Developing a land governance country assessment for the National Agricultural Investment Plan in Eswatini

A report prepared for GIZ in the context of NELGA

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Executive summary

The government of Eswatini continues to demonstrate its commitment to meeting the African Union heads of States Malabo Declaration and also its own internal programmes aimed at reforming various land related strategies, policies, and legislation. Evidence suggests that some achievements have been made in the last few years, although, rapid changes that government technocrats envision are hampered by slow transformation within the traditional leadership structures of the country.

This report evaluates the country’s status in land governance towards the end of the current Swaziland National Agriculture Investment Plan (SNAIP) to develop country-specific goals, targets and milestones to guide the development of a Malabo-compliant successor to NAIP. The report is informed and guided by the African Union Commission (AUC)/ New Partnership for Africa’s Development (NEPAD) Country Comprehensive Africa Agriculture Development Plan (CAADP) Implementation Guidelines and the National Agriculture Investment Plan (NAIP) Toolkit for Malabo Domestication and the African Union (AU) Agenda on Land. This reports also takes into consideration the African Union Commission (AUC) Biennial Review Guidelines on the implementation of the Malabo Declaration, especially the indicators of relevance to land, such as the proportion of farm households with ownership or secure land rights and the share of agriculture land under sustainable land management practices.

Based on the review of key policies, programme, legislation, relevant literature, and key informants interviews carried out in Mbabane, a major observation this assessment report makes is that while the land issue in Eswatini remains complex and while the land question has yet to be resolved in broader policy and legal frameworks, it is important to acknowledge that bureaucrats are doing their best to improve the situation. However, the lack of both land policy and land law make it difficult to enforce certain strategic decisions about land use and investments in land.

Based on the examination of the land-related policies and how they speak to investments in agriculture in Eswatini, coordination among interrelated sectors and the report highlight existing consistencies and inconsistencies. Therefore, the reports highlights the consistency of the land policies and other land-based policies related to agriculture investments, which is fundamental because, even though the over-arching policy of the national government is to eradicate poverty and increase agriculture productivity, the lack of policy synchronisation can be an impediment to achieving well-intentioned national goals. This assessment report finds consistencies in policies as an important ingredient for effective transformation and improvement in land administration and management in the country.

Since Eswatini has no specific land policy and land act, the major reference document is the country’s constitution. The report recommends as part of the government’s commitment to its own national priorities and those of regional bodies such as the African Union, it must ensure a strong political will and readiness to change, dedicate resources, design actionable plans and/or integrate assessment into regular planning cycles, coordinate across all government levels and sectors, and establish a process for ongoing learning/monitoring. It further recommends that the Eswatini government aligns its traditional land management by chiefs, and land management by government through the Land Management Board (LMB), while maintaining the dual structure for land management.

**Goals and milestones for integrating land governance into the NAIP**

The objective of developing country specific goals and milestones for land governance issues into NAIP is to ensure that land governance is anchored into land governance in the country systems and with further aim of providing relevant data to the biennial review process. One of the key goals and milestones for Eswatini is therefore to develop physical and/or spatial planning to enhance land use planning, demarcation and documentation processes. For effective implementation and for monitoring purposes the report further provides the following specific milestones:

*Increased proportion of farm households with secure land rights.* There is a need to increase the amount of arable land under cultivation and for grazing purposes. Once set aside, such productive land needs to be recognised, used for designated activities and protected from possible encroachment for other land uses including establishment of settlements.

*Increased budgetary allocation to land sector.* Significant financial resources are required to design and implement programmes and initiatives including those targeting improvement in land administration and governance, land use planning and documentation as well as awareness raising campaigns against climate change impacts at the national and community levels.

*Boost the number of skilled, knowledgeable and professional land experts*. As it stands, agricultural sector and land reform in Eswatini could benefit from highly qualified land experts to articulate the country’s needs and execute all the existing initiatives and policies to achieve much needed reforms in this sector.

*Increased number of harmonised land related policies and legislation.* The presence of policies and legislation that speak to each other will smoothen the execution of such policies and legislation and hence improve land governance. This will in turn lead to an increase in the investment in agriculture.

*Increased number of home-grown solutions and approaches towards sustained land governance*. As a country with unique history in relation to its independence and its governance structure, there is a need to base external support towards domestically articulated approaches and solutions. This may include up-scaling of the Sustainable Land Administration and Management Project implemented by the Ministry of Natural Resources and Energy and initially funded by the European Union, the Swazi Nation Land Commercialisation Bill and the Chiefdom Development Plan all meant to improve land governance and set aside land for investments in agriculture.

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List of Acronyms

AU African Union

AUC African Union Commission

CAADP Comprehensive Africa Agriculture Development Plan

CANGO Coordinating Assembly for Non-Governmental Organisations

CASP Comprehensive Agricultural Sector Policy of 2005

CBO Community-Based Organisation

CSO Civil Society Organisation

FBO Faith-Based Organisation

FSE&CC Federation of Eswatini Employers and Chamber of Commerce

FAO Food and Agriculture Organisation of the UN

GDP Gross Domestic Product

GIZ Deutsche Gesellschaft für Internationale Zusammenarbeit

LMB Land Management Board

LUSIP Lower Usuthu Smallholder Irrigation Project

MEPD Ministry of Economic Planning and Development

MNRE Ministry of Natural Resources and Energy

NAIP National Agriculture Investment Plan

NEPAD New Partnership for Africa’s Development

NFP National Forestry Programme

NLP National Land Policy

SACU Southern African Customs Union

SLGA Strengthening Advisory Capacities for Land Governance in Africa

SNAIP Swaziland National Agriculture Investment Plan

SNL Swazi National Land

TDL Title Deed Land

UNDP United Nations Development Programme

VGGT Voluntary Guidelines on the Responsible Governance of Tenure

# Introduction

As an African Union member country, the Kingdom of Eswatini (hereafter Eswatini[[1]](#footnote-1)) has made its commitments to implement the AU declarations to improve agriculture and land sectors such as Maputo and Malabo Declarations. The 2017 African Union Commission (AUC) Biennial Review Report of the Implementation of the Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods had Eswatini among the 20 African countries which have achieved the minimum overall score of 3.94 out of 10 of the 2017 benchmark. Eswatini, as part of its ambition to become a first world country by 2022, has since 2014 developed its set of indicators in its eight priority areas which include economic prosperity, agriculture and environmental sustainability, education, health, service delivery, infrastructure, governance, and corruption. The aim is to track its progress in achieving the national target of reaching the First World Country by 2022.[[2]](#footnote-2)

Although the country has advanced its strategies in agriculture and other priority sectors, the issue of land governance is lagging behind. In Eswatini, like many other African countries, land is governed through diverse structures including chiefs and state authorities. More specifically, in Eswatini, most of the land is held in ‘trust’ by the King – who has the ultimate power to allocate or acquire land and he often performs this mandate through his local chiefs. This land governance structure instituted by the country’s land laws, is at times blamed as the source of uncalled evictions of vulnerable people and groups leaving them landless in their own country.[[3]](#footnote-3)

The African Union has also recognised the need to mainstream key themes such as land policy and governance into the National Agriculture Investment Plans (NAIPs) as part of its strategy to ensure countries fully implement CAAPD at the country level. In order to achieve this the GIZ programme, Strengthening Advisory Capacities for Land Governance in Africa (SLGA) in collaboration with the GIZ CAADP Support Programme, commissioned a consultant to carry out an in-depth country assessment on land policy/governance in Eswatini. Specifically, this report evaluates the country’s status in land governance towards the end of the current NAIP to develop country-specific goals, targets and milestones to guide the development of a Malabo-compliant successor to NAIP.

This report is structured as follows: The second section briefly describes the assessments objectives and methodology. This is followed by the analysis of Eswatini’s National Agriculture Investment Plan (SNAIP) of 2015. The fourth section highlights the state of land governance and the evolution of land governance, and it examines in brief the main types of land tenure that exist in the country. This section further describes the institutional framework governing these land tenure systems, illustrate key challenges affecting land governance. The fifth section establishes linkages between Malabo Declaration and land governance in Eswatini. This is followed by section six, which attempts to develop country specific goals and milestones for land governance in NAIP to ensure that land governance is anchored into land governance in the country systems and with further aim of providing relevant data to the biennial review process. Finally, the seventh section provides some policy recommendations aimed at the government of Eswatini and all interested stakeholders in the land sector.

# Objectives and methodology

This section summarises the objectives of this study and the proposed methodology that would allow a consultant to answer the provided objectives.



## General objective

The main objective of this assignment is to carry out an in-depth country analysis of the status of land policy and land governance in the context of the Malabo Declaration to support the development of a successor (or 2nd generation) NAIP in Eswatini, including a presentation on the status quo, possible shortcomings and recommendations to the country team responsible for NAIP development and formulation.

