

**A CONSTITUTIONAL FRAMEWORK FOR POVERTY  
REDUCTION IN SWAZILAND**

**A WORKSHOP REPORT**

**MOUNTAIN INN HOTEL**

**29-31 JULY 2003  
MBABANE  
KINGDOM OF SWAZILAND**

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**Highlights of the workshop on “A Constitutional Framework For Poverty Reduction”**

The highlights of the workshop were the suggestions, made by participants, for improvements and amendments to the draft Constitution of Swaziland. These emerged as a result of a process, during the workshop, of reviewing and assessing the draft constitution. These improvements were suggested so that the constitution would become the main weapon in the process of poverty reduction in Swaziland. The workshop also enabled participants to better understand the draft constitution. Suggestions were also made on how the constitution could guarantee personal and property rights of Swazi citizens.

**Major suggestions included:**

- ❖ Improving the present minority status of women. It was argued that women should be recognised as having the potential to contribute on political and social issues.
- ❖ Giving special assistance to vulnerable groups i.e old people, disabled people, women and children.
- ❖ Emphasizing the need to improve the right of freedom of expression, as stated in the constitution. It was stated that Swazi people should be given a right to complete and full freedom of expression.
- ❖ The need for traditional institutions to be governed by the constitution.
- ❖ Clarifying participation of political parties.
- ❖ Ensuring that the main ideal to be enshrined in the constitution was that of promoting happiness for all, and
- ❖ Ensuring that the Constitution should promote rights to livelihood and not be limited to human life.

## **1.0 Background information and introduction**

The International Development Law Organisation (IDLO), in conjunction with the (Co-ordinating Assembly of Non-governmental Organisation (CANGO), hosted a three-day workshop on the Constitutional Framework for Poverty Reduction at the Mountain Inn Hotel in Mbabane. The main objective of the workshop was to raise awareness about the constitution so that the Swaziland state can have a clear framework for developing strategies to fight poverty. This workshop also provided a platform for participants to ascertain how the constitution could be restructured so that it would favour an environment whereby non-governmental organizations and other civil society organizations could effectively partner the government to address poverty reduction in the country.

The workshop was attended by 34 participants drawn from NGOs, government, and other civil society organisations.

### **1.1 Workshop objectives**

- Indicate how a new Constitution can contribute to the process of poverty reduction.
- Describe the aims and objectives of the new draft Constitution.
- Explain how personal and poverty rights of the Swazi citizens are guaranteed in the draft Constitution.
- Explain how the state structure of the Kingdom of Swaziland in the draft Constitution could strengthen the process of poverty reduction.
- Indicate how Swazi people should participate and collaborate with public institutions in the processes of poverty reduction.

## **2.0 CONFERENCE SUMMARY OF PROCEEDINGS**

### **2.1 Chairperson's remarks**

The chairperson welcomed participants to the workshop. He then requested the guest speakers to make their remarks.

### **2.2 Opening remarks**

#### **3.1 CANGO Board Chairperson - Mr Dumisani Mnisi**

The Chairperson of CANGO's Board stated that since CANGO dealt with poverty issues, it was in CANGO's interest to see if the constitution catered for poverty reduction strategies.

Mr Mnisi stated that the workshop had been organized with the clear aim of filling-in missing gaps in the draft constitution such that it was structured in a way that accommodated poverty alleviation. The workshop provided participants with the opportunity to recommend amendments which would facilitate poverty reduction strategies. These were also at the centre of the development agenda of NGOs.

### **3.2 Remarks by the International Development Law Organization facilitator**

Miss Rodriguez pointed out that the workshop was organized for the purpose of raising public awareness on the draft constitution of Swaziland. She further stated that IDLO was working in conjunction with CANGO and World University Service to give support to the Government to create an awareness of the constitution.

Miss Rodriguez further pointed out that the workshop would stress how the Kingdom of Swaziland could have a clear framework for poverty reduction and how the constitution could be used as a weapon for poverty alleviation. She also stated that another key aim of the workshop was to establish how the government could work successfully with non-governmental organizations to address the poverty crisis facing the country.

