

ASAKHANE

CONSTRUCTION INDZABA 2016



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Esangweni, Esibayeni Lodge, Matsapha

TABLE OF CONTENTS

ITEM	PAGE NUMBER
Executive Summary	3
Objectives, Structure & Participation	3
Key Findings	5
Official Opening	5
The state of the construction industry	6
Keynote Address	7
Presentation:	
Session 1	8
Session 2	11
Session 3	13
Session 4	15
Session 5	16
Session 6	18
Closing	19
Recommendations & Conclusion	20

1. EXECUTIVE SUMMARY

The Construction Industry Council (CIC) hosted its inaugural Indzaba in 2015 with the aim of creating a platform for its membership to share ideas and discuss pertinent challenges and opportunities for all players. Held at The George Hotel in Manzini, the Indzaba proved to be a key gathering, bringing together some of the best minds in the construction industry with the sole view of kwakhana – building each other up. The CIC then decided that the Indzaba would be held annually as issues facing the industry change from time to time and need to be addressed with the assistance of experts from within and beyond the borders of Swaziland.

The Indzaba, which takes the form of presentations, dialogue and exhibition of products and services, is the most popular space for all contractors, consultants, suppliers, manufacturers, developers and financiers to meet and discuss the ever-changing construction landscape. Indzaba delegates are able to reach and meet leading Building & Construction industry professionals in one place at the same time and network with key industry buyers and influencers from around the region. They are also given an opportunity to network with senior level experts and decision-makers and by so doing plan and develop the future of the Industry. This gathering also assists professionals to update their knowledge on current trends with input from global authorities and explore future trends to position their business as effectively as possible.

This year, the event was held at the spacious Esangweni Conference Centre, a division of the popular Esibayeni Lodge in

Matsapha. Speakers were drawn from an impressive think-tank of industry practitioners from South Africa and Swaziland who shared their expertise with the delegates.

The event also received the highest honour of being officially opened by the Acting Minister of Public Works and Transport, Honourable Jabulile Mashwama who was representing the Honourable Minister Lindiwe Dlamini. High ranking government officials and the CIC board also graced the event. It was highly recommended that more dialogue platforms need to be created so that the construction industry can continue to discuss pertinent issues regularly and find solutions to them.

1.1. The Hosts

The Construction Industry Council (CIC) of Swaziland was established through the Construction Industry Council Act No 14 of 2013 primarily to regulate and promote the construction industry in meeting national construction demands while providing strategic leadership to industry stakeholders for the stimulation of sustainable growth, reform and improvement in the country's construction sector. The Organization began its operations in September 2014. With infrastructure as a key pillar of economic development, the construction industry has a critical role to play in supporting Government to realise the country's infrastructure development plans thus improving the economy of the Country. The CIC strategies are geared towards supporting improved construction industry performance to enhance transformation, sustainable growth, reform and improvement in the country's construction sector.

1.2. The Organisers

For the second year in a row, The Corporate Gap a wholly owned Swazi company was responsible for the execution of this event. Drawing from the experiences and success of the first event, the team organised the logistics of the Indzaba under the guidance of the Construction Industry Council. The Corporate Gap is a comprehensive communications consultancy with the core ideal of offering clients integrated marketing communications solutions to suit their needs. The Company specialises in Public Relations, Events Management, Design & Publications, Creative Campaign Concepts and Brand Activation.

1.3. Indzaba Objectives

The main objectives of the Asakhane Construction Indzaba were:

- To promote the advancement of the construction industry and that of the council's objectives and mandate as aligned with the needs of its members;
- To ensure exposure of emerging contractors, consultants, suppliers and manufacturers to available opportunities in the market
- To promote and advance equal access to market opportunities for small, medium and large scale Swazi owned businesses by adopting best practice modes.
- To engage all relevant stakeholders in a bid to find ways to ensure that contractors, consultants, manufacturers and

suppliers meet national demand;

- To bring together all industry players to share ideas and strategic goals so as to help stimulate growth, reform and improvement of the industry; and
- To energize the construction industry by providing an opportunity for all relevant stakeholders to network by engaging in meaningful dialogue.

1.4. Indzaba Structure

The Indzaba took the form of a full day conference that started with the official opening address by key officials of the Construction Industry Council (CIC). The Honourable Minister of Public Works and Transport, which is the parent ministry on construction issues, gave the keynote address which was centred on the premise that "Informed exchange, collective discourse through a meeting of minds is but a sign that solutions are not far from where we stand."

The Indzaba was divided into six sessions based on different themes that included; The Effects of Delayed Payments on Companies and the Industry, Public Private Partnerships, Procurement and Delivery Management, Supplier Development, Dispute and Conflict Resolution and Sustainable Architecture and Infrastructure Development. At the end of each session, delegates were afforded an opportunity to raise questions and comments aligned to the theme. The presentations were made by highly respected professionals in the South African and Swazi construction industry.

The Indzaba also featured exhibitions by different players in the industry who showcased their products and services at a strategic location where delegates could easily access them. The exhibition ran parallel to the discussions so delegates were free to attend the exhibition throughout the course of the day.

