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Institutional Arrangements Stocktake and Assessment of Reforms

DISCUSSION PAPER

COWI

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1 Introduction

This report has been prepared as a requirement specified in the project terms of reference (3.1.1) for: Technical Assistance support to the Government of Swaziland in Sustainable Land Administration and Management (SLAM). The requirement is to carry out a stocktake assessing progress of land reforms already initiated in the context of project result area 3, which is "Institutional arrangements for non-Title Deed Land / SNL are endorsed by stakeholders." The focus is on reform of Swazi Nation Land (SNL) institutional arrangements. However, the scope of many of these reforms includes also title deed (freehold tenure) land as well as SNL (customary tenure) land, and sometimes Crown (state tenure) land. Therefore, the stocktake assessment will consider institutional reforms – of land policies, land laws and land organisations – generally and include all tenure forms and not just SNL. The stocktake assessment will not, however, consider land reform as such, which is an altogether different subject involving the redistribution of land from large landowners to smallholder farmers, usually as part of a programme of agrarian reform.

"Institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)." *(Douglass North, 1990. Institutions and Institutional Change)*

1.1 Scope and purpose

In the context of institutional reform, this stocktake assessment shall include the laws, rules and customs that govern land rights and land use, and the organisations – principally government agencies and traditional authorities – that implement, enforce, and act in conformance with these laws, rules and customs. This stocktake assessment will, therefore, review present policies, laws, rules, structures, responsibilities and roles of organisations administering and managing land (mainly statutory but also customary) plus proposed reforms of these.

1.2 Definitions and Background

Institutions are, briefly, formal and social structures, rules and norms that govern and shape societal behaviour. Institutions include, among other things, laws, organisations, and customs. Institutions are 'the underlying rules of the game'.

Organisations are 'groups of individuals bound by a common purpose'. Organisations are shaped by institutions and, in turn, influence how institutions change. Some social scientists view organisations as the material expressions of institutions. In the context of land tenure, there are government organisations, traditional authority organisations, and civil society organisations. Civil society organisations include professional bodies and special interest groups. The organigram in Figure 1 shows the principal government and traditional organisations that have land administration and management roles.

A **policy** is a set of guiding principles adopted or proposed by a government, organisation or individual. Policies provide a guide for decision-making and positive action toward desired goals.

Typically, policies are written down, although not always. A policy can be a set of principles derived from custom or a position on a particular question.

Law can also be either written or unwritten, or as more often described, statutory or customary, or formal or informal. Law differs from policy in that laws constrains, restricts and compels actions and behaviour. Statutory law, which often stems from policy, comes into force after enactment by a legislative body (parliament) followed by promulgation or assent of a head of state. Customary law is less rigid and develops from longstanding principles and practices that are widely recognised and upheld. Customary law may be written (codified) but most often it is not. Appendix B lists all relevant legislation and draft laws (bills) and these are summarised and assessed in part 3 of this report. Hughes (1972) provides a comprehensive account of customary land law.

Land administration is the processes of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies. **Land management** is the activity associated with the management of land as a resource from both an environmental and an economic perspective. **Land tenure** is the mode of holding land rights. Land tenure is an institution, i.e., it is rules invented by societies to regulate behaviour with respect to land. Rules of tenure define the allocation of property rights within societies, and define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints¹.

There are three types of land tenure in the country. These are 'Title Deed Land' (TDL), 'Swazi Nation Land' (SNL) and Crown (or government) land. TDL is private tenure, similar in effect to freehold tenure or title, where persons hold the land in perpetuity free of rent and most restrictions and obligations. Tenure on SNL is a customary form that pre-dates colonial administration. Its legislative basis is the Concessions Partition Act 1907 that created what became known as "Swazi Areas", and the *Definition of Swazi Areas Act, 1916* and the *Swazi Land Settlement Act 1946* provided the legal basis for these areas, then defined in 1951 in the *Natural Resources Act* as:

"'Swazi area' means any land set apart for the sole and exclusive use and occupation of Africans under the Concessions Partition Act No. 28 of 1907 and land set aside for African land settlement in terms of the Swazi Land Settlement Act No. 2 of 1946, and shall include any land registered in the name of the *Ngwenyama* in Trust for the Swazi Nation."

From this definition, the term 'Swazi Nation Land' (SNL) emerged into popular usage.

The *Ngwenyama* holds all SNL and land acquired in trust for the Swazi Nation. Swazi law and custom (customary tenure) applies in all the original 'Swazi Areas' where chiefs, by assignment of the *Ngwenyama*, control access to and use of the land. Land outside the original 'Swazi Areas' acquired for the Swazi Nation may be administered by either statutory or customary law, although there are different opinions on the tenure status of the latter.

The head of a family who having declared allegiance to a chief may request from that chief land to construct a family homestead and to cultivate. The use of the land is exclusive and in perpetuity and usually includes the right to access to common lands for livestock grazing, provided customary rules are adhered to, and duties performed (Hughes, 1972).

¹ United Nations Food and Agriculture Organisation

SNL held under customary tenure may not be bought, leased, mortgaged or sold, but may be lent or gifted. Land rights may be extinguished by banishment from the chiefdom or by order of the *Ngwenyama*. Traditionally rights do not need to be secured by continuous use, but a custom is emerging to this effect.

2 Policies

A policy, being a set of guidelines for rational decision-making, is different from a strategy, which is a plan designed to achieve certain objectives. Simply stated, policy is a principle of action, whereas strategy is a plan of action. However, the meaning is often conflated, especially in the government context, and therefore some national strategies are included here.

2.1 Sector wide policies

The project inception report² listed and summarised all key policies and strategies that touch on land matters (see Appendix B); the principal ones are heightened in Table 1 below together with the actions proposed and an assessment of progress toward each one.

Table 1: Sector policies and strategies

<i>Policy or strategy</i>	<i>Proposed action</i>	<i>Results</i> (☒ = no progress; ☐ = some progress; ☑ = achieved)
National Development Strategy (Vision 2022), 1999		
4.3.12(a)	Develop a land allocation policy that will ensure that both men and women have equal access and ownership opportunities especially on SNL.	☑ Land policy drafted (2000) but pending ratification.
	Review and up-date the Land Speculation Control Act of 1972 to promote development projects [to] minimise the requirement for land transactions and encourage investment and credit availability.	☒ No progress.
	Formulate an effective mechanism for settling land disputes on Swazi Nation Land.	☐ Mentioned in the (draft) land policy and some measures proposed in the land Bill. SLAM result area.
	Explore possibilities of improving the present land tenure system.	☐ See (draft) Land Policy (2000) and Land Bill (2013).
4.3.12(e)	Facilitate a well-functioning land market with adequate information, secure tenure arrangements and easy and affordable registration and transfer fees.	☐ A TDL market exists with information available at the Deeds Registry. TDL tenure considered very secure. Transaction costs are relatively high and a barrier to access and use. ³ SNL cannot be transacted in a market system.
4.4.2(a)	Address with greatest urgency the necessary institutional arrangements in order to eliminate the negative aspects directly affecting land use; taking into consideration that the land is held in trust for the nation and that there are	☐ Covered in the (draft) land policy. SLAM result area.

² COWI Inception Report, 15 March 2017.

³ See World Bank Doing Business Report 2018.

<i>Policy or strategy</i>	<i>Proposed action</i>	<i>Results</i> (<input checked="" type="checkbox"/> = no progress; <input type="checkbox"/> = some progress; <input checked="" type="checkbox"/> = achieved)
	many agencies involved with land issues (including the chiefs).	
	Intensify the efforts to modify the land tenure system such that it is consistent with increased production and employment.	<input type="checkbox"/> Covered in the (draft) land policy.
4.4.2(b)	Promulgate legislation to encourage investment on SNL.	<input type="checkbox"/> SNL Agricultural Commercialization Bill, 2016.
4.7.5(c)	Promote commercial agricultural production on Swazi Nation Land (SNL).	<input type="checkbox"/> SNL Agricultural Commercialization Bill, 2016.
4.7.5(e)	Reform and introduce new laws to deal with problems such as inheritance, land-use rights and status of women	<input type="checkbox"/> Progress where title deed land is concerned.
	Define and formalise property rights on Swazi Nation Land in a clear fashion so that access by households (including female-headed households) is increased and there is an incentive to invest in the land.	<input type="checkbox"/> Some progress (SLAM is clarifying and recording landholding rights on SNL).
National Food Security Policy, 2005.		
3.1.1.4	Investigate the options for land consolidation on SNL, e.g. through formation of blocks of land and resettlement...	<input checked="" type="checkbox"/> Implemented in, for example, LUSIP
3.1.1.7	Support and encourage sharecropping practices...	<input checked="" type="checkbox"/> No discernible progress, but implementation of SLAM should have an impact.
3.2.1.1	It is National Policy to improve access of households and individuals on SNL to land and water resources, together with concomitant rights over them.	Although access to land is limited to households (disadvantaging women and unmarried men), the availability of land to allocate is a greater constraint than the process.
Poverty Reduction Strategy Action Plan, 2007.		
5.1.1.1.1	In accordance with the Constitution, promulgate laws that facilitate and ensure the right for all citizens to have equal access to land.	<input type="checkbox"/> Proposed in the Land Bill, 2015.
	Approve and implement the National Land Policy...	<input checked="" type="checkbox"/> No progress.
	Legislate against the sale of Swazi Nation Land.	<input type="checkbox"/> Proposed in the Land Bill, 2015; customary law already prohibits it.
	Formalize the leasing of...SNL.	<input type="checkbox"/> Proposed in the Land Bill.

Evident from Table 1 is that the government's policy environment envisions change, or the exploration of possible change, to SNL tenure and to institutional arrangements affecting SNL. This may be contingent on formal ratification and implementation of the overarching land policy and promulgation of the Land Bill.

2.2 Land policies

In 2009 the African Union made a Declaration on Land Issue and Challenges in Africa, where member states, including eSwatini (Swaziland), are to, among other things, "prioritise, initiate and lead land policy development and implementation processes in our countries...[and]...support the emergence of the institutional framework required for the effective development and implementation of land policy and implementation."

Many years prior to this, a policy development process began that culminated in the 1999 draft of the Land Policy. Contrary to the AU guidelines, this policy-making process was largely government driven and 'top down' (Lukhele, 2006)⁴. Anecdotal accounts of the public consultations on the draft national land policy revealed some opposition to it. Questions arose regarding its need ('there is already a (unwritten) land policy') and its purpose ('government is seizing the powers of traditional authorities'). Although a laudable attempt by government to improve land use, management and administration, the draft national land policy "introduces new elements, which were previously not allowed in the laws and culture of Swaziland" (Community Forest Network, 2013). For instance, land tenure options "on SNL...may take the forms of leasehold, community property associations, and other forms of securing smallholder tenure for agricultural land" (Draft National Land Policy, 2009).

Regarding institutional arrangements, the draft national land policy proposed that "the legal framework of land administration be rationalised and streamlined...created at the local level, which is able to resolve all the local-level land administration inefficiencies...[and]...that all existing land administration structures be streamlined and integrated for effective functioning"⁵. Implementation of these policy measures on institutional arrangements proposes various measures highlighted below. The policy does not propose a ministry for lands but instead designates a ministry responsible for lands, under which the Surveyor General's Department and the Deeds Registry are located. Figure 1 below shows the organogram for this arrangement.

The land policy places the Land Management Board (LMB) in a hierarchy below Cabinet and a government ministry, suggesting that the government is responsible for all land, including SNL. This arrangement does not recognise the powers of chiefs over SNL; powers that stem from the *Ngwenyama*, who also appoints the members of the LMB. Furthermore, the organogram shows chiefs' councils and *boBandlancane* but omits chiefs themselves.

⁴ "In Swaziland the concept of the birth of the National Land Policy (NLP) came after the adoption of the National Development Strategy (NDS) in 1997. Government set up a Technical Committee to work on the document drafting process. Between 1997 and 2001 the Government drafted a NLP document, which was to be used as a working document...The document was produced in 1999 and submitted to Cabinet for its consideration and approval. It was eventually approved. Cabinet then submitted the document to the Head of State. The Head of State then referred it to Swazi National Council. This is the advisory body to the Head of State. The Council recommended that the finalisation of the NLP document should await the outcome of the National Constitution. Now that the Constitution is out, the line Ministry i.e. the Ministry responsible for land, is expected to resume the process of finalising to document. To this extent, government has set aside funds for public consultation (*vusele* exercise). This exercise is to solicit view of the stakeholders, in this case, the general public, on how the NLP should cater for their needs."

⁵ Draft national land policy 2009, para.2.6

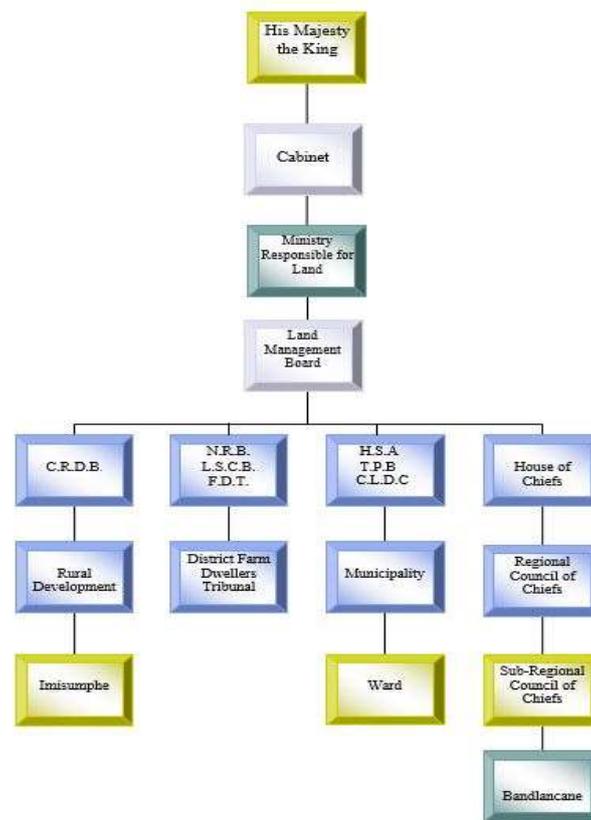


Figure 1: Institutional arrangements organogram (draft Land Policy, 1999)

The Constitution establishes the LMB as "responsible for the overall management, and for the regulation of any right or interest in land whether urban or rural or vesting in *Ngwenyama* in trust for the Swazi nation" but the draft national land policy interprets this much more narrowly to mean land disputes, land use planning at national level, and dealing with specific (undefined) land issues⁶. However, the drafters of the Land Bill (see 3.1 below) defined a different and more broad set of responsibilities for the LMB.

A 2013 review of the draft national land policy⁷ remarks, "it is however, discouraging to note that up to now (2012) the draft policy has not yet received final approval. Indications are, however, that it will soon receive consideration for approval by the traditional authorities. All the modern structures of government (including Cabinet) have already approved the policy. The delay in approval by traditional authorities is, however, understandable as this policy introduces new concepts which were hitherto very alien to Swazi Culture." The delays continue, and the national land policy remains a draft, suggesting that approval of the policy as currently drafted may not be forthcoming.

A subsidiary policy, endorsed by the draft land policy, is the extension of the 99-year leasehold concept over SNL. This draft policy originates from the World Bank funded Urban Development Programme that between 1995 and 2005 facilitated the creation of leasehold titles on peri-urban SNL. Although the creation of SNL leases is limited in number and extent⁸, the achievement

⁶ Draft national land policy, 2009, para. 4.1.1.1.

⁷ CFN, 2013, page 9.

⁸ To date, 1,370 leases are registered in the project areas of Msunduzi, Mahwalala and Nkwilini.

nevertheless prompted a proposal by the Ministry of Housing and Urban Development (MHUD) for extending the 99-year leasehold concept throughout the country⁹. A feasibility study and plan included options and proposals for institutional reforms. The study recommended a 'blend of Sub-Saharan approaches' fusing together modern and traditional land governance arrangements in a unitary land administration system under a Ministry of Land Affairs that would be "responsible for land related duties inclusive of acquisition, allocation, transfer and disposal of land and real rights in land, formulate and administer land related legislation, policies and guidelines, management of a land information system, keeping and maintaining registers of land use, coordinating land related projects, hearing land related disputes and determining appeals thereof."¹⁰ The Ministry would oversee various land boards, who in turn oversee regional land committees and chiefdom land allocation committees in the structure shown in Figure 2.

