamini. These were part of a larger human migration from Central Africa down to the southern part of the continent. The Dlaminis' arrival in the region coincided with the Mfecane era, where the likes of Zwide of the

Ndwandwe and Shaka of the Zulu were calling the shots. These espoused expansionist aspirations and therefore attacked Swazis from time to time. Consequently, the Dlaminis were forced to seek refuge further north, where they encountered other well established clans like the Maseko and the Magagula. At this time the Dlamini were a closely knit and small group with a very small army.

The Initial Building Blocks of the Swazi State

The first main architect of the Swazi state was Sobhuza 1st. Sobhuza's first task was to establish a kingdom for himself amongst the clans he found in the country. As his successes and conquests increased, he realised that the institutional arrangements he was familiar with could no longer cope with both the size and the number of chiefdoms involved. For this reason he pursued a number of strategies to deal with the situation and these included the following:

Sobhuza 1st's Strategies

Where the local chief pledged loyalty and support to Sobhuza, the chiefdom was allowed to retain its leadership. However, where loyalty and support were not forthcoming, the leadership was replaced with Sobhuza's trusted and loyal officers. In the latter part of his life, he made use of the system of appointing his trusted brothers and relatives to oversee outlying areas. He also established several royal villages in various communities.

King Mswati 1st's role in Nation Building

King Mswati was the second Swazi King to think more seriously about the establishment a strong Swazi state. This was dictated by the prevailing political turbulence in the region. Mswati's first main efforts went to the consolidation of military power within the country. Hitherto, each chiefdom had retained its own small army, made up of regiments who were called upon to defend the common borders in appropriate instances. He therefore formed age regiments across clan lines

Rationale for the Consolidating of Military Power

Historical sources do not indicate whether the consolidation of military power was actually dictated by Swazi tradition. What is clear however is that Mswati had pressing personal problems to sort out. When he was installed as King, some of his brothers who exhibited kingly aspirations were dispatched to the outlying areas.

On arrival at these areas, they soon took advantage of some discontent that existed between the centre and the periphery. The likes of Fokoti and Malambule are reported to have launched attacks against the centre using regional military resources.

Consequently, in order to deprive these and other belligerents, Mswati centralised military power to the centre. The likes of Fokoti and Malambule are reported to have launched attacks against the centre using regional military resources.

Mswati also hoped to achieve a secondary but highly important goal through the regiment system. This was to serve as a system of political socialisation. Historians tell us that it was through this system that the authority of the monarchy was reinforced. It was also hoped that the unity of the nation was going to be inculcated in those that participated in this system. The system is said to have also offered some form of upward mobility to members of other clans.

Jonathan Crush's observation

The political historian, Jonathan Crush makes the following observation about the aforesaid system.

In peace and war, the regimental system performed the vital role for socializing the young men of the non-Dlamini chiefdoms and refugee gr oups into the new state, cutting across regional and clan loyalties and forging a new national identity which demanded complete allegiance to the Dlamini aristocracy.

Mbandzeni's Role to the Formation of the Swazi state

With the rudiments of the Swazi state put in place by both Sobhuza and Mswati, Mbandzeni started exercising constitutional powers in terms of land and mineral rights. Historians indicate that Mbandzeni's claim to the throne was somewhat shaky, as he had to be adopted by the Indlovukazi, Sisile, in order to qualify for kingship. So initially, he did not command sufficient political clout to start exercising effective authority right away. It is said that he was then given the responsibility of dealing with concessionaires as this was considered to be an inferior responsibility. Through this system, he allegedly bequeathed the entire land area of the country to concessionaires. It is said that he frequently disregarded his council in granting some of these concessions.

Mbandzeni's Relations hip with the Indlovukazi

Apparently, after a while, Mbandzeni did not see eye to eye with the Indlovukazi.
Eventually, he eliminated her by setting his regiments on her. Consequently, he managed to defy his council and to weaken the other part of the monarchy by removing the Indlovukazi.

Mbandzeni's efforts to address the concessions problem

Mbandzeni's main contribution lay in officially inviting the British to take over Swaziland as a protectorate in order to sort out the numerous concessions he had granted to both the Boers and the British.

His call for assistance brought in Offy Shepstone who introduced a dual legal system. Both the British and the Transvaal government, as it was then called, relied on this development to sign treaties with Mbandze ni cementing this duality. Ultimately, Swaziland managed to slip into the hands of the British through the Anglo-Boer war fought at the turn of the last century.

Were all these developments precipitated by Swazi tradition?

The history given here does not do justice to over a century of activities that took place in the country. However, it does give rise to the fundamental question whether there were at any one time timeless institutions that enjoyed the force of Swazi tradition recognised by various generations from time immemorial. With this in mind, we can now move on to the 1960s to understand where we come from.

Notable phase of constitutional developments since 1960

The period under discussion has obviously given rise to several distinct constitutional phases and these include the following:
-        Pre-Self -governing Negotiations (1960-1964)

Pre-self-governing Negotiations (1960-1964)

Self-governing talks were initiated by the settler community.

The European Advisory Council (EAC) prompted the Secretary of State for Colonial Affairs to consider the establishment of a joint advisory council in which the interests of both the Europeans and Swazis would be represented. This was through a Memorandum sent to the Secretary in 1959. The following year, Sobhuza II, convened a meeting at Masundvwini in which he shared his vision and views about future constitutional developments in the country.

Sobhuza advocated the establishment of what he called a "federation" where both Africans and Europeans would be represented. He observed that the EAC had an inferior status to the Swazi National Council in that the former was only an advisory council.

He therefore suggested that the EAC should be elevated to the same status as the SNC. He also indicated that all Swazi interests would be represented by the SNC. He observed that the EAC had an inferior status to the Swazi National Council in that the former was only an advisory council. Therefore he suggested that the EAC should be elevated to the same status as the SNC. He also indicated that all Swazi interests would be represented by the SNC.

Sobhuza's constitutional vision

At the time of these discussions, there was already a political party in existence known as the Swaziland Progressive Party (SPP), headed by J.J. Nquku.

Nquku and all those who had no faith in the traditional establishment to adequately represent their views were urging the colonial authorities to consider a framework that would be more inclusive in terms of participation.

Formation of the Constitutional Committee

The British Colonial Office responded by putting in place a Constitutional Committee charged with the task of coming up with a suitable constitutional framework that could lead to the granting of self-governing status to the Protectorate.

The Committee was made up of 26 members, including official members who represented the Colonial Administration. The EAC selected their representatives and the rest of the Swazis were represented by appointees of the SNC. Three of the SNC representatives, JJ Nquku, Dr A Zwane and Mr O Mabuza were in fact members of the SPP. However, they were selected not in their capacity as members of the aforesaid party. Consequently, no political party was represented in this Committee.