1.5. Participation

Delegates were drawn from mainly from the CIC membership which includes consultants, contractors, manufacturers and suppliers of building materials. Also in attendance were architects, engineers, educational institutions, municipalities and insurance companies. Additionally, the CIC Council, high ranking officials from government ministries including the Ministry of Public Works and Transport, Economic Planning and Development and Finance. Developers and strategic partners such as Microprojects, the Swaziland National Housing Board, Swaziland Water Services Corporation, the Swaziland Electricity Company and the Swaziland Public Procurement Regulatory Agency were also present. The event attracted about 247 delegates.

1.6 Key Findings

- Some projects get commissioned without the available cash to finance them. The CIC needs to ensure that finance is available for all projects commissioned in order to protect contractors. Developers such as Micro projects have done well by ensuring that they secure funding first before commissioning projects.
- In order for PPPs to be effective, it would make sense for

banks and other financial institutions to be part of the structure. Getting them to be more actively involved in such partnerships is critical so they can better understand the need of the industry

- The Arbitration Act of 1904 needs to be reviewed. Although it has a lot of useful clauses, changes do need to be made in order to conform to the times. The country can learn a lot from neighbouring countries who have undergone reviews. Discussions to have the Act reviewed have been held for a long time now but this has not been a priority for government. This is a matter of national interest that requires input and lobbying from all quarters.
- The CIC, needs to work through the Ministry of Housing to ensure that all chiefdoms have developmental councils would put in place building codes and standards to ensure that all new structures meet the grade. Chiefs need to enforce that anyone building on Swazi nation land has submitted housing plans to the ministry for housing for approval.
- Swaziland's biggest asset is its people and thus the construction industry needs to invest in the safety of its people by focusing more on safety, health and environmental awareness. This would be an ideal topic for discussion at the next Indzaba.

2. OFFICIAL OPENING

Programme Coordinators: Nhlanhla Maphanga and Nelisiwe Bulunga

The programme coordinators, who are renowned professionals in the construction industry, welcomed all delegates to the Indzaba. They extended a special welcome to participants from beyond our borders who were attending as speakers and delegates. They encouraged all participants to make contributions openly as the CIC is only as good as the views of its membership. They also encouraged all participants to make time to visit the various exhibition stalls.

2.1. OFFICIAL OPENING ADDRESS – Dan Dlamini, CIC Chairman

“It is in our dialogue; in the persistent interactions we hold on our shared interests that we define our collective identity”

The Chairman extended a warm welcome to all delegates and thanked them for committing themselves to attending the Indzaba which is being held for the second year. He thanked all presenters for dedicating themselves to preparing for the Indzaba, which he said would inform the work of the CIC for the next year. He said the objective of the platform was to bring together all industry players to discuss how they can contribute meaningfully towards the economy and His Majesty’s vision for first world status by 2022. Dlamini noted that since the establishment of the CIC Act in 2015, the Council has made tremendous progress in striving towards excellence within the industry. He noted with pride that the CIC has a water-tight strategy in place to spearhead reforms across the industry. He said some of these reforms have been implemented some will be implemented within the current year and others within the

short term.

The Chairman said despite the successes enjoyed by the CIC, they were still faced with some challenges that need the collective support of all industry players. He noted that timely payment of contractors and inequitable distribution of work was still a challenge. Dlamini added that access to finance was still very limited in the construction industry and he highlighted the need to look into different models of financing capital infrastructure.

2.2. THE STATE OF THE CONSTRUCTION INDUSTRY - Nhlanhla Dlamini, CIC CEO

“Where we are going, How we get there hinges on the truths we tell ourselves about where we are today”

The CEO began his remarks by giving delegates an overview of the CIC including its establishment and objectives. He noted that according to the Central Bank Annual Report of the period ending 31st March 2016, construction activity remained positive although at slower rates following the completion of some major projects the previous year. He said the Industry performed well in 2015 largely benefitting from an increase in the government capital expenditure programme. He said in 2015, major public capital projects were mainly on-going projects such as the International Convention Centre and Five Star Hotel at Ezulwini, the Biotechnology Theme Park at Nokwane and Information Technology (IT) Park at Phocweni. Road projects included resealing of Manzini-Mbabane highway, Sikhuphe link roads (Sikhuphe-Hlane road) and the construction of Nhlan-

gano-Sicunusa road. Dlamini said the stock of credit extended by commercial banks to the construction sector recorded a 17 per cent decline from E627.8 million in 2014 to E520.1 million in 2015.

He said the sector would continue to benefit from the on-going and new construction projects driven by the public sector investment programme. He said addition to on-going projects, the public sector is expected to commence construction of Bulembu/Pigg's Peak and Maguga Road, Manzini/Mbhandlane Road (Lot 1 and Lot 2) and Lukhula/Big Bend roads. Other major projects include the construction of a 146 kilometres railway connecting Lothair in South Africa and Sidvokodvo which is valued at around E18 billion.