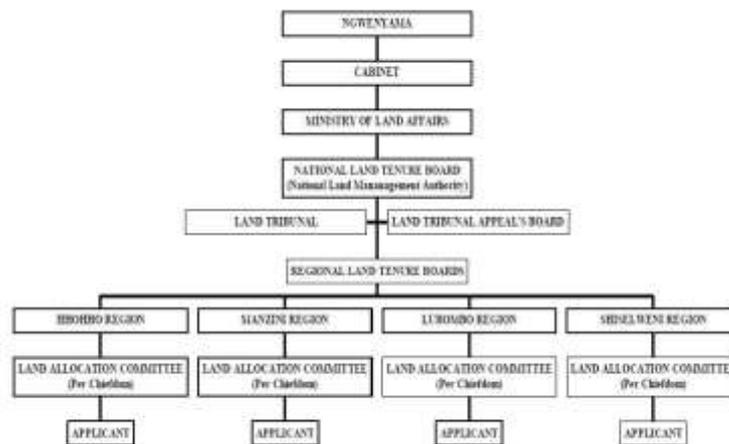


Figure 2: 99-year leasehold concept institutional arrangements (MHUD, 2004)

Another policy development that has had some success is that of the formation of farmer companies operating commercial agriculture ventures on irrigated SNL. The impetus for this development came from the Lower Usuthu Smallholder Irrigation Project (LUSIP) that aimed to "irrigate up to 6,000 hectares of land in a first phase for use by smallholder farmers. In the absence of a new policy and legal framework, the project has developed practical options for securing equitable access and tenure security within the existing policy and legal framework." (Gunda, 2013). These practical options include the "enhanced chief's letter" and the "chief's letter of consent" that document the land and membership of the farmer group. At the time, these 'letters' were an interim arrangement pending the issuance of leases but they remain, together with the incorporation of many groups, the tenure basis for these resettled smallholder farmers. Notwithstanding, there are instances of former landholders attempting to reclaim their lands (Gunda, 2013) and other instances of conflict and dispute (Liversage, 2013; Times of Swaziland, 2017).

In the continued absence of a formal, written land policy, existing unwritten policies subsist. For instance, there is a longstanding policy on maintaining land tenure arrangements on SNL. Various proposals for changing SNL arrangements have been put forward, as mentioned above and from

⁹ Ministry of Housing and Urban Development, 2004. 99-Year Leasehold Concept Feasibility Study and Implementation Plan

¹⁰ Ministry of Housing and Urban Development, 2004, p.82.

colonial times¹¹ up to the 2009 draft land policy, but traditional tenure and governance arrangements endure, and reform has been limited in extent and substance.

3 Legislation

The Lower Usutu Sustainable Land Management (LUSLM) project undertook a review of land-related policies and legislation in 2012 with the objective of making recommendations for the harmonisation of policies, laws and regulations that are listed in Appendix B. The consultant's report¹² in reviewing these found that "most legal pieces of legislation are fragmented, obsolete and outdated and unable to deal with new and emerging challenges of land issues" and recommended the enactment of a new land law. This resulted in the drafting of the Land Bill in 2013. The full list of the consultant's recommendations is attached at Appendix C.

3.1 The Land Bill, 2013.

The objectives of the Land Bill include, among other things, to (a) operationalise the Land Management Board as established by the Constitution, (b) harmonise the land legal regime so that there are no inconsistencies in various laws and in particular the Constitution, (c) establish the Department of Land Affairs to support the Board, and (d) establish a Land Tribunal for purposes of adjudicating over land issues. The Land Bill specifies the functions of the LMB, with the aim of ending current confusion and uncertainty about conflicting functional roles and responsibilities of various land agencies.

Although the Land Bill recognises the role of chiefs to oversee allocation and management of SNL according to custom, it legislates a role for government agencies and the LMB into matters presently governed by customary law and administered by traditional authorities. These proposed changes may have far-reaching consequences for the political economy of land, and may account for delay of the Bill's passage through the legislative process.

A copy, attached at Appendix E, highlights those sections of the Land Bill impacting on SNL and thought to be the most contentious. Briefly, these are:

- > Allocation of SNL will be subject to statutory law (s.87)
- > Chiefs shall consult and cooperate with the LMB (s.89(3)).
- > Allottee of SNL shall receive a certificate (s.90(2)).
- > Chiefs shall consult with relevant government departments when allocating land (s.91(1)).
- > A minister is responsible for SNL development (s.93(3)).
- > Certificates of allocation shall be registered with the LMB / Department of Land Affairs (s.94)).
- > Jurisdiction of the courts applicable to matters of illegal occupation of SNL (s.95).
- > Leases may be issued over SNL (s.96)).
- > The government shall be responsible for resettlement on SNL (s.105).

¹¹ See for example, Hughes, 1972 p.190 "in a speech at the opening of the Manzini agricultural show in July 1965, Sir Francis Lloyd, Her Britannic Majesty's Commissioner in Swaziland, is reported as having made the following policy statement. 'The first essential to any improvement in farming standards is security of individual land tenure, and this is a development which the country's leaders must promote with energy and speed in order to take advantage of the many opportunities afforded in the Swazi areas'."

¹² Community Forest Network, 2013

3.2 The SNL Agricultural Commercialization Bill, 2016

The Land Bill provides for the leasing of SNL for commercial agricultural purposes, presumably on the premise that this will enable access to finance. With the delay of the Land Bill, the *Swazi Nation Land Agricultural Commercialization Bill 2016* proposes a similar mechanism using certificates instead of leases.

The objects of the Bill include provision for the designation, demarcation and allocation of SNL for agri-business, the registration of (agri-business commercial *khonta*) certificates for SNL and the establishment of chiefdom land-use rights allocation committees, technical advisory committees, and an agri-business land-use rights appeals tribunal. Submitted to Parliament in 2016, its current progress through the legislative process is unknown. However, certain contentious clauses may be the cause of delays. A copy of the Bill, attached at Appendix F, highlights those sections that are thought to be the most contentious. Briefly, these are:

- > Agri-business commercial *khonta* certificate shall be registered with the King's Office (s.12).
- > Persons may transfer or alienate land rights with the consent of the chief (s.13(3)).
- > A land use rights allocation committee, convened in statutory law, issues and revokes land allocations (s.16).
- > Where an allocation is revoked, the land may be reallocated to a person from outside the chiefdom (s.18).

An important point to note is that section 12 of the bill proposes an institutional arrangement where the King's Office, an office that has no existing responsibilities for land-related matters or records, is the custodian of land certificates. Reports suggest the reason being that SNL matters must be kept close to the *Ngwenyama*.

3.3 Other Legislative Reforms

In 2013, recommendations were made to improve and update the *Swazi Administration Act of 1950* following earlier, unsuccessful attempts to do so¹³. This would rationalise the duties and powers of traditional authorities specified in the Act. In relation to land, these include the control of land use, homestead building, and resettlement.

The *Tinkhundla Administration and Development Bill 2011* is another significant piece of proposed legislation, with the objective to provide law on the administration and development of *tinkhundla* and regions and the decentralisation of power from Central Government to other spheres of governance in conformance with the Constitution. The functions of regions and *tinkhundla* are specified. Regions are to be responsible, among other things, for preparing land use plans. The functions of chiefs are not specified but functions of *boBandlancane* are, and include carrying out duties as required by customary law, in consultation with a chief. The status or progress of the bill through the legislative process is unknown; the assumption is that it is delayed for reasons similar to the Land Bill.

¹³ Community Forest Network, 2013. Review, Amendment and Enactment of relevant land related policies and legislation in Swaziland. This report stated that "The more improved Swazi Administration Order of 1998 which intended to repeal this Act was struck down as law solely on procedural grounds in the case of Chief Mliba Fakudze and 3 others versus the Minister of Home Affairs and 3 others; High Court Case No. 2823/2000."

4 Institutional Arrangements

The 2013 Stakeholder Consultation Report on the Review, Amendment and Enactment of Relevant Land Related Policies and Legislation¹⁴ concluded that "weak institutional frameworks exist for handling [land administration and management] issues. In addition there is the spread of the land mandate across multiple government ministries (There are overlaps of the ministerial domains that are not clearly defined and demarcated)".¹⁵ This is evident from Table 3 in Appendix D that lists the current functional roles of all government and traditional authority agencies and bodies responsible for land administration and management. Table 4 in Appendix D provides a summary background and legal basis for these functional roles and responsibilities.

Figure 3 illustrates the relationships between land agencies and bodies. These relationship links do not strictly reflect organisational hierarchy but emphasise functional interactions and lines of communication.

Changes to these institutional arrangements have been proposed, on numerous occasions in the past, in various policies, strategies and bills. However, arrangements have remained largely as they are now since 1951 when the *Natural Resources Act* came into force. An exception is the relocation in 2012 of the Deeds Registry from the Ministry of Justice to the Ministry of Natural Resources & Energy as proposed by the draft land policy. This relocation did not, however, result in any material change to the working relationships¹⁶, procedures or performance of these two key land administration bodies.

Within the Ministry of Natural Resources and Energy, modifications to the organisational structure took place in 2012 in anticipation of enactment of the Land Bill. The Ministry created the Department of Land Administration and the post of Director of Lands. This corresponds to section 23 of the Land Bill. Section 24 of the bill lists the functions of the department as:

- a) Provide secretarial and advisory services to the (Land Management) Board, (Settlement) Fund, (Land) Tribunal and Sub-Division of Land Committee;
- b) Ensure that the functions of the Board, Fund, Tribunal and Sub-Division of Land Committee are effectively undertaken;
- c) Establish and maintain accurate and complete databases, records registers and a land management information system containing all relevant information on land and land tenure in Swaziland;
- d) Prepare or execute or cause to be prepared and executed all deeds of transfer, donation, exchange, certificates of registered title and consolidated title and other land documents involving Crown Land to be registered by the Registrar;
- e) Sign off approved consent (for controlled transaction) certificates;
- f) Issue exemption certificates (for exempt transactions);
- g) Receive and refer complaints and disputes with regard to land to the appropriate forum;
- h) Disseminate land information to the public;

¹⁴ Community Forestry Network, 2013

¹⁵ Community Forest Network, 2013. The report goes on to recommend, "there should be institutional strengthening and establishment of new institutions or merging of existing ones in the area of land management and administration in the country. Appropriate Government Ministries relevant in this regard include the Land Use Planning Section of the Ministry of Agriculture and the Surveyor General's Office in the Ministry of Natural Resources and Energy which should actively be involved in leading land use programmes. A Ministry of Lands should be established to deal with issues such as land surveys, deeds, land valuation, conveyancing, land use, land use control etc. This will entail the reorganisation of ministries such as the Ministry of Housing and Urban Development, Natural Resources and Energy etc. In addition a land adjudication Board should be established to handle land disputes timeously."

¹⁶ The Deeds Registry and Surveyor General's Department have always had and continue to maintain a good working relationship on a level required by their respective legislation.

- i) Engage in research and programmes aimed at eliminating the farm dwelling system, reducing the incident and occurrence of squatting and landlessness;
- j) Advise on the performance and implementation of this Act;
- k) Cause to be collected fees for services rendered;
- l) Retain copies and records relating to land and land held by the Crown within and outside Swaziland;
- m) Conduct comprehensive research, audits and make appropriate recommendations to the Board, Minister and other government departments, as the case may be;
- n) Prepare and approve land use plans;
- o) Administer any function delegated by the Minister in accordance with this Act.

Of these functions, c), h), and l) are also conducted by the Surveyor General's Department, and the Deeds Registry; n) by the Ministry of Agriculture, Land Use Planning Department, and the Ministry of Tinkhundla Administration and Development (chiefdom development plans). This infers that the Department of Land Affairs would probably be located within the Ministry of Natural Resources.

Currently, a Director, performing function d) above, staffs the Department of Land Administration in the MNRE.

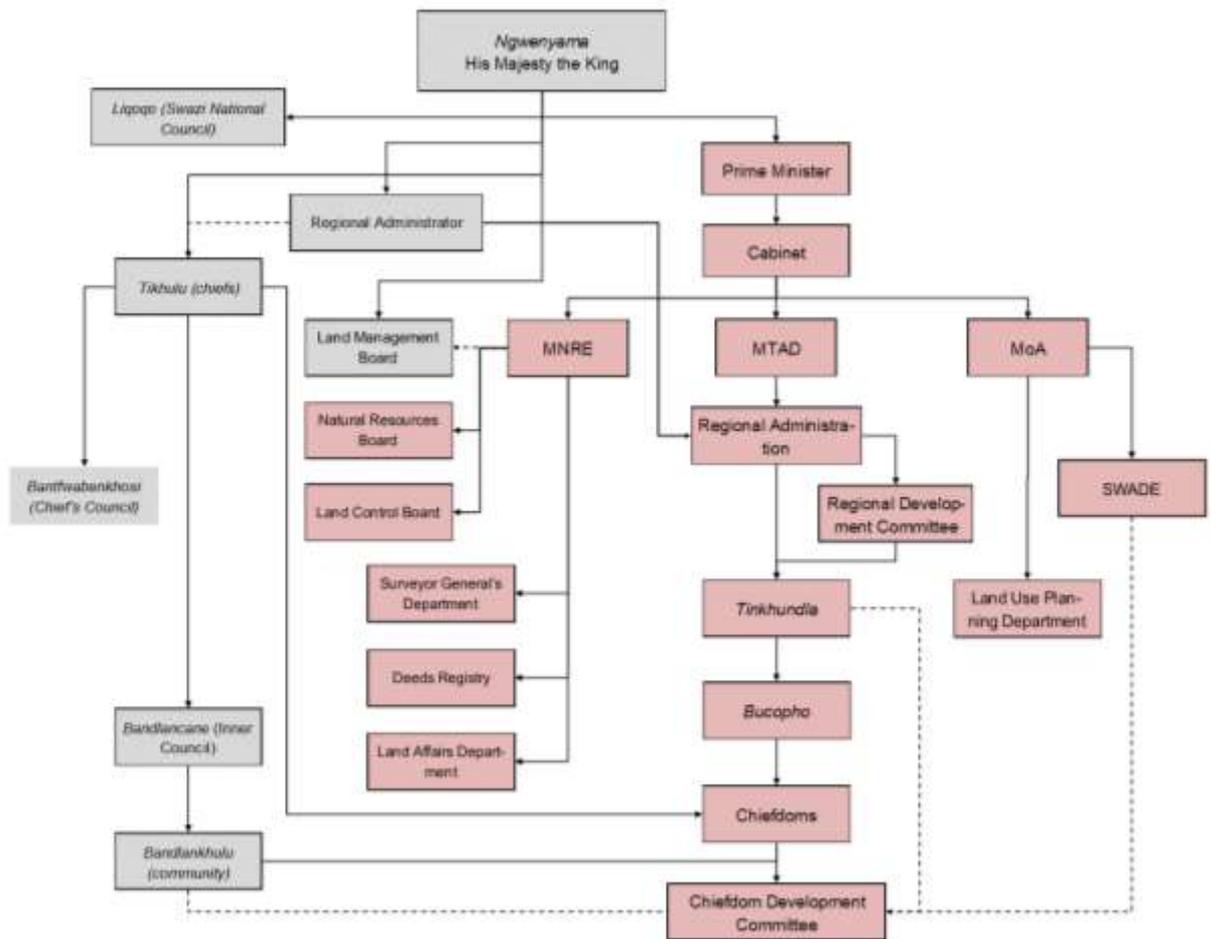


Figure 3: Land institution relationships (current)

5 Customs and Norms

The governance of SNL is rooted in customary law, and the norms, rules and institutional arrangements are well documented by researchers such as Hughes (1972). Customary law like statutory law is not static but subject to change resulting from changing norms in wider society. However, there are some significant differences in the institutional arrangements in the two forms of law, the most relevant customary law matters being different from statutory law are the following:

5.1 Land Rights

Hughes (1972) describes in detail the hierarchy (institutional arrangements) of SNL rights. Briefly, generalised rights vest in the wider community (clan) and membership of that community confers rights to use land for various persons. The use rights for cultivation are granted to homestead (family) groups represented by homestead heads. A head has the responsibility to ensure that members of the homestead group who require land are provided a share of the group's allocated rights. The community head is the chief, whose rights and that of the community s/he heads, derives from membership of the wider community or Swazi Nation and the *Ngwenyama*. Figure 3 shows the institutional hierarchy.