## Specific tasks

As per the Terms of Reference, in order to achieve the stated general objective, the consultant is required to carry out the following tasks:

* Consult background documents and hold interviews with key resource persons to evaluate the status quo of land governance in Eswatini;
* If applicable, assess the extent to which land governance is addressed in the ongoing (or 1st generation) NAIP and the impact of NAIP implementation on land governance;
* Analyse the extent of consistency between land policy issues and other policies;
* Assess implementation and coordination arrangements, delivery mechanisms, investment areas and priorities of relevance to land governance;
* Elaborate linkages between land governance and the achievement of Malabo Declaration targets;
* Identify required actions for strengthening good land governance in Eswatini;
* Define country-specific goals and milestones for integrating land governance issues into the NAIP with the objective of anchoring land governance in country systems and with the aim of providing relevant data to the biennial review process;
* Coordinate and engage with PEM Consult, the consultancy firm leading the NAIP support process and with ReSAKSS, the organisation contributing studies to the NAIP Review; and
* Participate in selected NAIP review missions/events/stakeholder workshops (up to two).

## Methodology

The proposed technical analysis requires in-depth evaluation of the country’s status in land governance towards the end of the current NAIP and to develop country specific goals, targets and milestones to guide the development of a Malabo-compliant successor NAIP. In order to gather sufficient evidence for this study, the consultant used qualitative methods (document reviews and consultation with key stakeholders) to gather relevant information from various databases and institutions. Priority was given to key documents, such as the country’s policies, programmes, budgets and evaluation reports. The secondary information was supplemented by key informant interviews with strategic officials from the Ministry of Lands, the Ministry of Agriculture, the Surveyor General, and private sector actors, such as investors and farmers.

Since the consultant’s report is a component of the overall package in support of the design and development of a successor (or 2nd generation) NAIP offered by GIZ and coordinated by PEM Consult, the consultant worked closely with PEM national expert permanently based in Eswatini. The consultant’s report further forms a component of the road map to be developed and implemented by country level stakeholders. This is the consultant’s high-level contribution to the country-led process that is supported by both AU Commission’s Department for Rural Economy and Agriculture (AUC DREA) and NPCA as facilitated by PEM consult.

The consultant analysis was informed and guided by the AUC/NEPAD Country CAADP Implementation Guidelines AUC and the NAIP Toolkit for Malabo Domestication. The consultant familiarised himself and aligned his analysis to the AU Agenda on Land. This includes taking consideration of the AUC Biennial Review Guidelines, especially the indicators of relevance to land, such as: “Proportion of farm households with ownership or secure land rights” (indicator 3.1.6) and “Share of agriculture land under sustainable land management practices” (indicator 6.1.2). More specifically, the study involved:

* Content analysis;
* Rapid Participatory Assessment; and
* Expert-based key informant interviews.

# Eswatini National Agriculture Investment Plan and related regional initiatives

The need to improve land governance is central to Eswatini’s National Agriculture Investment Plan (SNAIP) of 2015.[[4]](#footnote-4) The Eswatini NAIP categorically prioritises land in its first programme called ‘Sustainable Natural Resource Management’ with sub-programmes that target ““(i) water harvesting and irrigation development and (ii) integrated sustainable management of land and other resources”. Apart from scarce land resources, Eswatini faces shortages of water resources necessary for increasing both agricultural productivity and livestock products, especially as the impacts of climate change start to bite.

According the FAO’s (2015) National Investment Profile for Eswatini, the country’s agricultural sector is under-developed due to drought, the impact of HIV/AIDS, and under-investment. While commercial agriculture receives a high level of investment, most of the country’s agriculture is subsistence-based and experiences low levels of investment. The Eswatini government proposes to invest almost US$450 million in irrigation in order to boost agricultural production. Weak enforcement of property rights and property seizure, alongside poor labour protections and corruption hinder investment in the country (ADE, 2018). Foreign direct investment declined from the 1990s when the arrival of democracy in South Africa led to South Africa attracting more investment in the region. Sugar, paper pulp, and non-alcoholic beverage concentrates attract the most foreign investment.

Nevertheless, SNAIP sees agriculture as “a key sector for investment to spur economic growth”. As such it seeks commitments from government, development partners, farmers, NGOs, and the private sector to mobilise resources and use them effectively for transformation of the agricultural sector. SNAIP aims to (i) ensure optimal and sustainable use of natural resources; (ii) improve market access by strengthening stakeholder participation in commodity value chains; (iii) commercialise and diversify agricultural production; (iv) increase agricultural productivity by supporting agricultural extension and research; and (v) improve agricultural knowledge management and strengthen institutions for enhanced planning and evidence-based decision making and policy coordination (ADE, 2018). SNAIP primarily promotes public investment in rainwater harvesting and irrigation, increasing export volume and decreasing import volume, increased financial support for agriculture related production, and implementing quality accreditation systems. SNAIP also seeks to align itself with CAADP and the Malabo Declaration, and in this regard seeks to increase the ratio of public investment in agriculture from 4.4% to 10%.

Indeed, the current Eswatini NAIP has put in place, at least in theory the need to ensure that there is a strong Institutional Strengthening and Knowledge Management. Within this mechanism the key objective is improve communication and reinforce planning, monitoring and evaluation of key outcomes, including: (i) creating and maintaining a comprehensive database and website for the agricultural sector; (ii) supporting policy and planning based on evidence and analysis; (iii) promoting access to knowledge for stakeholders to support activities such as (a) aligning policy and regulations; (b) improving budgeting processes; and (c) reforming parastatals. The Institutional Strengthening and Knowledge Management programme cost about US$14 million and accounts for 1% of the total SNAIP cost.

The Institutional Strengthening and Knowledge Management – the SNAIP’s fifth programme emphasises the availability of policy and legal tools that could enable significant investment in the agriculture sector. These can be summarised as follows:

1. Swaziland has a comprehensive legal and regulatory framework covering agriculture and rural development. However many of these statutes and regulations are poorly understood or applied. These are summarised as follows:
   1. Instrument Provisions Forestry Preservation Act, 1910 - Preservation of trees and forests on government land and SNL
   2. Cattle Routes Act, 1918 - Establishment of routes to access public dipping tanks
   3. Land and Agricultural Loan Fund Act, 1929 -- Establishing the Swaziland Land and Agricultural Loan Fund to finance purchase of farms and farm improvements;
   4. Cattle Dipping Charges Act, 1950 - Imposing charges for cattle dipping;
   5. Private Forest Act, 1951 - Regulating and protecting privately-owned commercial forests;
   6. Natural Resources (Public Stream Banks) Regulations - Prohibiting development that may destroy vegetation within 100 feet of a public stream (other than on SNL);
   7. Grass Fires Act, 1955 - Consolidating laws related to grass burning;
   8. Cruelty to Animals Act, 1962 - Prevention of cruelty to animals;
   9. Animal Diseases Act, 1965 –ng – Regulating livestock movements including imports and exports of animal products;
   10. Pounds Act, 1966 - Establishing pounds and procedures for impounding stock;
   11. Cane Growers Act, 1967 –ng – Incorporating the Swaziland Cane Growers Association and collection of levies from cane growers;
   12. Citrus Act, 1967 - Establishment and functions of the Citrus Board;
   13. Cotton Regulation, 1967 - Constitution and functions of the Cotton Board and its regulatory powers;
   14. Dairy Act, 1968 - Control and improvement of the dairy industry and regulation of dairy product prices;
   15. Control of Tree Planting Act, 1972 - Regulation of tree planting for commercial purposes including prevention of tree planting on arable land;
   16. Public Health (Food Hygiene) Regulations, 1973 - Regulations relating to food premises, methods and practices in food businesses and adulteration of foods;
   17. Plant Control Act 1981 - Control, movement and growing of plants and matters relate to nurseries, plant disease and pest control, and noxious weeds;
   18. NAMBOARD Act, 1985 - Establishment and functioning of NAMBOARD and control of imports and exports of agricultural products;
   19. Flora Protection Act, 2001 - Protection of indigenous flora and related issues;
   20. Water Act, 2003 - Establishing National Water Authority, Water Apportionment Board, River Basin Authorities, and Irrigation Districts to reregulate water pollution and wastewater management;
   21. Veterinary Public Health Act, 2012 - Regulation of food safety for animal products; and
   22. Plant Health Protection Act, 2013 - Prevent introduction and spread of plant pests and diseases and establishment of the National Plant Protection Unit.

In the next subsections, the report highlights two key African Union initiatives on which the Eswatini Government is responding in ensuring its investments in Agriculture through an improved land governance.



## Malabo Presidential Commitments’ Declarations

The heads of States and Government of African Union met in Malabo, Equatorial Guinea in 2014 on the theme of the African Year of Agriculture and Food Security.  During this meeting, they developed the Malabo Declaration on Accelerated Agricultural Growth, which hinges on agricultural growth and transformation for shared prosperity and improved livelihoods. The declaration restated the commitment of African governments to the principles and values of the CAADP process, which includes pursuing agriculture-led growth as a key strategy for achieving targets on food and nutrition security, and shared prosperity.