The CEO said feasibility phases for this project have been completed and subject to financing, the project will commence in the short to medium term. Dlamini said in the 2015/16 financial year, the number of registered contractors were 846 in total which is a slight decrease in this year's registration which stood at 826 as at the 30th September 2016. He said registered Manufacturers and Suppliers of building material stood at 28 last year while this year there has been increase to 57. He added that professional consultants registered in the previous year were 115 while this year they increased to 128.

The CEO said the CIC has introduced a grading and categorization criteria that has seen contractors being categorised based on their financial capability, works capability and available Capital. He also added that based on recommendations from the inaugural Indzaba held in 2015, major strides have been made towards

implementation. Dlamini noted that the CIC continues to face a number of challenges such as regulating a previously unregulated industry. He added that there was still lack of understanding of the CIC's role by stakeholders since it is a relatively new organization. He said another concern was that the Industry is still dominated by a few big companies and there is need to look into models of subcontracting of works to the benefit of SMMEs.

2.3. KEYNOTE ADDRESS – Acting Public Works & Transport Minister Hon. Jabulile Mashwama

“Informed Exchange, collective discourse through a meeting of minds is but a sign that solutions are not far from where we stand”

The Honourable Minister, who was representing Minister Lindiwe Dlamini, was introduced by the Acting Principal Secretary in the Ministry of Public Works and Transport, Mkhululi Mamba. She began her remarks by congratulating the CIC and all stakeholders for their efforts in organising the Indzaba, which she said was the leading platform in gathering top industry minds to share new ideas, achievements and best practices.

She asked all stakeholders to make full use of the CIC to propagate reforms and improvements across the entire industry, The Minister said all topics featured at the Indzaba were central to delivery on government's Infrastructure Development Plan and Vision 2022 and were central to the CIC's strategy for the development of the construction industry. She said the main purpose of the Indzaba is to discuss and come up with propositions that will help emerging and established contractors to grow their

businesses by sharing information and experiences and deal with challenges facing the industry as the kingdom moves towards attaining first world status by 2022.

Minister Mashwama added that the propositions from the Indzaba will also ensure the promotion and advancement of the industry and that of the CIC's objectives and mandate as aligned with the needs of its stakeholders, will further ensure exposure for emerging contractors, consultants, suppliers and manufacturers to available opportunities in the economy. She noted that the sector has been performing well in the post fiscal-crisis of 2010/11, adding that its contribution to the economy is evidenced by the fact that it contributes about 5 per cent of the GDP and has been one of the fastest growing sectors over the last three years. The minister said the sector grew by 16.3 per cent in 2014, from 10.4 per cent in 2013 and 3.5 per cent in 2012. She added, however, that the industry is threatened by deterioration in government's fiscal position following a significant fall in

SACU revenues in the 2016/17 fiscal year. The minister said this is expected to slow down the implementation of government capital programme and thereby affecting activity in the construction sector. She then urged delegates to come up with tangible recommendations especially on the issue of Public Private Partnerships (PPPs). The minister noted that government needs the support of the private sector to fund its capital investment programme and therefore proper PPPs are vital in the realisation of Vision 2022.

Minister Mashwama said there vast opportunities to reform

and improve the industry, expressing hope that the speakers and experts will be able to share their ideas and experiences with all delegates. She invited delegates from outside Swaziland to seek partnerships and alliances with Swazi companies to pursue ventures not only within the country but also within the region and the world.

3. PRESENTATION SESSIONS

3.1. SESSION ONE - THE EFFECTS OF DELAYED PAYMENTS ON COMPANIES AND THE INDUSTRY, Mr D. Roberts, Group CEO Inyatsi Construction Group

Mr Roberts' presentation started with an overview of why companies go into business, highlighting that the main factor is to make money which is why a delay in payments can be frustrating. He noted that in an ideal business situation, people are happily employed, services or products provided and lifestyles are improved. He added that cash management is very important and that all construction documents need to have clauses relating to it and the obligation of the parties to ensure a successful contract. He then touched briefly on the documents mostly used in Swaziland as follows;

a) JBCC

The series 200 edition of this frequently revised set of contract conditions provides for interim payment in clause 31 and obliges the Principal Agent to issue a certificate monthly. The

Employer is obliged to pay the Contractor the amount certified within 7 calendar days (clause 31.9) of the date for issue of the payment certificate. Interest is payable in accordance with clause 31.10 and 31.11 which distinguish between interest payable after the date of practical completion (clause 31.10) and interest payable before practical completion. Interest is compounded monthly and is based upon the interest rate specified by reference to the contract data in respect of the interest set by the Central Reserve Bank of the country named such data multiplied by a stated factor. Interest under this form of contract also provides a mechanism to compensate the Employer in respect of interest where the contractor is indebted to the Employer.