5.2 Inheritance

Traditional inheritance practice in customary law favours the eldest son of the principal wife of the homestead head. Provision is made for younger sons, but not for daughters. A widow does not inherit land or property but has the right of use over the land of the household. SNL cannot be devised by will (Armstrong, 1986).

5.3 Women's Rights to Land

On TDL, women have the same legal rights to land as men, and may own land without restriction, but on SNL, notwithstanding what it says in the Constitution, women's rights are more restrictive principally because of prevailing patriarchal customs^{17 18}.

¹⁷ SNL allocations are made to the homestead head. Traditionally, the homestead head is a man, who may then distribute fields to women of the homestead. Tradition holds that the fields distributed and tilled by a woman belong to her, and she may defend her rights to that field against anyone seeking to take it away, including other members of the homestead. She has the right to the produce of her fields, although some of that produce must be contributed to the common stores of the homestead, and used to feed her husband¹⁷. However, as a rule, land is allocated to families rather than to individuals, and the customary law position is that only a man can acquire or hold land. Therefore, a woman can only use land that has been acquired by a man, and usually this man is her husband (Armstrong, 1986). However, there are cases where chiefs allocate land to unmarried women who have children to support if the woman approaches the chief through a male relative, and where a grandmother or senior wife is designate head of the homestead. Although the SiSwati word for homestead head, '*umnumzame*' has no feminine equivalent, the Farm Dwellers Act defines *umnumzane* as "a person recognized by Swazi law and custom as the head of the homestead and includes a woman."

¹⁸ Another way a woman can access land is by *Kukhonta* in a new chieftom through her male son, even though the son is still too young to have a wife. However, even in this case, the homestead is recognised by the son's surname and not the woman's, thus this system too restricts the woman's full rights of that homestead land.

5.4 Young Person's Rights to Land

Traditionally, young men remain within the family homestead even when married, but latterly the trend is to be more independent by establishing their own homestead either elsewhere or from part of the family land (Hughes, 1972). However, getting land elsewhere by allocation is contingent on being married and more often having a family.

6 Conclusions

6.1 Summary

This stocktake and assessment of institutional reforms reveals numerous attempts to introduce reforms that attempt to address problems related to land management and administration. Table summarises the key land administration and management institutional reforms and identifies some possible weaknesses and reasons holding back universal support and implementation of the reforms.

Table 2: Summary of recent institutional reforms

<i>Reform</i>	<i>Key effect</i>	<i>Comment</i>
Land Policy	Identifies a ministry responsible for land issues, which oversees the LMB	Because the LMB is appointed by HMK, the constitutional intent may be that the LMB are responsible to HMK or autonomous and not part of a ministry as proposed by the land policy.
	Functions of the LMB	The land policy defined functions that are not entirely consistent with the function defined in the Land Bill. The policy envisions regional committees through which the LMB operates together with existing 'competent authorities', retains existing authorities and structures (e.g. house of chiefs, CRDB, Land Speculation Control Board), establishes a cabinet land committee, and a public land management unit, among other things. The land policy is not explicit regarding the role and powers of the LMB on matters pertaining to SNL except that it will harmonise relationships between traditional and modern institutions, be responsible for the general oversight of land related matters whether urban or rural in liaison with existing structures, and to "direct itself through competent authorities in all circumstances".
Land Bill	Operationalises the LMB. Preserves current institutional arrangements. Creates a new government department.	Although the role and powers over SNL are preserved, the bill requires traditional authorities to work with the LMB and government agencies. A land affairs department becomes responsible for regulating land use planning, among other things, but the bill does not provide any powers to any authority, agency or body to regulate or control land use <i>per se</i> (which may imply that traditional authorities retain this function for SNL).
SNL Agricultural Commercialization Bill	Introduces the concept of (commercial) land certificates, and provides for registration in the King's Office.	The issue of certificates suggests the consequential collateralisation of SNL, which is repugnant to Swazi law and custom. Registration of certificates in the King's Office suggests in some quarters, a perception that, the LMB is part of government and that matters pertaining to SNL need to be kept closer to the Ngwenyama.
Tinkhundla Administration & Development Bill	Institutionalises decentralised local government and establish <i>tinkhundla</i> authorities.	Chiefdom inner councils, whom in consultation with chiefs have broad powers and functions derived from customary law.

However, the land bill and the SNL agricultural commercialization bill introduce further land institutional ambiguities, including but not limited to the following:

- > The land bill refers to a minister responsible, without conclusive identification, of which there are five mentioned in s.2 of the bill. The bill states that the LMB shall make certain that land is "sustainably managed" where other agencies may also be responsible for land management, and that the Board shall make certain that a government department of which it has no control shall develop and maintain an effective information system. The bill mentions, but without specifics, "appropriate structures" and "competent authorities" that the Board must work with or through. The bill creates a government department that duplicates the work of existing departments, and directs the department to make certain that the Board carries out its functions but without defining the means. The bill mentions "allocating authorities" but does not define who or what authority in different contexts.
- > The SNL Agricultural Commercialization Bill, 2016 creates Chiefdom Land-use Rights Allocation Committees that duplicate some of the functions of *boBandlancane*. The bill entrusts the King's Office with the registration of land certificates, a function that is similar to that carried out by the Deeds Registry. The bill seeks to establish a land use rights appeal tribunal similar to the tribunal envisaged in the land bill.

6.2 The "Land Problem"

The SLAM terms of reference highlights the "land problem" as:

"Investment in land improvements and commercialisation of agriculture on SNL are constrained by the fact that SNL cannot be used as collateral. The co-existence of a dual land administration and management system causes confusion and difficulty in handling land issue litigation. Under the prevailing duality in the legal system on issues of land administration, there are inherent delays in the land dispute settlement ... Efforts to introduce sustainable land management practice on SNL have met with limited success. This is partly attributable to an inadequate regulatory framework ... The lack of an agreed and functional land policy and/or a Land Act has stifled the country's implementation of all of the other land-related policies and legislation."

The problems that institutional reforms sought and seek to address are:

- > Duplicate, overlapping and ambiguous institutional and organisational roles and functions on land management and administration.
- > Tenure uncertainty and ambiguity perceived to discourage efficient use of and agricultural investment on SNL.
- > Long-standing and intractable disputes on SNL between communities and community members.
- > The lack of 'bankable' land rights and under-commercialisation of agriculture on SNL.
- > Lack of sustainable land use planning and effective land use control.

One reason for failure to move forward with legislative reforms is perhaps captured best by the following statement in the SLAM terms of reference:

"The long delays in approving ... legislation serve to highlight the complexity of the dual governance organisation - modern and traditional - and its current inability to deliver practical solutions to a complex issue."

This complexity is amplified because land, and especially SNL, is central to the political economy question and traditional governance. The registration of SNL agri-business commercial *khonta* certificate with the King's Office as proposed by the SNL Agricultural Commercialization Bill 2016, and not in the Deeds Registry, exemplifies the point that SNL matters may need to be kept close to the *Ngwenyama*. Furthermore, reports¹⁹ highlight the resilience of customary land rules and norms and antipathy to modernisation of tenure and modifications of traditional land governance arrangements.

The need to address the 'land problem' is recognised in the Constitution, 2005, which as section 59(6) under the heading 'economic issues' it states: "The State shall endeavour to settle the "land issue" and the issue of land concessions expeditiously so as to enhance economic development and the unity of the Swazi people."

6.3 Options

The SLAM TOR requires the development of a draft plan for harmonising and rationalising institutional arrangements for land governance of non-TDL. This stocktake assessment initiates the development of this draft plan by identifying reform proposals that put forward the following options for institutional arrangements:

- > Dual structure, with traditional authorities having overall responsibility for SNL and government for non-SNL, but where government through the LMB supports traditional authorities and assumes some powers and responsibilities over the administration and management of SNL (Land Bill²⁰).
- > Dual structure, but with less overlap, and a body close to the *Ngwenyama* with responsibility for formal administration of SNL (SNL Agricultural Commercialization Bill²¹).
- > Dual structure, with greater overlap, where government through a ministry responsible for land and the LMB works with various boards and councils for de-centralised land administration and management (Land Policy²²).

Both the Land Policy and the Land Bill propose broadly the same option – retention of the present dual structure but a greater role for government, through the LMB, in the administration and management of SNL. The SNL Agricultural Commercialization Bill proposes keeping a clear separation between the two administrative and management structures although it does introduce statutory law into SNL affairs and an advisory role for government. These policy and law reforms proposals may, therefore, be seen as two alternatives of the same option: (a) retaining and

¹⁹ Hughes 1972, Community Forestry Network 2013.

²⁰ Although the powers and functions of traditional authorities are retained, they will have a duty to consult, cooperate, and work with the LMB. The LMB attached to and closely aligned with the government ministry responsible for lands; members are appointed on recommendation of a minister; LMB reports to both the *Ngwenyama* and to government; LMB is supported operationally by a government department.

²¹ Land certificates (for agri-business) registered at the King's Office.

²² LMB under the ministry responsible for lands, oversees the Central Rural Development Board, the natural Resources Board, the Human Settlements Authority, and the House of Chiefs.

reinforcing the existing dual structure; and (b) retaining the existing dual structure and diminishing the divide between the two.

Another option is to remove the divide between the 'modern' and 'traditional' land governance structures and create a unitary or single structure for land administration and management of all land, both SNL and TDL, where all administrative and some appropriate management functions and responsibilities are under a single body. This was proposed in the MHUD 99-year leasehold concept paper, with a National Land Tenure Board located under a Ministry of Land Affairs. The location of this unitary body could be elsewhere within the land governance framework, which suggests there are also multiple versions of this option.

A further option would be to split structures thematically, with different organisations having separate (non-overlapping) functions of land administration or land management²³.

Therefore, the possible options and sub-options that emerge are:

- 1 Retain the dual structure of separate administration and management of SNL and TDL
 - 1.1 Keep separate the two structures and strengthen SNL administration and management by traditional authorities.
 - 1.2 Build linkages between the two structures (government support to traditional authorities).
- 2 Unify administration and management of SNL and TDL
 - 2.1 Within government under a ministry responsible for lands.
 - 2.2 Within traditional structures.
 - 2.3 As an autonomous body²⁴.
- 3 Either option 1 or 2 above but separate the functions of land administration and land management.

Undoubtedly, there can be many variations on these broad options, or perhaps other hybrid or different options. Each has its advantages and disadvantages, and in developing a proposal for institutional reform, these must be identified and assessed by stakeholders as part of the decision-making process. However, in all options the constitutional requirement must be met that the LMB "is responsible for the overall management, and for the regulation of any right or interest in land whether urban or rural or vesting in *iNgwenyama* in trust for the Swazi nation."

Notwithstanding that the SLAM terms of reference suggests²⁵ that the option to be developed should be consistent with the options identified in the draft land policy and the land bill and that

²³ Land administration, as defined by the UNECE, is the "processes of determining, recording and disseminating information about the tenure, value and use of land when implementing land management policies". The land administration system is a basic foundation for the spatial enablement of a society and is considered to include land registration, cadastral surveying and mapping, fiscal, legal and multi-purpose cadastres and land information systems (UNECE, 1996). Land Management is the art or science of making informed decisions about the allocation, use and development of the earth's natural and built resources. [It] includes resource management, land administration arrangements, land policy and land information management. It is "the process of managing the use and development of land resources and the process by which a country's resources are put to good effect (UNECE, 1996).

²⁴ For instance, a land administration and management authority that reports to the Ngwenyama but with representative governance of and by traditional authorities, government, and the private sector. Precedents for an autonomous agency approach for land administration and management exist regionally and globally.

²⁵ Result 3. Institutional arrangements proposed reforms for **non-Title Deed Land / SNL** are accepted by stakeholders.

the dual system should be retained, the next step in the development of a "draft plan for harmonising and rationalising institutional arrangements for land governance of non-TDL"²⁶ should include the (re)consideration of broader options for institutional reforms, as listed above. Thereafter, the more detailed development of a feasible proposal may move forward, more assured that it will not stall or stumble later in the policy and legislative approval process.

²⁶ SLAM TOR s.3.1.2

Appendix A Abbreviations and Acronyms

HMK	His Majesty the King
LMB	Land Management Board
LUSIP	Lower Usutu Smallholder irrigation Project
MNRE	Ministry of Natural Resources and Energy
MOA	Ministry of Agriculture
MTAD	Ministry of Tinkhundla Administration and Development
SLAM	Sustainable Land Administration and Management
SNL	Swazi Nation Land
TDL	Title Deed Land

Appendix B List of Relevant National Policies, Strategies, Laws and Reports

1 Policies

Comprehensive Agriculture Sector Policy 2005
 Decentralisation Policy 2006
 Land Policy (draft) 2009
 Land Policy (draft) 1999
 National Food Security Policy 2005

2 Strategies

National Development Strategy (Vision 2022) 1999
 Swaziland Poverty Reduction Strategy and Action Plan (PRSAP) 2007

3 Laws

Constitution of the Kingdom of Swaziland Act, 2005
 Deeds Registry Act, 1939 (a.2006)
 King's Order in Council, 1954
 Land Bill, 2013
 Land Concessions Order, 1973
 Land Survey Act and Regulations, 1961
 Settlement Act, 1946
 Swazi Nation Land Agricultural Commercialization Bill, 2016
 Tinkhundla Administration and Development Bill, 2011

4 Reports and Research Papers

Armstrong, A, 1986. Legal Aspects of Land Tenure in Swaziland. *Ministry of Agriculture and Cooperative's research on Changes on Agricultural Land Use: Institutional Constraints and Opportunities.*

Community Forestry Network, 2013. *Stakeholder Consultation Report (on) Review, Amendment and Enactment of relevant land related policies and legislation in Swaziland. Lower Usuthu Sustainable Land Management Project.*

Community Forestry Network, 2013. *Synthesis report (on) Review, Amendment and Enactment of relevant land related policies and legislation in Swaziland. Lower Usuthu Sustainable Land Management Project.*

Gunda, C, J Gasasira, S Sithole, H Liversage, & S Jonckheere, 2013. *Securing Smallholder Farmers' Land and Water Rights and Promoting Equitable Land Access in Irrigation and Watershed Management in Malawi, Rwanda and Swaziland*

Hughes, A.J.B, 1972. *Land Tenure, Land Rights and land Communities on Swazi Nation Land: A discussion of some inter-relationships between the traditional tenurial system and problems of agrarian development.*

Liversage, H & S Jonckheere, 2013. *Securing Livelihoods, Land and Natural Resource Rights Through Inclusive Business Models: Lessons From Swaziland and Sao Tomé & Príncipe.*

Lukhele, A & M.S. Mpila, 2006. *The National Land Policy Development under the New Constitutional Dispensation.*

Ministry of Housing and Urban Development, 2004. *99-Year Leasehold Concept Feasibility Study and Implementation Plan*.

World Bank, 2018. *Doing Business: Registering Property in Swaziland*.

5 Other references

Times of Swaziland, 2017. *Sugar cane uprooted in farmer's war*. July 27, page 7.