The Committee's Deliberations

When the deliberations commenced, both the EAC and SNC representatives argued for a fifty-fifty power sharing arrangement between the settler community represented by the EAC and the Swazi community represented by the SNC.

The SNC also submitted an official Working Paper, which stated that political participation for the Swazis should only take place through the SNC. Consequently, no political parties were to be accommodated. The Committee was also informed that even the formation of the SPP had not received Sobhuza's blessings, which meant that it should not be accorded any official status.

EAC's Opposition to Political Parties

The EAC made several statements indicating their opposition to the formation of political parties, including the following:

It is important to peace and good order in the Territory, that the Ngwenyama-in-Council should be approving political parties to the constitutional proposals. The overriding consideration is the need to respect the constitutional rights of the Ngwenyama-in-Council.

Even some members of parliament in Britain were opposed to the idea of the formation of political parties. Some of them said the following:

"The established institution of the Paramount Chief with his Council, representative of the Swazi people, as far as we are informed meets the wishes of the Swazi people themselves. It is surely right and proper again, whatever may be our ideas of what should be regarded as an adequate constitution, that the wishes of the Protectorate people and their existing institutions should be retained".

British MPs also opposed to political parties

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Dismissal and Resignation

As these debates were raging on, the president of the SPP was sacked from the Constitutional Committee for *"disruptive behaviour"*. The other two members decided to quit the Committee partly in sympathy to their president. As they put it:

"It was going to be misleading to the public to be associated with a forum that was hostile to the development of independent political forums in the country."

The Committee's Proposal

With the three opposition members gone, the Committee issued its proposals in 1962.

It came as no surprise when the Committee recommended the formation of a fifty-fifty power sharing Legislative Council involving the EAC and the SNC.

The Committee's recommendation was made despite the fact that the EAC represented less than 5% of the population. The Committee also recognised the SNC as the exclusive representative of Swazi interests. The Committee recommended the selection of the SNC candidates through a Tikhundla system of government. It was also recommended that the King should be granted the power to approve or even ban political parties. Further, the Committee recommended that the traditional establishment should fall outside the proposed Legislative Council candidates through a Tikhundla system of government.

Note of Reservations

The Report was accompanied by a Note of Reservations by the official members of the Committee. Their views were that a role should be found for those Swazis who did not want to be represented by the SNC in political affairs.

They also expressed concerns with the exclusion of the traditional establishment from the purview of the Legislative Council.

Responses to the Committee's Recommendations

Although the Colonial Administration was initially reluctant to state its position about the Report, it was eventually forced to deal with the issue. At the time of the publication of the report, there were already several political parties in existence in the country and these were:
- The SPP, as already indicated. However, this was to split in 1963 when Dr Zwane initially led a splinter also known as the SPP, which he later renamed the Ngwane National Liberatory Congress.
- The Swaziland Democratic Party formed in 1962 and headed by Sishayi Nxumalo
- Mbandzeni National Convention headed by Dr George Msibi. This was created out of a merger between two small parties.

The aforesaid parties were quite vociferous in their opposition to the Report. When the Committee presented the report to the SNC at large, it is said that the discussions were deliberately misdirected until such time that a great majority of the people returned home, only to find that the major findings were then debated and adopted by a minority. However, indications are that there was clear opposition to the main recommendations, particularly the idea that Swazi representation was to be achieved only through the SNC. The British Administration's experience with similar situations in other countries indicated that the proposed federation was simply a recipe for disaster. The aforesaid parties were quite vociferous in their opposition to the report.

Strategies to Tone Down the Report

In order to assuage both sides in the debate, the Colonial Administration convened a constitutional conference in London in 1963. It was hoped that Sobhuza was to attend the meeting in person; however, this was not to be. The political parties realised that this offered them an opportunity to alter the outcome of the entire political process.

In this regard the political parties formed what they called the Constitutional Alliance headed by Sishayi Nxumalo. When the conference achieved nothing except finger pointing and name-calling, the Colonial Administration decided to terminate the talks. However, the failure of the talks gave the British the moral legitimacy to come up with their own solution in view of the fact that the parties to the dispute were unable to do so.

The Sandy's Constitutional Framework

In drawing up this Constitution, the Colonial Administration had to take to account the traditional institutions of the Swazi people, the contribution of the European community to the economy of the territory and the need to provide opportunity for political expression to those who, while respecting the position of the Ngwenyama and of the Swazi National Council, yet do not feel themselves adequately represented through the tribal structure

Institutional Framework enshrined in the Constitution

The Constitution established and/or recognised four principal institutions and these were the following:
-        The Legislative Council (Legco)
-        The Executive Council
-        The Office of the Ingwenyama
-        The Office of Her Majesty's Commissioner.

Significance of the Legislative Council

Although all four institutions were clearly important in their various ways, it is the Legislative Council that holds a lot of answers for Swaziland's current constitutional crisis.

The Sandy's constitution provided that the composition of the Council was to be made up of twenty-four seats. Eight of these were to go to candidates certified by the Ngwenyama as representatives of the SNC. In other words they were to be selected in accordance with customary principles.

Another eight seats were reserved for representatives of the EAC. The last eight were to be contested in a national voter's roll. It was envisaged that various political parties were to find expression through this forum.

Legco's Legacy

This country is yet to recover from the legacy of the Legislative Council created by this constitution. Firstly, it completely disregarded the fact that the EAC was going to be overly represented by getting a third of the seats whilst its electorate constituted less than five per cent of the population. Secondly, the constitution failed to provide for the situation where one constituency would seek to maximise its representation within the Legco. This was particularly true of the SNC. After pocketing eight seats that it never contested for, it went on to form a political party through which it campaigned for all the seats reserved for political parties. It established the principle that a significant and visible minority may be completely ignored and disregarded with impunity.

EAC AND SNC's opposition to the Sandy's Constitution

The two parties here, EAC and SNC, were brought even much closer to each other by their opposition of the proposed framework. The SNC apparently ran a referendum in terms of which it sought to show that Swazis were only prepared to be represented through SNC. Out of about 122 000 Swazis that participated in the referendum, only about 154 voted against the framework suggested by the Constitutional Committee. The EAC also ran its own referendum, which

reportedly supported the original framework. However, none of these moves were strong enough to dissuade the Colonial Office from imposing its own constitution. This non-representative Legco presided over the drafting of the country's first defining document: the Independence Constitution.

The first National elections

When the EAC-SNC efforts to overturn the Sandy's constitution failed, the SNC decided to join the bandwagon by forming its own political party – the Imbokodvo National Movement (INM). When all was said and done, the INM took all the eight elective seats and received the support of 85% of the electorate. The NNLC recorded no more than 15% of the votes. There was nothing to write home about the rest of the parties.

Conclusions on the first years of political activity

What is clear from this historical record is that the traditional establishment is not accommodative to a constitutional arrangement that seeks to undercut its influence and power. What made a difference during this period is that the SNC unfortunately did not have the final say on what constitutional framework was suitable for the country. That was left to the Colonial Office. Despite the above, both the EAC and the SNC got what they originally wanted – their federation, because only the two constituencies were represented in the first Legco.