b) FIDIC

This suite of contracts provides for payment under clause 14 and requires the Contractor to apply for interim payment under clause 14.3 which then triggers a 56-day period within which the Employer must make payment to the Contractor. The Engineer is expected to issue an interim payment certificate within 28 days after receiving the Contractor's application for payment but the trigger for payment is the application itself and not the date of issue of the certificate. The Employer will accordingly be in mora from the expiry of the 56-day period for payment. The contract provides, clause 14.8 for compensation for delayed payments with an entitlement for the Contractor to receive 'financing charges compounded monthly', on the outstanding amount. Financing charges are defined as being paid at a rate of 3% above the discount rate of the Central Bank in the country of the currency of payments.

c) GCC 2004 AND 2010

The Standard Civil Engineering domestic contract regulates interim payments through clause 49. The process is triggered by the Contractor submitting a monthly statement claiming payment which would then result in the Engineer issuing a signed payment certificate for the amount which the Engineer considers to be due to the Contractor. The Employer's obligation to pay arises from clause 49.4 which requires the Engineer to deliver this certificate to the parties within 7 (seven) days of receipt of the Contractor's statement and for the Employer to pay the amount due to the Contractor within 28 (twenty-eight) days of receipt of the payment certificate. The Contractor's rights where the Employer fails to pay the amount due are regulated by clause 56 which not only deals with failure by the Employer to pay the amount certified (clause 56.1.1.2) but also the circumstances where the Contractor alleges, and presumably may in due course have to prove, that the Employer has interfered with or obstructed the issue of any certificates (clause 56.1.1.3). If either of these circumstances has arisen and following 14 days' notice from the Contractor to remedy the default then the Employer may by further written notice to the Contractor cancel the contract. Importantly GCC 2004 provides no mechanism to suspend the contract or to reduce the rate of working under the circumstances.

d) NEW ENGINEERING CONTRACT

In this document the contract data specifies an assessment date and the Project Manager is obliged to certify payment within

one week of each assessment date. Payment is required to be made thereafter within three weeks of the assessment date and interest in this instance is payable either as a consequence of failure to issue a certificate, alternatively as a consequence of a late payment or under payment. The interest rate is specified in the contract data and the amount is compounded annually. Once again this suit of contracts does not provide an entitlement for the Contractor to suspend work or reduce the rate of working. The termination provisions of clause 91.4 of the Engineering and Construction Contract entitle the Contractor to terminate where the Employer has failed to pay an amount certified within thirteen weeks of the date of the certificate.

After explaining the different documents, Roberts noted that generally, Contractor's recourse is very limited. He explained that all the above documents recognise the duty of the client to pay within certain time frames, but if this is not done, Contractor's recourse is very limited. He noted that no contractor wants to slow down, stop or cancel the contract. He said for a company to prosper, it has to have a growth strategy. He said on completion of projects, most companies are not cash positive and if they have marked their projects up by 10 per cent, they will only get their profits when retention is released. Roberts added that if they are starting another project anywhere in the negative cycle, companies will have challenges. He said therefore, it cannot come as a surprise when companies go under. He made two examples of good South African companies who were forced to close operations due to delayed payments. He said Sanyati closed its doors because the Free State Province was six months late on a payment of R70 Million and Protech,

another listed company, was owed R48 million and closed its doors. The Group CEO said the urgency for paying contractors as early as possible is critical to their survival, not to mention for them to grow and improve the economy of the Kingdom. He added that big contractors need to walk the talk if they really want to grow the smaller contractors. He said if this scenario is to be improved, there has to be collaboration between the client and the Industry.

He made an example that once due date is established, i.e. 56 days after submission, that date is flagged by all involved. He added that if payment is not made in full, 5 per cent is automatically added to the invoice plus interest starts to accrue. He also suggested that a Client body putting the contract out needs to prove funds are available and reinforced and if it is a government contract, Central Bank issues a payment bond or demand bond that is paid on the flagged date. Roberts also suggested that a late payment ombudsman could be established. He however, noted that all these suggestions would need legislation and so would take time to implement.

QUESTION AND ANSWER SESSION

Q – It is acknowledged that it is difficult for contractors to get recourse but they could try claiming interest or cancelling the contract. The other option would be to sue

A: It is true that litigation could be another option but this is a process that might go on for a long time and might be quite costly so it is usually not advised to take this route.

Q – Is there any type of client who is the major culprit of delayed payments?

A: Different clients pose different clients so it would be unjust to single any out for delayed payments. The consolation in Swaziland is that contractors always get paid, no matter how long it takes.

Comment– Some projects get commissioned without the available cash to finance them. The CIC needs to ensure that finance is available for all projects commissioned in order to protect contractors. Developers such as Microprojects have done well by ensuring that they secure funding first before commissioning projects.

Q – Most contractors are not reaping expected fruit from their work and this is very disappointing because businesses need to stay afloat. If the sector contributes so much to the kingdom's GDP why is it that many contractors are battling to stay open?

A: The industry makes 2 to 3 per cent profit and this quickly flies out the window based on operational costs. This is indeed worrying.

Comment – One of the solutions to delayed payments would be to provide cash discounts to clients at tender stage.