Under the Malabo declaration, the heads of state also made a commitment to enhance investment finance in agriculture to end hunger in Africa by 2025. They also committed to halving poverty by 2025 using inclusive agricultural growth and transformation as the tool of choice. An additional commitment in the Malabo declaration is to boost intra-African trade in agricultural commodities and services in by harnessing markets and trade opportunities locally, regionally and internationally.

*We are progressing well on achieving regional and international targets in boosting agriculture such as CAADP/ Malabo Declaration, but the challenge may be in implementation. But I see every ministry needs to contribute. We do not want to be isolated as a country.*

(Interview, May 2019)

The heads of state resolved to enhance the resilience of livelihoods and production systems to climate variability and other related risks.  They aim to ensure that by 2025, a minimum of 30% of farm, pastoral and fisher households will be resilient to climate change and weather-related risks. They also agreed to enhance investments for resilience-building initiatives including social security for rural workers, vulnerable groups, and ecosystems. Each state committed to mutual accountability on actions and results and committed to strengthening the African Union commission to support delivery of all commitments in the Malabo declaration.

## Comprehensive Africa Agricultural Development Programme

The Comprehensive Africa Agricultural Development Programme (CAADP), also known as the Maputo Declaration, was signed in 2003. CAADP is Africa’s policy framework for agricultural transformation, wealth creation, food and nutrition security, economic growth, and prosperity for all.  It aims to support the launch of a green revolution in Africa and was set up as a vehicle to motivate agricultural production that will lead to food security. The programme mainly focuses on the agricultural sector, but also takes cognisance of related sectors that are needed for agricultural growth.  Even though agricultural challenges differ from one country to another, CAADP has added value when it has been used flexibly to strengthen institutional and systemic capacity.

The principles and values of CAADP include African ownership and leadership, accountability and transparency, inclusiveness, and evidence-based planning and decision-making. Other principles include people-centeredness, private sector driven development, systemic capacity building, and subsidiary, peer learning and multi-sectarianism.

To understand the extent to which these initiatives are integrated into the country’s land policy, legal and institutional framework, in the next section, the report examines the country’s state of land governance.

# The state of land governance in Eswatini



## Evolution of land governance and reforms in Eswatini

From colonial times, Europeans flooded into Eswatini from about the 1870s (Mndzebele, 2001), and during the late 1890s the Boer republic and the British government faced off to take control of the land (Hughes, 1972). Europeans introduced a concept of land ownership whereby contracts described who owned, could access and use land, such that land ownership excluded natives from using the land. Europeans were given concessions to access land, but how far the concessions extended rights to Europeans was contested and often disputed.

By 1907, however, Britain had taken control of the country, and instituted the Land Proclamation Act, which gave 63% of the best land to Europeans, leaving 37% of the poorer quality land to Swazis (Mndzebele, 2001). After that, the 1913 Union Native Land Act banned Swazis from buying land outside the reserves (Dlamini, 2015). The land reserved for Swazis was primarily governed through communal systems, which have continued until the present, where chieftains exert the power over land access, particularly Swazi Nation Land (SNL) (FANRPAN, 2017). As such, a dual system of land tenure came into play, with traditional courts making decisions about access to SNL, while formalised Roman-Dutch law applied to towns and private land (Rose, 2002). In the SNL areas, the Swazi king maintained control of the political system, which has not changed much, but in the concession areas, Europeans no longer paid rent to the Swazi king (Hughes, 1972).

However, SNL land was not sufficient to provide land for Swazis, and land degradation resulted, with many Swazis no longer having access to land (Mndzebele, 2001). Even in SNL areas, huge parts of land were dedicated to agricultural research stations and game parks (Hughes, 1972). As of July 2019, the total conserved area in Eswatini accounted for only 4.2% of total land (personal communication, government official, July 2019). By the 1940s, recognising the problems of those Swazis who had lost access to land, the British government returned some land to the king – so-called Crown Land, however, not enough land was transferred to achieve land access for most of the population.

By 1963 the Swazis reclaimed their country with the introduction of a new constitution (Hughes, 1972), and political parties were introduced. After an initial period in which political parties competed for power, when a non-royalist party won the elections in 1973 there was a palace coup (Woods, 2017). In 1979 political parties were shut down and all power was vested in the King, with citizens only entitled to elect candidates from a list approved by the King (Orchard and Stringer, 2016). The title deeds granted to private companies as concessions in the colonial era were maintained, and systems of contract farming and outgrowing schemes were ongoing (Levin, 1988). In the 1970s, the government introduced the Rural Development Areas Programme (RDA), which aimed to alter land use patterns to improve agriculture and livestock production, protect the environment, and develop rural infrastructure (Mndzebele, 2001). Despite the RDA having some success in providing infrastructure and increasing yields (particularly maize yields), the fact that land remained as SNL discouraged further investment from taking place.

Unlike many other freedom fighters in Africa, the former King bought back land from colonial settlers. The King mobilized Swazi people to contribute livestock to buy back their land from colonial masters. It is argued that by then the Chief realized that Swazi was such a small country and it was clear its people cannot fight, so everything was negotiated.

(Interview, May 2019).

Some SNL land is used to produce cash crops, including maize, cotton, sugar, tobacco, potatoes and fruit. Traditionally, cattle have played a key role in land use, mostly for the homestead and ‘moveable wealth’, but since the 1970s, they have increasingly acquired a monetary value (Hughes, 1972). The commercial sector now occupies 40% of cultivated land, which “generates 80% of the national agricultural commodity value” (FANRPAN, 2017). Commercial farming is dominated by large-scale multinationals, mostly South African. SNL is more focussed on petty commodity production (Levin, 1988).

## The contemporary types of land in Eswatini

It is important to note that to-date land is still divided into two major categories, i.e. SNL and Titled Land. For the purposes of assessing the use and governance of these categorise of land, we specify each type of land as follows:



### Swazi Nation Land

Common use land right is practiced under the SNL. People do not have titles on these pieces of land, which is traditional land administered by the Chief who allocates and manages the land at his discretion. About 60% of arable land in Eswatini is SNL. Under SNL each smallholder may own as small as half an acre of land and or a piece for just building a house. All the staple food crops are produced on SNL although, at times, the smallholders do not produce sufficient food to meet local demands. Common areas of SNL are also used for grazing, which allows local people to produce beef meat for export to European Markets.

Within SNL, interest in establishing cooperatives is growing, especially among the sugarcane outgrowers. Where smallholders have mobilised themselves and created farming blocks in cooperative structures, farm management has been simplified and farmers can secure loans to construct efficient irrigation infrastructures. These cooperatives include successful associations/companies established by smallholders in the sugarcane sector. The outgrower companies have had strong partnership with sugar mills and their success is attributed to the fact that because the sugarcane business has a monopoly, farmers have one buyer, and therefore do not side-sell. Government has supported such schemes by building dams and supporting communities that farm sugarcane to curb the ever-increasing farm debts.

We have seen even the SNL is used to grow sugarcane but in a form whereby the small pieces of smallholders land are consolidated into group farms, which are then managed by a company. An individual farmer who has got a parcel in a block farm is allowed to work in his farm as a labourer and must be paid like any other labourer. This is done to instil discipline among farmers. We also have an option for farmers to form an association.

(Interview, May 2019).

According to an interview with a key informant, cooperatives for other agricultural crops never take off because they do not have good financial rules to curb looting, which leads to misuse of the coop’s money and it collapses.

Unlike, some of these failing agricultural coops, financial coops are the only one that are doing well in Eswatini

(Interview, May 2019).

#### Challenges facing the SNL

The lack of efficient land use planning means that productive and arable land becomes less available as households expand. Encroachment on rangelands also occurs for household use and infrastructural development, cutting down pastures and weakening the livestock production.

### Titled or private land

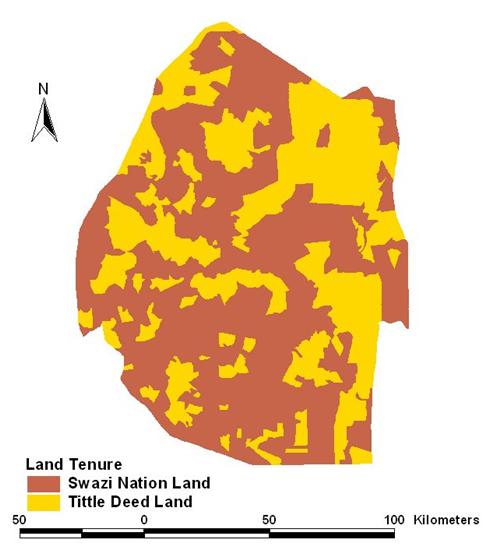
Title deed land is mainly for commercial farms, and is generally put to good use, contributing nearly 80% of the agricultural GDP. On the titled land, the largest commercial sugarcane production in the country is taking place, although, in recent years, production has also expanded into SNL. Citrus production is taking place on titled land.

On a 99 years lease, the government can lease its land to private individuals. As population increases, especially in areas where the population pumps faster, we introduce a “Control Area” – and make the area “crown land”. The government leases out these titles to individuals and interested firms too.