6 Statutory functions

Appendix C Recommendations of the 2012 Legislation Review for LUSLM (Community Forest Network, 2013)

- 1 A much more integrated and multi-sectoral approach is recommended since demarcating the domain of each ministry and establishing accountability in adhering to the defined limits of domain seems a serious issue to be addressed in formulating and implementing any meaningful policy.
- 2 There is need for capacity building of the government ministry in handling data, conducting policy analysis and engaging in informed policy debates.
- 3 Land reforms are suggested through the development and operationalisation of a national land policy or enactment of a land Act.
- 4 It was recommended that technical capacity, institutional capacity and means of implementation are addressed as part of all national policies and legislation from the early stage of formulation to implementation.
- 5 Further harmonization of national policies and legislation with regional and international protocols, conventions and agreements is necessary to enable efficient implementation of the latter.
- 6 All policy and legislation formulation, development and implementation process must be all inclusive, ensuring all key stakeholders are involved and have clear roles and responsibilities.
- 7 Reviewing and updating of policies and legislation as well having some laws repealed or new ones formulated and enacted is an urgent requirement to ensure a relevant and effective national policy and legislative framework.
- 8 Formulation, development and implementation of a contemporary land policy and enactment of a land act are mandatory.
- 9 Collaboration and integration of traditional and western systems of land management and administration should be considered as a matter of urgent importance to allow for a smooth land management and administration process in the country;
- 10 Formulation and enactment of a Swazi Administration Act to clarify the mandate of Chiefs and empower them as important role players in land administration is crucial.
- 11 A Capacity building and training programme targeted at key stakeholders and government officers should be developed and implemented.
- 12 Design, formulation and development of sustainable funding mechanisms for policy implementation and law enforcement at local and national level is imperative for effective and efficient implementation, and sections of financing should part of all national policy and legislation document.
- 13 There should be established a central organ dealing with all land related issues in the country, such as a Ministry of Lands.
- 14 There should be timely declaration of peri-urban areas into towns through appropriate legislation after constant consultations with all relevant stakeholders;
- 15 A speedy process for the succession of chiefs after their demise should be encoded in the proposed Swazi administration Act.
- 16 Revised and improved highly technical and efficient resettlement programmes backed by sound policies and legislation should be developed and implemented to safeguard land use.

- 17 Research must be part of policy and legislation development to ensure evidence-based policy and legislation that will be able to address genuine land concerns.
- 18 Harmonization of national policy and legislative framework with the National Constitution of 2005 should be given top priority during policy and legislation reviews.

Appendix D Land Agency Functional Arrangements

Table 3: Land agency functions

<i>Functions of Land Agencies and Bodies</i>	<i>Acquisition</i>	<i>Allocation</i>	<i>Cadastre</i>	<i>Develop-ment</i>	<i>Disputes</i>	<i>Registra-tion</i>	<i>Resettle-ment</i>	<i>Subdivision</i>	<i>Transfers</i>	<i>Use</i>	<i>Value</i>
Ministry of Agriculture											
-- Land Use Planning				✓			✓			✓	
-- SWADE				✓	✓		✓			✓	
Ministry of Housing & Urban Dev.											
-- Housing & Settlements	✓			✓						✓	
Ministry of Natural Resources											
-- Surveyor General's Dept.			✓					✓			
-- Deeds Registry						✓			✓		
-- Land Administration Dept.	✓								✓		
-- Land Valuation Dept.									✓		✓
-- Land Control Board					✓				✓		
-- Natural Resources Board								✓		✓	
-- Central Farm Dwellers Tribunal					✓						
Ministry of Tinkhundla Admin. & Dev.											
-- Regional Administration				✓	✓						
-- Tinkhundla (District) Administration				✓						✓	
Traditional Authorities											
-- Central Rural Development Board				✓			✓	✓		✓	
-- Chiefs		✓		✓	✓		✓	✓		✓	
-- Chiefdom Inner Council		✓			✓		✓	✓			
-- Chiefdom Development Committee				✓			✓			✓	
-- Commercial Amadoda		✓		✓						✓	
Land Management Board				✓	✓		✓	✓		✓	

Table 4: Land agency functions overview

<i>Land agency name</i>	<i>Overview</i>
Agriculture, Ministry of	Not established by legislation. The Government's policies (e.g. Comprehensive Agriculture Sector Policy) define functions. Various state agencies ('parastatals') exist that report to the Minister/Ministry (e.g. SWADE) created using the Companies Act and regulated by the Public Enterprises Unit.
Land Management Board	Established by The Constitution of the Kingdom of Swaziland Act, 2005. The Board is responsible for the overall management and for the regulation of any right or interest in land whether urban or rural or vesting in Ngwenyama in trust for the Swazi nation. (Const. s212). In the absence of more specific legislation (i.e. Land Bill), the LMB has assumed the duties of the now largely defunct Central Rural Development Board. The Board also has been directed to assist in the resolution of some high profile land disputes.
Natural Resources & Energy, Ministry of	Functions defined in the Natural Resources Act 1951 and other laws such as the Land Survey Act. Departments of: Energy, Valuation, Land Administration, Surveyor General's Department, Department of Water Affairs, Geological Survey and Mines, Conveyancing, Deeds Registry. Anticipating the enactment of the Land Bill, the Ministry has set up a Land Affairs Dept. to support the LMB, but at present, this department only provides advice and conveyancing services to the Ministry. The Ministry also provides support to various statutory boards (natural resources, land control, land control appeals, central farm dwellers tribunal, and district farm dwellers tribunal).
Tinkhundla Administration and Development, Ministry of	No direct land-related role or function. However, Constitution Act at s.221(1) states that the "primary duty of a local government authority (region and inkhundla) is to ensure, in accordance with the law, the efficient management and development of the area under its jurisdiction in consultation with local traditional authority where applicable.", and at s.225(4) that "chiefs shall be under the general oversight of the ministry for local government.". Many functions of MTAD are not specified in law but derive from the Constitution in terms of the powers and functions usually performed by (rural) local government.
Traditional Authorities	The Constitution Act provides clarity on the role and functions of some traditional authority bodies:

Land agency name	Overview
	<p>"<i>Liqoqa</i> traditionally advises iNgwenyama on disputes in connection with the selection of <i>tikhulu</i> (chiefs) boundaries of chiefdoms and any other matter iNgwenyama may assign for their advice in confidence." (Const. s231(3)). "The powers and functions of <i>chiefs</i> are in accordance with Swazi law and custom or conferred by Parliament or <i>iNgwenyama</i> from time to time." (Const. s233(8)). "<i>Tindvuna</i> hear cases, give judgments and advise on the temper of the nation, organise labour for the royal fields and ensure that the royal kraals and villages are periodically repaired." (Const. s235(5)).</p> <p>The legal powers of chiefs derive, through the <i>Ngwenyama</i>, from the Swazi Administration Act, 1950. Section 10(1) lists these powers that include: preventing overstocking, regulating grazing, and setting aside areas as reserve grazing; providing for the harmonious and co-ordinated development of Swazi areas, including, where necessary, the settlement or re-settlement of any part which has already been settled. The Act does not explicitly state that chiefs have the power to allocate and revoke allocations of land but section 10 makes this implicit, stating: "No person shall, without the permission of the competent authority, build a homestead in a Swazi area or remove such homestead from one place to another in any Swazi area."</p>
Ministry of Housing and Urban Development	The powers and function of municipal government are specified in the Urban Government Act 1969, and other legislation that regulates governance, development, public health, and service provision in urban areas.

Table 5: Statutory land functions

Statute Law	Purpose	Scope	Implementing agencies	Other agencies
Acquisition of Property Act, 1961	An Act to make provision authorising the acquisition of property for public and other purposes and for settling the amount of any compensation to be paid or any matter in difference.	Compulsory purchase of both TDL and SNL (see s.39 of the Constitution regarding definition of 'property').	Ministry of Tinkhundla Administration and Development	
Concessions Partition Act, 1907	An act to provide for the setting apart of land for the safe and exclusive occupation of Swazis and the grant of freehold or other rights to persons holding concessions in respect of land not so set apart.	Concession land not set aside as SNL may be converted into TDL subject to certain conditions (continued payment of any rents payable under the concession, etc.).	Concessions Commission	Minister of Tinkhundla Administration and Development. Deeds Registry Surveyor General's Department
Constitution of the Kingdom Of Swaziland Act, 2005	An Act to provide for the constitution of the Kingdom of Swaziland, 2005.	With respect to land, applies to TDL and SNL.	Parliament Council of Chiefs Traditional authorities Land Management Board	
Crown Lands Disposal Act, 1911	An Act to make provision for the disposal of Crown lands.	Minister for Local Administration may grant, sell, lease, or otherwise dispose of Crown (government) land.	Ministry of Tinkhundla Administration and Development.	Deeds Registry
Crown Land (Temporary Occupation) Act 1964		Minister for Local Government may grant permits for temporary occupation of Crown Lands and forbid the unauthorized occupation of or encroachment on Crown Land.	Ministry of Tinkhundla Administration and Development.	
Deeds Registry Act, 1968	An Act to consolidate and amend the laws relating to the Registration of Deeds	Applies to title deed land, but registers established under other laws may be kept.	Deeds Registry	Ministry of Justice
Farm Dwellers Control Act, 1982	An Act to regulate and control relations between owners of farms and other persons residing on such farms.	Imposes written agreements between TDL farm owners and dwellers.		

<i>Statute Law</i>	<i>Purpose</i>	<i>Scope</i>	<i>Implementing agencies</i>	<i>Other agencies</i>
Land Speculation Control Act 1972	An Act to provide for the control of speculative land transactions involving persons who are not citizens of Swaziland, and matters incidental thereto.	Prior consent of Board for foreign ownership of TDL. (Superseded by the Constitution, 2005?).	Land Control Board Land Control Appeals Board	Ministry for Agriculture Attorney General's Chambers Deeds Registry
Land Survey Act, 1961	An act to provide for the survey of land and matters incidental thereto.	Applies only to TDL.	Surveyor General	Ministry of Natural Resources and Energy Deeds Registry
Land Tax Order, 1974	A King's Order- In-Council to provide for the establishment of a Land Taxation Board with powers to impose a tax on undeveloped and underdeveloped land.	Expressly excludes the taxation of SNL.	Ministry of Finance Land Taxation Board	
Natural Resources Act 1951	An Act to provide for the conservation and improvement of the natural resources and for other matters incidental thereto.	Applicable to title deed land and not SNL. Government supervision over natural resources; promote conservation; etc.	Natural Resources Board	Ministry of Natural Resources and Energy
Order-in-Council No. 4 of 1954.	(Copy of law unavailable)	Together with the Swazi Administration Act, provides the legal basis for the Rural Areas Development Programme (resettlement).	Central Rural Development Board	King's Office Land Management Board
Safeguarding of Swazi Areas Act, 1910	An act to make provision for the protection of the rights of the Swazi people to areas set apart under the Concessions partition Act for their sole and exclusive use and occupation.	No persons other than Swazi shall without the permission of the Ngwenyama occupy or use Swazi Nation Land.	Traditional authorities (Ngwenyama)	
Subdivision of Land Act 1957	Act to consolidate and amend the law relating to the subdivision of land in Swaziland.	Subdivision of registered, non-urban, land title (into separate new titles) requires prior consent of the Board.	Natural Resources Board	Ministry of Natural Resources and Energy.
Swazi Administration Act, 1950	An Act to amend and consolidate the law relating to the Administration of Swazi Affairs.	Spells out the powers of the King and chiefs in relation to, among other things, land.	Traditional Authorities	
Swazi Land Settlement Act 1946	An Act to provide for the establishment, control and development of a land settlement scheme for the Swazi Nation.	Land within a designated resettlement area is under the control of the MOA. Consent of PS required for persons to settle or build residences (consent = a certificate of occupancy). The PS may allocate land in a resettlement area, and keep a register.	Ministry of Agriculture (Principal Secretary). Traditional Authorities (chiefdom indvuna).	Magistrate's Court (Administrative officer)

Appendix E Land Bill, 2015

Those sections and clause in the land bill thought to be contentious are shown in underlined text in the table below.

#	Title Clauses
1	Short title and commencement
2	Interpretation
3	Application
4	<p><u>Guiding values and principles</u></p> <p><u>(1) The guiding values and principles of land management and administration in this section bind Government and State organs, public officers, the Land Management Board and all persons whenever any of them— (a) enacts, applies or interprets any provisions of this Act; and (b) makes or implements public policy decisions relevant to land and purposes of this Act.</u></p> <p><u>(2) In the discharge of their functions and exercise of their powers under this Act, Government, the Land Management Board and any public officer shall be guided by the following values and principles- (a) equitable access to land; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) elimination of gender discrimination and marginalisation of vulnerable groups in law, customs and practices related to land and property in land; (f) participation, accountability and democratic decision making within communities, the public and the Government; (g) encouragement of communities to settle land disputes through recognized local community structures and initiatives; (h) utilization of alternative dispute resolution mechanisms such as the Land Tribunal as the final arbiter in land disputes.</u></p>
5	<p><u>Vesting of land</u></p> <p>(1) Save for privately held title deed land, all land [including any existing concession] in Swaziland is vested in the King and <i>iNgwenyama</i> who holds it in trust for the Swazi Nation.</p> <p>(2) All land registered as concession at the Deeds Registry shall within 36 months of the commencement of this Act be registered in the name of- (a) <i>iNgwenyama</i> in trust for the Swazi Nation, if it is located outside the boundary of a town, city or other urban area; (b) Crown if it is located with the boundaries of a town, city or other urban area.</p> <p>(3) Pursuant to sections 59(6) and 211(1) and (3) of the Constitution, in effecting the provisions of subsection (2) no pecuniary or landed compensation shall be paid in order to correct historical and colonial imbalances.</p>
6	<p><u>Forms of tenure</u></p> <p>(1) The following forms of land tenure are recognized as obtaining in Swaziland: (a) privately held title deed land; (b) Crown Land; (c) Swazi Nation Land or customary land rights; (d) leasehold on- (i) Crown Land and Privately owned title deed land for residential, agricultural or industrial purposes; (ii) Swazi Nation Land for communal agri-business or other medium to large scale business purposes as pursued by both individual and communal interests.</p> <p>(2) There shall be equal recognition and enforcement of land rights arising under all tenure systems and non-discrimination in ownership of and access to land under all tenure systems.</p>
7	<p><u>Persons who may hold title to land</u></p> <p>(1) Persons who may hold title to land in Swaziland are-</p> <p>(a) the King, <i>iNgwenyama</i> or <i>iNdllovukati</i>, both in their personal as well as official capacities; (b) the Government of Swaziland, notwithstanding that such land shall continue to vest in the King it shall be described in the Deeds Registry Office and in the Title Deeds as "Crown Land" and be registered in the Crown or Government of Swaziland; (c) a citizen of Swaziland who is not less than 18 years of age except – (i) where the person is married; (ii) where title is a result of a gift; (iii) where title is a result of inheritance; and (iv) where the person, although less than 18 years, is represented by a legal guardian; (d) a company duly incorporated or registered under the laws of Swaziland whose shareholders or majority shareholders are Swazi citizens; (e) an association, cooperative society, friendly society, trust and a society or body of persons registered under the laws of Swaziland, the majority of the members, trustees or beneficiaries, are Swazi citizens, with specific power to acquire immovable property; (f) Commonwealth or foreign governments or public international organizations for which Swaziland enjoys similar reciprocity for purposes relevant to their activities.</p>
8	<p><u>Persons who may not hold title to land</u></p> <p>(1) A non-citizen or a company the majority of whose share-holders are not citizens or a trust or other corporate body whose beneficiaries and/members or a majority of its beneficiaries and/or members are not citizens shall not own land in Swaziland;</p> <p>(2) Sub-section (1) shall not apply to existing or new legitimate business undertakings majority owned by non-citizens of which land is a significant factor or base of their business.</p> <p>(3) Sub-section (2) shall not be construed as allowing natural persons who are non- citizens that own existing or new legitimate business undertakings to own land in Swaziland in their own personal name.</p> <p>(4) Any land or property on land required for residential purposes by non- citizens or body corporates whose majority shares are owned by non-citizens shall either be leased or registered in the name of the business undertaking or company unless a sole proprietor non-citizen owns a business undertaking that employs more than 100 [one hundred Swazis] and has an annual turn-over of more than 3 million Emalangeni or any higher amount which the Minister may prescribe.</p>

