



NAMIBIA
UNIVERSITY
OF SCIENCE AND
TECHNOLOGY



Southern African Node

Land Governance in Southern Africa

NUST-NELGA Symposium

Windhoek, Namibia – 3-4 September 2019

Land Governance in eSwatini

Absalom M. Manyatsi¹, Saico S. Singwane²

¹University of Eswatini, manyatsi@uniswa.sz; ²University of Eswatini, saicos@uniswa.sz

Paper prepared for presentation at the

“2019 Land Governance in Southern Africa Symposium”

The NUST-NELGA Hub - Windhoek, Namibia, 3-4 September, 2019



ACRONYMS

CCSAP	Climate Change Strategy and Action Plan
CMP	Comprehensive Mitigation Plan
ECC	Environmental Compliance Certificate
EEA	Eswatini Environment Authority
EIA	Environmental Impact Assessment
ESWADE	Eswatini Water and Agricultural Development Enterprise
IEE	Initial Environmental Evaluation
MNRE	Ministry of Natural Resources and Energy
MOA	Ministry of Agriculture
MTAD	Ministry of Tinkhundla Administration
SNL	Swazi Nation Land
TDL	Title Deed Land

GLOSSARY OF TERMS

Umgiijimi (Chief's runner): Elected member of the traditional community who act as a link between the traditional community and government ministries and agencies of community development (plural is *Bagijimi*).

Bandlakhulu (council of community members): The general public in Swazi traditional community.

Bandlancane (Chief's Inner council): Swazi traditional council elected by the Chief's royal kraal to assist the Chief in day to day running of the community.

Bucopho (Individual chiefdom councillor): Chief Council in *Inkhundla* Council, elected and representing chiefdom.

Chief: Head of a Swazi traditional community who is responsible for control of land under his jurisdiction, and allocating it to community members for use.

Indlunkhulu : Chiefs' royal kraal

Indvuna (Headman): Deputy and secretary of Swazi traditional chief.

Indvuna yenkhundla: Chairperson of the *Inkhundla* Council, elected at *Inkhundla* level.

Inkhundla: Constituency centre used for polling and coordination of grass-root development (plural is *Tinkhundla*).

Kukhonta: Bonds of allegiance to Swazi chief by residents within his jurisdiction.

Liqoqo: King's advisory body on traditional matters and all other governance matters.

Ndabazabantu: King's Liaison Officer who links chiefs to customary hierarchy of national councils.

Abstract

The Kingdom of Eswatini covers an area of 17,259 km² with a population of 1.2 million people. It borders the Republic of South Africa and Mozambique. It is divided into 4 administrative regions and 59 constituencies (*Tinkhundla*). The two land tenure forms are Title Deed Land (TDL) and Swazi Nation Land (SNL). SNL accounts for 75% of the total land and Title TDL accounts for 25% of the total land. Chiefs are traditional land administrators and there are 385 chiefdoms. The institutions that deal with land governance are chiefdoms, *Tinkhundla* administration, urban local administration central government and regulatory structures (*Liqoqo* and Land Management Board). The traditional structure is responsible for land allocation, overseeing developments, disputes resolution, overseeing resettlements, subdivisions and land uses on SNL. *Tinkhundla* administration is responsible for overseeing regional developments and regional land uses. The central government through its different departments are responsible for cadastral mapping, land disputes resolution, registration, subdivision and transfer of land in TDL. Urban local authorities are responsible for the control, management and administration of the town in which they have jurisdiction. The regulatory bodies are responsible for land dispute resolutions, resettlements and subdivisions on SNL. The Land Bill that was tabled in parliament to operationalize the Land Management Board has not been enacted into law, and this is hindering the effectiveness of the Land Management Board. The country lacks appropriate cadastral data and information on land boundaries on SNL. Land ownership and rights are lacking and thus there is prevalence of forced evictions in both SNL and TDL. There are disputes between chiefs and a weak land dispute resolution mechanism. It is recommended that the Land Bill should be approved in order to operationalize the Land Management Board. The Farm Dwellers Control Act should be reviewed in order to take into consideration the rights of farm dwellers. A land dispute resolution tribunal should be established for SNL, to speed the mechanism of dispute resolution on SNL.

Key Words: Chiefdoms, communal land, dispute, evictions, land administration

Table of Contents

ACRONYMS	2
GLOSSARY OF TERMS	3
Abstract	4
1. Country Information	8
2. Institutional Framework on Land Governance and Administration	12
2.1. Traditional Local Administration.....	13
2.2. Tinkhundla Local Administration	14
2.3. Urban Local Administration	14
2.4. Central Government	15
3. Legal Framework on Land Tenure	18
3.1. Tenure Regime.....	18
3.2. Land Registration	19
3.3. Enforcement of Land Rights.....	20
3.4. Equity and non-discrimination.....	20
3.5. Land Markets	21
4. Land Dispute Resolution	22
4.1. Assignment of Responsibility	22
4.2. Conflict Management	23
5. Valuation and Taxation	24
6. Land Use Planning and Control.....	25
6.1. Land Use Planning Framework and Process	25
6.2. Delivery of Service	26
6.3. Development Permits	27
6.4. Land Use Control	27
6.5. Climate Change and Environmental Management.....	28
7. Management of Public Land	29
7.1. Public Land Inventory	29
7.2. Expropriation	29
7.3. Allocation of Public Land	29

8.	Land Information	31
9.	Key Challenges in Land Governance	32
9.1.	Enacting of Relevant Legislation	32
9.2.	Cadastral Mapping and Land Information System.....	33
9.3.	Land Ownership and Rights	34
9.4.	Forced Eviction	35
9.5.	Disputes between Chiefdoms	37
9.6.	Dispute Resolution Mechanism	37
10.	References	39

List of Tables

Table 1: Population distribution for country and administrative regions	10
Table 2: Typical calculation of rates payable to a residential property for 2017/2018 financial year	24

List of Figures

Figure 1: Map showing location of Eswatini.....	8
Figure 2: Administrative zones of Eswatini, with boundaries for the respective Tinkhundla centres.....	9
Figure 3: Ecological zones of Eswatini	11
Figure 4: Land governance and administration institutional framework at Eswatini.....	12
Figure 5: The traditional local administration on SNL	13
Figure 6: Structure of Tinkhundla council.....	14
Figure 7: Structure of central government institutions involved in land governance.....	16
Figure 8: Land tenure system at Eswatini.....	18
Figure 9: TDL and SNL dispute resolution hierarchy	22

1. Country Information

The Kingdom of Eswatini (formerly Swaziland) covers an area of 17,349.98 square kilometres and lies between latitudes 26 °S and 27 °S and longitudes 31 °E and 33 °E. It is surrounded on the north, west and southern sides by the Republic of South Africa and on the east by Mozambique (Figure 1). The total population according to the 2017 census was 1,093,238 (Government of Swaziland, 2017A). The population showed an increase of 74,789 persons from that of 2007, depicting an average annual increase of 0.7%. The population for males was 531,111 (48.6%), while that for females was 562,127 (51.4%).

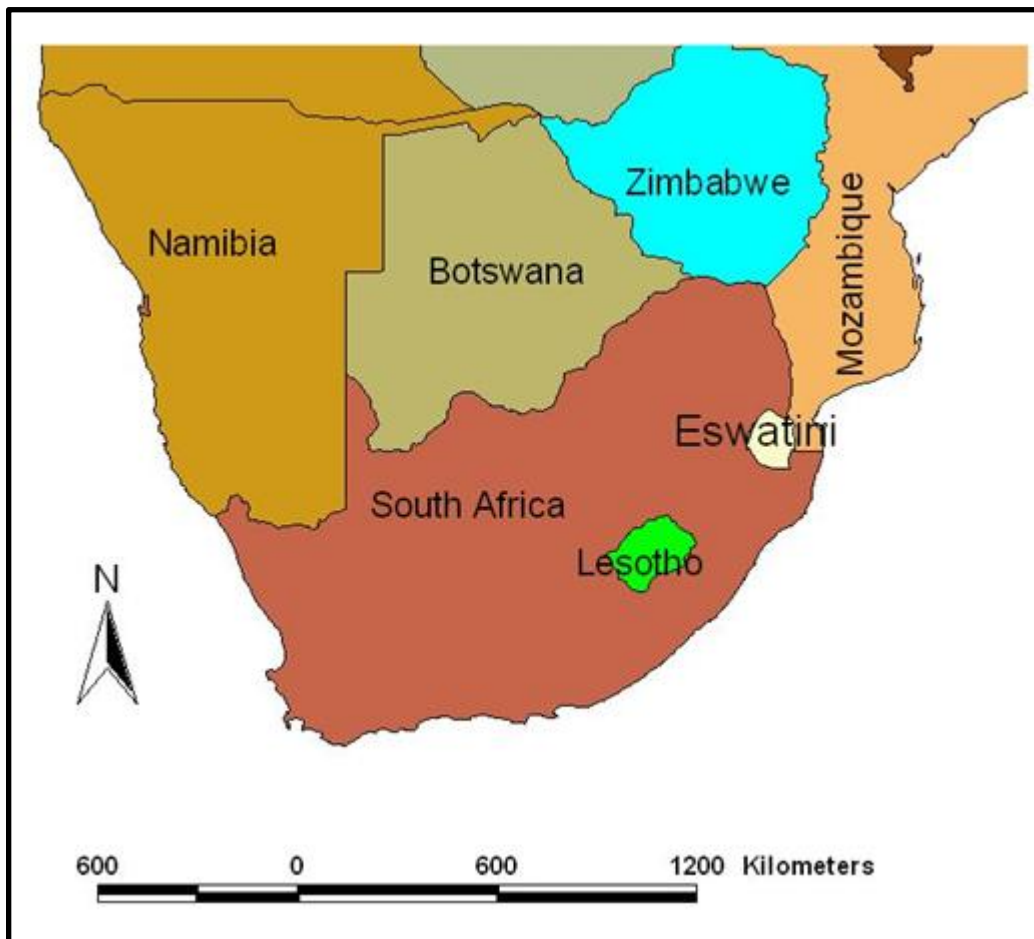


Figure 1: Map showing location of Eswatini

For administrative purposes, the country is divided into four administrative regions (Figure 2). The administrative regions are Hhohho, Manzini, Shiselweni and Lubombo with their

administrative capital towns (cities) being Mbabane, Manzini, Nhlangano and Siteki respectively (Figure 2).