3.2. SESSION TWO - PUBLIC PRIVATE PARTNERSHIPS

Strengthening local capacities to realise inclusive sector growth

& enhance economic development; Professor R.N. Nkado, Director QualConsul

Professor Nkado said the main incentive for public-private partnerships is the deficiency in skills and resources required to provide the public with the services they need to support economic activities and social well-being. He noted that parties involved in PPP arrangements expect win-win outcomes, while funders expect a return on investment while governments expect improved infrastructure to underpin or boost economic activity.

He said the evaluation of the feasibility of the project, including its life-cycle costs, must be thorough, including taking social benefits into consideration. He added that feasibility assessment must include financial, technical, facilities management, ICT and legal aspects and specific needs of the service requirement.

He said PPPs are based on four principles, namely; Genuine Risk Sharing, Output Specification, Whole-Life Asset Performance and Performance-Related Reward.

Prof. Nkado said in order to deliver on the construction industry's key role in low carbon future economy, industry and government must achieve following goals;

- Maintain construction commitments in programmes such as education and infrastructure renewal to achieve long-term national economic benefits.
- Promote future job creation and skills development by sustaining training and apprenticeships.

- Secure 'value for money' by properly resourced maintenance programmes, quality design and construction, and efficient procurement processes.
- Balance speed and fairness in planning system, from massive changes needed to facilitate large-scale power generation through to local level.
- Achieve carbon reduction targets and job creation by pro-actively upgrading energy efficiency of building stock.
- Support construction by means of a smoothly run financial system backed by policies on taxation which promote enterprise development and growth.
- Think in longer time frames to achieve long-term changes we need in transport, energy and sustainability, as opposed to stop/start cycles.
- Provide a fully resourced Ministry of Public Works to achieve an integrated approach to back up major government programmes in housing, education, health, infrastructure and carbon reduction.
- Promote access to construction jobs to all sections of society to achieve a diverse vibrant industry.
- Pursue a policy of zero tolerance of fatalities and injuries.

He added that project success is based on ensuring that there is team effort in delivering projects in a timeous and satisfactory manner by all parties. He then highlighted some of the causes of project failure including weak linkages, weak leadership, lack of effective engagement with stakeholders, lack of effective

project team integration and lack of skills and proven approach to project management, risk management and project costing.

The Professor then proposed a number of interventions to prevent failure including Uncompromising rigour of project and adopting excellent models such as Sasol's Business Development and Implementation model and the CIDB Infrastructure Gateway System. He concluded by summarising PPP requirements as follows; an enabling legal framework underpinned by an independent judiciary, a stable economy and stable financial sector, Institutional capacity for initial scoping, documentation and on-going monitoring, preparedness to understand project risks particularly at the construction stage and willingness to share risks, corporate governance that ensures transparency in tender procedure, quality of tender information, proper evaluation of tenders and willingness and ability to deal with society's or stakeholders' concerns

QUESTION AND ANSWER SESSION

Comment – In order for PPPs to be effective, it would make sense for banks and other financial institutions to be part of the structure. Getting them to be more actively involved is critical so they can better understand the need of the industry

Q – How can CIC members access the models that were mentioned in order to avoid project failure?

A: These will be made available to the CIC and members can access them from there

3.3. SESSION THREE - PROMOTING EQUITABLE DISTRIBUTION OF WORK OPPORTUNITIES IN ACCORDANCE WITH GUIDELINES FOR PROCURING SERVICES; Mr German Mphahlele, Manager CIDB Enterprise Development

Mr Mphahlele began his presentation by emphasising that even though his presentation was specific to South Africa, it was key that interventions that will be put in place be Swaziland-specific. He highlighted that he would just share what works and what doesn't in South African and it would be prudent for the kingdom to learn widely about success factors and challenges which as universally acceptable and transferrable.

He noted that major industry challenges include skewed distribution of contractors across the grades and classes of work, high mortality rates, the fact that the structure of the industry is representative of the apartheid legacy (massive conglomeration, high levels of centralisation and efforts to foster an inclusive economy.

He said as a policy tool, procurement has an imperative to stimulate economic activity, improve the competitiveness of certain industrial sectors, and remedy regional disparities and to achieve certain more directly social policy functions such as to foster an inclusive economy and promote the use of local labour. Mphahlele said Small and Medium-scale Enterprises (SME) dominate the building and construction sector and smaller businesses tend to concentrate particularly in the building sub-sector, due to the nature of the work requiring less capital

intensive equipment. He said the Register of Contractors also provides a wealth of information on the structure of the construction industry. He then gave an overview of the statistics of the SA construction industry, highlighting that the pace and depth of transformation is lagging and is not representative of what government, society or the industry desires.

He highlighted that Section 217 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996 states that the procurement system is to be fair, equitable, transparent, competitive and cost effective) and also states that Procurement Policy may provide for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.

He said it was highly important to promote equitable distribution of work. While acknowledging that there may be time and cost premiums in promoting equitable distribution of work, Mphahlele noted that this was integral to the country's growth by reducing unemployment, increasing average household incomes, reducing the poverty gap and increasing the tax base of the economy.