	<p>(5) In considering an approval for the purchase of land by a non-citizen or business undertaking whose majority shares are owned by non-citizens under sub-section (2) the following factors shall be considered- (a) land is a significant factor or base of the business; (b) the magnitude and origin of the tangible and intangible assets; (c) employment generation for indigenous Swazis; (d) strategic nature of the enterprise; (e) whether the business in relation to the application provides for the transfer of business expertise to local citizens; (f) advancement of business undertakings owned by citizens; (g) environment protection; and (h) strength of recommendation by government department or parastatal responsible for foreign investment.</p>
9	<p>Methods of acquisition of title to land Title to land may be acquired through-</p> <ul style="list-style-type: none"> (a) purchase; (b) inheritance; (c) compulsory acquisition and for the avoidance of doubt it is hereby declared that Swazi Nation Land is subject to compulsory acquisition for public purposes under the provisions of the law relating to the compulsory acquisition of land for such purposes; (d) prescriptive acquisition; (e) donation or gift; (f) settlement or resettlement programs; (g) <i>kukhonta</i> on Swazi Nation Land; or (h) any other manner prescribed by an Act of Parliament.
10	<p>Conversion of land</p> <p>(1) Any land may be converted from one form of tenure to another in accordance with the provisions of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1)-(a) Crown land may be converted to privately owned title deed land by sale, donation and exchange; (b) Crown land may be converted to Swazi Nation Land subject to public needs or in the interest of resettlement, land use planning, public safety, public order, public morality, public health or some other compelling ground; (c) privately owned title deed land may be converted to Crown land by: (i) purchase; (ii) compulsory acquisition; (iii) exchange; and (iv) donation or voluntary surrender; and (c) Swazi Nation Land may be converted only to Crown land for compelling public purposes, including the expansion of urban area or establishment of a new urban area.</p> <p>(3) Any conversion in terms of subsection (2) shall require- (a) full consultation of the community and people affected after notice advertising proposed conversion has been extensively publicised through notifications placed in print, visual and audio media; (b) full consultation of the chief or competent authority of the affected community; (c) positive approval by the Board; and (d) written approval by the King or <i>iNgwenyama</i>.</p> <p>(4) The Department shall cause a register to be kept containing the identity of persons and land involved in the following- (a) crown land converted to privately owned title deed land; (b) privately owned title deed land converted to Crown land; (c) Swazi Nation Land converted to Crown land; and (d) such other details as the Director may direct.</p> <p>(5) The Minister responsible may, in consultation with the Board, make regulations for the better carrying out of the provisions of this section.</p>
11	<p>Presumption of joint title in marriages</p> <p>(1) Where persons are married in community of property or in terms of Swazi Law and Custom any title to immovable property acquired by anyone of them shall be deemed to be acquired by both partners, and any title to such property shall be held jointly by both.</p> <p>(2) Subsection (1) shall apply in the same manner in the case of polygamous marriages as if each household was a monogamous marriage.</p> <p>(3) Transactions in relation to land involving married couples as described in subsection (1) shall be conducted by both spouses jointly or with the written authenticated consent of other spouse, and where any document requires a signature the document shall be signed by both spouses unless they agree in a written affidavit that one spouse shall represent and sign on behalf of the other.</p> <p>(4) Subsection (3) shall apply in the same manner in polygamous marriages and each of the multiple wives shall be responsible for land matters relating to her household.</p> <p>(5) Where any of the spouses is for any reason unable to sign or give consent or unreasonably withholds a signature or consent where such is required under this Act, the other spouse may apply to the Tribunal for leave to perform the act without the required consent or to sign alone.</p> <p>(6) This section shall not apply where the land is an inheritance or donation from a parent or grandparent to a descendant.</p>
12	<p>Contract of sale to be in writing</p> <p>(1) No contract of sale of land or other immovable property shall be of any force or effect unless it is in writing, states consideration payable, fully describes the property and each and every page is signed by the parties thereto or by their agents duly authorised in writing.</p> <p>(2) The signature of each party signing on the final page shall be attested to by a witness who was present when the contract was signed by such party.</p> <p>(3) Subsection (1) shall not apply to a contract made in the course of a public auction.</p>
13	<p>Operationalization of the Land Management Board Pursuant to Article 212(1) of the Constitution, the Land Management Board is hereby operationalized.</p>
14	<p>Membership of the Land Management Board</p> <p>(1) The Board shall consist of a chairperson and four other members appointed by <i>iNgwenyama</i> on the advice of the Minister responsible and drawn from a pool of people with knowledge and experience of at least 10 years in matters relating to land management and administration, land use, land law, land economics, town planning, land survey, customary law and traditional governance, public administration and business.</p>

	<p>(2) The members of the Board shall be appointed for a period of not more than five years and shall be eligible for re-appointment.</p> <p>(3) The allowances payable to the members shall be charged on the Consolidated Fund.</p> <p>(4) A person shall not be qualified for appointment as the chairperson or a member of the Board if the person-</p> <p>(a) is a member of Parliament; (b) is <i>indvunayenkhundla</i> or <i>bucophobenkhundla</i>;</p> <p>(c) is an unrehabilitated insolvent; (d) has been convicted of a crime involving dishonesty in any country in the last ten years; (e) has benefitted from, or facilitated an unlawful or irregular allocation, acquisition or use of land or other public property; or (f) has been removed from office for contravening the provisions of the Constitution or any other written law.</p> <p>(5) Subsection (4) (a) and (b) shall cease to apply to a person after one general elections have been held since the person ceased to hold such office.</p>
15	<p><u>Vacancy in office of chairperson or member</u></p> <p>(1) The office of the chairperson or a member of the Board shall become vacant where- (a) the holder- (i) dies; (ii) resigns from office on written notice of 30 days; (iii) is convicted of a crime involving dishonesty in any country; (iv) is removed from office under any of the circumstances specified in section 212(7) read together with section 175 of the Constitution; or (b) the term of office of the holder expires.</p> <p>(2) <u>The line Minister responsible for the Board</u> shall publish every resignation, vacancy or termination in the Gazette within thirty (30) days of such resignation, vacancy or termination.</p>
16	<p><u>Removal of chairperson or member</u></p> <p>The chairperson or a member of the Board may be removed from office in accordance with the procedure for removal provided under section 175 of the Constitution.</p>
17	<p><u>Filling of vacancy</u></p> <p>Where a vacancy occurs in the membership of the Board, <i>iNgwenyama</i> acting on the recommendation of the Minister responsible for the Board shall appoint a replacement within 60 days of such vacancy subject to section 13(1).</p>
18	<p><u>Functions of the Board</u></p> <p>(1) <u>The Board shall have the basic function of exercising overall management over land or any interest or right over land throughout the country be it urban, rural or vesting in <i>iNgwenyama</i> in trust for the Swazi Nation.</u></p> <p>(2) <u>Overall management over land shall mean-</u> (a) formulation, revision and amendment of land policy and legislation from time to time; (b) monitoring and evaluating the implementation of land policy and legislation with a focussed objective to make relevant recommendations annually; (c) assess land reform measures, land use plans, resettlement plans and land use zones; (d) assess and appropriately recommend to the King and <i>iNgwenyama</i> on any proposed grant, allocation, disposal, sale or lease of Crown land by a Ministry, Minister, local government or parastatal; (e) cause to be conducted research related to land and the most efficient use of land, and make recommendations to appropriate authorities; (f) initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress; (g) ensure that land, in particular Crown land, is sustainably managed for its intended purpose and for the benefit of future generations; (h) ensure the Department develops and maintains an effective land information management system; (i) encourage the use and monitor the effectiveness of alternative dispute resolution mechanisms in land dispute handling and management; (i) appraise and approve applications on controlled transactions; (l) prepare annual reports to <i>iNgwenyama</i> and government on the state of land, recommendations to improve or ensure sustainable administration and management of land, identify challenges and or reasons for non-implementation of recommendations, any impediments to its work and such other information as the Board considers appropriate in relation to its functions.</p>
19	<p><u>Powers of the Land Management Board</u></p> <p>(1) The Board, shall have all the powers necessary for the execution of its functions under the Constitution, this Act and any other written law.</p> <p>(2) <u>Without prejudice to the generality of subsection (1), the Board shall have powers to-</u> (a) gather, by such means as it considers appropriate, any relevant information including requisition of reports, records, documents or any information from any source, including any State organ, and to compel the production of such information where it considers necessary; (b) hold inquiries for the purposes of performing its functions under this Act; (c) without derogating from the provisions of section 102, establish a structure that will be responsible for the speedy disposal of disputes on Swazi Nation Land; (d) take any measures it considers necessary to ensure compliance with the principles of this Act and the provisions of the Constitution relevant to land, through the appropriate structures.</p>
20	<p><u>Conduct of business and affairs of the Board</u></p> <p>(1) Except where regulations are enacted, the Board may regulate its own procedure.</p> <p>(2) The Board may co-opt into it other persons whose knowledge and skills are necessary for the functions of the Board.</p> <p>(3) A person co-opted under subsection (2) may attend the meetings of the Board and participate in its deliberations but shall have no right to vote at any meeting.</p>
21	<p><u>Seal of the Board</u></p> <p>(1) The common seal of the Board shall be kept in such custody as the Board shall direct and shall not be used except on the order of the Board.</p> <p>(2) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Board under this Act shall be presumed to have been duly given.</p>
22	<p><u>Protection from personal liability</u></p>

	No matter or thing done by a member of the Board or any agent of the Board shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Board, render the member or agent personally liable to any action, claim or demand whatsoever.
23	The Department of Land Affairs There is hereby established a Department of Land Affairs which is a government department consisting of public servants led by the Director of the Department appointed by the appropriate government structure.
24	Functions of the Department (1) The Department shall- (a) provide secretarial and advisory services to the Board, Fund, Tribunal and Sub-Division of Land Committee; (b) <u>ensure that the functions of the Board, Fund, Tribunal and Sub-Division of Land Committee are effectively undertaken;</u> (c) <u>establish and maintain accurate and complete databases, records registers and a land management information system containing all relevant information on land and land tenure in Swaziland;</u> (d) prepare or execute or cause to be prepared and executed all deeds of transfer, donation, exchange, certificates of registered title and consolidated title and other land documents involving Crown Land to be registered by the Registrar; (e) sign off approved consent certificates; (f) issue exemption certificates; (g) receive and refer complaints and disputes with regard to land to the appropriate forum; (h) disseminate land information to the public; (f) engage in research and programmes aimed at eliminating the farm dwelling system, reducing the incident and occurrence of squatting and landlessness; (i) advise on the performance and implementation of this Act; (j) cause to be collected fees for services rendered; (k) retain copies and records relating to land and land held by the Crown within and outside Swaziland; (l) conduct comprehensive research, audits and make appropriate recommendations to the Board, Minister and other government departments, as the case may be; (m) prepare and approve land use plans; (n) administer any function delegated by the Minister in accordance with this Act.
25	Powers of the Director (1) The Director, appointed in terms of section 23, shall be a public officer and shall exercise the powers and functions conferred upon him by or under this Act. (2) The Director shall- (a) manage the Department and ensure the discharge the functions specified under section 24; (b) be the secretary of the Board, Tribunal and Sub-division of Land Committee; (c) the administrator of Land Settlement Fund; (d) advise the Minister on all matters of related to sustainable administration and management of land. (3) The Director may, in writing, appoint any public officer within the Department to represent the Director for the purpose of the exercise and performance of all or any of the functions conferred on the Director by the provisions of this Act.
26	Qualification for appointment as Director (1) A person shall be qualified for appointment to the public office of Director where the person- (a) holds a degree from a university recognized in Swaziland; and (b) has knowledge and experience of at least 7 years in matters relating to any of the following fields- (i) land management and administration; (ii) land adjudication and settlement; (iii) land law, land survey, spatial planning or land economics; (iv) public administration with a bias to land affairs; (c) has had a distinguished public service career in their respective fields.
27	Land Settlement Fund (1) There is hereby established a Fund to be known as the Land Settlement Fund which shall be <u>administered by the Board.</u> (2) There shall be paid into the Fund- (a) any monies appropriated by Parliament for the purposes of the Fund; (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund; (c) gifts, grants, donations or endowments as may be given to the Board by legitimate persons, including owners of property with squatters or farm dwellers, for the purpose of the Fund; (d) monies raised or generated by persons or community of people in need of resettlement and desirous to be resettled; and (e) monies received from any other lawful source.
28	Application of Fund (1) The Fund shall be applied for the following purposes- (a) provision of access to land, whether title deed or Swazi Nation Land to- (i) farm dwellers; (ii) displaced persons; (iii) landless persons; (b) purchase of privately owned title deed land or preparation of land on Swazi Nation for resettlement purposes; (c) facilitation of the provision of shelter to persons in need of resettlement; (d) research, document, disseminate information on farm dwelling, squatting, displacement and landlessness and propose tangible recommendation on the reduction or elimination thereof; (e) any other purpose that would enhance the development and promotion of the Fund's programmes as approved by the Board. (2) The Fund shall be administered in accordance with the provisions relating to public funds under the law relating to public finance management. (3) In carrying out its functions under this section, the Board shall consult and co-operate with the departments responsible for land, finance, agriculture, environment and natural resources, and disaster relief and other government or non-governmental departments as the case may be.
29	Establishment of the Sub-division of Land Committee (1) There is hereby established a Sub-division of Land Committee which shall be responsible for the sub-division of all title deed land whether situate in an urban or rural part of Swaziland. (2) For avoidance of doubt, the Committee has no jurisdiction over Swazi Nation Land.
30	Composition of the Sub-division of Land Committee (1) The Sub-division of Land Committee, which shall be appointed by the Minister responsible, shall consist of a chairman who shall not be a public servant, five public servants and four members of the public who shall be distinguished professionals in the fields of town planning, environmental management, land use planning and civil engineering.