(Interview, May 2019).

Apart from commercial farms, town and urban areas have titled government land, i.e. the land is under the “crown title”. Furthermore, some land is titled under various concessions, and some land is under freehold lease.

Figure 1: Dominant land tenure system in Eswatini



Source: Manyatsi & Singwane (2018)

## Institutional framework for land governance in Eswatini

The draft National Land Policy proposes that the institutional framework should rationalise and streamline land administration, with local-level structures that are “able to resolve all the local-level land administration inefficiencies”. In the draft policy, the Ministry for Land is designated as responsible for land, supported by the Surveyor General’s Department and Deeds Registry Department (COWI, 2018). The draft proposes that a Land Management Board (LMB) would manage and regulate interests and rights in urban and rural land. Despite the proposed changes, the institutional framework is weak, and has remained largely unchanged since the 1951 Natural Resources Act was passed into law (COWI, 2018).

Through the Eswatini National Council, chiefs have direct access to the king and thereby acquire the right to allocate farming and residential land. Subjects receive land based on swearing allegiance to the king and their chief (*kukhonta*) (Dlamini, 2015; Simelane, 2016). Land recipients are expected to give allegiance to the chief by making payment of one head of cattle or the equivalent in cash, and also to labour on the chief’s homestead from time-to-time (Dlamini, 2015; Simelane, 2016).

On urban land, parallel structures of chiefs and municipal/city councils govern, with contestation between them, and with the Ministry of Housing and Urban Development, especially in informal settlements (Simelane, 2016). Multiple institutions and contradictory land claims have created situations where urban residents are caught between traditional and urban governance, which affects their economic development. Amnesty International (2018, p. 60) argues that “the existing legal framework in Eswatini fails to provide sufficient clarity and certainty regarding land ownership and other forms of tenure, which amounts to the Eswatini state’s failure to meet both its regional and international obligations to take measures aimed at ensuring residents’ legal security of tenure”.

## Policy and legal framework for land governance

Currently there are varying views among experts in the country. For example, there are strong efforts to ensure whenever a new policy or a programme is initiated, all other stakeholders are engaged. For example, when the Ministry of Agriculture wants to construct a dam it must engage the Ministry of Natural Resource and Energy (MNRE) and other relevant ministries and institutions (Interview, May 2019). But there are also concerns from other professionals that some work is needed to ensure policies, laws and programmes speak to each other. Officials have argued that some policies and programmes are in silos, therefore, when officials discover any mismatch between one institutional policy and the other, they try to work together to fill those gaps (Interview, July 2019).

From the discussions with officials in the relevant ministries in Eswatini, it is clear that as a nation politicians and bureaucrats agree that there are only three pillars of development that they believe in: land, human and financial capital. As such, based on the data from the Sustainable Land Administration and Management Project they may push for legislation to ensure each household/homestead owner can transfer his or her land to next generation. Officials also believe that data from the Sustainable Land Administration and Management Project can allow a chief to take an appropriate action. In the past, if you misbehave towards a chief, they could take away your land, so you have to move away from the chiefdom’s area. However, data and documents from the project give people more tenure security, as their rights are officially documented, even though individuals are not given title deeds.

## Constraints towards land governance and reforms in Eswatini

According to COWI (2018), the dual system of land governance has not been resolved because it is extremely complex to do so. Customary systems remain strong and resist efforts to modernise the tenure system. While the 2005 Constitution recognises the need to urgently resolve the land questions in order to ensure economic development, land institutions are not harmonised.

While international development projects in the country have sought to decentralise and encourage participation (Orchard and Stringer, 2016), the Swazi government has been reluctant to undertake further land reforms because of the impact that sweeping reforms would have on socio-political culture. As Woods (2017, p. 5) argues “land is the essence of power inSwaziland … Traditionally, village chiefs have been at the center of this socioeconomic order. It is essentially their control over land that sustains the patronage system upon which political control in the countryside is based”.

As COWI (2018) point out, the draft National Land Policy proposes closer alignment between traditional land management by chiefs, and land management by government through the LMB, but still maintaining the dual structure for land management. None of the draft policies on land and agriculture suggest the possibility of creating a unitary structure, therefore, the most likely option for reform would be to harmonise and rationalise institutional arrangements for land governance. As the country team in Eswatini and their counterparts in development agencies strive to complete First Generation NAIP and formulate its successor, they have to grapple with the following specific challenges:



### Challenges

#### Lack of specific legislation governing land sector

As will be further discussed in section 4.6.2, no land policy or land act has been passed, and the land policy is currently only in draft form. One interviewee argued that because a number of processes are involved in developing a policy, some stakeholders have not given approval for the laws to be passed. Since Eswatini became independent, therefore, no land reform has taken place.

In our case, anything like this must be approved by chiefs and his Majesty, the King. The King supports all our efforts but chiefs do not want to allow anything that somewhat encroaches on their control over land.

(Interview, May 2019).

#### The complex dual governance structures

The reality of land governance in Eswatini lies in the fact that the country has a dual government structure, i.e. the modern government and traditional chiefs. The two structures operate concurrently (see Appendix 1).

Chiefs just walked to his Majesty and complained about the proposed policy. Chiefs are aware that their powers are off in the urban areas, and so that is why there are a bit hesitant when we initiated this project in their chiefdom’s land. Here in Eswatini Chiefs have a saying that “a chief without a land is like a fish taken out of the water”.

(Interview, May 2019).

The difficulty of operating under this kind of a government structure is that when the modern government structures try to change things, traditional structures of government realise that you are encroaching on their powers and block activities, so for example, since 1999 the land policy has been stuck.

As such, the legal framework in Eswatini does not provide certainty regarding land tenure, as chiefs can exercise their own discretion, and the proposed legislation has not been adopted, so the legal framework does not ensure residents legal security of tenure (Amnesty International, 2018).

#### Linking land rights to rational land use

Despite the fact that Eswatini is a tiny country with scarce land resource, pieces of land under both SNL and private lands are not fully utilised. Interviewees argued that where land titles exist, i.e. on private land, the government does not have powers to revoke the title and owners are entitled to use the land in any way they choose. Farming is voluntary, so private land owners are sometimes not living on the land and have no interest in developing it but are only using it for speculative purposes.

Small-scale producers who are usually given land by chiefs are also free to use land the way they want, so sometimes such land is not put to a productive use. While the Ministry of Agriculture is available to advise farmers, not every land holder makes use of government services.

The real farmer is the one dirtying the soil and not necessarily officials in the Ministry of Agriculture. Farmers are free to take note of our agriculture experts’ advice or not.

(Interview, May 2019).

Because only 10% of Eswatini is viable for agriculture, the Ministry of Agriculture indicated in interviews that an updated land use map was prepared to identify prime resources and make use of all land that is viable for agriculture. However, land use plans have not been fully prepared due to a lack of funds. Much of the country is rocky and mountainous but it is cheaper to build on flat land and in the low lands where primary settlement is currently taking place. A land use plan would encourage chiefs to effect sustainable land use and ensure land is used appropriately.

#### Increasing pressure on land from expanding urbanisation and population

Because the population is becoming increasingly urbanised, urban development is sometimes encroaching on SNL with a high potential for farming. Because of weak land legislation, there is no mechanism for monitoring and controlling building on arable land.

In Eswatini, a growing population means the establishment of more housing settlements and industrial and commercial buildings that are encroaching the SNL.

(Interview, May 2019).

Interviewees stated that while the latest census shows that people are interested in staying in rural areas, uncontrolled invasion of agricultural/productive land has become a problem. However, due to the small size of Eswatini, people can afford to drive from their rural homesteads to their places of employment. Therefore, a development plan that includes land use planning could help to deal with urbanisation on agricultural land.

#### Land and water scarcity, drought and climate change

Water is extremely scarce in Eswatini, with most river basins not having been fully developed. The sectors for domestic use, industry, forestry, hydro-power and irrigation compete over the scarce water resources. Drought is fairly common in the country, which is aggravated by climate change so it is necessary to improve irrigation systems and water harvesting to make smallholder farmers more resilient (FANRPAN, 2017).

The issue of sustainability of land governance and water are key questions in Eswatini and that is why the studies like the GIZ land governance assessment and other related ongoing studies are needed in Eswatini

(Interview, May 2019).

#### Agricultural trade and investment

While commercial agriculture receives a high level of investment, most of the country’s agriculture is subsistence-based and experiences low levels of investment. According to interviewees, because residents do not have tenure security on SNL, they experience difficulty in attracting investments because chiefs could chase them off the land at any point. The uncertainty around land governance and administration adds to the investment difficulties.

In Swazi Nation Land no one has a title and assurance on when the chief may chase him or her out when they are labelled as misbehaving.

(Interview, May 2019).

World Trade Organisation rules impact unfavourably on agricultural production and trade in Eswatini. Eswatini is a price taker, not a price maker because the market price for crops is determined by global trade instruments and foreign stock markets. As one interviewee argued, while the National Maize Crop market guarantees a price for all producers, the national demand for maize is not met by in-country production. Therefore, Eswatini is forced to import maize at international prices to guarantee the availability of maize for consumption. As such, Eswatini has the country’s trade balance between 1968 and 2015 has always been in the negative (Dlamini et al., 2018).