The only material difference was that the SNC had about two-thirds of representation as opposed to the initial fifty they had agreed to. So in fact the SNC came out with more, out of this arrangement than what they had proposed prior to its imposition.

The opposition was unfortunately in disarray at this time. In a very small country such as Swaziland, especially at that time, it was clearly not justifiable to split votes amongst the political parties. This only managed to weaken the opposition. Further, it appears that there was very little political conviction from the leaders of these parties as a great majority of their leaders immediately joined the INM after the elections, which weakened the opposition even further. Some of the parties' most articulate leaders who joined the INM were the following:
- Prince Dumisa
- Sishayi Nxumalo
- Arthur Khoza
- Albert Shabangu, Prince Mabandla and Obed Dlamini joined the establishment well after the demise of political parties in Swaziland
- There are others who joined the traditional establishment much later in life.

Post 1964 Elections

There is very little that occurred during this time, save for the drafting of what later became the independence constitution. This process was initiated by Prince Makhosini, who headed the Executive Council in terms of the framework created by the Sandy's constitution. In justifying the drafting of a new framework, Prince Makhosini stated the following:

> "The Constitution must combine the essentials of a modern democratic state with the traditional institutions of the Swazi nation and Swazi kingship, in order to foster progressive and responsible government and maintain peace and stability of the Territory. Unless this two fold duty is discharged, no economic or social advance is possible."

The EAC – SNC Part ways

The preceding statement signalled the end of the marriage of convenience between the two parties. Having tasted victory at the polls, the INM believed that it had come of age and was ready to stand for and on its own. In or der to render the opposition meaningless, the INM adopted some of the slogans of the opposition such as:

•The adoption of a progressive constitution that embodied a bill of rights
•The full recognition of freedom of association
•The acceptance of democratic elections as exemplified in the one person - one vote system
•The 1967 general elections held in terms of the new constitution crafted by the INM confirmed the INM's popularity as it garnered over 80% of the votes cast.

Independence Constitution

This constitution, like most other constitutions in the world, described itself as the supreme law of the land, which meant that the exercise of governmental powers were subject to the constitution. As already intimated, this constitution provided for the protection of fundamental rights and freedoms enshrined in a bill of rights. The High Court was declared the guardian of the Constitution. The Constitution also established conventional democratic institutions such as parliament, the executive and the judiciary and allocated powers to these institutions. However, the Constitution also maintained the duality that was first introduced into the country by Offy Shepstone, as we saw earlier on.

Derogation Clauses in respect of fundamental rights and freedoms

Although the constitution guaranteed all equality before the law, it recognised and entrenched provisions relating to Swazi law and custom. This regime, it is widely argued, does not embrace the principles of equality and freedom; as women are regarded as perpetual minors without legal capacity to transact business in their own names unless they are assisted by their spouses.

In particular, it provided in section 15(4) that although discrimination on the basis of race, colour, gender, creed, tribe or place of origin, any law which sought to apply to members of a particular race or tribe, shall not be unconstitutional by virtue merely of the fact that that law imposed a disability or restriction over the aforesaid members.

This, in real terms, was license to disregard the most important provisions of the constitution under the guise of Swazi law and custom. It also places the entire traditional establishment outside the parameters of the general law of the land

This was difficult to understand, especially because Swazis were now in control of the state apparatus. Initially, the concept of duality came up because the general law was supposed to administer the affairs of the Europeans.

Provisions of the constitution under the guise of Swazi law and custom, also places the entire traditional establishment outside the parameters of the general law of the land.

The first five years of Independence

No activities of constitutional significance occurred between 1968 and 1972. However, things changed significantly when the first post-independence elections were held in 1972.

For the third time in a row, the INM came out with an overwhelming majority. However, it lost one out of eight constituencies. The net result of this loss was that the NNLC managed to send only three out of 24 members to parliament.

This election result led to significant constitutional changes in the country. The country is yet to recover from the consequences of those results.

Thomas Bhekindlela Ngwenya

The INM's reaction to the election results was to challenge the citizenship of one of the NNLC MPs, Mr TB Ngwenya. The Deputy Prime Minister at the time declared Mr Ngwenya a prohibited immigrant. Mr Ngwenya's response, as most of you may be aware, was to launch a High Court application. The Court held in his favour on the ground that the Minister in question had failed to act in accordance with the procedures specified in the Immigration Proclamation in terms of which he sought to exclude Mr Ngwenya from Swaziland.

The government appeale d this decision. Parallel to the appeal, the government initiated legislation in parliament in terms of which it removed this matter from the competence of the ordinary courts and conferred jurisdiction on a specially appointed Tribunal.

Mr Ngwenya's first attempt to have this amendment to the Immigration Proclamation set aside by the High Court was unsuccessful.

It was at the Court of Appeal that he finally found justice, as the Court held that the aforesaid amendment had the effect of altering certain provisions of the Constitution relating to citizenship. In view of the fact that the aforesaid amendment did not comply with the rigorous amendment procedures spelt out in section 134 of the Constitution, the Court had no difficulty in concluding that the Minister's decision violated the Constitution and was therefore null and void.

The Aftermath of the Ngwenya case

On 12 April 1973, barely two weeks after the Court's decision, the Prime Minister introduced a motion in a joint sitting of both Houses of Parliament in terms of which he sought to have the Constitution abrogated. The Prime Minister offered as justification for the Motion the following reason:
- The Constitution permits particularly undesirable political activities, bordering on the subversive; and is completely foreign to, and incompatible with, the normal and peaceful way of life of the citizens of this country.
- This was the very same person who pointed out the importance of balancing the interests of Swazi traditions against the dictates of modern forms of government.

Some of the questions that have never been answered by proponents of the repeal are the following:
- What exactly were these highly undesirable activities that were bordering on the subversive? In view of their obvious gravity, why was the police force not dealing with these activities in terms of the law?

- Were there any attempts made to pass legislation aimed at dealing with these specific activities without compromising the very foundation of the legal and political system of the county?
- Was there any consultation with the electorate on these activities? In particular did the parliamentarians who acceded to the Prime Minister's motion have the mandate to accept a motion of this magnitude and which effectively terminated the very essence of their existence as parliamentarians?

The Repeal of the Constitution

As if by coincidence, later that afternoon, the Prime Minister advised the King at Lobamba that all members of parliament were unanimous in the view that the Constitution should be repealed. All members placed themselves at the mercy of the king.

The Parliament voted unanimously for the repeal of the constitution

The historical record indicates that the Parliament voted unanimously for the repeal of the constitution. There are conflicting reports about how the other members of the opposition participated in this saga. One account suggests that they were actually out of parliament at the time, having boycotted the session for what it sought to achieve.