	<p>(2) The public servants referred to in subsection (1) are- (i) the Surveyor General; (ii) the Registrar of Deeds; (iii) the Director of Industry; (iv) Director of Housing and Human Settlements; (v) Director of Land Use Planning.</p> <p>(3) The term of office of members shall not exceed three years except for the members who are public servants.</p> <p>(4) The Committee shall regulate its own procedure.</p> <p>(5) Six members, including the chairman shall constitute a quorum.</p> <p>(6) The Department shall provide secretarial and support services to the Committee.</p> <p>(7) The Committee shall be paid such allowances as the Minister may determine.</p>
31	<p>Consent for sub-division of land</p> <p>(1) Where an application for sub-division has been lodged, unless the Committee has consented in writing, no land- (a) shall be sub-divided; (b) no building shall be constructed or erected on such land; (c) no land shall be sold or advertised for sale and no right to such land shall be sold; (d) no public notice to the effect that a Human Settlement, Township or Town Planning Scheme relating to such land or any portion thereof has been prepared or submitted under either the Human Settlements Act, the Urban Government Act, or the Town Planning Act, shall be published or otherwise given.</p> <p>(2) Where an application to sub-divide land situate within an urban area or proposed human settlement, the application shall first be submitted to the relevant local government or human settlement authority, as the case may be, to ensure compliance with local government or human settlement authority standards, before being submitted to the Committee.</p>
32	<p>Certificate of consent to sub-divide</p> <p>A certificate of consent to sub-divide signed and stamped by the chairman and secretary of the Committee accompanied by the approved original stamped sketch of the proposed sub-division shall, for the purposes of this Act, be conclusive evidence of consent to sub-divide.</p>
33	<p>Land inherited either by testamentary deposition or intestacy</p> <p>(1) Land received by way of inheritance shall be subject to the provisions of this Act.</p> <p>(2) Where the necessary permission to give effect to a sub-division in terms of a testamentary disposition is refused, the property shall be regarded as having been left to the persons affected in undivided shares.</p>
34	<p>Submission of Applications to sub-divide</p> <p>(1) An application to sub-divide land shall be lodged in writing, in triplicate, with the Department and shall be accompanied by twelve plans drawn to scale showing the boundaries of the whole property which is to be sub-divided as well as the area and boundaries of the proposed subdivision and remainder and a certified copy of the title deed issued by the Registrar of Deeds.</p> <p>(2) Such plan shall be drawn by a registered land surveyor.</p> <p>(3) Such application shall also state the purpose for which the land to be sub-divided is to be used.</p> <p>(4) The applicant shall be the registered owner of the property or representative authorized in writing.</p> <p>(5) Every application shall be accompanied by a government issued receipt proving the payment of the sub-division of land application fee of E500 or such higher amount as the Minister may from time to time set by regulation.</p>
35	<p>Consideration of Applications</p> <p>(1) The Committee shall not consider an application consisting of more than four, including the remainder, sub-divisions per parcel of land.</p> <p>(2) Notwithstanding the provisions of sub-section (1), where the land is situated in an urban area, the Committee shall comply with the town planning scheme on the number and size, of submission, permissible.</p> <p>(3) An applicant shall be permitted to give evidence or call witnesses to give evidence before the Committee in support of the application provided that the applicant has notified the Secretary of the Committee in writing of his desire to do so when forwarding his application.</p> <p>(4) The Secretary of the Committee shall notify any applicant, whether or not he has given notice in terms of sub-section (3) of his desire to adduce evidence, of the time and place where the application will be considered.</p> <p>(5) If an applicant, after being duly advised when to appear, fails to appear on that date and for two consecutive dates thereafter, such application will have to be re-moved from the agenda and the applicant shall have to re-apply.</p> <p>(6) The Committee shall have power to subpoena any person as a witness to give evidence before it and the applicant may cross examine any such witness.</p> <p>(7) Any evidence taken by the Committee shall be given on oath, affirmation or sworn to be the truth and same shall be filed for record.</p> <p>(8) The Committee shall grant or refuse an application with or without conditions.</p> <p>(9) Within three months of receiving any application which is complete in every necessary detail the Committee shall- (a) inform the applicant in writing of its decision and in the case of a refusal include therein its reasons; (b) if the application is granted, forthwith issue a duly signed certificate of consent to sub-divide in terms of section 30.</p>
36	<p>Approval of diagrams, human settlement plans and land transfers subject to this Act</p> <p>The Surveyor General shall not approve a diagram nor shall the Registrar of Deeds effect registration of a transfer of any land which has been sub-divided contrary to the provisions this Act.</p>
37	<p>Power of entry upon land</p> <p>(1) The Committee may either generally or in any particular case authorize any person to enter on any land at all reasonable times to carry out thereon such investigations or perform such acts as are necessary or expedient for achieving the sub-division of land objects of this Act.</p> <p>(2) The Committee shall have power to inspect and monitor any land before and after approval of an application in order to ensure compliance with approved conditions and stated reasons for sub-division.</p>
38	<p>Complaint</p>

	Where the Committee fails, within three months, to convey its decision to the applicant, the applicant may, on production of proof to the satisfaction of the Board that the requirements of section 34 have been complied with, apply to the Board for a certificate of consent to sub-divide and the Board may grant such certificate.
39	<p>Appeal</p> <p>(1) Any person whose application has been refused by the Committee shall have the right to appeal against the decision of the Committee to the Board whose decision shall be final unless it violates the law, in which case either party may review the decision of the Board at the High Court of Swaziland.</p> <p>(2) Notice of such appeal shall be lodged with the Secretary of the Committee within twenty one days of the Committee’s decision and shall set forth fully the reasons for appeal.</p> <p>(3) Notice of such appeal shall be accompanied by a government issued receipt proving the payment of appeal fee of E750 or such higher amount as the Minister may from time to time set by regulation.</p> <p>(4) The Secretary of the Committee shall within seven days of lodging with him of notice of such appeal, forward to the Board such notice together with the record of any evidence which may have been heard by the Committee and the Committee’s reasons for refusal.</p> <p>(5) In prosecuting the appeal, the applicant shall have the right to produce evidence that the decision of the Board was unreasonable.</p> <p>(6) In all cases of appeal, the Board may- (a) confirm the decision of the Committee; (b) alter or reverse the decision of the Committee if in its opinion such decision was unreasonable; (c) require the Committee or applicant to submit further information; (d) permit the applicant or cause any other person, under subpoena, to give evidence or to produce any document or any information as he may require; or (e) refer the application back to the Committee for the taking of further evidence or further information generally or in respect of any particular matter.</p> <p>(7) No costs of appeal shall be allowed against the Committee.</p> <p>(8) Any evidence taken by the Board shall be given on oath, affirmation or sworn to be the truth and same shall be filed for record.</p>
40	<p>Offences</p> <p>(1) Any person who sub-divides, constructs a building or sells any parcel of land subject to an application for sub-division before such sub-division is approved shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment not exceeding two years or both;</p> <p>(2) Any person who, after having been duly sworn wilfully gives false evidence before the Board, knowing such evidence to be false shall be deemed guilty of perjury and on conviction, liable to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding 6 months or to both.</p>
41	<p>The Lands Tribunal</p> <p>(1) There is hereby established a Lands Tribunal which shall have jurisdiction to determine and adjudicate over disputes and complaints over land, land rights and interest in land.</p> <p>(2) For avoidance of doubt disputes or complaints emanating from rights or interest in Swazi Nation Land are outside the jurisdiction of the Tribunal.</p>
42	<p>Composition of the Tribunal</p> <p>(1) The Tribunal shall consist of the following members who shall be appointed by the Minister- (a) a Chairman who shall be qualified to be a judge of the High Court;</p> <p>(b) a Deputy Chairman who shall be an admitted and practicing conveyancer with over 7 years’ experience; (c) a registered land surveyor; and (d) not more than two persons from the private sector with experience in land use, land administration and management and adjudication.</p> <p>(2) The members referred to in subsection (1) (a) and (b) shall be appointed after consultation with the Judicial Service Commission.</p> <p>(3) The Tribunal may co-opt or utilise persons who have ability and experience in land, agriculture, commerce or other relevant professional qualifications for purposes of assisting it in the determination of any matter under this Act and such co-opted person shall have no right to vote.</p> <p>(4) The members of the Tribunal shall be appointed on such terms and conditions as may be specified by the Minister in their letters of appointment;</p>
43	<p>Jurisdiction</p> <p>The Tribunal shall have jurisdiction to- (a) inquire into and make awards and decisions in any dispute relating to land under this Act; (b) to inquire into, and make awards and decisions relating to any dispute of compensation to be paid under this Act; (c) generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under this Act, of any person or the Government; and (d) to perform such acts and carry out such duties as may be prescribed under this Act or any other written law.</p>
44	<p>Procedure</p> <p>(1) The Chairman or in the absence of the Chairman the Deputy Chairman shall preside over the sittings of the Tribunal.</p> <p>(2) The Tribunal, when hearing any matter, shall be duly constituted if it consists of four members which number shall include either the Chairman or the Deputy Chairman.</p> <p>(3) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members considering the matter.</p> <p>(4) A member of the Tribunal or co-opted person shall not sit at a hearing of the Tribunal if he has any interest direct or indirect, personal or pecuniary, in any matter before the Tribunal;</p> <p>(5) The Tribunal shall not be bound by the rules of evidence and strict procedural law as applied in a court of law.</p> <p>(6) A person appearing as a party before the Tribunal may appear in person or through a legal practitioner at his own expense.</p> <p>(7) Where the Tribunal is satisfied that any application to the Tribunal is frivolous or vexatious, it may order the applicant to pay his costs, that of the other party and that of the Government in connection with the proceedings;</p>

	<p>(8) The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act;</p> <p>(9) The Department shall provide the necessary secretarial and accounting assistance to the Tribunal to enable the Tribunal to perform its functions under this Act;</p> <p>(10) Any person aggrieved by an award, declaration or decision of the Tribunal may, within thirty days, <u>appeal to the Board</u>.</p>
45	<p>Regulations</p> <p>The Minister may for, purposes of this Part, make regulations, not inconsistent with this Act- (a) as to the forms to be used and the fees to be paid for things to be done under this Part; (b) as to the procedure for the making of applications and appeals under this Part, and the particulars and material to be furnished to the Board, Committee, Tribunal or Fund; (c) as to the allowances to be paid to members or representatives of the Committee, Tribunal and fund; (d) generally, as to all matters for which the Minister deems it necessary or expedient to make regulations in order to carry into effect the purposes hereof.</p>
	LAND CONTROL
46	<p>Exempt transactions</p> <p>Transactions in land or immovable property where the purchaser, transferee, lessee or mortgagee is a- (a) citizen of Swaziland; (b) company of which majority shareholding is owned by a citizen or citizens; (c) trust of which the trustee and/or beneficiaries are citizens or a majority of them, as the case may be, are citizens; (d) co-operative society or association or other corporate body a majority of whose members are citizens, shall be classified as an exempt transaction.</p>
47	<p>Application for Exemption Certificate</p> <p>(1) An application for exemption in respect of an exempt transaction shall be made to the Director, and the Director shall, within three days of receipt of such application, either give or refuse exemption in respect of the transaction.</p> <p>(2) Refusal in terms of sub-section (1) shall only be on account of procedural inadequacies and once such procedural inadequacies have been rectified, an exemption certificate shall be issued.</p> <p>(3) Every application shall be accompanied by a government issued receipt proving the payment of an application fee of E200 or such higher amount as the Minister may from time to time set by regulation.</p>
48	<p>Controlled Transaction</p> <p>(1) Transactions in land or immovable property where the purchaser, transferee, lessee or mortgagee is a- (a) person who is not a citizen of Swaziland; (b) company of which majority shareholding is owned by a non – citizen or non-citizens; (c) trust of which the trustee and/or beneficiaries are non –citizens or a majority of them, as the case may be, are non-citizens; (d) co-operative society or association or other corporate body a majority of whose members are non-citizens, shall be classified as a controlled transaction.</p> <p>(2) Subsection (1) <u>does not apply</u> to- (a) the transmission of land or shares by virtue of the will or intestacy of a deceased person; (b) a donation by a parent to his descendants; (c) Public auctions.</p> <p>(3) For purposes of this Part the question- (a) whether a person is a citizen of Swaziland shall be determined by the Minister responsible for Immigration; (b) whether the major shareholders of a private company incorporated in Swaziland are citizens shall be determined by the Registrar of Companies; (c) whether a co-operative society is registered as such in Swaziland and matters incidental thereto, shall be determined by the Commissioner for cooperatives; (d) whether an association is registered as such in Swaziland and matters incidental thereto, shall be determined by the Registrar for the Protection of Names, Uniforms and Badges.</p>
49	<p>Proposed controlled transactions to be advertised</p> <p>(1) Any person who proposes to enter into a controlled transaction shall, not less than three months before the proposed date of such transaction, publish a notice of such proposal in at least one newspaper circulating nationally in Swaziland giving in such notice- (i) a full description of the land subject of the controlled transaction; (ii) the full names of the parties to the proposed controlled transaction; (iii) the consideration for the proposed transaction; and (iv) details of how the proposed controlled transaction addresses section 8(4) of this Act.</p> <p>(2) Any person wishing to object to a proposed controlled transaction may give written notice of his objection, with reasons therefore to the Director of the Department.</p>
50	<p>Application for Consent Certificate</p> <p>(1) An application for consent in respect of a controlled transaction shall be made to the Board, and the Board shall, within 30 days of receipt of such application, either give or refuse its consent in respect of the transaction, and refusal be subject to the right of appeal to the Tribunal, but no appeal shall lie from the decision of the Board to any court.</p> <p>(2) An appeal in terms of subsection (1) shall be lodged with the Tribunal within 5 days of receipt and the Tribunal shall return its decision within 30 days of receipt of all appeal documents, including the record informing the decision of the Board, which record the Director shall remit to the Tribunal within 5 days of noting of the appeal.</p> <p>(3) Every application shall be accompanied by a government issued receipt proving the payment of an application fee of E200 or such higher amount as the Minister may from time to time set by regulation.</p>
51	<p>Consent Decisions</p> <p>In deciding whether to grant or refuse consent to any application made under section 50, the Board shall consider the following- (a) whether land is a significant factor or base; (b) the magnitude, origin and legality of the tangible and intangible assets; (c) employment generation of indigenous Swazis; (d) strategic nature of the enterprise; (e) whether the business in relation to the application provides for the transfer of business expertise to local citizens; (f) advancement of business undertakings owned by citizens; (g) environment protection; and (h) strength of recommendation by government department or parastatal responsible for foreign investment.</p>
52	<p>Form of decision</p> <p>(1) A decision in terms of this Part shall be given in writing and shall be signed by</p>

	<p>the Director, and where consent is refused or an appeal is dismissed the reasons for the refusal or dismissal shall be stated.</p> <p>(2) A decision of the Board granting consent shall specify the use or development in respect of which such consent is granted, as well as such conditions as the Board may impose as per section 50 hereof.</p> <p>(3) A copy of a decision by the Board shall be given to or served on the applicant and, in the case of an appeal, to the Tribunal.</p>
53	<p>Voidance of consent A controlled transaction shall be void unless the Board has granted its consent in respect of that transaction in accordance with this Act.</p>
54	<p>Recovery of consideration Where any money or other valuable consideration has been paid in respect of or in relation to an agreement that is void by virtue of section 53, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid.</p>
55	<p>Exclusions The Minister hereby excludes from the provisions of Part IV persons listed in the First Schedule hereto, subject to such terms and conditions as are set out in the Schedule.</p>
56	<p>Refusal of registration of documents (1) The Registrar shall refuse to register a deed or instrument effecting a controlled transaction not approved by the Board. (2) Where the Registrar contravenes subsection (1), the Registrar shall be guilty of an offence and liable on conviction to a fine of ten thousand emalangeni or in default of payment thereof to imprisonment not exceeding twelve months.</p>
57	<p>False statements Any person who knowingly makes any false statement in an application or appeal under this Act, or who knowingly gives any false information to any person in connection with the determination of an application or appeal under this Act, shall be guilty of an offence and liable on conviction to a fine of ten thousand emalangeni or in default of payment thereof to imprisonment not exceeding twenty four months.</p>
58	<p>Refusal to give or produce evidence Any person who, without reasonable excuse, refuses or neglects to attend before a Board or to produce within the time allowed, any document or evidence having been required to do so under section 19, shall be guilty of an offence and liable on conviction to a fine of ten thousand emalangeni or in default of payment thereof to imprisonment not exceeding twelve months.</p>
59	<p>Speculation (1) All transactions suspected to be speculative shall be referred to the government department responsible for property evaluation where the government valuer or his representative will forthwith certify whether or not in his opinion the transaction is speculative. (2) Every decision in terms of subsection (1) shall be in writing and stating reasons for the opinion rendered. (3) Any party, including the Board, dissatisfied with the decision in terms of subsection (1) shall within 5 days of receipt appeal to the Tribunal whose decision shall be final. (4) For avoidance of doubt, all transactions tested for speculation shall also include those executed by citizens of Swaziland.</p>
60	<p>Tax on speculative transactions Where a transaction has been certified as speculative in terms of section 59, the difference between the last purchase price and the proposed sale price will be subject to a capital gains tax [non-improvements tax] levied at a rate of 35%.</p>
61	<p>Regulations The Minister may for, purposes of this Part, make regulations, not inconsistent with this Act- (a) as to the forms to be used and the fees to be paid for things to be done under this Part; (b) as to the procedure for the making of applications and appeals under this Act, and the particulars and material to be furnished to the Board; (c) generally, as to all matters for which the Minister deems it necessary or expedient to make regulations in order to carry into effect the purposes hereof.</p>
	CROWN LAND
62	<p>Vesting of Crown Land Notwithstanding any other law, Crown Land shall vests in the King, but shall be described in the Deeds Registry Office and in the title deeds relating to such land or rights as Crown or Government land.</p>
63	<p>Authority of Government to deal with Crown Land (1) The Government acting through the Minister responsible is hereby authorised and empowered to enter into any agreement relating to the letting, sub-letting or the granting of any servitude or other real right in any land or real right in land vesting in the King in terms of this Part, and is further authorised and empowered to acquire any land or real right or any lease to any land on behalf of the King. (2) The Minister responsible is hereby further authorised and empowered to sign and execute on behalf of the King any documents of any kind whatsoever to give effect to any transaction of the kind mentioned in subsection (1) and, if necessary, to appear before a notary public to execute any such documents. (3) Nothing in this section shall be deemed to authorise or permit the Government to mortgage, sell, donate, exchange or otherwise dispose any land or real right in any land vesting in the King in terms of this Part without the written authority of the King so to do.</p>