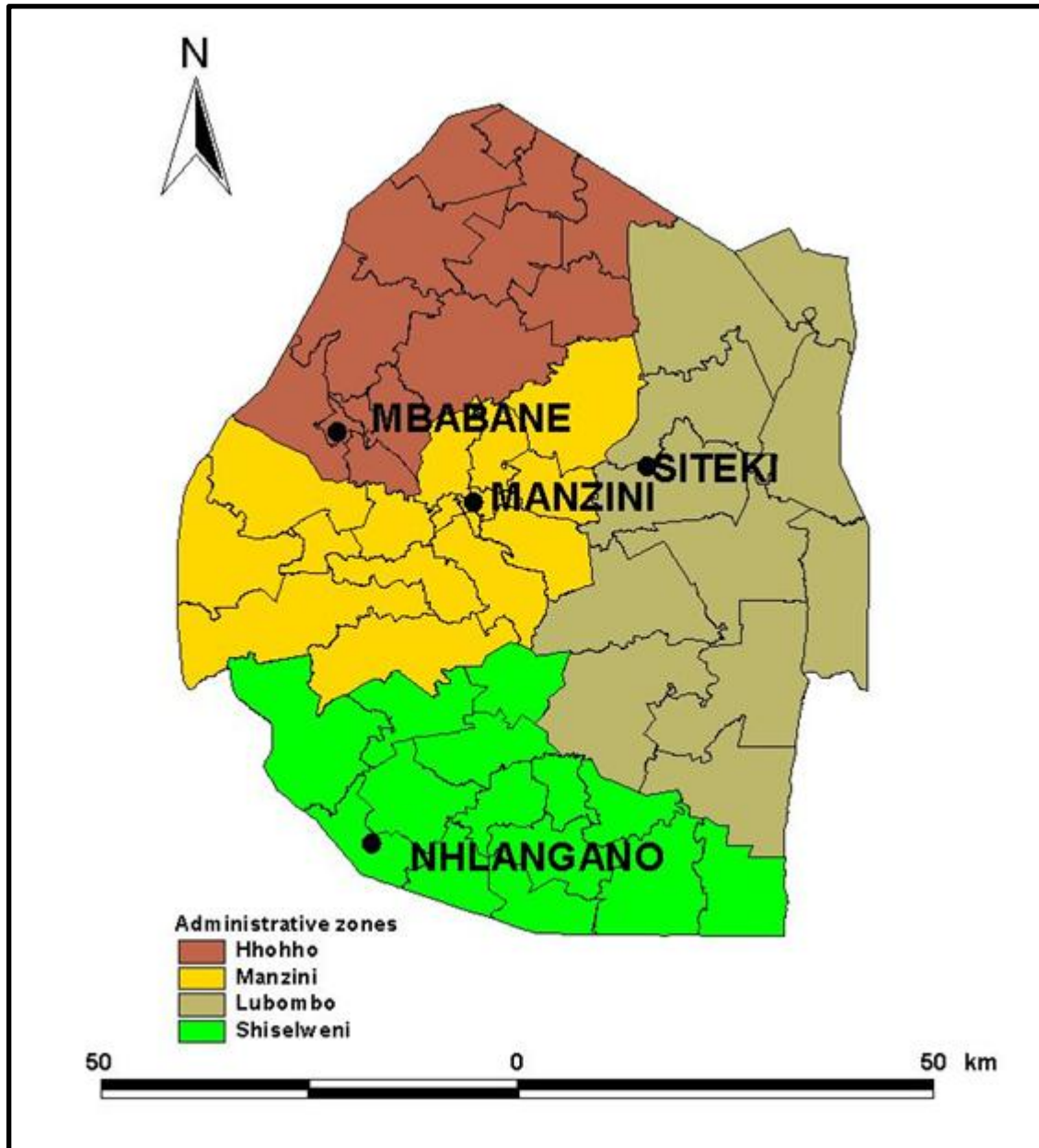


Figure 2: Administrative zones of Eswatini, with boundaries for the respective Tinkhundla centres

Each administrative region is headed by a Regional Administrator who is appointed by the King. Mbabane is the administrative capital city of the country. The population density for the administrative regions is presented in Table 1. The population density for Hhohho and Manzini

regions are above the national average density of 63 persons/km². Population density for Hhohho was 89 persons/km², while that for Manzini was 87 persons/km². The population for Shiselweni region was decreasing over the past 10 years. This could be due to lack of job opportunities in the region and poorly developed and maintained infrastructure such as roads. It is estimated that the urban population for the country is 21.3% of the total population with the rate of urbanization being 1.41% (Index Mundi, 2018). The country is further divided into 59 *Tinkhundla* centres. The numbers of *Tinkhundla* for Hhohho, Manzini, Shiselweni and Lubombo regions are 15, 18, 15 and 11, respectively (Government of Eswatini, 2019A). *Tinkhundla* act as constituencies for national elections, and the centres play a role of local government and they foster development programmes. The country has a total of 385 chiefdoms, and under each *Inkhundla* there are several chiefdoms.

The country is recognised as having four broad ecological zones that are distinguished by altitude, rainfall, geology and vegetation: the Highveld, Middleveld, Lowveld and Lubombo (which shares same name with administrative zone (Figure 3). The mountainous Highveld lies on the western side of the country. Steep slopes, incidence of frost, sour grasses and some poor soils restrict the agriculture of the Highveld to mainly grazing activities.

Eswatini/Region	Area (km ²)	Population	Density (persons/km ²)	Annual growth over 10 years
Eswatini	17,349.98	1,093,238:	63	0.7
Hhohho	3,319.37	320,651	89	1.3
Manzini	4,107.85	355,945	87	1.1
Shiselweni	3,784.46	204,111	54	-0.2
Lubombo	5,838.30	212,531	36	0.2

Table 1: Population distribution for country and administrative regions (Source: Gov. of Swaziland, 2017A)

Only 3% of the area in the region constitutes good arable lands although 10% of the area is classified by Murdoch (1968) as having a fair potential for crop agriculture. Lying to the east is the Middleveld, which is generally hilly and includes several large valleys. It is a sub-tropical region, with a drier and warmer climate than the Highveld. Close to 15% of the

Middleveld have arable soils of good to fair quality. The Lowveld lies to the east of the Middleveld and for most part comprise a gentle undulating terrain. About 20% of the Lowveld has good or fair soils. Finally there is the Lubombo zone which borders Mozambique in the east. About 12% of the zone has arable soils of good to fair quality.