Another account is to the effect that they had actually answered Royal Summons at Lobamba, as the nation had been summoned to Lobamba for proceedings later that afternoon.

A third account suggests that they were actually present in parliament and voted with the majority for the repeal of the constitution. Participants who may be familiar with these developments may want to apprise us of what really took place on the day in question.

Although some of the important institutions created by the Constitution were swept away by the Proclamation, it is worthy of mention that some of them were re-enacted under the same instrument; and these included the Cabinet, the judiciary and the traditional government. Whilst the powers of the judiciary were severely pared down, the same may not be said about the Cabinet.

New Constitutional Framework

Of signal importance is the constitutional framework that was contained in the King's Proclamation, for in repealing the Constitution, it had to provide a framework to fill in the void left thereby. The aforesaid framework is captured in article 3 of the King's Proclamation, which provides as follows:

"I hereby declare that I have assumed all supreme power in the Kingdom of Swaziland and that all Legislative, Executive and Judicial power is vested in myself and shall, for the meantime, be exercised in collaboration with a Council constituted by my Cabinet Ministers".

Through this instrument, the Cabinet was reconstituted into a Council of Ministers and was designated the only institution in which the King was to exercise all the aforementioned powers.

Consequently, while the Cabinet only enjoyed executive powers under the Constitution, they now enjoyed both judicial and legislative powers as well, although this was to be the case only in the meantime

Council of Ministers' Law Making Powers

Soon after the repeal of the constitution, the King and the Council of Ministers enacted what came to be known as the Legislative Procedure Order No. 1 of 1973. This Order merely specified how legislation was to the enacted under the new regime. Individual ministers prepared draft bills with the assistance of the Attorney General. Once prepared, a bill would be sent to the Council of Ministers for consideration. Where the Council was happy with the bill, it was sent to the King for assent.

Where the King was not happy with the bill, he would send it back, specifying the changes he required in order to accede to the bill. The minister concerned referred the matter to the Attorney General and the changes desired by the King would be effected. The bill could then be presented to the King for assent.

Observations

The Legislative Procedure Order specified no other procedures for the passage of legislation. In other words, the bills were not classified into categories. An appropriation or monetary bill went through exactly the same flexible procedure specified here. There was no requirement that the bill should be published for public comment or some such thing. No participation from any other forum was accommodated in terms of this Order. It is unclear to what extent the Council of Ministers' views as expressed in the various bills reflected and mirrored the views of the ordinary Swazi people.

In fact, this procedure provided for the enacted of legislation virtually without public debate, as the Council's meetings were not open to members of the public or the press. The public only learnt of new legislation after the same was gazetted. This was the state of affairs for five years from the date of enactment of the Order.

Observations on the Proclamation's Supreme Powers

As the King enjoyed supreme powers, it follows that all participants and officers in any of the three organs of government enjoyed delegated authority and nothing more than that. In other words, there was absolutely no need to have parliament, Cabinet or Courts as, theoretically speaking, the King could exercise these powers as and when he pleased.

This fundamental constitutional structure has not changed since 1973. The only changes that this country has seen were in respect of the delegation of powers and how to exercise them. In determining whether changes that have taken place have any significant constitutional implications, one needs to ask the question whether there has been any change at all to the supreme powers.

Establishment of the Parliament Order of 1978

Some commentators have argued that the Establishment of the Parliament Order of 1978 introduced significant constitutional changes and therefore brought about some reforms to the constitutional framework. Is this really true? The order obviously re-introduced parliament as well as the cabinet. It also allowed for indirect parliamentary representation. However, the Order is most famous for introducing what is known as the Tinkhundla system of government. From the King's public speeches, this was just an experiment to be changed from time to time as the exigencies of the moment required.

The constitutional framework has therefore remained virtually the same since 12 April 1973, although cosmetic changes have been made to the delegated powers conferred on some of the organs of government. In respect of the ongoing process, the real question is whether the new constitution likely to be delivered, if at all, by the CDC will lead to the revision of the Proclamation's supreme powers

An Analysis of the Parliament Order of 1978

The only significant change ushered in by the Order was that it split the King's law-making powers. However, it provided that only the Proclamation still enjoyed legal validity and that only the King could amend or repeal it.

An interesting question to constitutional scholars is whether the King had the power to amend the Proclamation for any reason other than to give effect to a new constitution adopted by both him and the King. Section 80(2) of the repealed Order said the following:

"Save in so far as is hereby expressly repealed or amended the King's Proclamation of April 1973 shall continue to be in full force and effect provided that the King may by Decree published in the Gazette amend or repeal the said Proclamation after a new Constitution for the Kingdom of Swaziland has been accepted by the King and the people of Swaziland and brought into force and effect".

The Constitution for the Kingdom of Swaziland has been accepted by the King and the people of Swaziland and brought into force and effect However, the preceding question is now only academic as the King has on numerous occasions amended the Proclamation. Some of the most significant amendments to the Proclamation occurred during the Liqoqo era.

Further Evidence that the Parliament's Powers are limited

The parliament established in terms of the Order of 1978 was clearly delegated powers in view of the fact that an amendment to the Proclamation clearly said so. This was the Amendment Decree No. 1 of 1982, which stated as follows:
-       This Proclamation is the supreme law of Swaziland and if any other law is inconsistent with this Proclamation, that other law shall, to the extent of the inconsistency, be null and void.
-       An important observation to be made at this point is that a new constitution that fundamentally changes the Proclamation cannot be enacted in any other way except through the Proclamation
-       If parliament were to enact such a constitution, it would be invalid because it would be contrary to the Proclamation.
-       If such a constitution were to be adopted by the people in a referendum, again it would be invalid as it would still be in conflict with the Proclamation.
-       All this goes to show the significance of the supreme powers acquired through the Proclamation to the Nation.

Summary and Conclusion

Some commentators have argued that even if the Order of 1978 did not bring about any significant constitutional changes, the Order of 1992 certainly did. Again the critical question to ask is whether

this new order brought about any changes to the foundation laid by the King's Proclamation. The only significant change was in respect of representation in parliament.

The new parliament created by the Order cannot re-enact fundamental rights and freedoms as these were specifically swept away by the Proclamation. Parliament cannot un-ban political parties and accept political plurality.

In fact, one of the critical issues that appear to exercise the minds of those involved in constitution making, is whether to make a constitution the supreme law of the land or just one institution as supreme.

In trying to provide a better understanding of the constitutional framework, we have looked at constitutional developments in Swaziland. These developments actually explain why the framework is structured the way it is. Given this history, the critical question to be raised is. Is the current constitutional process likely to yield a different constitutional framework? This, especially because it is presided over by people and institutions that were created to accept no other framework except what already exists now.

We noted how the Swazi state came into existence and what factors precipitated the development of the institutions that are now regarded as customary and traditional.