	(4) The King may, in writing, delegate the powers in terms of subsection (3) to the Board provided that the Board shall report every quarter on land authorised to be mortgaged, sold, donated, exchanged or otherwise disposed by the Crown.
64	<p>Types of Crown Land</p> <p>(1) The following forms of Crown land are recognised as obtaining in Swaziland- (a) Urban Crown Land; (b) Rural Crown Land.</p> <p>(2) Subject to the provisions of this Act and other written law, it shall be competent and legal of the Minister responsible to lease Crown land.</p>
65	<p>Minister Responsible</p> <p>“Minister responsible” means in relation to this Part as the context may dictate-</p> <p>(a) the Minister responsible for urban crown land shall be the Minister for urban title deed land; (b) the Minister responsible for rural crown land shall be the Minister responsible for rural title deed land; (c) the Minister responsible for agricultural crown land shall be the Minister responsible for agriculture; (d) the Minister responsible for industrial crown land shall be the Minister responsible commerce and industry.</p>
66	<p>Powers of Minister responsible for Urban Crown Land</p> <p>(1) The Minister may, subject to section 62 of this Act, dispose of Urban Crown land by grant, sale, lease or otherwise on such conditions as contained in the Schedule of this Act.</p> <p>(2) The Minister is empowered to sign and execute, on behalf of the Crown, all legitimate grants and transfer documents of urban, agricultural or industrial [situate in an urban area] crown land and all leases and agreements as they relate to urban crown land.</p> <p>(3) The Minister may and is empowered on behalf of the Crown to purchase or otherwise acquire land that shall be thereafter converted into urban crown land.</p> <p>(4) The Minister is authorised, subject to the conditions as set by law or regulation, to extend the boundaries of an urban area.</p> <p>(5) The Minister shall appoint members of the land allocation committee established in terms of the regulations on the allocation of urban crown land to advise the Minister on the allocation and disposal of urban crown land.</p> <p>(6) The Minister shall make regulation on the allocation of urban crown land.</p> <p>(7)The land allocation committee shall include two representatives from the Ministry responsible for commerce, industry and trade and one from the business community when exercising its powers in respect of commercial and industrial grants;</p> <p>(8) The Minister may issue a notice to vacate on any person illegally occupying such crown land.</p>
67	<p>Powers of Minister responsible for Rural Crown Land</p> <p>(1) The Minister may, subject to section 62 of this Act, dispose of Rural Crown land by grant, sale, lease or otherwise on such conditions as contained in the ... Schedule of this Act.</p> <p>(2) The Minister is empowered to sign and execute, on behalf of the Crown, all legitimate grants and transfer documents of rural, agricultural or industrial [situate in rural title deed land] crown land and all leases and agreements as they relate to rural crown land.</p> <p>(3) The Minister may and is empowered, on behalf of the Crown, to purchase or otherwise acquire land that shall be thereafter converted into rural crown land.</p> <p>(4) The Minister may issue a notice to vacate on any person illegally occupying such crown land.</p>
68	<p>Powers of Minister responsible for Agricultural Crown Land</p> <p>(1) The Minister is empowered to sign and execute on behalf of the Crown all legitimate leases and agreements as they relate to agricultural crown land.</p> <p>(2) The Minister may and is empowered on behalf of the Crown to purchase or otherwise acquire land that shall be thereafter converted into agricultural crown land.</p> <p>(3) For the avoidance of doubt, after concluding such purchase, and depending on where the land is situate, the Minister either responsible for urban or rural crown land shall sign the transfer documents.</p> <p>(4) The Minister is authorised, subject to conditions as set by law or regulation, to declare an agricultural zone and enact law regulating such a zone.</p> <p>(5) The Minister is empowered, subject to conditions as set by law or regulation, to revoke a lease for agricultural crown land for breach of lease conditions and/or failure to remedy same.</p> <p>(6) The Minister is empowered to receive, scrutinize and make recommendation to the committee, through the Department, all applications for the sub-division of rural title deed land and land in an agricultural zone.</p> <p>(7) The Minister may issue a notice to vacate on any person illegally occupying such crown land.</p>
69	<p>Powers of Minister responsible for Industrial Crown Land</p> <p>(1) The Minister is empowered to sign and execute on behalf of the Crown all legitimate leases and agreements as they relate to industrial crown land.</p> <p>(2) The Minister may and is empowered on behalf of the Crown to purchase or otherwise acquire land that shall be thereafter converted into industrial crown.</p> <p>(3) For avoidance of doubt after concluding such purchase, and depending on where the land is situate, the Minister either responsible for urban or rural crown land shall sign the transfer documents.</p> <p>(4) The Minister is authorised, subject to the conditions as set by law or regulation, to declare an industrial estate and enact law regulating such a estate.</p> <p>(5) The Minister shall appoint members of the land allocation committee established in terms of the regulations on the allocation of industrial crown land to advise the Minister on the allocation and disposal of urban crown land.</p> <p>(6) The Minister may issue a notice to vacate on any person illegally occupying such crown land.</p>
70	<p>Guiding principle on the allocation of Crown Land</p> <p>(1) As a guiding principle the Crown shall not sell or allocate by sale Crown land unless by express written authority of the King as positively recommended by the Board.</p>

	<p>(2) For avoidance of doubt agricultural and rural crown land shall be capable of lease and exchange on an equitable basis.</p> <p>(3) Where Crown land is available for sale, lease or grant, the Minister responsible or local authority with jurisdiction shall, by notice in the Gazette and national newspaper circulating in Swaziland, publicise the fact.</p> <p>(4) The notice referred to in subsection (3) shall - (a) state that the land is available for sale; (b) contain a sufficient description of the land to enable its identification; (c) give particulars of the permitted land use, the proposed reserve price, where appropriate, and of the amount to be paid for the improvements, if any, made to the land; and (d) invite members of the public to lodge applications with the allocating authority by a specific date.</p> <p>(5) The Minister shall publish or cause to be published a notice of all allocations made, and such notice shall contain a description of the land in respect of which the sale, lease or grants of title were made.</p>
71	<p>Allocation of Crown Land</p> <p>(1) Application for allocation of land shall be made in the prescribed forms as contained inschedules to the Minister responsible or allocating authority having jurisdiction;</p> <p>(2) Notwithstanding any regulation enacted or to be enacted on the allocation by any Minister responsible, Crown land shall be allocated through- (a) public auction to the highest bidder at prevailing market value subject to and not less than the reserved price; (b) application confined to a targeted group of persons or groups in order to ameliorate their disadvantaged position; (c) public notice of tenders as it may prescribe; (d) public drawing of lots as may be prescribed; (e) public request for proposals as may be prescribed; or (f) public exchanges of equal value as may be prescribed.</p> <p>(3) The Minister responsible or allocating authority with jurisdiction shall ensure that any crown land that has been identified for allocation does not fall within any of the following categories- (a) crown land that is subject to erosion, floods, earth slips or water logging; (b) crown land that falls within forest and wild life reserves, agricultural zone, rural crown land and wetlands or fall within the buffer zones of such reserves or within environmentally sensitive areas; (c) crown land that is along watersheds, river and stream catchments, public water reservoirs and other public utility facilities as may be prescribed; (d) crown land that has been reserved for security, education, research and other strategic public uses as may be prescribed; (e) natural, cultural, and historical features of exceptional national value falling within crown or public land; and (f) any other land categorized as protected by law as the case may be.</p>
72	<p>Local authorities</p> <p>(1) Subject to sections 66, 69 and 70, the power to recommend allocation and revocation of allocations to urban crown land shall be exercised by the local authority having jurisdiction in the area.</p> <p>(2) Where, in pursuance of the regulations, the Minister responsible has given directions to a local authority on the procedure on allocation or revocation of land, the local authority shall act in accordance with those directions.</p> <p>(3) The local authority shall not exercise its powers of recommendation for commercial and industrial purposes unless it shall have first referred the application to the relevant Ministry which shall for these purposes include a representative from the Ministry responsible for commerce, industry and trade, a representative from the Department and a representative of the business community in the area.</p>
73	<p>Register</p> <p>(1) The Registrar of Deeds shall open and keep special registers wherein all grants of Crown lands shall be registered and notwithstanding anything contained in the Transfer Duty Act, No. 8 of 1902, the Stamp Duties Act, No. 37 of 1970, the Deeds Registry Act, No. 37 of 1968, or of the Deeds Registry Regulations, No. 37 of 1968(1) or any amendments thereof, such grants need not be drawn by a notary public or conveyancer, nor shall they be subject to stamp duty.</p> <p>(2) Except in case of subsequent transfer or cession, such transfer or cession shall be in the ordinary form and subject to the duties prescribed by law.</p> <p>(3) Where the Government is not in possession of written title to any land granted the entry in the special register kept in the Deeds Office shall be regarded as registration.</p>
74	<p>Diagrams</p> <p>(1) Where one or more lots of land sub-divided according to a general plan filed in the Deeds Registry Office is or are granted or leased by the Government it shall not be necessary to annex a diagram to the grant or lease, but as soon as it is first sought to transfer or lease a portion of such lot there shall in addition to a diagram of that portion annexed to the transfer or lease of that portion be filed in the Deeds Office a diagram of the whole.</p> <p>(2) The diagram last mentioned in subsection (1) may be a copy certified by the Surveyor-General of a portion of the general plan mentioned in this section.</p>
75	<p>Amended grants</p> <p>(1) Where it is found that the description or diagram of the land, the subject of any grant or lease under this Act, does not properly describe the land intended by the grantee or lessee to be therein comprised or to which such grantee or lessee is entitled either by reason of an error in the description or survey or from any other cause, the Minister may recall such grant or lease and an amended grant or lease may be issued in lieu thereof.</p> <p>(2) Where there be a dispute between the Minister and the grantee or lessee as to the boundaries of the land or the diagram, the cancellation of the original grant, lease or diagram shall take place in accordance with the existing laws relative thereto.</p>
76	<p>Conditions of grants</p> <p>(1) The Minister may insert in any grant or lease under this Act such conditions as he may deem necessary to secure the beneficial occupation of the land granted or leased and may prescribe such penalties for non-fulfilment of the conditions including cancellation or forfeiture of any grant or lease as he may think fit.</p> <p>(2) The Minister may waive the penalties so provided in any case where he may think such waiver just or equitable.</p>
77	<p>Illegal occupation Crown Land</p>

	<p>(1) A person who occupies Government or Crown Land unlawfully or a person who causes, aids, abets another person to occupy land without proper authority shall be guilty of an offence and liable to a fine not exceeding E10, 000 or term of imprisonment not exceeding 10 months, if a first offender.</p> <p>(2) Where a court of law has convicted a person under subsection (1) the court shall- (a) order the person and his dependants residing thereon by association to him to vacate the land forthwith or within a specified period of time; (b) order the person or any other authority to demolish and remove within a specified period of time any structure or building work thereon; and (c) order the prosecution serve a notice as per schedule of this Act on the director of land affairs that a person has been convicted in terms of subsection (1).</p> <p>(3) Service of an order under subsection (2) shall only be personal service on the person convicted unless the court is satisfied that such person is deliberately declining or avoiding such service, in which case service shall be deemed to have been effected by leaving it upon some conspicuous part of the building works or structure in question.</p> <p>(4) Where an order under subsection (2) is not complied with, an officer of the court may seek the assistance of the police in evicting the convicted trespasser from the land.</p> <p>(5) Where a person convicted under subsection (1) has failed to comply with an order made under subsection (2) and the expenses have been unreasonably incurred in executing the order, such expenses may be recovered from the person upon whom the order has been served.</p> <p>(6) For purposes of this section, occupying land without proper authority includes remaining in occupation thereof after the date on which the land should have been vacated as a consequence of a notice to vacate given under this Act or the regulations.</p> <p>(7) Upon receipt of a notice in terms of subsection (2) (c) the Director of land affairs shall assess if any assistance may be rendered to such person under the settlement fund for purposes of providing alternative accommodation to such person and where the assessment is positive, the Director shall cause the person to be assisted forthwith on terms and conditions as the Director considers reasonable unless such assistance is resisted or rejected.</p>
78	<p>Regulations The Minister may for, purposes of this Part, make regulations, not inconsistent with this Act- (a) for prescribing the procedure, manner and conditions of allocating or revoking an allocation of crown land; (b) the extension of boundaries of an urban area and conditions necessary before such extension is approved; (c) for prescribing the form of grants or leases under this Act; (d) for any object or purpose that may be deemed necessary for the efficient administration of this part of the Act.</p>
LEASE RIGHTS AND TRANSACTIONS ON TITLE DEED LAND	
79	<p>Application of this Part Save as otherwise provided, this Part applies to all leases and land transactions emanating from leases on title deed land.</p>
80	<p>Duration of leases (1) A lease shall not be granted for a term not exceeding- (a) 99 years, where the lease is for – (i) residential purposes; (ii) agricultural purposes; (iii) purposes of exercising a profession or calling; or (iv) any devotional, religious, benevolent, educational, recreational, charitable and medical purposes; (b) 60 years, where the lease is for – (i) heavy industrial purposes; (ii) commercial or light industrial purposes, other than the sale of petroleum by retail; or (iii) hotel purposes; (c) 30 years, where the lease is for – (i) purposes of sales of petroleum or oil; or (ii) purposes of wholesale storage of petroleum or oil. (2) A lease <u>shall not be granted</u> for a term of less than 10 years. (3) The lessor reserves the right to extend or decline to extend a lease on such conditions as by law be set unless the lessor is the Crown and it is in the public interest or interest of the country that a lease not be extended. (4) All leases under this Part shall be prepared by a notary public and registered with the Deeds Registry Office save that for a notarial lease involving the Crown as a party such lease need not be drawn by a notary public nor be subject to fees and duties payable in respect of such transactions.</p>
81	<p>Conditions of a lease (1) A lease shall be subject to such terms and conditions as may be prescribed in law or regulations. (2) Where a lessee is a Commonwealth or foreign government or an international organisation, and a statutory term and condition prescribed in terms of subsection (1) is inconsistent or incompatible with any agreement with such government or organization, that condition shall not apply.</p>
82	<p>Rights of a lessee (1) A lessee shall be entitled- (a) subject to any statutory conditions or other conditions attaching to the lease- (i) to the exclusive possession of the land leased; (ii) to encumber the land leased by mortgage; (iii) to provide for inheritance of the lease in the event of death, except that where such disposal is to a non-citizen, applicable provisions of this Act shall apply; (iv) to abandon, surrender and on reasonable notice terminate the lease; (v) to donate his interest, but where a donation is to a non-citizen a lessee shall be subject to the consent of the Board; and (b) subject to obtaining the consent of the lessor and the Board in the case where the lessor is the Crown- (i) to dispose of his interest; (ii) to sub-let the land leased; (iii) to create private servitudes; or (iv) to deal with his interest in such other manner as the law may permit. (2) In the event of a lessee dying intestate, where the lessee qualifies, the disposition of his interests in land shall be governed by the written law relating to succession. (3) Nothing in this section shall be construed as affecting the lessor's right to terminate due to breach of any condition or the compulsory acquisition of the land under any law.</p>
83	<p>Termination of lease for breach of condition (1) A lease may be terminated by the lessor by giving at least one month's notice to the lessee where the lessee is in breach of any conditions of the lease and has failed to comply with a notice from the lessor calling upon him to remedy the breach within a reasonable specified period of time.</p>