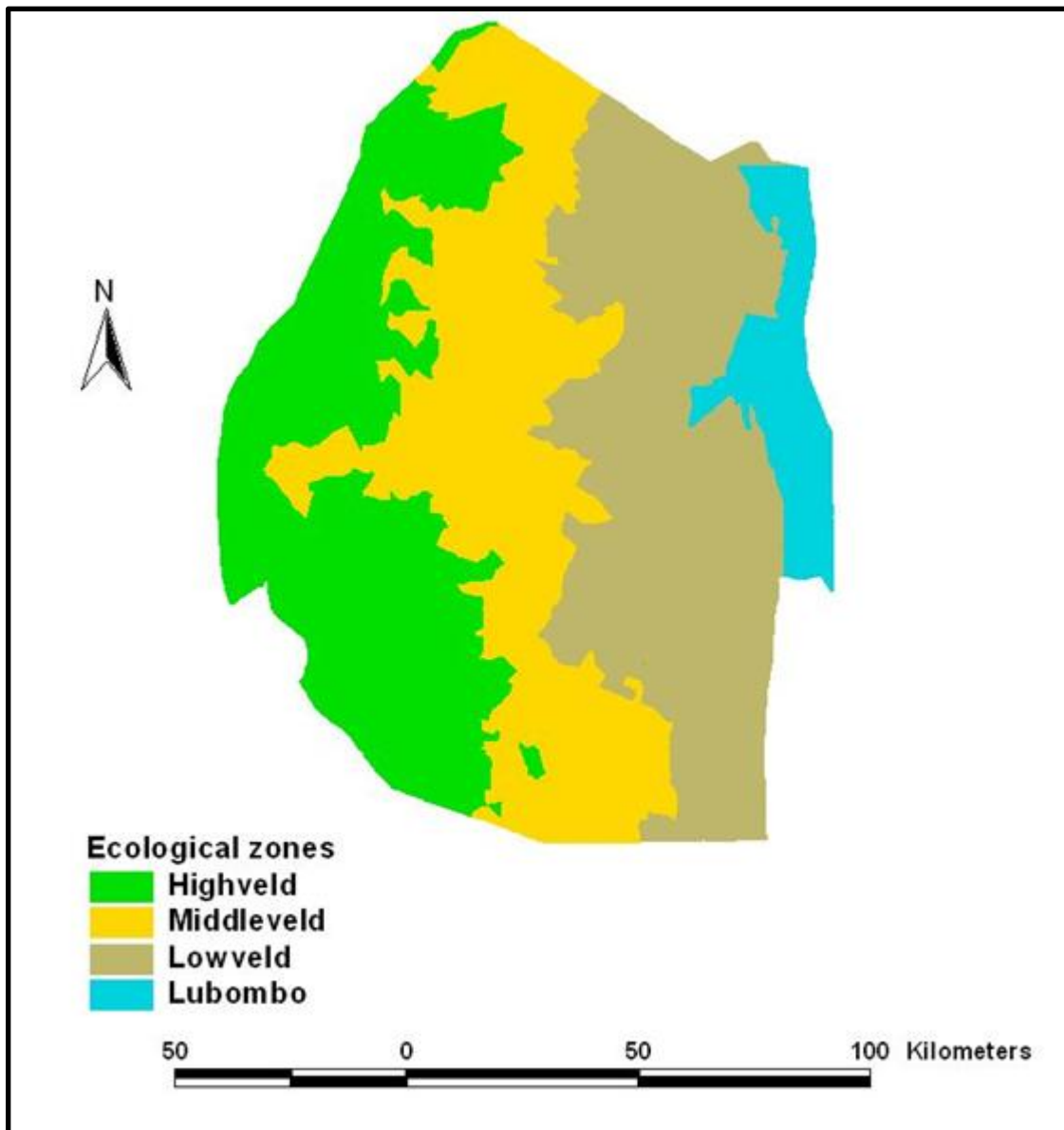


Figure 3: Ecological zones of Eswatini

2. Institutional Framework on Land Governance and Administration

The executive authority of management and governance of land is vested to the King as Head of State by the Constitution of 2005 (Government of Swaziland, 2005). The Constitution established the Land Management Board that is responsible for the overall management and for the regulation of any right or interest in land whether urban or rural or vested in King in trust for the Swazi Nation. The Board is accountable to the King, and the King appoints its members. *Liqoqo* is an advisory council whose members are appointed by the King. *Liqoqo* traditionally advises the King on disputes in connection with selection of chiefs and boundaries of chiefdoms.

The four principal institutions dealing with land governance and administration are chiefdoms (traditional local administration), *Tinkhundla*/Regional administration, urban local administration and the central government (Figure 4).

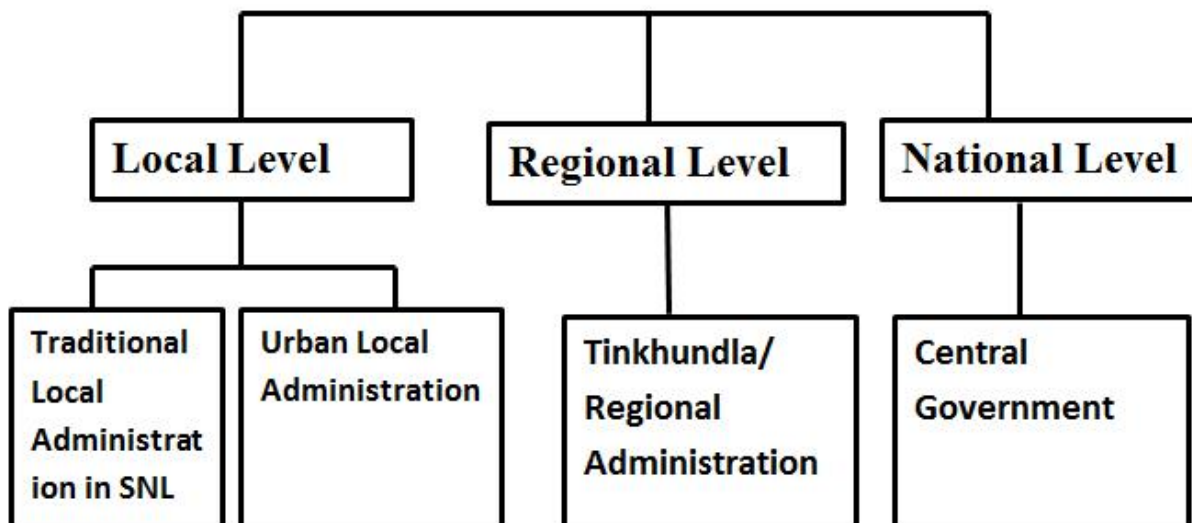


Figure 4: Land governance and administration institutional framework at Eswatini

2.1. Traditional Local Administration

The traditional local administration on SNL is composed of the Chief, *Indvuna* (headman), *Bandlancane* (chief's Inner council), *Bandlakhulu* (council of community members) and *Bagijimi* (Chiefs' runners) (Figure 5). The Chief has overall powers in the community with the *Indvuna* (headman) acting as his deputy and secretary. The position of a Chief is hereditary, while the *Indvuna* is appointed by the chief after consultation with *Bandlancane*. The *Bandlancane* is composed of 5 to 10 members, elected by the chief's royal kraal (*Indlunkhulu*) to advise the Chief on traditional and cultural matters. The chiefs' runners act as a link between the local community and government ministries and agencies of community development. They are elected by the chief's royal kraal (there are often 2 to 3 in a community). Chiefdom development committees are elected by *Bandlakhulu* and work with *Bucopho* in compiling and coordinating ordinary development projects that are taken up with *Tinkhundla* to facilitate implementation.

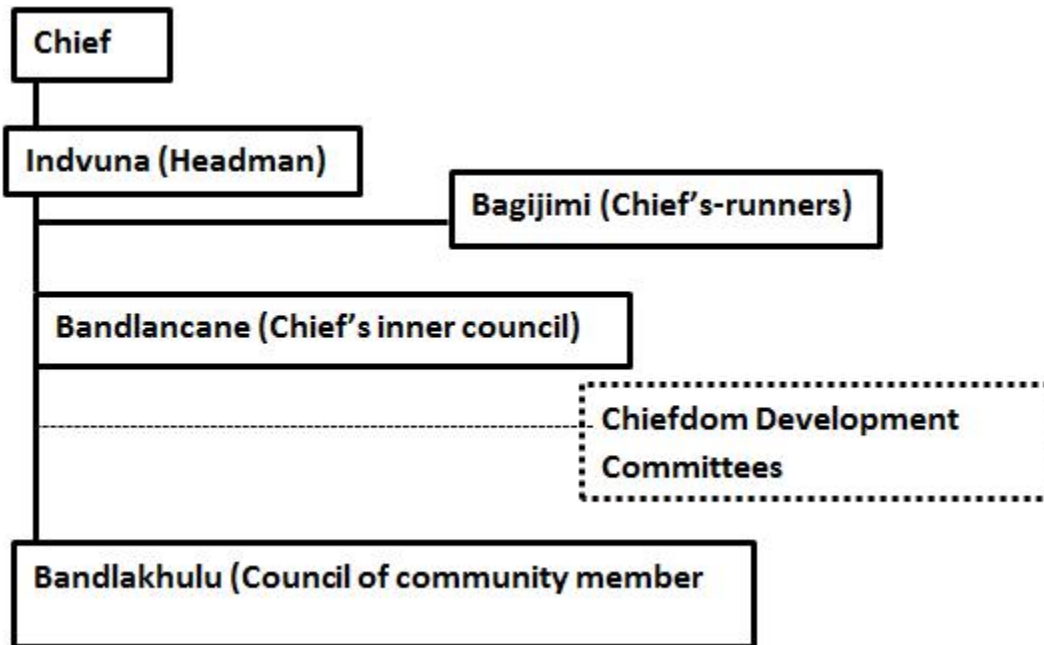


Figure 5: The Traditional local administration on SNL

2.2. Tinkhundla Local Administration

The *Tinkhundla* governance (through *Inkhundla* Council) does not operate on areas with city councils, town councils and town boards, which are found in declared urban areas. The *Inkhundla* Council comprises *Indvuna yenkhudla* (Chairperson), *Bucopho* (Chief Council), Member of Parliament, and *Inkhundla* Executive Secretary who is ex-officio member (Figure 6). *Bucopho* is elected at chiefdom level and there as many *Bucopho* in the Council as there are chiefdoms within the *Inkhundla*. *Indvuna yenkhundla* and Members of Parliament are both elected from among all the chiefdoms within the *Inkhundla*. The Members of Parliament further represents the *Inkhundla* (constituency) in national parliament. The *Indvuna yenkhundla* reports to the Regional Administration on issues affecting the *Inkhundla*.