### **3.3 Guest speaker: Mr. Amil-ur Islam**

In his opening remarks Mr Islam mentioned that Swaziland was taking a very important step in its history through the process of making its own constitution. The country therefore needed guidance from experienced people if this dream was to be realized. He pointed out that Bangladesh had experience of developing three constitutions. In sharing this experience with Swaziland, some comparative advice could be presented as to how the country's constitution could be structured so that it served the people's best interests. Swaziland is a developing country: this made it important that the Constitution be structured in a way that facilitated poverty reduction.

### **3.4 United States Embassy representative - Robert Dance**

In his opening speech, the United States Embassy representative highlighted the importance of bringing about change in Swaziland. He mentioned that one of the strategies that could be adopted in bringing about change was indeed the constitution.

He said the United States was more than ready and willing to support processes that could bring about change in the country. He emphasized that the constitution was one of the strategies that would allow Swaziland to move forward in developing the country and a better life for all.

Mr Dance also pointed out that in order for Swaziland to achieve progress and change, it was vital to keep traditions that promoted progress while also letting go of those traditions that were a threat to the development of the country as a whole. This would enable Swaziland to stand on her own without depending on other countries, such as the United States.

Mr Dance focused on the three main objectives for poverty reduction with regard to the present situation in Swaziland. These were to:

- promote good health
- promote economic self sufficiency
- promote good governance

### **3.4.1 Promoting good health**

Mr Dance pointed out that 40% of the adult population, or some 400 000 persons, were estimated to be infected with the HIV virus and that the figure was increasing. This therefore meant that about 40% of the workforce in Swaziland was infected with the virus. This level of infection had a negative effect on investment in the country. In order to minimize the present problem of HIV/AIDS, stigma had to be overcome. This could only be realised through testing. If the HIV/AIDS crisis was addressed effectively, the country would move forward in its economic development agenda.

### **3.4.2 Promoting economic self sufficiency**

Mr Dance mentioned that developed countries, like the USA, gave assistance on condition that countries demonstrated progress in their development agenda, coupled with good governance. He stated that his government no longer gave aid for the sake of giving it. It had expectations of those countries that received aid.

In this regard, he suggested that Swaziland should work towards attainable development goals. It should work towards self-reliance, which could be realized through attracting new investors into the country. This would enable the country to stand on its own.

He further mentioned that industry and trade required a healthy workforce, which provided more reason for the country to fight HIV/AIDS.

### **3.4.3 Promoting good governance**

On the issue of good governance, Mr. Dance pointed out that good governance meant equality for everyone in the eyes of the law. He further stated that gender equality should apply and that everyone should enjoy freedom and equal rights. However, freedom came with certain responsibilities for the people who enjoyed it.

## **4.0 Workshop proceedings**

### **4.1 Poverty analysis**

Mr Islam began by stating the causes and symptoms of poverty, pointing out that they were interlinked. He elaborated his point by arguing that the levels of HIV infection could be both a cause of poverty and a symptom of Swaziland's poverty crisis. However he opened this issue for debate. The ensuing debate showed that participants agreed that the sick population could be both a cause and a symptom of poverty. It could be described as a cause, because when the majority is unhealthy, especially amongst the workforce, it meant that the country would suffer from economic decline. An unhealthy workforce discouraged trade and investments in a country. Furthermore, it was stated that it could be a cause in the sense that if the breadwinner of a family died of AIDS, the family would be left with no-one to take care of them; a cycle of poverty then began.

He elaborated on the picture of poverty in Swaziland stating that within communities in Swaziland, families were headed by children who had been orphaned after their parents had been killed by the HIV/AIDS virus. These families lived in poverty since they did not have any source of income. Mr Islam further pointed out that this situation was caused by inequality: he stated that “in politics we always talk about equality but in the real social and economic life there is no equality”.

He further discussed the issue of poverty, in line with the resources available for the economic development of a country. He stated that, for a country to develop, the people had to have access to five resources.

- Economic resources
- Social resources
- Human resources
- Cultural resources
- Environmental resources

A situation could exist where the majority of the population of a country did not have access to these resources. This resulted in poverty, as was the case in Swaziland.

## **4.2 Group work on poverty analysis**

The participants were then asked to work in groups, discussing seven themes as major causes of poverty. These were:

- i) Lack of access to resources
- ii) Lack of access to public services provided by the state
- iii) Patriarchal social system
- iv) Distorted/interlocked market
- v) Big development projects by the state funded by donors bypass/ negatively affect the poor
- vi) Environmental pollution and degradation
- vii) Lack of participation in social and political institutions.