3.3.1. PROCUREMENT AND DELIVERY MANAGEMENT IN THE PUBLIC SECTOR

Mr Richard Raphiri, Manager CIDB Procurement and Delivery Management

He highlighted that there were a number of procurement challenges in the construction industry such as fragmented prescrip-

tions for construction procurement (NT and CIDB), poor planning by implementing departments, inadequate response to the social agenda, poor interdepartmental relationships, lack of delivery, poor procurement / contract management strategies, limited technical capacity in the public sector, weak management systems, high incidence of fraud, corruption in procurement systems and collusion in the industry.

Raphiri said the good news that there were tools in place aimed at dealing with these challenges. He highlighted the legislative framework as one of these tools. He said as of 1 April 2016, the National Treasury introduced a Central Supplier Database (CSD), which is a single consolidated comprehensive supplier database for national, provincial or local government aimed at removing duplication and fragmentation of supplier information across spheres of government and applies to all services including construction. He also mentioned the eTender Publication Portal, which gives free access to public sector tender opportunities in South Africa. He also briefly explained about other tools in place such as the Standard for Infrastructure Procurement and Delivery Management (SIPDM), the Preferential Procurement Policy Framework Act (Draft regulations) the BBBEE Act and Construction Charter Codes.

It highlighted that although SA has created the legislative environment and tools for promoting equitable distribution of work opportunities, the results are not so impressive as the legislative framework and tools adopted are wrong as they are based on incorrect diagnoses and recommendations.

QUESTION AND ANSWER SESSION

Q – Swaziland is faced with a serious problem of fronting. How has South Africa been able to deal with this challenge?

A: fronting is a problem all over the world and is not just a challenge faced by the construction industry. It is very difficult to deal with and needs the full involvement of all key players. In SA, the BBBEE Act has been used as tool for fronting. Processes are underway to repeal the Act soon to ensure this is minimized

Q – Most Joint Ventures do not thrive. In most cases, only one of the parties stands to benefit while the other suffers. How can this be dealt with?

A: The CIDB has a JV calculator which spelling out clearly how they should be formed. All parties need to be registered with the CIDB and are assisted to stick to their terms. The CIDB has investigated issues of unfairness within JVs. Based on its mandate, the CIDB can charge and fine partners who do not stick to regulations

Q – What has been South Africa's success rate regarding white paper on delayed payments and interest on the same?

A: The country has a system within the national treasury and supply chain processes to ensure the 30 day payment period is adhered. Most contractors do not want to charge interest on their projects due to a number of reasons. In the new regulations, interest is automatically charged so this works better.

Q – How can legislation be successfully enforced as people always find ways to ‘beat the system’?

A: if a contractor falsifies information, they are brought to book. The CIDB tries to ensure that legislation is adhered to. The CIDB has the power to investigate if it is suspected that something fishy is going on. Defaulters can be fined up to E100 000.

3.4. SESSION FOUR - SUPPLIER DEVELOPMENT

Linking Buyers to Suppliers for real value creation and industry development

Mr Gary Joseph, CEO South African Supplier Diversity Council NPC

He gave an overview of the South African Supplier Diversity Council, stating that the Council serves as a platform through which corporates, Black Owned Enterprises & other strategic entities can do more business leveraging Preferential Procurement & Supplier Development Interventions. He added that the Council verifies key credentials of certified Black Suppliers through a Proprietary Due-Diligence Methodology that the SAS-DC developed in collaboration with Corporates & other Strategic Partners. He said although Africa has missed out on two decades of economic growth, there are still positive aspects such as the continent gaining its rightful place in global value chain and global trade, the rising level of optimism, increased political stability over past decade and an increase in regional economic co-operation and intra-African trade drivers of growth in the future.

Joseph said although formidable challenges lie ahead, there is a

good potential for economic transformation because Africa has a growth momentum, which if leveraged can create long awaited opportunity for movement higher on global value chain. He said the greatest potential is that the African consumer base is growing substantially as consumer spend last recorded at US\$720 billion and will exceed US\$1,4 trillion by 2030.

The CEO said implementing a “business as usual” approach when in Africa is not feasible in the long term, saying business must operate responsibly and inclusively to achieve short, medium and long-term sustainability. He added that new models for doing business to overcome the structural challenges of Africa must be adopted. He said when supplier diversity is applied as part of the business strategy, opportunity emerges, adding that proven results have informed Supplier Diversity Global Best Practice.

He shared best practices as follows;

- Best Practice No. 1: Have Top-Down Commitment
- Best Practice No. 2: Set Metrics to Ensure Accountability
- Best Practice No. 3: Integrate Supplier Diversity Throughout the Organization
- Best Practice No. 4: Invest in Small Supplier Education/Training
- Best Practice No. 5: Share In-House Expertise With Small Suppliers
- Best Practice No. 6: Protect Your Investment, Provide Financial Support

- Best Practice No. 7: Tap Suppliers for Solutions
- Best Practice No. 8: Consider Consortiums
- Best Practice No. 9: Partner With Regional or Industry-Focused Groups

Joseph said adopting the above practices benefits business by finding subcontractors/suppliers who are more efficient, flexible, innovative and committed, opening doors to new markets, adding competitive advantage when bidding on public contracts, ensuring 'best value' and a better service and improving the company's bottom line.