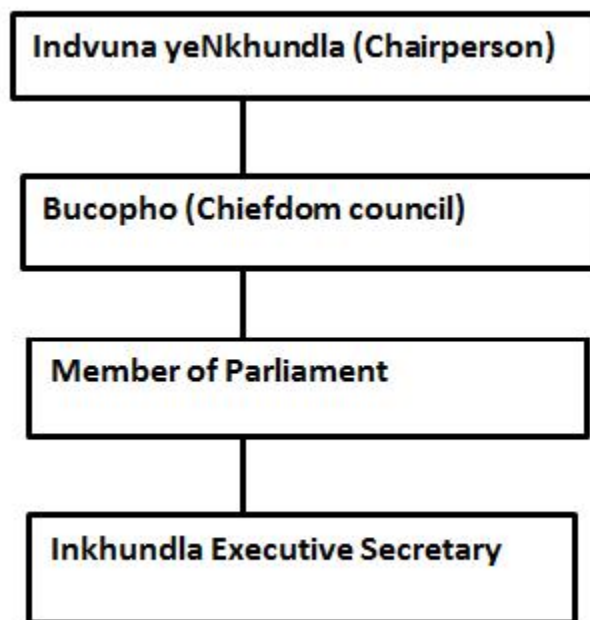


Figure 6: Structure of Tinkhundla council

2.3. Urban Local Administration

The urban local authorities in the country are Town Boards, Town Councils and Municipal Councils. The five town boards are Hlathikhulu, Lavumisa, Mankayane, Ngwenya and Vuvulane. On the other hand there are five town councils. They are Ezulwini, Matsapha, Nhangano, Pigg's Peak and Siteki Town Council. The town boards and town councils are managed by partly elected

and partly appointed board and councils. The two municipal councils are Mbabane and Manzini. They are administered by fully elected council. Urban local authorities are responsible for the control, management and administration of the town in which they have jurisdiction. They have power to levy rates, promulgate by-laws, approve building plans and control building activities. Urban local administration does not have powers to the registration and administration of title deed land and such powers are vested with the Deeds Registry in the Ministry of Natural Resources and Energy. However they do sell land to citizens on behalf of government. For example during the period of July to September, 2016, the government made available for sell 25 plots through urban local authorities (Dlamini, 2016).

2.4. Central Government

The central government is headed by the Prime Minister who works with a Cabinet of Ministers. The three ministries that play a major role in land governance are the Ministry of Natural Resources and Energy (MNRE), the Ministry of *Tinkhundla* Administration (MTAD) and the Ministry of Agriculture (MOA) (Figure 7).

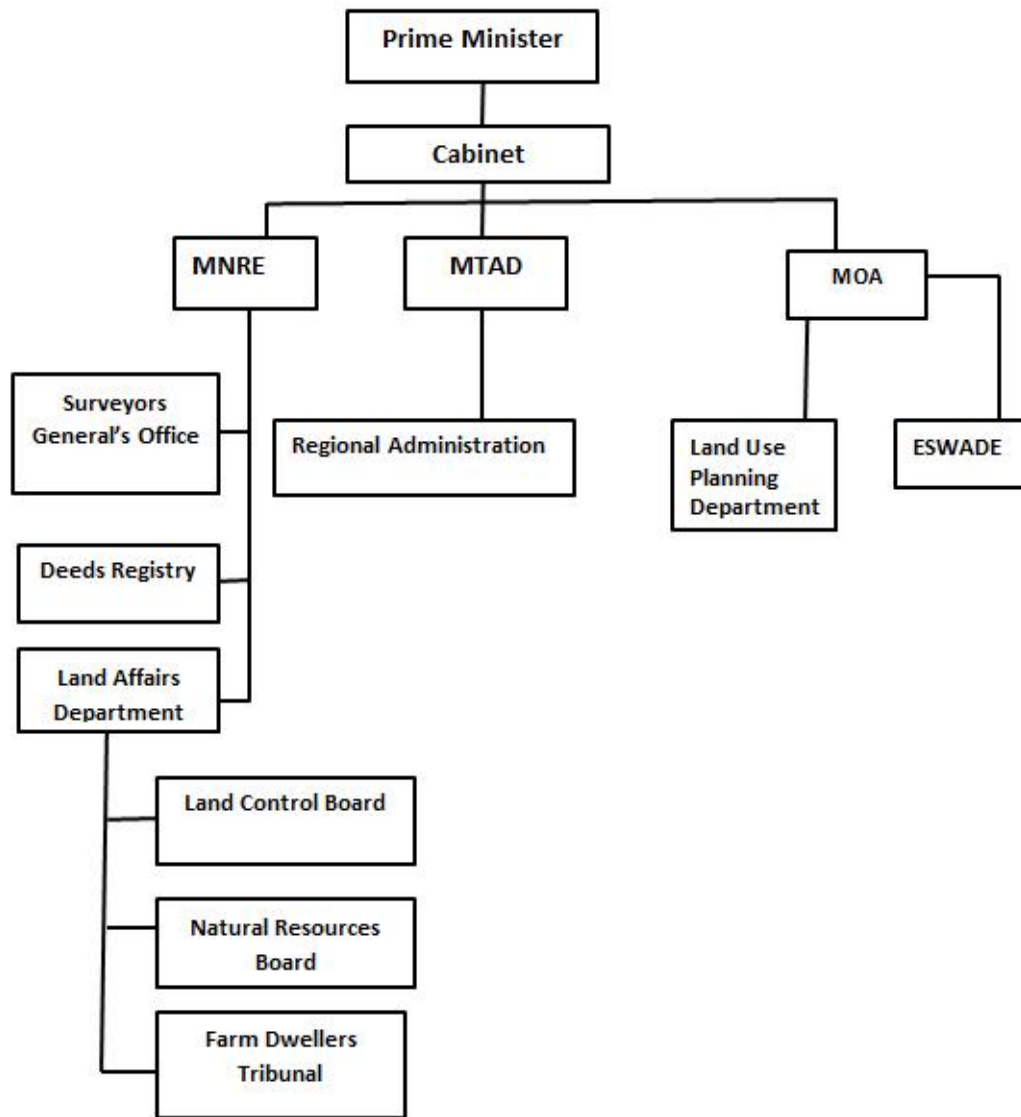


Figure 7: Structure of central government institutions involved in land governance.

The Surveyors General's Office is responsible for undertaking cadastral surveys, while the Deeds Registry examines all Deeds submitted for execution. The Land Affairs Department of the MNRE provides secretarial services to land control and land related boards. The three boards that are central to land governance are the Natural Resources Board, the Land Control Board and the Farm Dwellers Tribunal. The Natural Resources Board was established in terms of Section 3 of the Natural Resources Act of 1951 to do functions related to conservation and improvement of natural resources (Government of Swaziland, 1951). The Board decides on applications for

subdivisions of land. The Land Control Board was established in terms of Section 3 of the Land Speculation Control Act of 1972 (Government of Swaziland, 1972). Its function is to consider applications for consent in respect of a controlled transaction. The Farm dwellers Tribunal was established in terms of Farm Dwellers Control Act of 1982. It consists of District Farm Dwellers Tribunal (for each of the four administrative regions) and Central Farm Dwellers Tribunal (Government of Swaziland, 1982). The main function of the District Farm Dwellers Tribunal is to hear and decide any dispute between farm owner and farm dweller concerning the rights and liabilities under an Agreement. They attempt conciliation and failing conciliation make such order relating to the dispute, including conciliation of the Agreement and the removal of the farm dweller and his family from the farm as it deem necessary. The function of the Central Farm Dwellers Tribunal includes to hear and to determine any appeal by a person aggrieved by any decision of a District Tribunal.

The Regional Administration department under the MTAD facilitates and monitors the implementation of developmental projects that are funded by central government for purposes of economic development at grassroots level. The Regional Secretary liaises with *Tinkhundla* council through the chairperson of each *Inkhundla* on developmental issues.

The Land Use Planning Department of the MOA is responsible for promoting national land use and development of land and water resources on SNL. The Department produces Land Capability maps. It develop land use plans covering resettlement plans, crop and forestry land suitability plans.



3. Legal Framework on Land Tenure

3.1. Tenure Regime

The two basic land tenure forms in Eswatini are freehold land, known as Title Deed Land (TDL) and communal land which is known as Swazi Nation Land (SNL) (Figure 8).