The participants were asked to identify how the above themes contributed to poverty.

## **4.3 GROUP PRESENTATIONS**

### **4.3.1 Group 1 presentation: Distorted/interlocked market**

The group argued that interlocked markets play a role in enhancing poverty. Swazis experience a lack of access to credit, thus becoming dependent on foreigners for investment. As a result, Swaziland's economy cannot grow because only foreign investors benefit from their investment; the Swazi nation does not benefit much. A further complication is the lack of markets through which to sell produce.

The group also argued that low wages were a major cause of poverty. The group argued that, due to poverty, a lot of Swazis (especially women) were forced by circumstances to work under bad working conditions, accompanied by poor wages. Due to the poor wages they were not able to improve their living standards. This situation was complicated by the fact that they were forced to borrow money from the informal sector in order to enhance their poor salaries. As a result they became perpetually indebted.

#### **4.3.2 Group 2 presentation: Lack of access to resources**

The group argued that most Swazi's did not have access to social and economic resources. This was argued in relation to lack of access to clean water, credit and social grants. The group maintained that about 40% of the Swazi population, mostly in rural areas, lacked access to clean water. This could lead to the spread of disease, caused by water contamination.

The group also noted that vulnerable groups also had problems in accessing social grants due to a lack of transparency. The bad attitude of civil servants had also affected access to services, including health services.

#### **4.3.3 Group 3 presentation: Lack of access to cultural and human resources**

The group pointed out that all Swazis have access to cultural activities: however the only problem this cultural issues was that it reinforced the minority status of women. According to Swazi culture, men have sole ownership over the property of the family. They also argued that culture was being used to further political ambition.

#### **4.3.4 Group 4 presentation: Patriarchal social system:**

The group argued that the patriarchal social system upheld the unequal status that existed in Swazi society. It was further stated that Swazi culture promoted the submissiveness of women and girls, where women had no say in political or social issues since they were regarded as minors.

Furthermore, the group argued that polygamy, as part of Swazi culture, perpetuated poverty. Although most men lived a life of poverty they stuck to the culture of taking more than one wife: as a result they had difficulties in supporting their families, thus worsening poverty. The group also noted that polygamy was a major contribution to the HIV/AIDS pandemic, since it involved multiple sexual partners.

The group also argued that the patriarchal system discouraged women is empowerment. As a result, most women were deprived of education, making women unable to look after the family when their husband died. This led to families living in poverty.

#### **4.3.5 Group 5 presentation: Big development projects by the state, funded by donors, bypass/negatively affect the poor**

The group argued that the poor were excluded from development projects adding that poor persons affected by development projects undertaken by the state were resettled without adequate compensation. The group argued that it was in fact impossible for the poor to be directly involved in development projects, like large scale farming, since the conditions for obtaining funds and land for such projects only favoured the rich, not the poor.

These projects also negatively affected the poor because most of these projects included toxic chemicals which may have negative effects on the persons living in surrounding areas.

The participants were informed that local and foreign investment brought no economic benefit to the poor because even the products they produced were sold at higher prices to the local population.

#### **4.3.6 Group 6 presentation: Lack of participation in social and political institutions**

The group pointed out that only a certain group of people were involved in social and political institutions. He further pointed out that in cases where participation was allowed, it was mostly ineffective because it was not interactive and representative.

It was further argued that women wearing mourning gowns were denied the right of participation completely. This was so because when a woman wore a mourning gown she was not allowed to enter public places such as the Tinkhundla Centers, which is where participation was said to occur. The group also argued that women were marginalized on political matters.

#### **4.3.6 Group 7 Presentations: Lack of access to public services provided by the state**

The group addressed this issue in terms of access to health and educational services and facilities. They pointed out that health services were not provided free of charge, even to the needy, thereby depriving many poor people of access to services. The group further pointed out that there were only five government hospitals in the country and few health centers, not easily accessible to the rural population. As a result people from rural areas ended up not having access to health services. Other factors include distance, poor transport facilities and lack of ambulance services.

Another constraint was the shortage of doctors in contrast to the high demand; the shortage of drugs and the fact that doctor-patient relationships were not always professional.