We further saw how in the early 1960s there was such a strong opposition to the idea of a truly plural political arrangement. The traditional establishment argued that it provided sufficient representation to all Swazi interests and for this reason there was no need to accept political parties. It further saw that several political commentators argued that political parties should only be established with the King's permission.

2.5 Discussion

The following issues were raised during the discussions-:

- ?? There is a need to decentralise ruling structures.
- ?? There is a need to clarify the role of the Indlovukazi and Emakhosikati.
- ?? There is no logic in asking people if powers should return to them if the King has supreme power.
- ?? There is a need to empower parliament to stand ground when making decisions.
- ?? One participant felt that the language of one participant was too harsh by suggesting dictatorship and centralised power, as the King ruled through the people.

It was also observed that it is pretty disturbing that the Deputy Prime Minister who is the fourth most important official does not yet know the mode of adoption of the constitution yet. This was seen as signifying the non-inclusiveness of the process.

Another observation was that since the constitution making process is a creature of the 1973 Proclamation itself, there is no way that parliament can constitutionally adopt the constitution, save for a decree by His Majesty.

2.6   Constitutionalism and Constitution Making
Prof. Chuks Okpaluba, University of the North, Pretoria

What is often very clear in my mind is that I regard myself as an elder African because at least I was 60 last March, you may not think it is true, but it is the case, maybe I have been keeping myself very well, but I have been around. I look at myself as a serious, committed African, somebody who has interest of the black man at heart, or black woman for that matter, and therefore anytime I will be asked to do anything, however little it might be to enhance the case of Africans, I definitely will try my best.

My best may never be good enough to uplift the African continent, but I will definitely try to give it a shot. Having said that, I want to say that I have a difficult task, but I am glad that the two speakers who have come before me have made my job much easier. Earlier in the day we had a lecture, and a brilliant one, on democracy that is one expression I dread so much, because I never quite understand it.

Later in the day we had a beautiful, what I would call a fantastic synopsis of the history of constitutional development in this country. A person eminently qualified among others gave out that lecture. He has also tackled a lot of issues and questions have been asked. I hope those questions won't come back to me. However, I want to say that the Constitutionalism, as a topic is one of these words that give a lot of problems of meaning, like democracy itself, or like in even law. These are meanings that you really cannot pinpoint, but in each case, there is usually the sense of the standard of what we are talking about when we talk about, say constitutionalism.

Among other things, the question of governance is raised; governance according to the constitutional tenants. Before constitutionalism came, there was a principle of constitutional law that was known as the Rule of Law. It came from the Greek philosophers, and then it was taken to some heights by English writers. One of the reasons why the English preferred it is that the English had never had a constitution; and then they talk about the Rule of Law, that is rule according to law, and rule totally distinct from arbitrariness

In other words, if you are in office as a Prime Minister or as a Minister or permanent Secretary or as a Principal of a school, even as a parent, your actions, your acts, must be guided by law whether in it's written or unwritten form. Sometimes we call the unwritten law, customary law. Law by any other name remains law in so far as it is identifiable and people can put their finger on it, and is not something that is imaginary.

Governance and the Rule of Law and constitutionalism tend to over lap. But we talk about constitutionalism when we talk about governance according to law, according to constitutional tenants, according to constitutional principles. What I think this seems to do, is to indicate to you some of those identifiable constitutional principles which appear inevitable in this day and age. Whenever we are talking about this kind of topic, we understand a constitution as being a written document. I am not suggesting that other non-written constitutions are not constitutions, but we do not talk about constitutionalism where there is no written constitution because we would be talking about something in mid-air, something that we put together somewhere along the line. However, that is not the kind of constitutionalism we have in mind. We talk about constitutionalism based on a framework of governance that has been reduced accordingly into writing and that gives rise to a number of factors.

Now let us take the preamble of a constitution. For example, whenever you pick a constitution there is always a preamble. A preamble technically is not part of the constitution but it does state the aspirations of the people. What the people have in mind.

But I think there are two, since the American constitution was written some centuries ago, there are constitutions in modern times, and in Southern Africa, that probably have the most elaborate preambles. One is the constitution of Namibia and the other is the constitution of South Africa.

If you read the preambles of these constitutions you would have read the constitutional developments in these countries in a nutshell, because they tell you where they are coming from and they tell you where they are going, and the aspirations of the founders of that constitution.

In these days we don't talk about the founding fathers, but we recognised that life does not just do with fathers alone, the mothers must be there.

And so we say the founders of the constitution state clearly their aspirations, what they have in mind and what they hope to achieve and what they want the constitution to do for them. That is a very important aspect of a constitution. When you get to the constitution itself, there is one clause, which was debated in a different context this morning.

There's always this expression, "this constitution is the Supreme Law of the land". Those of us who happen to be students of the law could say that the constitution itself can be interpreted based on that clause sentence alone.

But what does it mean; it means that the constitution is the supreme law, and that no other law is above it. It means that every other law that is passed in the country with such a constitution must be tested as against the provisions of that constitution. A major implication. So if we put it that way, it means the constitution is the supreme law. In the United Kingdom, which was a Colonial Master for at least a lot of us, Sovereignty belongs to the Parliament. They don't have a constitution. Parliament in the UK is the Sovereign law making authority.

Now that's a unique parliament in the entire world these days, the only parliament that operates like that is the parliament of New Zealand.
In those countries it means parliament can enact a constitution and nobody can challenge this fact; and those who have tried to challenge this have been told they could not do so.

But where the constitution is supreme it means that, any law made by the legislature must be tested against this constitution; and any order, act, or decision of the executive hand of the government, of the Prime Minister or of the President will be tested against the provisions of the constitution. That is the position in South Africa and Namibia and it is also supposed to be the position in Zimbabwe.

The Supreme character of the constitution is one factor, and if you were to try that supremacy against the supremacy of the parliament, you would have a third parliament and a third supremacy that was raised that day. The supremacy that had risen from the 1973 Declaration in which the King said ***"I am reposing upon myself the three organs of power, but I will exercise them through my cabinet".*** This means that supremacy rests with the King here in the Swaziland of today. I have heard some debates and arguments over the years about challenging the decree. But what do you challenge and in whose courts? The court is the King's court and he assumes the judicial powers.

I think we must understand it that way. When I say so, it is as a Professor of court Law that I think I have the qualification to interpret the provisions of the law

as I see it. It simply means that you really cannot challenge the decree. On what basis are you going to challenge it?

Now the court is appointed on the basis of the provisions of decree of 1973 and the jurisdiction is based on that. Maybe we should put it to rest so that we can proceed from there, because I can only see the argument for us academics to continue writing articles based on that. Now I think you should deal with real life issues here and that you should proceed to improve things and maybe even get those clauses removed. I'm suggesting that no court in this country has any jurisdiction to clear that sort of argument. This is a fact, and it is a constitutional principle.