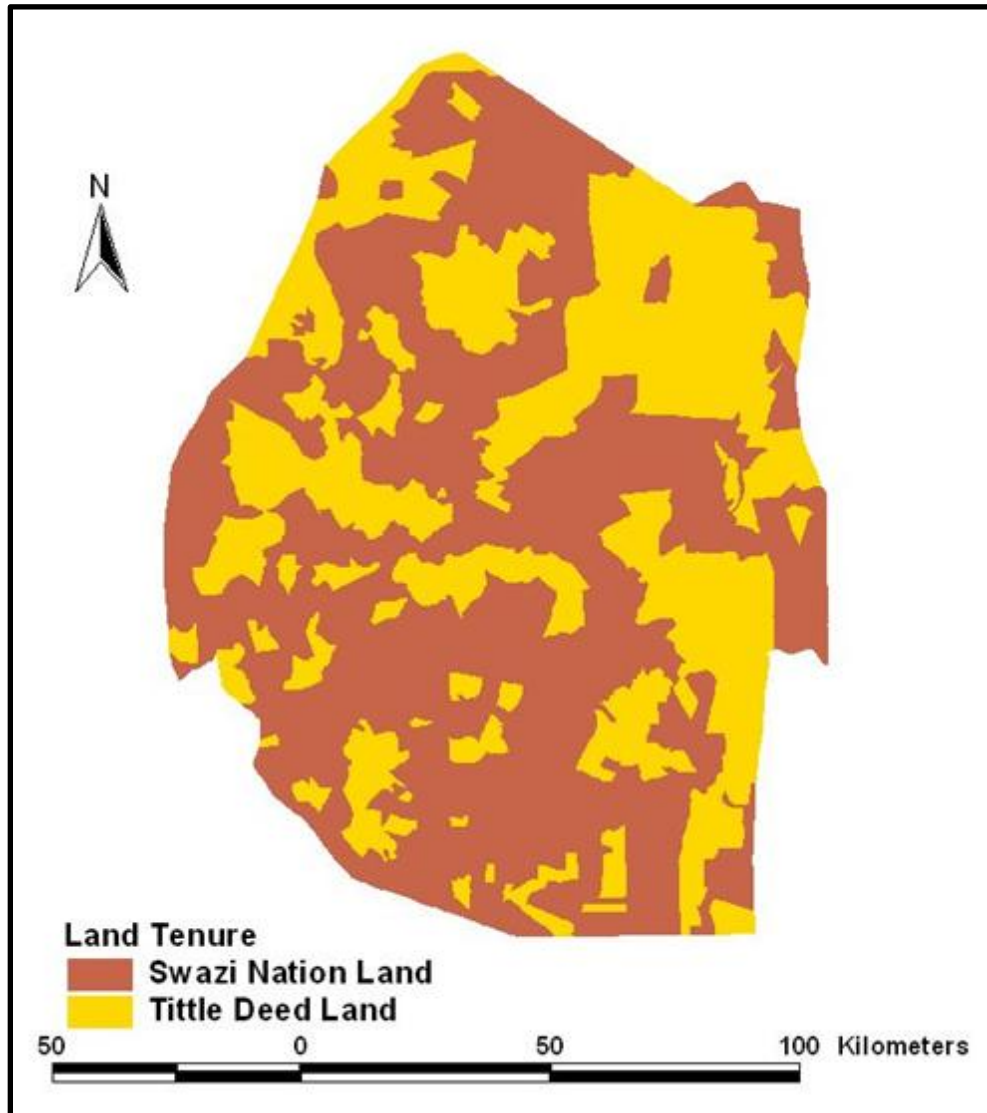


Figure 8: Land tenure system at Eswatini

TDL comprises around 25% of the land while SNL accounts for 75% of the land and is held in trust by the King for the Swazi Nation. Chiefs are the traditional land administrators in SNL. The head of a family who have declared allegiance to a Chief may request from that Chief land to construct

a family homestead and to cultivate. The use of the land is exclusive and the rights are held in perpetuity and include the right of access to common lands for livestock grazing. TDL is mainly used for commercial farming with significant areas under irrigation, whilst SNL is mainly used for rain-fed cropping and grazing. A vast majority of rural Swazis live on SNL, which is subject to customary law and administration.

Of the total land area only 11% are used for crops, with the remainder used for communal grazing (48%), commercial ranching (19%) and commercial forests (6%). Around 16% of land is used for residential purposes, natural reserves, reservoirs, orchards and gardens. SNL held under customary tenure may not be bought, leased, mortgaged or sold, but may be lent or gifted. A person may be given permission to use land for temporal period, and will not have land rights when lent, while the land rights are permanently transferred to the new owner when land is gifted. Land rights may be extinguished by banishment from the chiefdom or by order of the King. Investment in land improvements and commercialisation of agriculture on SNL are constrained by the fact that SNL cannot be used as collateral to obtain loans from banks for agri-business.

3.2. Land Registration

Under customary law, the household head approaches the traditional authority of the chiefdom under which he or she pays allegiance to request for a piece of land to build homestead and to grow crops. The land is demarcated and allocated in the presence of *Bandlakhulu*. The household head is awarded rights to use the land, and not ownership as it is communal land. There is no written evidence of the rights to use the land. The Deeds Registry of Eswatini was established under Section 3 of the Deeds Registry Act of 1968. Its responsibilities include examining all Deeds or other documents submitted for execution or registration and register them (Government of Swaziland, 1968A). They take charge of and preserve all the records of the Deeds Registry and collect revenue for the central government in the form of stamp duties, fees of office and search fees. The Deeds Office records have been computerized since 1995. They can be easily accessed and retrieved. The Office operates its own local network with workstations. The two systems are

integrated so that they check each other whenever a need to do so arises. The office does not yet have a National Land Information System, and the intention is to have it together with a national Information Service Centre (Government of Swaziland, 2017B).

3.3. Enforcement of Land Rights

The Constitution of Eswatini recognises the rights for all individuals to own property, including land. However the majority of the population do not have the financial resources to own land, and they occupy SNL where they cannot own the land, but have the right to use the land. In the event communal land is required by the State for public use, the user is allocated another piece of land for building homestead and for cultivation. The individual is compensated for development on the land. Owners of TDL in both rural and urban settings are registered. In the event that their land is required for public use they are compensated for both the land and developments on the land. The majority of Swazi citizens do not enjoy the right to own land, even though such right is enshrined in the constitution. Forced evictions are common in both SNL and TDL.

3.4. Equity and non-discrimination

The customary laws of the country restrict women's rights to land and personal property. Under customary law and customs, a chief allocates communal SNL to a woman only through her husband, male relative, or male child. Because land rights vest in males, a woman has no security on communal land. Furthermore, a husband married under customary law or civil rights, may exercise his marital power to control community property and income without her consent. The Constitution of 2005 requires allocation of SNL to women regardless of marital status and it permits women to register private property in their names regardless of marital status. The laws dealing with property rights have not been aligned with the requirements of the Constitution, and women are still discriminated in many cases. The fact that women are supposed to be allocated land regardless of marital status and without consent of male relative has not been fully embraced by many traditional authorities.

3.5. Land Markets

Eswatini is a small country with a relative small market for land and property. It is however reported that there are considerable interest from potential investors in neighbouring countries looking to invest in the country (Property, 24). The demand for commercial property was largely fuelled by national infrastructural development, good returns and improved confidence in the country. There was growth and increased property prices for some places where there was limited supply, with high demand and willing cash buyers. Opportunities for residential developments were mostly in and around major towns and gated community estates. The land market in TDL can be considered to be active, judging from the many adverts for land on local newspapers and media.

4. Land Dispute Resolution

With land, there is often an inevitable incidence of conflict and disputes about land access, rights and land use. When disputes arise, there are established means for resolving them.

4.1. Assignment of Responsibility

Statutory law directs that “western courts” have no jurisdiction over dispute cases on SNL. Swazi law and custom expects that land disputes between family members are dealt with at family level, disputes between chiefdom subjects at chiefdom level and disputes between chiefs at national or traditional “central authority” level. Common disputes at family level include inheritance and family member allocations and use rights. Disputes at chiefdom level include allocation of use rights, overlapping/contested use rights and homestead/field boundaries. Disputes between chiefdoms include chiefdom jurisdiction and chiefdom boundaries. The land disputes resolution pathway for Farm Dwellers, TDL and SNL is shown in Figure 9.

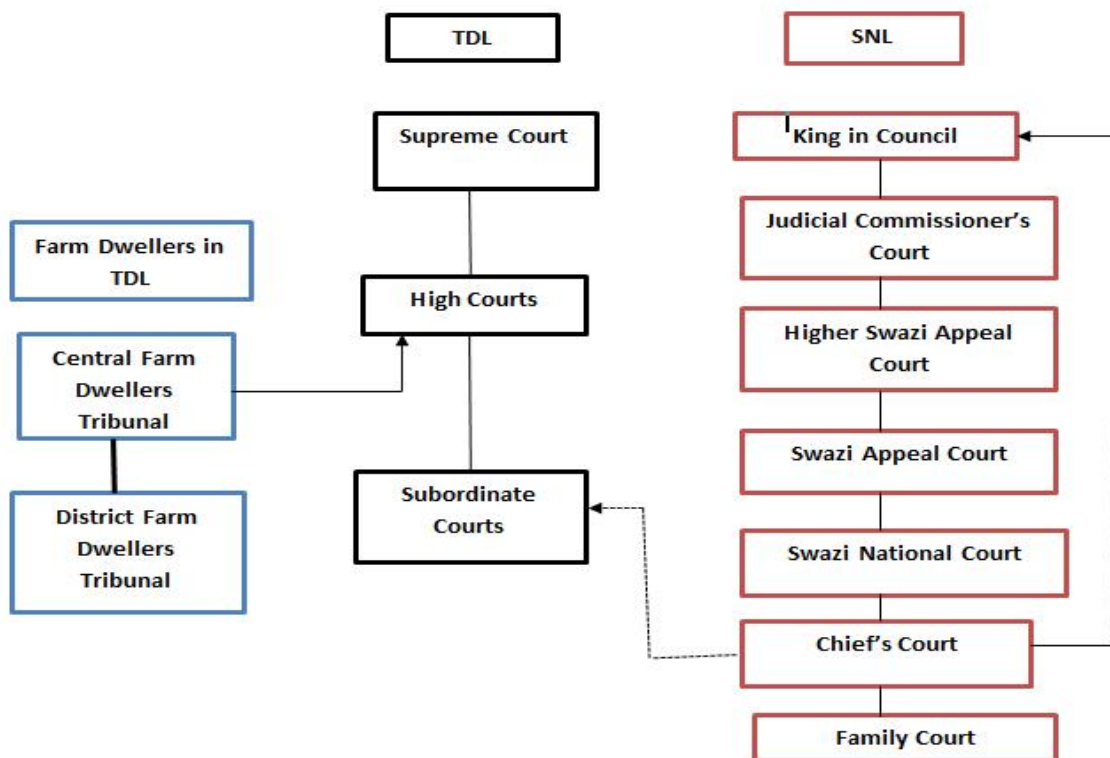


Figure 9: TDL and SNL dispute resolution hierarchy (Source: Adapted from EuropeAID, 2017)

4.2. Conflict Management

At all levels there is an expectation that disputing parties first try to find a mutually accepted solution by negotiation or by mediation. At chiefdom level, most disputes are brought before the inner council (*Bandlancane*), but some may be heard before the council of community members (*Bandlakhulu*). Appeals are permissible up the hierarchy but not across into “western courts”. However “western courts” will entertain a civil matter relating to an SNL dispute. Appeals are referred first to the Regional Administrator who may refer a matter to the King’s Liaison Officer (*Ndabazabantu*) who is the president of the regional Swazi court. Matters relating to TDL are considered in “western courts”. Issues relating to farm dwellers are dealt with first by the District Farm Dwellers Tribunal and matters from District Farm Dwellers Tribunal can be referred to Central Farm Dwellers Tribunal on appeal. They can further be appealed to high courts.