On the lack of access to educational facilities, the group stated that, for most children in rural areas, access to school was constrained by transport facilities and lack of funds. Government bursaries were only provided to children at primary school level while there was also no transparency in the granting of bursaries.

### **4.3.7 Group 8 presentation: Environmental pollution and degradation**

The group stated that resettlements contributed to deforestation, as relocated persons had to clear up land. It was also pointed out that these people faced the problem of having inadequate access to clean water.

On another note, the group pointed out that companies that deal with chemicals contributed to the problem of air and river pollution. Chemicals and fumes from these companies polluted the air, contaminating water in the rivers. On the issue of agricultural companies, it was pointed out that sugar companies were overusing the land, depriving it of its fertility. Some land previously planted with sugar was now lying idle because it was no longer fertile. Excessive irrigation also dried out rivers, depriving down-stream communities of access to water.

## **5.0 Review of the Constitution**

### **5.1 PREAMBLE**

On the second day of the workshop Mr Islam reviewed the preamble of the constitution. He highlighted the supremacy of the constitution stating that everyone including the king, the judiciary, and the people are not sovereign to the constitution.

He noted another good point: that its main aim is to protect and promote the fundamental rights of the people of Swaziland with the view to *achieving happiness for all*. He further pointed out that the main objective of the Constitution is to provide peace, order and good governance.

### **5.2 Summary of chapter 15 of the constitution**

Mr Islam started out by defining law: which he defined as an act, decree, order, rule, regulations, notifications or any other legal instrument having the force of law. He stated that according to the Constitution, which is the supreme law, the King and every citizen are expected by law to defend the constitution. Subversion of the Constitution is a treasonable offense.

**5.3** Participants had the opportunity to review the draft constitution, noting areas that needed to be changed.

### **5.3.1 CHAPTER 4**

#### **Section 15: Fundamental rights and freedoms of the individual**

1(a) Five principles were noted, that is respect for life, liberty, and security of **every** person, equality before the law and equal protection of the law.

b) It was noted that freedom of conscience and expression guarantees the right to form political parties. However, according to this constitution they will be constrained to participate in the electoral process.

(c) Whilst every person's right is guaranteed, the state could restrict one's right in the public interest.

### **Section 16: Protection of right to life**

It was pointed out that, according to this constitution, right to life does not mean right to livelihood which could assist in ensuring that people's livelihood is guaranteed.

### **Section 18: Protection from slavery and forced labour**

18 (2) The group added the following... *or any in dignifying duties even when forced by certain circumstances e.g. when forced by poverty to work under inhuman conditions.*

Subsection (3) a-d) It was suggested that this should be eliminated.

### **Section 19: Protection from inhuman and degrading treatment**

The groups suggested that it should be kept as is.

### **Section 20: Protection from deprivation of property**

(2) It was added that *...a person should not be deprived of property or any interest in right over property of any description.*

### **Section 21: Equality before the law**

2) Should be added after Discriminated..... *and or any other status or classification without any reasonable basis or nexus.*

3) Should be eliminated because it is a repetition of subsection 2

5) It should be added that..... *education or other inequitable or imbalances in society*

### **Section 23: Protection against arbitrary search or entry**

Subsection 2 (d) was deleted

### **Section 24 Protection freedom of conscience or religion**

3) The participants felt that this section should be reviewed as it deprives students of the freedom of worship

### **Section 25: Protection of freedom of expression**

2 (a) Takes away the right of expression and thus must be reviewed

b) also takes away freedom of expression

c) It was proposed that it should be removed

### **Section 26: Protection of freedom of assembly and association**

3 (a) Public morality should clearly be defined or be put in a much simpler way

### **Section 27 Protection of freedom of movement**

4 (e) proposed that it be taken out

(f) Add after conviction... *as required by the extradition treaty*

### **Section 29: Rights and freedoms of women**

1) *It was suggested that the marriageable age should be fixed by the law*

2) *Should apply to both customary and Western Marriage*

3) *Should be clear if family also consist of extended or nuclear*

5) Should be elaborated which value supersedes the other – personal or family

6) It was suggested that, *subject to availability of resources*, should be removed as it is within the government power to allocate resources.

### **Section 30: Right of the child**

2) Moderate chastisement should be elaborated by law. It was added that the child should be protected from all kinds of abuses.