The next point is the issue of separation of powers. In modern constitution these are the basic principles that are written in it. Maybe you will not find any provision that says, *"There shall be separation of powers".* But the mere fact that the constitution has three different powers, one to the legislature, one to the judiciary and one to the executive, presupposes that those three functions must have parts from each organ and must be exercised by different organs of State.
In principle and basically, there has to be that separation to allow governance according to law, to allow ruling according to the rule of the law.

There is even a more important reason why there should be separation of powers and why a lot of countries adopt that kind of system. Even where there is no separation between the executive and the legislature as it is written, and there seems to be no serious separation, there is always an attempt to keep the courts apart.

The courts must of essence be kept apart because their functions are difficult functions. They adjudicate, they interpret the constitution, and for that reason they must be allowed to do that. They must not be interfered with in the doing of their jobs.

What does that mean, (the independence of the judiciary)? That is another important point, and we can look at it from two angles:

Structural or institutional independence? The law establishing the courts or the law conference jurisdiction on them must be such that it secures that independence. It does not interfere with either the way judges are appointed or how the judges function, and that is often written into the constitution.

And that have several implications; is the appointment procedures, how are judges appointed?

And if you look at the 1960 constitution of Swaziland those provisions are contained there, they were intended to secure the independence of the judiciary, appointment of judges, their salaries how they are removed, their conditions of service.

So the judiciary is a very important aspect of constitutionalism. When you talk about constitutionalism you are merely talking about the rule of the constitution in simple terms. And I must say, the constitutionalism of Swaziland is not developed, because when I came I was told to teach constitutional law I couldn't find it. It was a difficult task to put it together and call it the Constitutional law of Swaziland to teach students.

The reason why the constitutional law is not developed is that there are no opportunities to challenge their mental activities. Unless people go to court and get decision against government or authority you cannot develop constitutional law.

When you are considering what to do, I suggest that you consider the Rule of the courts. I am putting it before you to have that as part of what you will consider very serious. And if you are making submissions to any constitutional drafting or review committee its very vital that the Rule of the courts be visited in this kingdom and that it doesn't take away whatever other powers you want to have, because you will only interpret the laws that are put before them.

I want to say this at this point, that, I know that there is always this resentment in the kingdom about foreign this and foreign that, but you are creating the room for it. In constitutional law students at UNISWA are taught foreign court law because the lecturer will teach what he knows.

It is important that we must reconsider the role the courts play in any given system. The courts are very important and I feel that somewhere along the line they are not particularly regarded as much in this system.

Now, I want to say that within the concept of separation of power or within the concept of judicial independence, rests the entire experience of constitutionalism.

I want to say more about those principles, for the simple reason that the whole essence of modern constitutionalism rests on those plans.

When we talk about separation of powers it means that we are saying that law making should belong to one arm and as a cushion of the law, the other should belong to interpretation of filth and to the judiciary. At the end of the day, ask yourself the question. Who eventually decides whether the lawmaker has done his job properly and who decides whether the executive has conducted itself in a manner stipulated by the constitution? The answer is "The Court of Law".

The constitutional framework should be such that once a judge is appointed he should remain a judge until retirement. All you need to do is to write out proper law for him to follow and interpret.

In a constitutional system, it is the courts that will decide whether an act of parliament is valid and whether it is constitutional or not. These are part of the supremacy of the constitution. The power of the courts is to review governmental acts and government functions, actions and decisions that include the legislature as well as the executive.

I also want to tell you that the judge is supposed to be a very different kind of man, and if you are a lawyer here and you know that you are going to continue living your life the way you used to, please do not accept the appointment to be a judge, because that appointment puts you away from the society. It is a very high-risk job that is why the law protects him on a number of things.

I want to point out an aspect of constitutionalism. There is something called in the constitutional law system, rights. It is at times difficult to explain what rights are and mean, but when we see them we recognise them. At this day and age, it is so easy to identify rights because the United Nations has for many years done a lot of work. They have drafted the Universal declaration of Human rights in 1948 etc.

In the Constitution of Swaziland of 1968, those rights are written, and in my opinion that constitution was overtaken by events, amongst other things. However, when it comes to human rights, those rights are still valid rights as far as I am concerned.

But putting it mildly, I want to say that a constitutional system that does not include rights cannot be regarded as a constitutional system. A system that does not articulate rights and that does not encourage people to fight for their rights, a system of law, will not develop. It would take it time to develop.

I don't think I need to repeat what we mean by rights, I'm sure everyone here understands the basic principles of the kind of rights we are talking about.

I know that, one of the issues I will leave to you is, the constitutional principles are fairly standard. You talk about the Rule of Law, separation of powers, and you talk about Independence of judiciary and the Bill of Rights.

Let me put it this way, we live in a global world/village: I want to appeal to you that whatever might be the lines of conflict, my opinion is that the dialogues are absent, because if people deal with each other with a kind of long-spoon, they will never get it right. You have to get together one of these days. Do not wait too long. Time waits for nobody. We do not have our destiny in our hands. I suggest to you that it is time that you work out something, work out a way forward. Those of us who are the experts can do it; you tell us what you want in the constitution and then we will write it for you.

If you give me the Constitution Review Commission document, there's nothing to put down there. There is no principle there that can enable anybody to draft anything. I have seen that and I must say it here, I was a little disappointed. I was not impressed with that document. And if I were the professor I would have done better.

If you talk about Swaziland, I think the CRC had every opportunity to put in some of those things there. They had five (5) years to do that. Where are the documents they are supposed to have read, to show the homework they did, that they ha ve consulted the people. Where are the documents? I have seen the Constitutional Review Commissions, and it has taken them two years (2) to produce the volumes. You better ask them where their own volumes are; I think you are entitled to that.

2.7   Women and Conflict Prevention in Africa
Ms Yaliwe Clarke Kamuhuza, SACPN Representative

Gender Relation Prior to Conflict

Prior to conflict, women are often confined to traditional roles of child bearing and rearing of the children with less public, economic and political activity compared to men. She further said that the main causes of war stem out from the struggle over natural resources by men who comprise the leadership, which is why it looks like it is the men who are creating conflict and not the women. She said that the aggressive nature and behaviour of men stems from the way we are socialized, society has socialized us such that we believe that men are superior hence they are more aggressive.

She said that women's lack of participation in the national decision making process inhibits their ability to influence brewing intra or inter state conflicts.

Gender Relations During and After Conflict

She told the participants that, wars especially in the Sub-Saharan Region have had a great impact on women especially the liberation effect. Women who participated as equals to the male in the wars have become part of the decision-making process after the war.

She made an example of Eritrea where by 1984, 30% of women were fighting for the ELPLF.