According to the Constitution of Eswatini, the Land Management Board is responsible for overall management and guiding role on land use issues in the county. The Board has intervened in disputes relating to land use issues, albeit on ad hoc basis since it lacks legislation to make it operational. The Board has been vocal and voiced concern on homesteads that were built in wetlands and areas designated for other developments. It has also voiced concern on discriminate allocation of land by traditional leaders and selling of SNL. A Land Bill was presented in parliament with intention to operationalize the Board (Government of Swaziland, 2015).

5. Valuation and Taxation

Land taxation is based on the Land Tax Order of 1974, which established a Land Taxation Board (Government of Swaziland, 1974). The Board consisted of five persons who were appointed by the Minister. It decided on a tax payable by owner of TDL (be it rural land or urban land). The land taxation only applied on TDL. The payment of taxation in urban areas has evolved to payment of annual rates. The rates are based on percentage of value of property at present time, and they differ according to designations; residential properties, commercial properties, urban farmland, government property and vacant land. The tax charged for vacant land tends to be lower than that charged on developed land. For example the rates assessment for residential property in Manzini was at 0.0049 (0.49%) of the value of land and 0.00697 (0.697%) of the value of improvement. Table 2 is a typical illustration of rates payable to a residential property for the 2017/2018 financial year.

Category	Value (R)	Rate (%)	Rates Payable (R)
Land	500,000	0.49	2,450
Improvements	750,000	0.697	5,227.50
Total	1,250,000		7,677.5

Table 2: Typical calculation of rates payable to a residential property for 2017/2018 financial year (Source: Manzini City Council, 2017)

Stamp duties are collected in terms of the Stamp Duties Act of 1970 (Government of Swaziland, 1970). They are charged in accordance with the Scheduled stamp duties and paid when making transactions for immovable property, including land. The payment of transfer duty is in terms of the Transfer Duty Act of 1902. It is paid for transfer of immovable property, including land. The duty is paid based on percentage of the value of the property (Government of Swaziland, 1902). When selling the property, the seller makes a declaration, stating the value of the property being sold. Search fees are paid when information on deeds is required. The search fees charged for different activities in Rands are (i) search fees over the counter (R10), (ii) search fees in detail (R18), (iii) copy of title deed (30), (iv) copy of bond/lease (R50) and (v) copy of trust deed (R50) (Government of Eswatini, 2019B).

6. Land Use Planning and Control

6.1. Land Use Planning Framework and Process

The establishment of human settlements in urban areas is controlled by the Human Settlements Authority Act of 1988. The Act established the Human Settlement Authority which assists the government on formulating policy relating to human settlements. It ensures orderly development of existing and future urban and rural settlements (Government of Swaziland, 1988). The Act requires that a person desiring to establish a human settlement, housing scheme or private housing scheme shall submit an application in writing to the Authority. The Authority may either grant or refuse an application for permission to establish a human settlement, based on their judgment.

There is no specific law or legislation that control rural or agricultural land use in TDL. The Environmental Audit, Assessment and Review Regulations of 2000 regulate and controls all land uses from the environmental point of view. Under the Regulations, land owners/proponents of development have to obtain an Environmental Compliance Certificate (ECC) from the Eswatini Environment Authority (EEA) before undertaking any development on the land. Proposed projects are categorized into 3 categories. Projects under category 1 include residential development not exceeding three houses and renovation of existing structures. Projects under category 2 include medium-scale agro-industry and medium scale irrigation projects. Projects under category 3 include dams, reservoirs and large scale agriculture. For a project that is classified under category 1, the EEA issues an ECC without the proponents having to present an Environmental Impact Assessment (EIA) report. For a project that is classified under category 2, the proponents are required to prepare and submit Initial Environmental Evaluation (IEE) and Comprehensive Mitigation Plan (CMP). The EEA will only issue compliance certificate if satisfied with the reports and that the CMP adequately addresses the identified environmental impacts. A proponent of a project classified under category 3 is required to undertake a consultation process that involve and include affected government agencies, local authorities and other interested and affected persons to help determine the scope and effect of the project or work to

be carried out. It is during the consultation that land use and land governance issues may be raised by local authorities and other affected persons.

The Land Use Planning Department of the MOA is designated to prepare land use plans on SNL after undertaking surveys and inventories of the land resources. However the practice is that they only carry out land use planning for communities/areas where a land use or resettlement project that is funded by the national government or its development partners (such as ESWADE) is to be implemented. The traditional structure (through *Bandlancane*) is responsible for allocating land to homestead heads to build homes and to cultivate crops. They also designate areas for other uses such as community grazing, graveyards and building other community structures such as schools, churches and shops.

The urban local administration is responsible for land use planning in urban areas. They do this through zoning the land for different uses in each urban area. Before land can be developed, the developer submits a plan to the local administrator for consideration. The plan could either be accepted, or referred back for modifications or rejected. On the whole the process of land use planning is efficient and transparent in urban areas.

6.2. Delivery of Service

The development of the towns and cities along with the expansion of industrial sites brought with it demand for labour, which was met by rural dwellers moving to the urban areas. When they arrived, however they found there was little or no formal housing to accommodate them. They were drawn to the areas where Swazis had already settled, in the peri-urban informal settlements (Government of Swaziland, 2007). The informal settlements in most cases started as temporary shacks, and as peoples' residency stretched into decades; old structures began to be replaced with houses constructed using modern methods. Urban areas are declared only on TDL, and not in SNL in Eswatini. The informal settlements in TDL within urban area boundaries tend to be located in steep and inaccessible land which has been disregarded for development by the formal sector. There is no service provided. The population densities within the informal

settlements tend to be very high. In most cases it was not possible to extend the declared urban area without encroaching on neighbouring SNL. Under such situation, the SNL is barrier to both urban expansion and local authorities' ability to make sufficient serviced land available to accommodate the incoming Swazi population.

6.3. Development Permits

Applications for development permits in urban areas are submitted to the local authorities. The Ministry of Housing and Urban Development provide building plan scrutiny and approval services for public buildings. When there is a building to be constructed, the agent will fill out an application form and pay an application fee on submission. The processing of application for development is in accordance with the Building Act of 1968 (Government of Swaziland, 1968B) and local government regulations. The fee for application to obtain approval of structures is 1% of construction cost plus R10 for submission fee (World Bank Group, 2019). It takes about six weeks on average to get the plans approved and receive building permit. The time taken to request and obtain ECC from the Eswatini Environment Authority is 42 days on average and it cost R2,000. This is made up of submission cost of R1,500 and additional R500 for resubmission after receiving comments from initial submission. No permits are required for developments in SNL.

6.4. Land Use Control

The urban local authorities are responsible for land use control in towns and cities. They do this through zoning areas according to allowable land uses and issuing of development permits. The urban local authorities formulate and enforce local building regulations. The status of tenure in some informal settlements is disputed. Residents would claim that the areas are under SNL, and not TDL. They would not recognise authority of the urban local authorities. Under such situations there is poor control of land use. Land use control in TDL outside the urban local authorities is through requirement for ECC that is issued by the Eswatini Environmental Authority. The traditional authorities allocate land and control how it is used in SNL. A number of factors have led to failure of land use control in communal land. They include high population pressure in places adjacent to urban areas, chieftain disputes and lack of authority to enforce control by

traditional authorities. Homesteads at times are built in areas that had previously been reserved for other uses such as communal grazing and arable agriculture.

6.5. Climate Change and Environmental Management

The government of Eswatini developed and approved a Climate Change Strategy and Action Plan (CCSAP) in 2013. The document recognised the fact that increasing human population have led to unplanned and un-serviced settlements making them more vulnerable to adverse effects of climate change and environmental related disasters. It called for regulated land use in both SNL and TDL. Regulated land use would also be the first line of action for addressing many environmental problems. It would incorporate climate change consideration and integrated environmental management. The following were sub-actions proposed by the CCSAP (Government of Swaziland, 2013A).

1. Develop and implement land use plans and regulations that take into account climate related risks.
2. Strengthen and expand building design standards and codes to cover all areas taking into account climate-related risks.
3. Improve settlements of communities living in climate change risk prone areas.
4. Relocate settlements from climate change high risk prone areas.

The CCSAP has not been implemented up to date, and the legislation to make it operation has not been enacted. The issues of climate change and environmental management are not integrated into the land use planning in a systematic way.