Regionally, Eswatini is the most exposed trading country in the Southern African Customs Union (SACU) and transfers from SACU in recent years have been highly volatile, linked to developments in South Africa in terms of fiscal flows and remittances (IFPRI and ReSAKSS, 2019a).

## Coherence between land policy and other national policies in Eswatini

This section identifies the salient features in policies and what gaps exist, if any. Further, we examine land related policies and how they speak to agricultural investment in Eswatini, with coordination among interrelated sectors. This is critical because, even though the over-arching policy of the nation is the eradication of poverty and increasing agriculture productivity, the lack of policy synchronisation can impede achievement of well-intentioned national goals.



### Policy harmonisation

Regarding land and agriculture, the MNRE takes the lead, but works with other ministries, such as those on agriculture, housing, water, and constituencies. The different ministries come together to review and formulate policies, legislation and strategy documents to ensure harmonisation of policies. The draft National Land Policy was a product of harmonisation of policies between the ministries.

However, Eswatini faces land governance challenges in terms of coordinating efforts to implement policies and programmes. Despite the coordination led by the MNRE, ministries still sometimes worked in silos. Some interviewees said that some gaps exist in coordination and commitment to implementing effective land governance and administration. One official in the Ministry of Agriculture complained that while the MNRE is coordinating, they do much of their work alone. Other interviewees argued that while policies are in silos, programmes and activities are jointly implemented, i.e. officials from various departments and/or ministries work together to execute programmes and/or activities, even if they fall under one ministry.

However, as COWI (2018) argues, customary systems remain strong and resist efforts to modernise the tenure system. While the 2005 Constitution recognises the need to urgently resolve the land question, in order to ensure economic development, land institutions are not harmonised.

In this section we highlight key policies and programmes which are directly linked to agriculture and land.

#### National Land Policy

Eswatini’s National Land Policy (NLP) is still in draft form. The draft states that the vision of the NLP is to maximise benefits of land to the entire society on a sustainable basis. The objectives centre around access to land, secure tenure, rational and sustainable land use, poverty alleviation, improved productivity, income and living conditions, reduction of land related conflicts and the development of an effective and efficient land administration system. The draft NLP’s principles include gender equity, access to land for all Swazis, and integration of the NLP with the vision and goals of Eswatini's National Development Strategy. Other principles of the draft NLP include optimal sustainable use of land resources in ensuring food security, community participation, and accountability and transparency in land administration. However, since the policy has not been converted into law, citizens are not guaranteed security of tenure, and some have been subject to forced evictions (Amnesty International, 2018).

#### Eswatini Agricultural Sector Policy of 2005

Different policies exist on various issues relating to agriculture in Eswatini, but key policy is the ‘Comprehensive Agricultural Sector Policy of 2005’ (CASP).  CASP was drafted by Eswatini government with help of the UN Food and Agriculture Organization (FAO). CASP aims to propel sustainable development of the agricultural sector of Eswatini so as to reduce poverty and provide food security in Eswatini. The government of Eswatini sees the agricultural sector as the means to improve food security and curb poverty.

CASP focuses on the contributions of the agricultural sector to the realisation of Eswatini’s aspiration of Vision 2022 and the attainment of their National Development Goals.  CASP’s goal is to ensure that the agricultural sector contributes to the total socio-economic development of the country. The policy provides guidance and important measures to improve development of the agricultural sector and contribute to the general economic growth, alleviate poverty, improve food security, and improve sustainable management of natural resources.

The integral part of CASP is made up from various policies covering irrigation, forestry, crop and livestock. CASP’s main focus is on small-scale production but also covers large scale production. It covers large scale production because large scale production has the potential to contribute immensely to food security and poverty alleviation.

##### Agriculture supporting legal and policy tools

It is important to note that despite the lack of land law and policy as discussed above, the country has devised a number of legal and policy tools to ensure smooth implementation of agriculture development strategies and programmes. For example, the Land and Agricultural Loan Fund Act, 1929 although, developed during the colonial period, still provides some relief for people to be able to purchase and improve farms through the Swaziland Land and Agricultural Loan Fund.

#### Water and Forestry legislation and policies

The Eswatini Water Act of 2003 does not directly mention the relationship between water management and land management; its main focus is on the need for hydroelectric dams and rural water use in homesteads. In addition, the National Water Policy of 2009 points to a shift in water use from domestic and agricultural water use towards hydropower and industrial development. Nevertheless, the Water Act does establish a relationship between water and agriculture, insofar as the policy discusses irrigation. Irrigation accounts for almost 97% of water withdrawal in Swaziland (FAO et al., 2015), however, based on available natural water sources, Eswatini does not have the capacity to roll out further irrigation schemes unless it builds new dams (National Water Authority, 2009). According to the National Irrigation Policy of 2005, productive and resilient irrigation schemes sit side-by-side with rain-fed agriculture which is subject to climate conditions. In rain-fed agricultural areas, poor water access is leading to food insecurity.

In allocating water, the National Water Authority may determine quantities based on crop water requirements and climatic conditions (National Water Authority, 2009). However, the Water Act of 2003 establishes that primary water use is for domestic use, sanitation, giving no more than 30 head of cattle water, and irrigating no more than a quarter of a hectare of land. The River Basin Authority has “authority over Irrigation Districts, Project Boards and User Associations”. It further asserts that those who divert water courses for irrigation shall be responsible for maintaining, at their own expense, any pipes, aqueducts, or bridges which cross their land. Penalties and incentives are in place to promote water conservation, and the National Water Policy of 2009 promotes cost recovery mechanisms, especially for rural areas, but not for primary use. Water for commercial use is subject to national levies and requires a permit.

According to the Water Act 2003, the Minister of Water may also establish irrigation districts for agricultural purposes, and these will be structured around a body corporate to be governed by a board of directors. The body corporate will be entitled to charge for the provision of irrigation services, and those who elect the board will have a number of votes relative to the area of land that they hold. The irrigation districts are further responsible for giving water access permits and may pass bylaws to fulfil their obligations with respect to water supplied for irrigation. Individuals with land access may not obstruct the provision of water to other land rights holders and may not alter the water flow approved by the body corporate board of directors. Backing up this legislation, the National Water Policy of 2009 specifically states that organised groupings of people will be given preference over individual users in water allocation.

The National Water Policy of 2009 specifically refers to the National Development Strategy, and asserts that the goal of the policy is “poverty eradication and economic prosperity … with the main objective of improving water availability for both socio-economic and economic productivity”. Nevertheless, vulnerable and marginalised groups experience difficulty accessing water due to inequitable distribution. The policy aims to balance the needs of economic benefits and social obligations when considering water allocation in order to improve national food security. The National Irrigation Policy of 2005 also points to the need to balance water irrigation needs for commercial farmers and irrigation needs of smallholder subsistence farmers. The irrigation policy affirms that developing irrigation systems is costly, and states that it will assist farmers to access the necessary finance to realise irrigation farming.

Forestry generates about 10% of the country’s GDP, but no government legislation covers the use of forests. A National Forestry Programme (NFP) was put in place in 2002, which links with the National Development Strategy and drafts of the National Land Policy, National Environmental Policy, and National Biodiversity Strategy. The purpose of the programme is to address and limit deforestation and environmental degradation. Under the NFP, forests must be treated as a national asset linked to scarce land and water resources. Forests are linked to cultural and spiritual practices, and the forest should be administered through community participation processes, and community accountability and transparency.

The policy objectives of the NFP include improving access to land for using and developing forest resources, while protecting trees, balancing the needs of sustaining the forest with use of land and water for other purposes, improving forest productivity and supply forest products, and improving local access to income to alleviate poverty and enhance living conditions. The NFP also promotes sustainable use of forests and equitable sharing of benefits accruing from forest use.

Land owned by the king and government, i.e. Crown Land may not be used for commercial purposes. Jungles, forests and woodlands may also form part of Swazi Nation Land, which belongs to communities and chiefs. This land may also not be used for commercial purposes but can be exploited for customary uses such as indigenous herb collection, provided chiefs manage and monitor such uses carefully and sustainably. Indeed, the only forestry land that can be used for commercial purposes is that held under private freehold tender/ Title Deed Land (TDL), which covers about 123 495 ha. However, forests made up of indigenous species on TDL may also not be used for commercial purposes. Regular audits of all forest land types take place to ensure sustainability, and where forests are used for commercial purposes, payment of taxes.

The country also has stricter regulations on the preservation of forestry and water catchment areas. The Natural Resources (Public Stream Banks) Regulations of 1951 prohibit any development that may destroy vegetation within 100 feet of a public stream (other than on SNL). These regulations, however, remain insufficient as they do not apply on SNL, and as a result, some of the catchment areas falling in SNL may have weak legal protection, instead, depend on the will of local communities and their chiefs.