She quotes one woman as having said, *"Before, I used to spend most of my time in the kitchen and never had the chance to chat with my husband. I did not own property, could never leave the house alone and wasn't allowed to vote. I just had to do what my husband told me what to do. Now I cannot only vote but hold political office. We women now administer village affairs where before it was only for men. My husband and I own property together. I can travel freely and if I want to go out in the evening on business for the village or the Front, then my husband does the cooking and takes care of the children"*. (Cowan 1984: 150)

The SACPN Coordinator said that 85% of the victims of conflict are civilians of whom the majority are women, and also said that 80% of refugees and internationally displaced persons are women and children. *"Women in unstable, disruptive conflict and post conflict situations are at risk from multiple forms of violence and share a common set of vulnerabilities- they are killed, wounded, tortured, imprisoned, separated from families, or driven into exile,"* she said.

She further shared with the participants the disheartening reality of little girls who are kidnapped to fulfil sexual desires of fighting soldiers.

Role of Women in Peace Building

The SACPN representative said that women are often the only segment of society remaining that are able to pick up the pieces and rebuild as providers of and for children and elders especially as active church members and agriculturists. She says that women have the ability to create a coalition for peace and discussions about conflict issues because they have the access to the grass roots people, the elders, and even the combatants. She says that church platforms, market places, self-help groups micro-credit schemes can provide the opportunity for them to access the levels of tensions in the community and alert the relevant authorities. She said that women used their indigenous cultural practices to device new strategies for peace building and can contribute to the development of an alternative vision of peace and security.

2.8   Discussion, Questions and Comments

The following issues were raised after both the presentations of Prof. Chuks Okpaluba and Ms Yaliwe Clarke Kamuhuza.

- It was observed that national security sometimes infringes on people's rights, even if they are enshrined in a constitution.
- There was a need to have a constitution with the interest of all peoples of this country.

- Civil society can challenge decrees that violate people's rights by speaking out publicly and lobbying international pressure on the government. This was done to Decree No. 2 of 2002.

3 GROUP PRESENTATIONS

The workshop was divided into four groups to discuss the following questions and present their views at the plenary session:
- How can we strengthen the role of civil society in democracy building?
- What are the most pertinent conflict issues in the country today?
- What can we do to bridge the political divide?

3.1 Group One Presentation

Pertine nt conflict issues

1   Drafting of the constitutional process – not an inclusive process.
2   Lack of fundamental human rights
3   1973 Proclamation
4   Culture
5   Lack of separation of powers; PM not respecting court orders, judges summoned by Cabinet Ministers.
6   Gender; women do not support other women; have no time to contribute to constitutional making process because of other chores.
7   Invisible labadzala; who are suffering from fear of the unknown

How to bridge political divide?
Put in place a constitutio n with a comprehensive bill of rights.

How to strengthen civil society in democracy building?
- Political parties, the church, academics, women, youth and all other formations need to be active.
- Need to reach to the people, especially through the church.
- Network continentally and internationally
- Some civil society players not contributing enough to assist society.

3.2 Group Two Presentation

Pertinent conflict issues

1   Culture
Polarisation, abuses, conflict of values, generation gap. There is a clash with Swazi culture.

2   Lack of information
No information for making informed decision. Lack of information on the Tinkhundla democracy, multi partism, Banning of political activity makes it difficult for disseminating information. There is no press freedom. The press is a critical pillar of democracy.

3   Attitudes

Political monopoly. Politics is taboo. Parliament has been prevented from discussing certain political issues. People are looking for meaningful participation. Women participation in decision-making is wanting.

4   Constitutionalism

The 1973 Proclamation forms the constitutional basis for the country. However, it does not have principles of internationally accepted standards of democracy and has no regard for human rights. Participation is selective and determined by the King. There is no good governance. No separation of powers. No rule of law.

How to bridge political divide

- Develop a culture of political tolerance.
- Undertake civic education
- Empower all marginalized groups of society i.e. women, children, people -with disabilities etc.
- Build consensus
- Harness a political will to level playing ground
- Establish all-inclusive constituent assemblies
- Dialogue
- Explore regional and international structures for support and collaboration.

How to strengthen role of civil society in democracy building
- Civic education
- Networking
- Civil society forum.

3.3   Group Three Presentation

How to strengthen the role of civil society in democracy building
- Civic education to include people at grass roots level

Pertinent conflict issues
1   Rule of law
2   1973 Proclamation
3   Dual system of government (unclear roles).

How to bridge political divide
- Lobby for repeal of Decrees 11, 12 and 13 of the King's Proclamation of 1973
- Political pluralism
- Civil society should bring together a cross section of political stakeholders including government
- Create a forum to agree on the values of a new constitution.

3.4   Group Four Presentation

Pertinent conflict issues

1   Rule of law; court decisions being flouted
2   Lack of independence of the judiciary system
3   1973 Proclamation; basic human rights are not observed.

How to strengthening role of civil society in democracy building
-    Acknowledge there is political divide
-    Create infrastructure, which will make all parties participate
-    Lobby for the repeal of 1973 Proclamation.

3.5   Discussion

At the end of the group discussions, participants were given an opportunity to interrogate the issues.

The following issues were raised:

Constitution
-    There is no agreement on the way forward with regard to the constitutional making process. The state is going ahead with the drafting of the document while others feel the process should be stopped to have an all-inclusive process.
-    Constitution drafting process is null and void since it was not all-inclusive.
-    Create national coalition to include those who have been left out of the process and those moving it.
-    Approach traditional structures to influence change.

Swaziland National Council (SNC)
-    SNC does not make law. When a Bill comes to the king, he takes it to the committee for recommendation.
-    Does the law allow the debate of a Bill by the committee?
-    Terms of reference of SNC include ensuring good governance, but sometimes the King asks the committee to do something on his behalf.
-    In terms of the 1996 Decree establishing the SNC, the king is allowed to refer any other matter to the council.
-    There is a need to define the powers of the three arms of government. The role of the SNC is not clear. Parliament is frustrated by the lack of clear roles and is normally accused of being rubber stamps.
-    Although heads of states all over the world have advisory councils, a final decision remains with the head of state. Advisors can only advise. Other speakers however felt that the king's decision is based on the advice of the advisory body, and therefore it was imperative for the body to conduct research on issues before they advise.

Civic Education
-    Civic education processes should be independent and impartial instead of being driven by government.
-    There is a group of people around the king who are not prepared to budge.

3.6   Way forward

-    Collection of various views for submission to the constitution drafting committee.

- Form a representative task committee to take the process forward with the view of getting a wider representation of stakeholders. This will create an on-going forum to discuss important national issues that may also impact on the constitution drafting process.
    - Continuation of civic education.
    - Members should have a mandate of their constituencies. Organisations, therefore, need to elect people to participate in such as forum.

- Create a structure that will represent the interest of all groups. Although a Constituent Assembly was suggested, there were concerns about the capacity of the country to put in place such a structure.

- The Constituent Assembly should be given time frames and be tasked with drafting the constitution.