7. Management of Public Land

7.1. Public Land Inventory

The Land Evaluation Department of the Ministry of Natural Resources and Energy is responsible for undertaking appraisal and valuation of public fixed assets which include mainly land and buildings. It provides real estate consultancy services to all government departments. The information from appraisal and valuation is not made public and it is for government use. An inventory and valuation of SNL has not been undertaken.

7.2. Expropriation

Expropriation of land is done through the Acquisition of Property Act of 1961 which give powers to the Minister to acquire any real property needed for public purposes. It states that the Minister may agree with the owner of real property needed to purchase of such property or such portion of the property required (Government of Swaziland, 1961). The amount of compensation to be paid to the owners is agreed upon by the property owners and Minister. In determining the amount of compensation the factors to be taken include the market value of the property, any increase in the value of property and reasonable expenses incidental to a change of residence or place of business.

7.3. Allocation of Public Land

The allocation of communal land (SNL) follows Swazi customary law, where a chief allocates land to household heads of his subjects. Household heads from other chiefdoms are allocated land through the process of *kukhonta*. This is done through paying allegiance to the chief where they sought to get land. The process of *kukhonta* is transparent and is witnessed by the council of community members. On the other hand, allocation of public land in TDL is governed by the Crown Land Disposal Act of 1911 (Government of Swaziland, 1911). Crown land (government land) is allocated to individuals or companies who intend to make developments that would benefit the public. The benefits could be in the form of employment opportunities brought about by investments. Crown land is also allocated to citizens for individual use through town and city councils. Government farms within the vicinity of towns are often surveyed and subdivided into



plots for expansion of the towns. The public land is then advertised and sold by urban administrators. The land is often sold through open bids with highest bidder getting it. Public land is also allocated to individuals for private use under situations where the individuals have been displaced from the land they had occupied in order to accommodate public use of the land they had occupied.

8. Land Information

The Surveyor General's Office under the MNRE maintains trigonometric network in the country. It undertakes topographic and cadastral surveys on government land and SNL. It is responsible for approval of cadastral surveys from private surveyors. It maintains all survey records, cadastral maps and makes surveying products available to the public at a fee. On the other hand, the Deed Registry keeps information on registration and transfer of property (land). The Ministry of Housing and Urban Development (through the Housing and Settlement Department) and the urban local administration keep information on acquisition, development and use of property for TDL in urban areas. Land information on SNL is lacking, as it is not collected or kept.



9. Key Challenges in Land Governance

The key challenges that hinder land governance in the country are delays in enacting legislation to enable proper function of Land Management Board, lack of information on land boundaries on SNL, prevalence of forced evictions, disputes between chiefdoms on boundaries, lack of land ownership rights, and dispute resolution mechanism.

9.1. Enacting of Relevant Legislation

The National Land Policy was drafted in 2000 and improved in 2013 (Government of Swaziland, 2013B) but it remains a draft. Land administration is regulated by various pieces of legislation pertaining to SNL and TDL. The draft policy aims to: (i) improve land access and secure tenure; (ii) encourage rational and sustainable land use; (iii) improve productivity, income and living conditions and reduce poverty; (iv) reduce land-related conflict; (v) develop an efficient and effective land administration system; and (vi) encourage land ownership by Swazi citizens. The draft policy introduces new elements including: (i) removal of gender bias in land tenure; and (ii) compensation for expropriation of land ownership or rights to reflect the extent of economic loss (EuropaAid, 2015). The draft Policy also provides for sub-leasing or reallocation of unused SNL. These initiatives however require legislative backing to become effective.

A Land Bill which backs up the draft Policy was also tabled in parliament and waiting approval (Government of Swaziland, 2015). The Land Bill specifies persons who may hold title to land and who may not. It states the methods of acquisition of title to land, that includes *kukhonta* (paying allegiance to a Chief) on SNL. It intends to operationalize the Land Management Board. The Bill recognized the practice of selling SNL, and it emphasizes that it is illegal. It does state that such person acquiring a piece of land that was occupied, has some improvements may compensate the previous owner, provided the new occupier acquires the piece of land with improvements through *kukhonta*. The Bill transfers the Department of Land Affairs to be under the Land Management Board. It establishes the Land Settlement Fund and the Sub-division of Land Committee. The Land Bill seeks to repeal 18 laws that deal with issues of land governance as they

were consolidated in the Bill. They include the Natural Resources Act of 1951, The King's Order in Council of 1954, the Sub-division of Land Act of 1957 and the Land Speculation Control Act of 1972. One of the constraints in commercialization is that currently SNL cannot be used as collateral for sourcing loans on banks. To overcome this problem, the Swazi Nation Land Agricultural Commercialization Bill has been presented to parliament for consideration (Government of Swaziland, 2016). The Land Bill of 2015 compels chiefdoms to set aside agri-business land.

The Swazi Nation Land Agricultural Commercialization Bill states that a person is entitled to apply for designation and allocation of land for agri-business. The land should have been surveyed by Surveyor General, and its boundaries should have been appropriately marked in terms of the land survey laws of the country. An Agri-business Commercial *Khonta* Certificate shall be registered with the Kings Office. Speedy approval of the draft Land Policy and enacting of the two Bills would operationalize the Land Management Board.

9.2. Cadastral Mapping and Land Information System

The implementation of the proposed Land Act (Land Bill of 2015) and the Swazi Nation Land Agricultural Commercialization Act will require updated and detailed cadastral information. The scale of mapping for most of the cadastral information is at 1:50,000. There is a need to update the cadastral information and present it at an appropriate scale (for example at 1:5,000). Boundaries for chiefdoms have not been adequately identified, verified and mapped. The operationalization of the proposed Land Act will require verified and agreed upon chiefdom boundaries. To undertake this activity the Surveyor General has to work together with the traditional structures and the Regional Administrators. The chiefdom boundaries should be marked and geo-referenced. A National Land Registration System for SNL should be developed. The system should be computer-based and geo-referenced for ease of retrieval and updating of information. The system should be integrated into the National Land Information System that is proposed by the Deeds Registry.

9.3. Land Ownership and Rights

The Constitution of Eswatini states that a person has a right to own property either alone or in association with others (Government of Swaziland, 2005). It states that a person shall not be compulsory deprived of property or any interest in or right over property of any description. It places conditions on, or exceptions for depriving of property. The exceptions include situations where the taking of possession or acquisition is necessary for public use and where compulsory taking of possession is made under a law. It states that the law should make prompt payment of fair and adequate compensation. Such has been practice of late in events where communities or individuals are resettled to give way for development such as building of roads, irrigation schemes and other infrastructure of national importance. In the case of TDL, those affected are compensated for value of the land, any improvement on the land or loss consequent upon that deprivation. However those on SNL are compensated only for improvements on the land and to some extent loss consequent upon that deprivation. Customary rights which refer to the enjoyment of some uses of land that arises through customary, unwritten practice rather than through written codified law are not considered for compensation. Communities are often denied the rights to utilize land resources in adjacent TDL (farms). When they are allowed to do so, they are often issued with permits. The worse scenario is where livestock from communal land stray into private farms which may not be properly fenced. The livestock are often pounded and owners are made to pay heavy fines for their release. The farm Dwellers Control Act of 1982, which is principal instrument below the Constitution in matters of eviction from TDL, does not address itself to any substantive rights of the dwellers. Despite the Constitution being specific about individual's rights, evictions are still common in the country.

The Land Bill of 2015 proposes title for SNL, as in the case of TDL. Such title would be in the form of *khonta* certificate to be issued by chiefdoms where a person has paid allegiance, and awarded land. Customary land was issued through *kukhonta* only to male subjects. A female could approach chiefdoms for *kukhonta* with a male relative, irrespective of age. After the enactment of the constitution, every adult person has a right to acquire land through *kukhonta*. However,

females are still being discriminated upon in some chiefdom and not given land until they were accompanied by male relatives.

9.4. Forced Eviction

Forced eviction is described as a permanent or temporal removal against their will of individuals, families and/or communities from the homes and or/land which they occupied without provision and access to appropriate forms of legal or other benefits (Committee on Economic, Social and Cultural Rights, 2014). The practice of forced eviction is common in Eswatini. Chiefs would issue eviction orders for customary crimes such as where a resident defied orders from the King, or where one was convicted for serious crime by the court, such as murder. Customary evictions and banishing on SNL often happen without being recorded.

A typical and famous case of eviction and banishing was that of Mzikayise Ntshangase who was a Chief of Mkhwakhweni area in the Shiselweni region of the country. Mr Ntshangase was stripped his powers of being a Chief when his relative took a King's daughter to be his wife. Culture dictates that the brother who took a King's daughter as his wife resumed the status of being senior in the clan, and had to take over the chieftainship. Mzikayise Ntshangase was further banished from his home. He died while in banishment. His family intended to bury him at his ancestral place, but the traditional authorities ruled that he should not be buried at his homestead because he had been evicted. He was eventually buried at his home after a long-running court battle by the family of the deceased, which ended when the Supreme Court ruled in his favour. His body was in mortuary from December, 2002 to December, 2007 (BBC, 2007). Another prominent case was that of 200 KaMkhweli and Macetjeni residents who were evicted with their chiefs. KaMkhweli and Macetjeni are situated in the Lubombo region of the country. The people were evicted after they refused to accept a senior royal prince as their Chief. The two chiefs, Chief Mtfuso Dlamini of Macetjeni and Chief Mliba Fakudze of Macetjeni had been stripped their powers as chiefs and the senior prince was declared Chief of both areas. The residents were evicted by the army at midnight of 13 September, 2000. The Appeal Court of

Swaziland declared their eviction illegal (IOL, 2002). The government decided not to respect the decision of the Appeal Court and the chiefs together with their subjects remained evicted. The chiefs with their families took refuge in South Africa.