The CEO said countries need to build the supply chain capability and skill set that can enable strategy development and execution and also leverage platforms for networking and collaborating more effectively and productively amongst private and public sector supply chain functions. He added that there is need plan better and proactively communicate these to the market to ensure best-fit responses. He said there was need to standardize definitions and processes where possible to better drive economies of scale. Joseph by saying supply chain capability needs to be developed for Africa and not just for the Private or Public sector.

QUESTION AND ANSWER SESSION

Q – Most suppliers in Swaziland do not benefit much financially as most raw material is sourced from South Africa. Even if material is available in Swaziland, contractors still prefer sourcing from SA because of lower costs.

A: It is quite understandable. Contractors will have to do what makes business sense to them. The continent can learn a lot from Asia; it took them a long time to source all their good from within but now their system works like a well-oiled machine. All key players, including legislators, need to start having honest conversations about how the Asian story can become a reality here.

3.5. SESSION FIVE - DISPUTE AND CONFLICT RESOLUTION WITHIN THE CONSTRUCTION INDUSTRY; Mr Steve Mitchell, Director Lang Mitchell & Mr Cyril Maphanga, Executive Secretary SD Institute of Arbitrators

Mr Mitchell said there are many reasons for disputes in the construction industry which may include financial, legal and implementation issues to all construction projects. He said construction poses one of the most complex relationships because of the linkages with various service providers and these complexities provide a lot of challenges. He said because the industry is bizarre at the very least, good communication is key. Mitchell noted that most engagements within the construction are based on contracts, which are then said to be a source of confusion when the going gets tough. Mitchell said contracts should not be blamed when things go wrong but lack of communication should. He said most contracts do allow for claims if things have gone wrong.

He said the kingdom has a large number of inexperienced people entering the industry as contractors and consultants

and this is one of the reasons that can lead to disputes. Mitchell added that the issues indicate the answers - Contract Issues, People Issue and The Unknown. Regarding contract issues, he noted that the challenge is in the implementation. He said some contracts are unbalanced while other times people sign contracts that do not have reasonable time lines and thus find themselves under pressure and this may lead to disputes. He said Joint Ventures are usually a nightmare as they have advantages but obligations and responsibilities need to be spelt out clearly if disputes are to be prevented. Mitchell said JVs are an accident waiting to happen as subcontractors/main contractors almost always have issues.

On People Issues, he said there is usually interference by employers to contractors and misunderstanding on the role of supervisor. In the classification of The Unknown there are issues such as natural disasters. He said he would recommend that Clause X – “I undertake to be understanding and reasonable.” Be ended to the end of every contract.

Mr Maphanga started his part of the presentation by describing the different options available to parties in case a dispute arises. These include negotiation/settlement, mediation, neutral evaluation, mini-trial, adjudication and arbitration. He described arbitration as a process whereby parties to a dispute enter into a formal agreement that an independent and impartial third party chosen by the parties will hear both sides of the dispute and make an award which the parties undertake to accept as final and binding. He said arbitration is governed by the Arbitration Act of 1904. Maphanga explained that any person with

legal capacity to enter into a contract may act as an arbitrator. He said the person should have no direct interest in the subject matter and should have an appreciation of the rules of procedure and evidence.

He said the Swaziland Arbitration Institute is an independent initiative established by professionals in the dispute settlement field to serve as a centre for the facilitation of structured commercial dispute resolution in Swaziland.

He said the Institute was available to assist in managing disputes to ensure they do not get out of hand and that all parties reach an amicable settlement in order to avoid high costs which may result if matters are not resolved speedily.

QUESTION AND ANSWER SESSION

Q – What happens if the arbitrator has made a mistake in making an award?

A: The challenge with arbitration is in the selection of the arbitrator. Parties involved need to be very careful in the selection of a competent arbitrator. If an arbitrator has acted improperly then there are provisions to seek recourse in the Act.

Q – Are the processes to review the Act to make it relevant to modern times as the Act was established in 1904 and is archaic?

A: The Act is workable but changes do need to be made in order to conform to the times. The country can learn a lot from neighbouring countries who have undergone reviews. Discussions to have the Act reviewed have been held for a long time

now but this has not been a priority for government. This is a matter of national interest that requires input and lobbying from all quarters.

3.6. SESSION SIX - SUSTAINABLE INFRASTRUCTURE AND DEVELOPMENT Dr. Sitsabo Dlamini, Director Sitsabo Project Managers

Dr Dlamini said sustainable infrastructure makes substantial use of locally available materials and local means of transport, uses resources that are available in sufficient quantity to satisfy a general demand and does not damage the environment. He added that sustainable infrastructure does not depend on equipment that is not easily available and uses skills that can be realistically developed in the community. He said it can be afforded within the local socio-economic context and produces a durable result. Dr Dlamini said communities may develop infrastructure stocks that are not suited to new climatic conditions and this would compromise SD's developmental goals as articulated in HMK's 2022 vision and the GPOA 2013/18.