#### Resettlement Policy

In Eswatini, resettlement is governed by Resettlement Policy Framework of 2007. Resettlement may result from the state wanting to use the land for development purposes or because squatters have taken over SNL and need to be moved to another place. The Resettlement Policy Framework specifies that every effort must be made to avoid resettlement, as “the involuntary displacement of people may give rise to severe economic, social, and emotional distress on the part of those who are relocated”.

If 10 or more households are to be relocated, a resettlement plan must be approved by the Ministry of Housing and Urban Development and the plan must consider the needs of vulnerable groups. Those being relocated also have the right to be compensated before they are relocated, regardless of whether they are owners, tenants or squatters. All assets must be valued and compensated, including but not limited to: shelter, fencing, crops and trees, other structures, and private infrastructure supplied to a plot. In addition to compensation, those being moved are also entitled to a once-off inconvenience payment to provide for “increases in transportation costs, loss of social network, disruption of life, the bother of having to relocate, and possible mental anguish”.

Interviewees emphasised that under SNL even when people do not have land rights, they would have user rights, so if they are resettled, they must be compensated and given alternative land. One interviewee argued that because the Resettlement Policy Framework should improve the lives of those relocated, many people are hoping their land will be expropriated for national initiatives, as the compensation process would leave them better off.

#### Land governance and climate smart agriculture in Eswatini

Eswatini is characterised by four ecological zones: the Highveld, Middleveld, Lowveld, and Lubombo Range. Weather is sub-tropical with wet, hot summers (Manyatsi and Mhazo, 2014). Due to variable levels of precipitation each year, Eswatini often experiences either flash floods or drought. Eswatini is already experiencing climate change with disruptions to rainfall and changing temperatures impacting on agricultural production. Droughts have led to death of livestock in the country, and in 2007, 50% of the population received food aid due to hunger as a result of crop failure.

Rain fed agriculture is no longer reliable here in Eswatini. So we in the Ministry of Agriculture are investing in small and medium size dams. We are working with the ministry of natural resources in doing this task. Our aim is to consolidate small pieces of land of the SNL into block farms owned under companies and associations.

(Interview, May 2019).

In 2015/16, Eswatini experienced an El Nino related drought, which led to acute water scarcity with a 64% drop in maize production, and 11% of cattle having died (Fakudze, 2016). Monitoring the climate vulnerability of the rural population between 1991-2000 and 2006-2015, IFPRI (2019b) found that the rural population experienced an 5% increase in climate vulnerability between the two periods.

In response to climatic challenges, Eswatini has introduced conservation agriculture, drought tolerant varieties, increased irrigation for smallholder farmers, encouraged the use of kraal manure, and encouraged agroforestry whereby arable crops are grown with woody perennials (FANRPAN, 2017; Manyatsi and Mhazo, 2014). While sugar and rice crops are 100% irrigated, on 0.7% of maize is irrigated, and only 2.5% of potatoes (IFPRI and ReSAKSS, 2019b).

Projects such as the Lower Usuthu Smallholder Irrigation Project (LUSIP) have improved access to food and water but due to the cost of food, in the dry season many households still experience hunger (Njeim, 2018). In some areas agricultural production increased, but due to the Swaziland Water and Agricultural Development Enterprise (SWADE) now demanding that users get water permits, some farmers have reduced access to water (Njeim, 2018).

The Ministry of Agriculture is focusing on improving irrigation as it is done in private farms producing sugarcane.

(Interview, May 2019).

Eswatini has written the Climate Change Policy of 2016, which aims to develop “a sustainable, climate resilient and inclusive low-carbon green growth society” (Ministry of Tourism and Environmental Affairs, Kingdom of Swaziland, 2016). However, with respect to agriculture, the Ministry of Agriculture still needs to develop a national action plan (FANRPAN, 2017), and the ability of the ministry to rollout climate smart agriculture has been hampered by lack of skills and poor institutional capacity, with agricultural extension posts remain vacant (Manyatsi and Mhazo, 2014).

## Land access for women and youth in Eswatini

CAADP recognises the need for agricultural policy to be gender sensitive, but also framed this in terms of cultural sensitivity, such that “the emphasis is on encouraging the participation of marginal groups (women, youths, poor households, ethnic minorities, etc.) in community decision making, and improving their access to communal ecosystem resources, in ways that build on, and as necessary encourage adaptive changes to, the social and cultural norms of the wider community”. The programme goes on to confirm that women perform 60%-80% of agricultural labour in Africa. It asserts that even with irrigated agriculture, women-led farms make up 50% of the total. In the Malabo Declaration, heads of state reaffirmed the necessity to target women and youth, and “to support and facilitate preferential entry and participation for women and youth in gainful and attractive agri-business opportunities”.

Despite progress in developing gender-sensitive policies, however, Eswatini has a gender inequality index of 0.569, ranking it 141 out of 160 countries (UNDP, 2018). Most subsistence farmers in Eswatini are women who produce crops such as maize, traditional vegetables, legumes and tubers on small SNL plots. Men often migrate to urban areas, leaving women behind to do agricultural work (Dodson et al., 2008).

Regarding gender and youth issues in Eswatini’s national policies, the Agricultural Sector Policy of 2005 sees gender and youth empowerment as a cross-cutting issue. The Policy insists that gender inequality makes it difficult to satisfy domestic food requirements, which causes many Swazis to suffer from under-nutrition, which greatly impacts on children. The policy promotes “gender-sensitive methods” to address poverty and promote food security.

During interviews, senior government officials confirmed that in legislation, women’s land rights are guaranteed and safeguarded, including the Constitution. Women have legal room to challenge discrimination.

Women can claim their land rights in legal institutions. There was a case where the lady was marginalised of her land right and she opened the court case against the Chief’s claim that she can only get land through her male siblings. But she said no. The law guarantees women’s access and ownership. The judges uphold her rights over the land.

(Interview, May 2019).

(Interview, May 2019).

Despite the draft National Land Policy promoting equitable access to land for men and women, in practice, men can claim and inherit land, while women have only secured land access in a few cases, where chiefs are now allocating land to females and allowing land to be claimed by female head of households (FANRPAN, 2017). In rural areas, to access land women usually have to go through male relatives, and “widows are often dispossessed of their property because it is recognised as belonging to the male heir” (OECD, 2019, p. 8). Interviewees concurred that many chiefs still do not give women access to land. Traditionally, women can only access land through their husbands, sons or brothers, and chiefs write up the homestead in men’s names and are not open to putting a women’s name down for the homestead.

In urban areas, the situation is somewhat better as chiefs in urban areas are more educated and knowledgeable about women’s land rights. As Amnesty International (2018, p. 26) points out, “chiefs’ proximity to urban centres was linked to their openness to allowing women to access land”, so women closer to urban centres are more likely to be able to access land.

Chiefs who are in urban areas they give land to women. The latter do this because of their education or awareness about land rights issues and the fact that women’s deserve the same rights as men.

(Interview, May 2019).

As Rose (2002) points out customary law is flexible and adaptable, so communities can and do adjust land tenure customs on an ongoing basis, as social and political circumstances change. She goes onto argue that the literature on land access for women neglects differentiation between women of differing social and economic statuses.

Gender is given a specific focus in the National Water Policy, which states that “the water sector shall strive to achieve gender balance in the development and management of water resources”. The policy acknowledges that woman are under-represented in leadership and decision-making positions, and despite “socio-cultural perceptions” will seek to remedy women’s marginalisation. Similarly, the National Irrigation Policy points out that many subsistence farmers are women and, therefore, women need to achieve equitable access to irrigation. Loans for irrigation development are therefore meant to be equitably shared between men and women.

Furthermore, in 2010 the government introduced the National Gender Policy, which aims to redress inequalities between women and men, so that women can play “a collaborative and dynamic role” in the development of Eswatini. In its thematic area on environmental and natural resource management, it states that it will formulate “gender responsive policies on the distribution of under-utilized land resources” and integrate gender perspectives in designing and implementing environmental and natural resource management policies. In its theme of poverty and economic empowerment, the policy also emphasises that it aims to develop economic empowerment for women, through encouraging self-employment and skills development.

Regarding Swazi youth, while the Draft National Land Policy includes no mention of youth (Dlamini, 2012), the CASP specifically recognises that it is essential to include the youth to improved agricultural yields. Although HIV/AIDS has decimated the adult population of rural areas, leading to a high youth population, many young people in rural areas are still not involved in farming (Dlamini, 2012). The National Youth Policy of 2009 confirms that there are no significant opportunities for youth to participate in economic, social and political life. In terms of youth participation in the political sphere, the 2005 Constitution sees this more as a privilege than a right (Khumalo, 2016). According the National Youth Policy, many children do not progress beyond primary school education, and those who complete high school often do not have access to tertiary education. The policy sees the inclusion of youth in various programmes as essential to tackling poverty, but while the youth can access SNL, in practice only about 27% of youth are involved in agriculture and the farming population is aging (Swazi Observer, 2015). In 2009 the Swaziland Agricultural Development Project (SADP) was launched; it focussed on getting youth involved in agriculture by creating 60 youth groups who were trained and had businesses set up in “poultry farming, pig production and vegetable and crop production” (FAO, 2014a). However, “there is lack of youth specific data to inform youth strategies and programmes as well as monitoring and evaluation mechanisms including indicators” (Dlamini, 2012, p. 22).