6) Addition – free *compulsory* education

7) b) Reasonable provision should be determined by law

### **Section 31: Respect of persons with disabilities**

1) Add *full potential* instead of physical and mental

2) Subsection 3 should be added... *the government should provide facilities to enhance the welfare of the disabled.*

### **Section 34: Right to Justice – cancel administration**

1) Changed to ...every person has a right to justice

2) It was added that *Any authority or agency of the government or any corporation or public body before taking any decision likely to adversely affect the rights of any citizen should give adequate warning to the*

*person/community affected so that the affected party can make effective representation before the concerned authority.*

3) It was suggested that 3 be added ... *a person adversely affected by any decision has a right to go to court*

### **Section 36: Enforcement of protective provisions**

1) It was suggested that it should be added that...*or any other person. Association body having sufficient interest or concern....*

2) It was suggested that this section is a repetition of the jurisdiction of the court that is under section 151. It was suggested that it should be removed and put under section 151.

### **5.3.2 CHAPTER 6**

#### **Section 58: Law Enforcement Objectives**

1) It was pointed out that it should be added that. ... *Citizens or any other police officer or third party should report corruption to the institution responsible for human rights.*

#### **Section 59: Political Objectives**

1) It was suggested that there should be an addition stating that ... *at all levels and shall subscribe to democratic principles of good governance.*

2) It was suggested that it should be added that... *at all levels of governance in the mechanism of the constitution and law to ensure promote, courage and sustain.*

3) It was pointed out that the word cultivate shall be removed and instead *sustain* should be added and it was added that.. *This constitution shall apply to all people living in Swaziland in respect to fundamental rights.*

6) It was suggested that it should be added that...*the state and people of Swaziland should ensure a democratic environment.*

7) It was also suggested that it should be added that. ... *Guided by the principle of good governance and democracy, so that the country can develop towards social, economic and political development.*

#### **Section 60: Economic objectives**

4) It was added that the state shall promote and that.....*Take appropriate measures should be removed.*

5) It was added that .. *to ensure that workers and the environment are protected.*

- 6) It was suggested that *endeavor* should be removed and that land issue should not be put in quotes.

### **Section 61: Social objectives**

- 1)-(4) It was pointed out that these sections fall under the fundamental rights and that they should be an elaboration on the fundamental rights.

- 3) It was added that this section *should be emphasize on women and vulnerable groups.*

- 10) It was suggested that *appropriate* should be removed and that *positive* should be added.

### **Section 62: Foreign policy objectives**

- 1) c) It was suggested that it should be elaborated on what international treaties should be respected, there should be an elaboration on whether all treaties or not.

### **Section 63: Objectives and independence of the judiciary**

The main suggestion was that this section should be read with chapter 4 sections 36.

- 2) It was pointed out that *improper* should be removed

### **Section 64: Duties of the citizen**

- a) it was added that *...citizens should uphold the constitution on grounds that it meets the best interests of the citizens.*

- b) It was suggested that it should be added that *...by contributing to a democratic order for good governance.*

- e) It was suggested that this section should be changed to *.... Promote democracy, good governance and the rule of law and human rights.*

- h) It was suggested that this section should be changed to *lawful enforcement* instead of lawful agencies.

**6.0** At the end of the assessments of the sections of the constitution, the facilitators of the workshop presented their closing remarks.

### **6.2 Closing remarks by Mr. Islam**

Mr Islam concluded by pointing out that it is the duty of civil society to ensure that the changes and recommendations on the draft constitution were presented to the committee responsible for drafting the constitution.

He further pointed out that the contributions that had been made by the facilitators and the participants of the workshop should not go to waste. Instead they should be used to engage government on the draft constitution.

### **6.3 Closing remarks by Pia Rodriguez**

The IDLO representative thanked the participants for their enthusiasm and commitment during the workshop. She noted that it was now the responsibility of CANGO to continue from where IDLO had left off. It was also the duty of participants to continue to review the draft constitution with a view to facilitating poverty reduction in Swaziland.

### **6.4 Closing remarks by Mr Robert Dance**

Mr Dance suggested that the constitution should bring about change in Swaziland. He hoped the workshop had served the purpose of making everyone see the constitution in a new light, as a document that would bring about change and freedom to the people of Swaziland. However he pointed out that freedom is not free but that it comes with responsibilities. The people of Swaziland should be ready to take on the responsibilities that come with freedom and change.

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