- Lobby His Majesty to remove Decrees 11, 12 and 13 to enable civil society to operate effectively. Constitution making requires input from groupings, not just individuals. Otherwise the legitimacy of the constitution may continue to be an issue.

- Various groups should gather views and submit recommendations to the drafting committee.

- Need to form a structure from this workshop that will then canvass for the formation of a bigger structure to involve other stakeholders.

- The structure should then develop its own shadow constitution if it is unable to engage the constitution drafting process.

- Lobby for equal access to the press.

3.7   Organisational Positions

Several Swaziland NGOs and governmental actors were asked to express their organisational positions.

Swaziland National Association of Local Authorities (SNALA)
Sibongile Mazibuko
- Local government will embark on civic workshops to educate people on democracy, multi party democracy, Tinkhundla and human rights. This will assist in bridging the gap.

Swaziland National Association of Teachers (SNAT)
Simelane
- All citizens have a right to get involved in the constitution making process. Therefore, we want to lobby for the participation of everyone.

Swaziland National Association of Civil Servants (SNACS)
Quinton Dlamini
- Stand by the resolutions of the Mpumalanga Declaration.

Business Women's Association of Swaziland (BWAS)
Mrs Dumsile Sigwane
- Legislation that will protect foreign and local investors.
- There is need to utilise the structures created to review the 1973 Proclamation. Tinkhundla centres are the only structures to be used for lobbying for political change.

SIBAHLE SINJE
Zibuse Simelane
- There is a need for more workshops of this nature to allow groups to present their positions.

Federation of Disabled Persons In Swaziland (FODSWA)
Musa Makhanya
- People are not considered as equal citizens of this country. Their voice cannot be easily heard. Need to find a way to resolve this anomaly.
- Civic society groups need to collaborate with organisations of the disabled in order to take the interest and views of the disabled to decision making.

PARLIAMENT
Senator Simeon Simelane
- Encourage all organisations to invite parliamentarians to their gatherings.
- Feel free to lobby parliamentarians.
- Need of workshops to focus more on bridging the political divide.
- Easy to resolve conflict because we are all related.
- It is a fallacy that the executive arm of government dictates to parliament.

Ngwane National Liberatory Congress (NNLC)
National Organiser, Sipho Mamba
- The rule of law has been abrogated by the system, not just individuals.
- Disassociates itself from constitutional making process.

Women and Law in Southern Africa WILSA
Ms Doo Aphane
- Research based data on women in Swaziland.
- Bill of Rights with an equality clause.
- Ratify international instruments on women and people's rights.
- Ratification of CEDAW
- Citizenship can only be passed on by Swazi men. Recommend that a constitution should recommend how citizenship should be passed on.
- Equal access, control and ownership of land.
- Swaziland should desist from undermining human rights by tradition, custom and religion.

Human Rights Association of Swaziland (HUMARAS)
Vulindlela Msibi
- The constitutional review process must be confronted honestly by all who are concerned including those in power.
- Swaziland is a signatory to regional, continental and global structures that support human rights. Swaziland has ratified the protocol for political participation of women. Swaziland takes care of refugees.
- However, Swaziland violates basic human rights. Has not ratified ICCR, CEDAW, Convention Against Torture (CAT),

- Rule of Law – the flouting of court orders is unjustifiable and inconsistent with the universal declaration on human rights.
- Constitution should provide for the creation of a commission on human rights that will challenge abuses.
- Rights are god given.

Swaziland Nurses Association (SNA)
Mbabazane Lukhele
- Nurses are part of society and have to participate in political activity.
- Matters of national interest should be solved amicable to avoid anarchy.

Swaziland Conference of Churches (SCC)
Glenrose Dlamini
- The church is in a precarious position with regard to our mandate. The church wants to see justice, human rights. Condemn lies, untrustworthiness. We place ourselves in a position where we can be usable.

Swazi National Council (SNC)
Senanile Nkosi
- The workshop has been very informative. It should be taken up to SNC.
- The issues also concern the king and he would be happy to be briefed.

LUTSANGO LwakaNgwane
Tsenjiwe Dlamini
- It is important avoid conflict, bloodshed, poverty as these impact heavily on women. Whatever change taken should avoid the above. The changes should happen within the socio-cultural confines of the nation.
- As women, we aspire for peace, equality and prosperity.

4   RECOMMENDATIONS AND TASK COMMITTEE

4.1   Recommendations

1   Whereas representatives of a cross section of the political scenario, including civil society, government, legislature and marginalized groups held a workshop to discuss bridging the political divide the Pigg's Peak Protea Hotel on 21 – 23 June 2002 with the facilitation of the Council of Swaziland Churches (CSC) and Southern African Conflict Prevention Network (SACPN).

2   Realising the need for all parties to participate in the creation of a political dispensation of the kingdom of Swaziland.

3   We therefore recommend the following processes as a way forward to ensure the bridging of the political divide:

- That the workshop elects a highly representative task committee to develop strategies of consolidated views and participation from a wider stakeholder base to feed into national initiatives such as the constitution drafting process.

- The process of consolidating views from all sta keholders should lead to the creation of an alternative constitution in the event the constitution drafting committee does not accept recommendations from the groups.

- That the terms of reference for the committee should include a mandate to continue with civic education initiatives.

- Committee members should obtain full mandate from their constituencies to participate in the task team.

- That there is need to lobby for the creation of a Constituent Assembly to be tasked with drafting the constitution.

- That there is need to lobby His Majesty King Mswati IIIrd to remove Decrees 11, 12 and 13 to enable civil society to operate effectively.

- That there is need to explore regional, continental and international structures to support our political transformation processes.

- Strengthen the civil society.

- Encourage networking within the civil society.

- That there is need to lobby for the ratification of international instruments on women and people's rights.

- That the constitution should recommend equality in the passing on of citizenship.

4.2   Task Committee

1	Doo Aphane	Women and Law in Southern Africa Trust WLSA
2	Bonginkosi Dlamini	People's Democratic Movement PUDEMO
3	Vulindlela Msibi	Human Rights Association HUMARAS
4	Comfort Mabuza	Media Institute of Southern Africa - Swaziland MISA
5	Dumsile Sgwane	Business Women's Association of Swaziland BWAS
6	Masalekhaya Simelane	Parliament, Senator

7	Sthemba Dlamini	Consultant (Gender)
8	Nomthetho Simelane	University of Swaziland Political Science Lecturer
9	Senator Mavimbela	Parliament
10	Girlie Hlanze	Federation of the Disabled in Swaziland FODSWA
11	Quinton Dlamini	Swaziland National Association of Civil Servants
12	Musa Makhanya	Federation of the Disabled in Swaziland FODSWA
13	Sipho Mamba	Ngwane National Liberation Congress NNLC
14	Tsenjiwe Dlamini	Lutsango LwaboMake
15	CSC	Ex-Officio member
16	SACPN	Ex-Officio members