# Linkages between Malabo Declaration and land governance

As interviewees argued, significant evidence suggests that the current SNAIP is geared towards addressing Malabo Declaration. For example, a big linkage between the land governance in Eswatini and the Malabo Declaration is the country focus on increasing land irrigation and water harvesting. The Eswatini government acted swiftly to implement most of the Malabo Declarations, with the 2017 implementation of the EU funded project, Sustainable Land Administration and Management.



## The focus of the Sustainable Land Administration and Management project

In Libya in 2009, African Heads of State initiated the Sustainable Land Administration and Management project, which recognised that African land is largely dominated by traditional leadership and governed through customary tenure rights. This is also the case in Eswatini, which recognised that if it is to benefit from land, it needs to improve land governance and administration as a matter of priority. Eswatini was then selected as one of the ten countries where the project was implemented on SNL, governed by traditional leaders.

The project is implemented by three ministries: the MNRE, the Ministry of Agriculture and the Ministry of Constituencies. The Ministry of Natural Resources and Energy is collecting data and mapping land across all four provinces and with 13 chiefdoms.

The project officially ends in May 2019, but we are yet to make official hand over of the project outputs and we are busy arranging logistics to allow us to officially hand over the report to the minister who will then hand over to the chiefs.

(Interview, May 2019).

The data will help traditional leaders improve the governance and administration of land as they can identify each piece of land under their jurisdiction, who was allocated land, and what land is available for future use. The map also defines boundaries between one chiefdom and another as this is a source of dispute.

However, the 13 chiefdoms only cover 17% of the country, so more funding is needed to scale-up the mapping to cover the whole country and to keep the information updated every year. Since the mapped land is not titled, chiefs still need to negotiate with household heads if they want to relocate someone or if government want such a piece of land for public use.

This will help individuals to invest in their land because in the past they remained in the state of fear that they may be moved elsewhere.

(Interview, May 2019).

Some chiefs resisted the mapping exercise because they did not want people to have a document that shows their ownership of land, however, the ministries argued that the chiefs did not have full control of their land because they did not have up-to-date information. The project allowed chiefs to identify pockets of idle land and also see all the subjects in their chiefdom.

## Actions for strengthening good land governance in Eswatini

Based on the analysis of the documents retrieved and interviewees carried out, there are number of promising actions that once fully taken by the government of Eswatini, will allow the country to reach its SNAIP goals and milestones. In this section we highlight these priority actions, which include (i) implementing chiefdom development plans, and (ii) investing in developing land legislation, including the Swazi National Land Commercialisation Bill, establishing more inclusive and effective farmers’ cooperatives, encouraging land reform by leveraging existing regional and global initiatives, and ensuring meaningful and inclusive public policy engagement.



### Chiefdom development plans

A key issue in improving poverty alleviation and bringing investment is to identify what kinds of enterprises can work on the small plots of land most people have, i.e. less than half an acre. The government has therefore been implementing chiefdom development plans, which identify the priorities for the optimal use of land through agriculture and tourism for subsistence and commercial gain.

Interviewees explained that in developing the plans, communities are supported to demarcate crop and grazing land, and the chiefs then guarantee that land will be set aside for project implementation. As demonstrated by senior officials during interviews, chiefdom development planning, spearheaded by the Ministry of Agriculture in partnership with certain chiefdoms provide a unique and sustainable approach to improve land governance. The EU is a key funder of the plans, which include sustainable land use and cultivation of high value crops including horticulture to ensure food security and incomes for households. Already a number of Chiefdoms development plans have been officially launched, for example in Mvembili Inkhundla and Ntondozi chiefdom.

### Investing in developing land legal instruments

There is a need to have legal instruments to govern land holistically in the country. As part of the process to strengthen land governance, the government is increasing efforts to register SNL under agriculture so that it can be legally accepted as collateral by credit providers; this would allow homesteads to leverage finances to boost both agricultural production and trade.

Although the Constitution clearly provides for land rights for all Swazi people, land laws are needed to effectively govern land; the lack of such legislation hampers implementation of land related programmes and policies. The judicial systems are also hampered as they cannot offer justice without laws guiding their decisions. The officials interviewed hope that by registering SNL land, they are opening opportunities for people with capacity to rent land for effective and efficient use/production. This is a great opportunity to put land into good use, but accompanying laws are crucial, otherwise without safeguards, land rented out may be lost if used as a collateral. Some potential legal tools include:

#### Swazi National Land Commercialization Bill

The Swazi National Land Commercialization Bill of 2016 creates opportunities for people to apply for their land to be designated and allocated for agri-business. Chiefdoms are also entitled to designate land specifically for agri-business purposes. Under the bill, the Surveyor General must survey the land and appropriately mark its boundaries. Under the bill, each chiefdom must establish a five-member Chiefdom Land-use Rights Allocation Committee, which will:

(a) exercise control over the designation, demarcation, allocation, revocation and cancellation of land-use rights; (b) receive, consider and recommend an application for land-use rights; (c) liaise with the Technical Advisory Committee on the designation and demarcation of land that is subject to land-use rights; (d) submit recommendations to the Chief for approval of an application; (e) adjudicate over disputes relating to agri-business land-use rights; (f) advise the Chief on the implementation of this Act; and (g) perform such other related functions as may be assigned by the Chief.

While the chief must be consulted and has final authority on the allocation of land for agri-business, interviewees asserted that the bill was an attempt to bypass chiefs who block the enactment of land policies. The bill aims to ensure that people can use their land effectively, albeit that land designated for commercial use may not encroach on homesteads.

#### Establish more inclusive and effective farmers’ cooperatives

Since Eswatini already has functioning cooperatives, more efforts could be made to establish effective farmers’ cooperatives, especially through the Agriculture Marketing Board which facilitates local and exports products. These efforts to establish cooperatives can link smallholders with large-scale producers who do their own market analysis and export products, such that smallholders’ products can also be marketed and sold abroad. The efforts in agriculture will encourage smallholder farmers to put their farmland to good use and will encourage them to invest in governance structures and infrastructure such as dams and soil conservation techniques. Smallholder sugarcane cooperatives are already working hand-in-hand with large-scale companies in this regard.

#### Encourage land reforms with existing regional and global initiatives

In addition to CAADP, the Malabo Declarations encourage African states to commit to implementing existing regional and global tools that provide guidance and require countries to domesticate these tools. The key regional and global initiatives which should be leveraged to bring about land reforms include (i) the African Union (AU) providing a Framework and Guidelines on Land Policy in Africa released in 2009, and (ii) the United Nations Food and Agriculture Organization’s (FAO) Voluntary Guidelines for the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security (FAO VGs), released in 2012 (see Box 1 below).

Box 1: AU and FAO guidelines on land-based investments

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| Eswatini, like many other African countries is promoting investments in agriculture. The country can take key lessons from both the AU and FAO guidelines – all of which were published following an ever-increasing ‘land-grabbing’ for the production of food, energy feedstocks and private forest plantations registered between 2005 and 2009. Despite the limitations of these guidelines, that they remain soft laws until the specific country has domesticated them, they provide wide-ranging guidance on how Eswatini as an African state should carry out its own land reforms and administer land-based investments. The AU guidelines in particular suits the Eswatini context as they emphasise the need to ensure that the ongoing land reforms in Africa, most of which are pro-market, do not jeopardise the rights and access of vulnerable groups such as women, indigenous communities and the young, and that these groups are not adversely affected by expensive systems to transfer rights. |

(African Union, 2009a; FAO, 2014b; Sulle, 2017).

The two guidelines highly recommend that countries implement reforms in land sector land-based investments and ensure that such reforms and investments do not displace the existing land rights holders. The guidelines further recommend protecting the right to access, use, control and own land by vulnerable groups such as women, indigenous communities and youth. Therefore, although both the AU F&G and the FAO VGs remain soft laws (not legally binding), since the Eswatini is an active member of an AU and FAO, these tools provide sufficient grounds for the country to integrate lessons provided herein its land reforms.

#### Ensure meaningful and inclusive public policy engagement

While it is still challenging for bureaucrats in Eswatini to make major land reforms without strong support from the traditional authorities, starting with the king, it is important that many forums are established to debate public policy, especially land and agriculture policies. Regional and international agencies to which the Eswatini government is a partner and or a signatory can provide a starting point. For example, through the African Land Policy Centre, the African Union can support relevant policy and institutional reforms to stimulate and facilitate agriculture related market opportunities, and “mobilise technical expertise and financial resources to support capacity development and related policy reforms to accelerate CAADP implementation” (African Union, 2009b).