He said given the high stakes and the urgency of action, it is more important at the current time to gain an improved understanding of the challenges and opportunities at the nexus of climate change and infrastructure development. He noted that the IPCC has predicted that the earth will be between 1.8°C - 4°C warmer by the end of the 21st Century, adding that the economic and social impacts of global warming depend not only on progress in the international arena, but also critically on the developmental paths that countries adopt. He said a broad range

of developmental choices in which infrastructure policy plays a key role will impact SD's capacity to cope with these changes.

He said these developmental choices include geographical distribution of economic activities, infrastructure design, land use policy and energy security. Dr Dlamini said new Infrastructure development now requires anticipating the future & developing a gradual adaptation strategy.

He said exposure to different climate risks, increases in temperatures and the consequent extreme weather need consideration at feasibility stage which demands employing ingenious design approaches tailored to local conditions. Dr Dlamini said maintenance cycles for timely, effective and proportionate upgrades must be optimized and this will ensure the long-term economic sustainability of both private & public sector utilities. He said climate scientists are steadily amassing evidence that makes the changing climate increasingly difficult to ignore adding that new professional design standards are underway and this serves as an opportunity for the CIC. Take advantage of synergies that exist between national mitigation strategies & national development priorities.

Dlamini said there was urgent need for the kingdom to invest in decentralised forms of energy, such as solar or wind power to achieve both green growth and more inclusive growth at the level of Tinkhundla. He said this will support efforts to achieve the developmental goals as envisaged in HMK's 2022 National Vision. He said through the proposed SADC University, the CIC can take a lead in undertaking postgraduate research and teaching on appropriate technologies, knowledge and skills that LDCs

require to satisfy a wide range of physical, economic and social needs of society.

QUESTION AND ANSWER SESSION

Q – Swaziland is seeing the rapid migration of the urban class from investing in building homes in the suburbs to Swazi nation land. A lot of money is being invested on such structures and the challenge is that there are no standards and codes applicable. How can disasters be prevented as in urban areas municipalities regulate this?

A: This puts the work of the CIC on the spotlight. All communities need to have developmental councils which should put in place regulations to deal with this. The CIC can assist to ensure this is done through persuasion. This will not be achieved overnight but it can be practicalised over time. With the help of the CIDB, this can be achieved – all housing developments, regardless of location would conform. Chiefs need to enforce that anyone building on Swazi nation land needs has submitted housing plans to the ministry for housing for approval.

Q – What is the position of the UN on the impact on African countries on the carbon emission and the climate changes that are now raising our costs? Are countries that are now suffering indirectly going to be assisted?

A: Growth comes with both opportunities and challenges. The CIC needs to come up with a model of development path and showcase this so that partners can see what the kingdom has in mind and what the impact of the carbon emission are on the

country. Financial aid may be available from organisations such as the World Bank

Comment – Swaziland’s biggest asset is its people and thus the construction industry needs to invest in the safety of its people by focusing more on safety, health and environmental awareness. This would be an ideal topic for discussion at the next Indzaba.

4. CLOSING SESSION

The Programme Directors thanked all participants for their invaluable contributions and encouraged future dialogue using difficult platforms.

4.1. CLOSING REMARKS

Mr Mkhululi Mamba, Acting Principal Secretary Public Works and Transport

The Principal Secretary thanked the organising committee for a sterling delivery of the Indzaba and extended his appreciation to all delegates for attending. He applauded the excellent presentations made by the different speakers, who he said were insightful and well thought out. He said the day’s program was very tight but all the topics were important and thus none of them could have been left out. Mamba expressed hope that the way forward and recommendations would be shared with all participants in the not too distant future and would allow the organisers to plan well for the next Indzaba.

He assured delegates that all presentations would be posted on the CIC website.

4.2. INDZABA RECOMMENDATIONS

The following recommendations were made by delegates;

- Presentations need to be kept short in order to allow enough time for discussions
- Number of speakers needs to be reduced
- There needs to be gender balance in the selection of speakers
- There should be less focus on South Africa and more local content
- Afternoon topics should be more interactive – session should be a dialogue instead of presentations
- Both official languages need to be used

4.3. Suggested topics for next Indzaba;

- Effects of Awarding tenders to inexperienced contractors
- How to enforce technology transfer
- Contract management
- The challenges of being a woman in the construction industry
- Facility management in institutions
- Sharing of experiences by companies that went bankrupt as a result of government failure to pay on time
- A Client's Perspective of the industry

4.4. CONCLUSION

Based on the first and second Indzaba, it is clear that industry players need space and time to air their views and to contribute meaningfully to this fast-growing sector. The onus is on the CIC to maintain such platforms and to further create more dialogues throughout the year.