Apart from the customary evictions, court ordered evictions from TDL also exist. Some dwellers in TDL may have resided in a farm for generations and in some cases even prior to the demarcation of the area as TDL. Conflicts often arise when the owner of TDL intends to develop the farm and seeks the eviction of the people residing there.

Farm dwellers consisting of 20 families were forcefully evicted from a farm at Nhlalambili, which is in Lubombo region of the country in 2006. The residents were served with letters of eviction by lawyers of Mkhaya Game Reserve in 2004. Some of the residents claimed that they had settled in the area over a long period of time, spanning over 60 years (Nhlabatsi, 2018). Most of them were born there and their ancestors' graves are located within the farm. The dwellers approached the District Farm Dwellers Tribunal, who could not conclude the issue. They were advised to seek a redress under Swazi customary law by appealing to the King while the matter was simultaneously being pursued through the Farm Dwellers Tribunal. The Ligoqo in March 2006 issued an order that the residents evacuate the area within 6 months. They were evicted to a government farm that was 6 km from their original land. The evictions were forceful and were without compensation.

In April, 2018, 65 farm dwellers were forcefully evicted from a farm at Malkerns, in the Manzini region. The people were from 4 homesteads that were demolished by bulldozers during the operation of eviction by the deputy sheriff with a support of armed police (Amnesty, 2019). The families had initially moved from a land they had been occupying in order to make way for timber harvesting. They were resettled on the piece of land from which they were evicted in April 2018. The evictions were carried out in pursuance of a High Court order of July 2017. The affected people were not provided with any alternative accommodation, forcing some of them to take refuge at a local school. Others slept in the open at the site of the demolitions with their

belongings. The residents did not get any compensation, not even for the improvements in the form of their dwelling structures.

9.5. Disputes between Chiefdoms

When the boundaries of chiefdoms in Eswatini were first established, their boundaries were often not specific and only indicated approximately. They were “up to such-and-such a mountain” or “across a certain stream”. When pressure on land was light, boundaries were not of great consequence. As the density of population increased, there was a tendency to define them more accurately (Rose. 1987). Inter-chieftain land disputes fracture social relationships, and they divide the residents who may be staying in the same location. They ordinarily involve boundaries and are usually provoked by development projects. Such projects require that boundaries and chiefly jurisdictions be specified. The option open to aggrieved chiefdoms on land disputes is an appeal to the *Liqoqo*. Such an action requires years to be processed, as national bureaucracy proceeds slowly. Inter-chieftain land disputes often result in evictions for those who are in the land that will be declared to be not falling under the chiefdoms to which they have been paying allegiance.

9.6. Dispute Resolution Mechanism

The land dispute resolution mechanism follows three paths in the country. The Farm Dwellers Control Act of 1988 is the central legislation below the constitution on land disputes relating to farm dwellers on TDL. The act primarily considers the holder of the title as the sole and rightful owner of the land. It does not consider the circumstances under which the dweller happened to occupy the land. It does not consider cultural and customary rights of the farm dweller. There may be cases where ancestors of present day farm dweller had settled in the area before it was declared TDL. More so farm dwellers pay allegiance to the Chief in the vicinity of the farm, as every citizen (be the person resident on SNL or TDL) pay allegiance to a Chief, and official documents such as National Identity Cards and Passports have to reflect the Chief under which the person pays allegiance. The perception of the farm dwellers may be that the Chief and

traditional authority has jurisdiction over the farm. This was the case of the farm dwellers who were eventually evicted from a farm at Nhlalambili in 2006. They sought a redress under Swazi customary law, yet customary law does not apply to TDL. The Constitution of Eswatini guards against compulsory deprivation or taking any interest in or right over property unless it is for public purpose and public benefit. The High Court judgment that authorized evictions of families in Malkerns in 2018 was under the premises that the owner of the farm could not be directed to compensate those being evicted from the farm as the rights of farm owner would be infringed. This shows that the Farm Dwellers Control Act needs to be reviewed, and harmonized with the Constitution of the country. Land disputes on TDL are handled through the courts, which are considered to be independent and transparent.

The chief's courts are the cornerstones of settling land disputes on SNL. However land disputes between chiefdoms are dealt with by the *Liqoqo*. The powers of traditional local authorities have been eroded in some communities because of chieftaincy disputes and loss of authority and respects by traditional leaders. Some traditional leaders lack authority and capacity to deal with land disputes. There are many layers above the chief's court in the event appeals are lodged. This results in delay in finalisation of the disputes. A land dispute resolution tribunal should be established for SNL.



10. References

Amnesty (2019). Eswatini: One year on, forcibly evicted Malkerns residents left broken and in poverty.

BBC (2007). Swazi Burial after five-year wait. <http://news.bbc.co.uk/2/hi/africa/7135764.stm>

Committee on Economic, Social and Cultural Rights, General Comment No. 7 (2014). Forced Evictions Fact Sheet No. 25, Rev. 1.

<https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

Dlamini S. (2016). Ministry sells 25 Crown land plots.

<https://www.pressreader.com/https://www.pressreader.com/eswatini/swazi-observer/20161202/281535110604917>

EuropAID (2015). Technical Assistance support to the Government of Swaziland in Sustainable Land Administration and Management: EuropeAid/136656/IH/SER/SZ <https://europa.eu/capacity4dev/file/69707/download?token=MeU1B75E>.

EuropAID (2017). Resolution of disputes on Swazi Nation Land. Technical Assistance Support to the Government of Swaziland Sustainable Land Administration and Land Management (SLAM) Project. <https://europa.eu/capacity4dev/file/69707/download?token=MeU1B75E>.

Government of Eswatini (2019A). Tinkhundla administration. <http://www.gov.sz/index.php/ministries-departments/ministry-of-tinkhundla-administration/tinkhundla-administration>.

Government of Eswatini (2019B). Search Fee Tarrif. http://www.gov.sz/images/SEARCH_FEES_TARIFF.pdf

Government of Swaziland (1902). Transfer of Duty Act, 1902. Ministry of Justice. Mbabane, Swaziland.

Government of Swaziland (1911). Crown Land Disposal Act, 1911. Ministry of Justice. Mbabane, Swaziland.

- Government of Swaziland (1951). The Natural Resource Act, 1951. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1961). The Acquisition of Property Act, 1961. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1968A). Deeds Registry Act, 1968. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1968B). Building Act, 1968. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1970). Stamp Duties Act, 1970. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1972). Land Speculation Control Act, 1972. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1974). Land Tax Order, 1974. Kings Order in Council. Lobamba, Swaziland.
- Government of Swaziland (1982). Farm Dwellers Control Act, 1982. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (1988). Human Settlement Act, 1988. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (2000). The Environmental Audit, Assessment and Review Regulations, 2000. Ministry of Justice. Mbabane, Swaziland.
- Government of Swaziland (2005). The Constitution Act, 2005. Ministry of Justice and Constitutional Affairs. Mbabane, Swaziland.
- Government of Swaziland (2007). A brief history of urban development and upgrading in Swaziland. Ministry of Housing and Urban Development. Mbabane, Swaziland.
- Government of Swaziland (2013A). Climate Change Strategy and Action Plan. Ministry of Tourism and Environmental Affairs. Mbabane, Swaziland.
- Government of Swaziland (2013B). Draft Land Policy, 2013. Ministry of Justice and Constitutional Affairs. Mbabane, Swaziland.

Government of Swaziland (2015). The Land Bill, 2015. Ministry of Justice and Constitutional Affairs. Mbabane, Swaziland.

Government of Swaziland (2016). The Swazi Nation Land Commercialisation Bill, 2016. Ministry of Justice and Constitutional Affairs. Mbabane, Swaziland.

Government of Swaziland (2017A). Results of Census 2017. Ministry of Economic Planning and Development. Mbabane, Swaziland.

Government of Swaziland (2017B). <http://www.gov.sz/index.php/departments-sp-623334762/deedsnistry> of Natural Resources and Energy-Deeds.

Index Mundi (2018). Swaziland Urbanisation.

<https://www.indexmundi.com/swaziland/urbanization.html>.

IOL (2000). Swazi court rejects eviction of chiefs. <https://www.iol.co.za/news/africa/swazi-court-rejects- eviction-of-chiefs-56382>

Manzini City Council (2017). Rate bill for residential property. Manzini, Swaziland.

Murdoch G. (1968). Soils and Land Capability of Swaziland. Ministry of Agriculture. Mbabane, Swaziland

Nhlabatsi S. (2018). Forced eviction and disability rights in Africa.

https://www.nyulawglobal.org/globalex/Forced_Evictions_Disability_Rights_Africa1.html

Property 24 (2014). Investment opportunities in Swaziland.

<https://www.property24.com/articles/investment-opportunities-in-swaziland/21231>

Rose L.L. (1987). Customary land dispute management in Swaziland. SSRU/UNISWA and University of California-Barkeley. Kwaluseni, Swaziland.

World Bank Group (2019). Doing Business 2019. Economy Profile. Eswatini.

<https://www.doingbusiness.org/en/data/exploreeconomies/eswatini#>