Also through the FAO-Eswatini Government partnership, as was stated during interviews, the FAO country office has set aside funding for follow-up support to NAIP, but it is all waiting for the result of ongoing studies including this one. Given the FAO’s rich experience on land reforms, especially as detailed in the VGGT guidelines, there is room for the government of Eswatini to begin executing the recommended stages of implementing VGGT at the country level, starting with an awareness raising workshop at the national level. The strategic workshop partners may include, among others, government officials, representatives from civil society, farmers’ associations, private sector, and academia. These participants should be able to review key VGGT principles and, based on their preference, engage in a stock-taking exercise to identify country-specific priorities. This will help government bureaucrats set an inclusive land reform agenda and allow them to design much more broad-based reforms in the sector.

The national level workshop may be followed by a workshop targeting *VGGT use among Civil Society Organisations (CSO) and grass roots organizations*. This workshop needs to focus on building awareness and increasing engagement of civil society organisations and grassroots community-based organisations (CBOs) and faith based organisations (FBOs) in the implementation and use of the VGGT on the ground.

Lastly, since Eswatini like many other countries in Africa suffers from gender inequality in access to use, control and own land, the FAO/VGGT principle of gender equality and the Technical Guide “*Governing land for women and men*” provide useful tools that the country bureaucrats need in improving tenure governance (see FAO 2012).

In addition, at national level, the Joint Sector Review of agriculture involves the Federation of Eswatini Employers and Chamber of Commerce (FSE&CC), the Coordinating Assembly for Non-Governmental Organisations (CANGO), government ministries, farmers, academia, and development partners (IFPRI and ReSAKSS, 2019b). This review process helps the government assess and determine appropriate policies and priorities in the agricultural sector, by providing an assessment of strengths and weaknesses (IFPRI and ReSAKSS, 2019b).

IFPRI and ReSAKSS (2019b) further recommend that despite the existence of Aid Coordination and Management Section under the Ministry of Economic Planning and Development (MEPD), more coordination is needed between development partners who support agriculture policies and programmes in the country in order to align country policies and programmes.

# Goals and milestones for integrating land governance issues into the NAIP

The objective of developing country specific goals and milestones for land governance issues into NAIP is to ensure that land governance is anchored into land governance in the country systems and with further aim of providing relevant data to the biennial review process.

One of the key suggestions from officials in Eswatini is to ensure the country is able to develop physical and or spatial planning of the country so the land use can be done and land demarcated. Some interviewed officials at the MNRE stated that the initiative started but got blocked. Their efforts to demarcate land was taken over by the Ministry of National Housing Development which started to demarcate rural land, but it also failed. But we believe land use planning is inevitable, because the planning will enable authorities and people to know where is best to build a house and where to farm.Therefore, in order to achieve these crucial recommendations and intended reforms in land sector, the report provides the following specific goals and milestones as indicators to ensure concrete execution and integration of land governance in second generation Eswatini’s NAIP.



## Increased proportion of farm households with secure land rights

The challenge that Eswatini government has is to increase the amount of arable land under cultivation. Therefore, one of the key milestones is to increase the number hectares of land set aside for agricultural and grazing purposes. Also a legal and/or legally enforceable mechanism must be established to ensure such productive land is recognised, used for designated activities and that these lands are protected from possible encroachment for other land uses, including establishment of settlements.

## Increased budgetary allocation to land sector

As a lead programme under existing NAIP, it is crucial that the government of Eswatini allocate significant budgetary resources to design and implement programmes and initiatives including those targeting improvement in land administration and governance, land use planning and documentation as well as awareness raising campaigns against climate change impacts. The current NAIP document shows that the required finances to improve the natural resources sector including land will cost about 54% of the entire cost of implementing NAIP. Yet, the gap analysis showed that the country’s spending on agricultural sector averaged around 4% against the 10% budget provided for in the CAADP compact. The budget amount of finances therefore remains relatively small given the huge task of surveying, mapping, and documenting land parcels in the country.

## Boost in number of skilled, knowledgeable and professional land experts

As it stands, agricultural sector land reform in Eswatini suffers from lack of highly qualified land experts making it difficult for the existing few experts to execute all the tasks necessary to bring about the much needed reforms.

## Number of harmonised land related policies and legislation

The presence of policies and legislation that speak to each other will smoothen the execution of such policies and legislation and hence improve land governance. This will in turn lead to an increase in the investments in the agriculture resulting in an increased agricultural investments.

## Increased number of home-grown solutions and approaches towards sustained land governance

This may include up-scaling of the Sustainable Land Administration and Management Project implemented by the MNRE and initially funded by the European Union. This project came to its end in May 2019 and by the time of the consultant’s visit to Eswatini, it was unclear if the project funders will provide additional funds or an up-scale fund. The government of Eswatini and other development partners have an opportunity to invest in this project to secure more and productive agricultural land and protect such land from further encroachment for other development – i.e. settlement development. The draft bills – the Chiefdom Development Plan and Swazi National Land Commercialisation Bill provide avenues for some meaningful reforms in the land sector.

# Policy recommendations

The key recommendation that this report makes is to ensure the Eswatini government aligns its traditional land management by chiefs, and land management by government through the LMB, while maintaining the dual structure for land management. Further recommendations include:

1. Ensure that both draft policies on land and agriculture are able to harmonise and rationalise institutional arrangements for land governance in the country. Provisions and statements are needed to bind institutions to collaborate from the design, implementation and monitoring of policies related to land and natural resources that are crucial to increased investment in agriculture. Moreover, these draft policies need to be endorsed by both government structures and they need to secure political backing from both modern government bureaucrats and traditional chiefs.
2. International agencies and other development partners including the AU and GIZ need to support well-articulated domestic solutions to land question in Eswatini to allow not only a buy-in from traditional chiefs, but to ensure acceptability, and sustainable and effective implementation of such solutions. The recently implemented Sustainable Land Administration and Management Project by the MNRE through the European Funding can be an example on how domestically thought projects can be up-scaled in an effort to improve land governance in Eswatini without fragmenting the local land governance system.
3. Further investments in agriculture in Eswatini are pegged not only on land governance, but on the country’s capacity to invest in water harvesting and building of dams necessary for agriculture due to unreliable rainfall seasons. A well thought and integrated land use plan needs to take account of water availability and usage and allocate land for dams’ construction.
4. Ongoing reforms in the land, agriculture and investment sectors need to prioritise the need to legitimate land owners including empowering women to have access to use, control, own, purchase and dispose land as their men counterparts, and also as central workforce in bringing the much desire changes in agricultural productivity.
5. Invest in national and local technocrats’ innovative approaches. In the face of complex and rather rigid land governance structures in Eswatini, it is crucial to adopt alternative approaches such as investing in government technocrats, who are trying to develop programmes that will boost agricultural investment and encourage chiefs to accept such programmes. For example, the new Chiefdom Development Plan. Under this programme, communities are supported to demarcate crop and grazing land. In this way, experts are able to work with communities without getting into trouble with chiefs, and land use planning is slowed down. However, since this programme is a developmental approach, not legislation, the challenge is that chiefs have better access to the king than technocrats. To effectively roll the project out, chiefs need to guarantee land set aside for project implementation.

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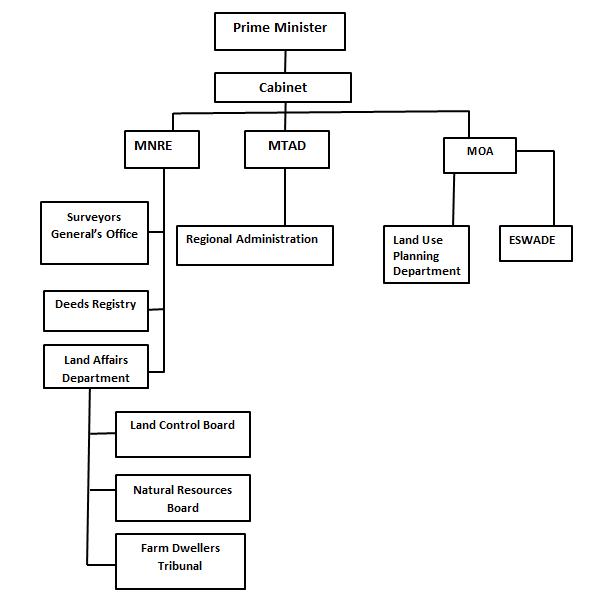
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Appendices

Appendix 1: Structure of central government institutions involved in land governance.

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Source: Adapted from Manyatsi and Singwane (2018)

1. eSwatini, which means ‘land of Swazis’ in the local language, is the new name for Swaziland. [↑](#footnote-ref-1)
2. His Majesty’s Government Programme of Action 2013-2018, The Kingdom of eSwatini. [↑](#footnote-ref-2)
3. <https://www.amnesty.org/en/latest/news/2018/08/eswatini-forced-evictions-expose-flawed-land-laws-as-hundreds-face-homelessness/> [↑](#footnote-ref-3)
4. Please note that when the existing NAIP was developed, eSwatini was still called Swaziland. His Majesty – The King later renamed the country to eSwatini. [↑](#footnote-ref-4)