	<p>(2) Notice of termination of a lease shall be served by the lessor upon the lessee, Director, sub-lessee, mortgagee or occupant of a parcel who benefits from a servitude burdening the leased land and any other individual or entity with an interest in the land.</p> <p>(3) Publication of the notice in the Gazette or a national newspaper shall constitute sufficient notice to interested persons not appearing in the Deeds Register.</p> <p>(4) A sub-lessee or mortgagee of leased land subject to a termination in terms of subsection (1), who is willing to acquire the lessee's interest at the value assessed under subsection (6) shall, before the date specified for termination of the lease apply to the lessor, concurrently serving the Director, for the transfer of the lessee's interest to him.</p> <p>(5) Where a lessee's interest is disposed of pursuant to subsection (1) or where a sub-lessee's, or mortgagee's application for the transfer of a lease under subsection (4) has been approved by the lessor, the purchaser or sub-lessee, as the case may be, shall, succeed to the lease and such succession forthwith be brought to the attention of the Registrar of Deeds who shall cause the original lease to be endorsed "transferred by operation of law" reflecting the full particulars of the new lessee thereon and relevant lease registers will be amended accordingly.</p> <p>(6) Subject to any claim by a mortgagee, the lessee whose lease is terminated under this section shall be entitled to the market value compensation for improvements lawfully made by him on the land leased.</p> <p>(7) The Director shall immediately reflect in the records or registers kept by the Department any change in terms of this section.</p> <p>(8) Where there is a dispute regarding the value of improvements made, such dispute shall be determined by the Land Tribunal.</p>
84	<p>Rights of lessee upon expiry of lease</p> <p>(1) A lessee shall, at the expiry of the term of the lease, be entitled to the first option for a new lease over the land.</p> <p>(2) Where, except at the instance of a lessee, a new lease is not issued to the lessee, compensation, at the value assessed by the government valuer, shall be payable to the lessee for improvements on the land at the time of expiry of the lease.</p>
85	<p>Rights of lessee upon surrender of lease</p> <p>(1) A lessee may upon notice to the lessor, concurrently served on the Director, surrender his lease in part or as a whole, subject to such conditions as the law may prescribe, and upon such surrender he shall cease to be entitled to any rights enjoyed by virtue of the lease.</p> <p>(2) A surrender of a lease which in fact or by reasonable deduction has as its purpose or effect the fraudulent, dishonest or unjust deprivation of a derivative right shall be invalid.</p> <p>(3) Any lease surrender shall be brought to the attention of the Registrar of Deeds who shall effect the necessary endorsement on the original lease if the surrender in part or order the cancellation of the lease if the surrender in full.</p>
86	<p>Surrender of lease not to extinguish obligation for payments</p> <p>(1) A person who surrenders a lease shall remain liable to pay all premiums, ground rent, taxes, municipal rates, fees, interests and loans taken out on the security of the lease.</p> <p>(2) A person who surrenders a lease shall be liable for breach of conditions subject to which the lease was issued and for breach of any rules relating to the use of that land which came into force during the occupation of that land for which the person was responsible up to the time of the surrender of the lease.</p>
	SWAZI NATION LAND
87	<p>Application of Part VII</p> <p>(1) <u>This Part applies to Swazi Nation Land.</u></p> <p>(2) <u>Subject to the Constitution, allocation of land on Swazi Nation Land shall be guided by this Part of the Act.</u></p>
88	<p>Vesting of Swazi Nation Land</p> <p>Notwithstanding any other law, all Swazi Nation land vests on <i>iNqwenyama</i> who holds it in trust for the Swazi Nation.</p>
89	<p>Authority of Chiefs to deal with Swazi Nation Land</p> <p>(1) <u>Chiefs are the footstool of <i>iNqwenyama</i> and <i>iNqwenyama</i> rules on Swazi Nation Land through the Chiefs.</u></p> <p>(2) <u>Chiefs or competent authorities appointed by <i>iNqwenyama</i> in the absence of a substantive chief, have the authority to oversee and manage allocation of land on Swazi Nation Land subject to the Constitution, Swazi Law and Custom, or a directive which <i>iNqwenyama</i> may issue from time to time.</u></p> <p>(3) <u>Subject to the Constitution and provisions of this Act Chiefs and the Board shall, as much as possible, even without compulsion by law or regulation, cooperate, consult and respect the mandate and powers of each other as they ensure sustainable management and administration of land in the country.</u></p>
90	<p>Kukhonta</p> <p>(1) <u>A Chief, after consultation with Bandlancane and in accordance with customary law, may determine questions of allocation and admission of persons to the chieftom.</u></p> <p>(2) <u>Land on Swazi Nation Land is acquired through kukhonta where a Chief or competent authority, on the recommendation of Bandlancane and after satisfying the allocation procedure, in terms of Swazi law and Custom, shall sign and issue a Certificate of Allocation to the person being allocated the land.</u></p> <p>(3) <u>In allocating land by kukhonta, in terms of sub-section (2), the allocating authority shall ensure that the applicant is a Swazi citizen.</u></p> <p>(4) <u>A person applying for kukhonta shall- (a) give full details of his place of residence; (b) submit a sworn statement indicating that he has not been previously allocated land on Swazi Nation Land; and (c) where the applicant has been previously allocated land, that the land has been surrendered to the umphakatsi which originally allocated the person such land.</u></p>

	<p>(5) In addition to the requirements stipulated in sub-section (4) the applicant shall give a token to the allocating authority which shall be determined by the allocating authority taking into account the size, location and intended use of the land.</p>
91	<p><u>Powers of Chiefs in the allocation of Swazi Nation Land</u> (1) When allocating land on Swazi Nation Land Chiefs or the competent authority, acting in consultation with <i>emabandla</i> at chiefdom level, the community and relevant government departments and bodies, shall- (a) prescribe conditions for the grant, use and revocation of an allotment on Swazi Nation Land; (b) develop land use and development plans, infrastructure improvement and investment plans, environmental management plans, implementation and monitoring plans or other plan as tools to guide allocation of land and such plans shall- (i) prescribe conditions regarding the demarcation, size, allocation, use, control and surrender and cancellation of allotments including residential, agricultural, garden and business allotments; (ii) prescribe the conditions on the demarcation, use and control of allotments communal use such as grazing areas; (iii) regulate the introduction or removal of stock and the control of numbers and kinds of stock; (iv) encourage adherence to stipulated standards regarding the construction, maintenance, repair and demolition of buildings and other structures; (v) provide model for the valuation of improvements on Swazi Nation Land and the liability for improvements on re-allotment; (vi) provide guidance on the use, maintenance, system of husbandry and care of allotments and contour grass strips, dividing access lanes, roads, water furrows, drainage channels and other water works; (vii) regulate the use of wheeled vehicles and animal drawn sledges; (viii) prescribe conditions for the termination or recall of allotments; (ix) regulate the management for planting and control of areas for afforestation or other environmental management interventions; (x) guide on interventions to prevent and control animal or plant diseases, insects and other pests infestation; (xi) prescribe conditions for the grant, renewal or suspension of revenue licences on land settlement areas; (xii) provide for industrial development and co-operative trading including the incorporation of communal associations or body corporates, surrender of land to association through chief and procedure on collapse of such communal association or body corporate. (3) The Minister responsible for the development of Swazi National land may, by regulation, stipulate other powers of allocating chiefs or competent authority.</p>
92	<p><u>Certificate of allocation</u> (1) A person who has been allocated land on Swazi Nation Land, in terms of section 90, shall be issued with a certificate of allocation by the allocating authority. (2) A certificate of allocation shall be signed by the Chief or competent authority and shall state, inter alia, the following- (a) full name and particulars of person allocated; (b) precise size, use and material conditions of maintaining allocation status; (c) procedure for surrender and termination of allocation and admission.</p>
93	<p><u>Limitations on size and ceiling number of landholdings</u> (1) The size of different categories of allotments shall be explicitly stipulated in each and every chiefdom's land use and development plan provided that the chief or competent authority, through <i>libandla</i>, may authorise variation of the allotments depending on the size of a family or association applying for allocation. (2) A person shall not be allocated more than one piece of land on Swazi Nation Land through-out Swaziland. (3) Notwithstanding the provisions of subsection (2) the Council of Chiefs or the Minister responsible for the development of Swazi Nation Land may by law otherwise stipulate.</p>
94	<p><u>Registration</u> A certificate of allocation shall be registered with the Department within 7 days of issue.</p>
95	<p><u>Illegal Occupation Swazi Nation Land</u> (1) A person who occupies Swazi Nation Land unlawfully or a person who causes, aids, abets another person to occupy land without proper authority shall be guilty of an offence and liable, if the person is a first offender, to a fine not exceeding E20, 000 or term of imprisonment not exceeding 2 years. (2) Where a court of law has convicted a person for unlawful occupation, under subsection (1), the court shall- (a) order the person and his dependants residing thereon by association to him to vacate the land forthwith or within a specified period of time; (b) order the person or any other authority to demolish and remove, within a specified period of time, any structure or building work thereon; and (c) order the prosecution to serve a notice as per schedule of this Act on the Director of land affairs informing the Director that the person has been convicted in terms of subsection (1). (3) Service of an order under subsection (2) shall only be by personal service on the person convicted unless the court is satisfied that such person is deliberately declining or avoiding such service, in which case service shall be deemed to have been effected by leaving it upon some conspicuous part of the building works or structure in question. (4) Where an order under subsection (2) is not complied with, an officer of the court may seek the assistance of the police in evicting the convicted trespasser from the land. (5) Where a person convicted under subsection (1) has failed to comply with an order made under subsection (2) and the expenses have been unreasonably incurred in executing the order, such expenses may be recovered from the person upon whom the order has been served. (6) For purposes of this section, occupying land without proper authority includes remaining in occupation thereof after the date on which the land should have been vacated as a consequence of a notice to vacate given under this Act or the regulations. (7) Upon receipt of a notice in terms of subsection (2) (c) the Director shall assess if any assistance may be rendered to such person under the settlement fund for purposes of providing alternative accommodation to such person and if the assessment is positive, the Director shall cause the person to be assisted forthwith on terms and conditions as the Director considers reasonable unless such assistance is resisted or rejected.</p>
96	<p><u>Lease of Swazi Nation Land</u></p>

	<u>Swazi Nation Land may, subject to sections 97 and 98, be leased by a Chief or competent authority for purposes of agricultural or commercial undertakings.</u>
97	<p><u>Consolidation of allocations for agri-business or other commercial undertaking</u></p> <p><u>(1) Persons allocated land on Swazi Nation Land may, with the consent of the chief or competent authority, consolidate their allocated land for purposes of utilising the land for large scale agri-business or commercial undertaking subject to the following-</u> (a) <u>incorporation of public company recognising contributors as share-owners;</u> (b) <u>demarcation of agri-business land with residential reserve and reasonable boundaries for yard and fire breaks clearly isolated and excluded;</u> and (c) <u>voluntary surrender of agri-business contribution to scheme through the indlunkhulu.</u></p> <p><u>(2) Where such approval has been granted the Chief or competent authority shall issue a Letter of Consent.</u></p> <p><u>(3) A person who is a shareholder in a public company incorporated for purposes of this section may resign his membership following the procedure stipulated in the articles of association of such company.</u></p> <p><u>(4) For purposes of this section 'consolidation' means the process by which different contiguous parcels of land, sharing common boundaries, are merged together to form a single parcel of land.</u></p>
98	<p><u>Authority of iNgwenyama to grant long leases</u></p> <p><u>Allocation of land on Swazi Nation Land for large-scale agri-business or other commercial undertaking shall only be by way of a long lease granted by iNgwenyama acting upon a recommendation of the local Chief and the Board, on such terms and conditions as shall be determined.</u></p>
99	<p><u>Designation of SNL for commercial and public purposes</u></p> <p><u>(1) Every chieftom shall have specially designated areas for commercial and social purposes.</u></p> <p><u>(2) The Ngwenyama, acting on the advice of the chief or competent authority, may, by notarial deed, grant a principal lease in respect of such designated land.</u></p> <p><u>(3) A chief or competent authority may make sub-leases in respect of such land through kukhonta.</u></p> <p><u>(4) Such land may be used for establishing residential areas for citizens.</u></p>
100	<p><u>Compliance with prescribed use</u></p> <p><u>A person who has been allocated land on Swazi Nation Land shall utilise the land allocated for its prescribed use.</u></p>
101	<p><u>Revocation of allocation</u></p> <p><u>(1) An allocation on Swazi Nation Land may be revoked by the Chief or competent authority having jurisdiction over the area for breach of terms and conditions of allocation.</u></p> <p><u>(2) Before exercising its power under subsection (1), the Chief or competent authority shall give at least 3 months' notice to the person affected to remedy the breach.</u></p> <p><u>(3) The notice referred to under subsection (2) shall set out clearly the nature of the breach and the consequences of failure to remedy the breach.</u></p> <p><u>(4) An allocation may further be revoked upon the written application of an allottee to voluntary surrender its allocation back to iNdlunkhulu.</u></p> <p><u>(5) The information on revocation shall be transmitted to the Department.</u></p>
102	<p><u>Appeal against revocation</u></p> <p><u>(1) A person aggrieved by a decision in terms of section 101 (1) may appeal the decision in terms of Swazi Law and Custom.</u></p> <p><u>(2) Save to entertain interdicts, the judiciary shall not have jurisdiction to review or hear an appeal of a revocation in terms of section 101.</u></p>
103	<p><u>Regularisation on Swazi Nation Land</u></p> <p><u>(1) A chief or competent authority, acting in consultation with the Board, may relocate a person allocated land where such land is determined to be unsafe for human habitation or it poses a hindrance to the introduction of basic amenities such as piped water and electricity or where the size of an allocation is more than 2 hectares.</u></p> <p><u>(2) A draft scheme of regularisation shall be prepared with the assistance of the Department.</u></p>
104	<p><u>Procedure for approval of a scheme of regularisation</u></p> <p><u>(1) A draft scheme of regularisation notice shall be circulated to all persons affected and their input sought within a specified time indicated in such notice.</u></p> <p><u>(2) After consensus achieved or where unreasonably withheld, the Chief acting on the advice of the Department, shall approve a scheme of regularisation.</u></p> <p><u>(3) As a general rule, no compensation shall be payable to a person affected by such relocation.</u></p>
105	<p><u>Implementation of a scheme of regularisation</u></p> <p><u>(1) The Government shall be responsible for the implementation of a scheme of regularisation.</u></p> <p><u>(2) Where the regularisation area is situate or next to an urban area, the local authority of that urban area may be delegated the whole or any part of the implementation of such a scheme.</u></p>
106	<p><u>Prohibition of sale of Swazi Nation Land</u></p> <p><u>(1) There shall be no sale or exchange of consideration in respect of Swazi Nation Land.</u></p> <p><u>(2) Notwithstanding the provisions of sub-section (1) a person may be compensated for improvements made on Swazi Nation Land by a person acquiring such improvements, who has gone through the kukhonta process.</u></p> <p><u>(3) A person who contravenes sub-section (1) commits an offence and shall on conviction be liable to a fine not exceeding E50,000 or a minimum of 5 years imprisonment or both.</u></p>
	ACQUISITION AND EXPROPRIATION OF LAND FOR PUBLIC PURPOSE
107	<p><u>Principles behind expropriation</u></p> <p>Compulsory acquisition and expropriation of land for public purposes under this Act shall be subject to the following principles- (a) the Government shall first negotiate with the holder of the land rights which are the subject of</p>

	potential expropriation and resort to expropriation only upon failure of the negotiations due to the unreasonableness of the holder of the rights to the land; (b) failure to reach a negotiated settlement within 30 days of commencing negotiations shall constitute a failure of negotiations in terms of this section; (c) payment or settlement of compensation as provided for in the Constitution and this Act; (d) a party whose land rights are the subject of expropriation by the Government shall have the right to seek review from the Tribunal against any decision of the Government.
108	Declaration of land for public purpose or public interest Whenever it appears to the responsible Minister that land is required for public purpose or public interest, the Minister shall by notice in the Gazette and twice in 14 days, in a newspaper with national circulation, declare the land to be so required.
109	Acquisition notice (1) Prior to the publication in the Gazette and national newspaper of a declaration notice the responsible Minister shall cause an acquisition notice to be served upon any person known to own, be in occupation of, or to have an interest in the land. (2) An acquisition notice by the responsible Minister under this section and section 107 shall contain such particulars as shall be set out in Form A in the Schedule hereto or to the like effect and shall invite any person having any claim in the land to submit his claim to the Minister. (3) The Minister may agree with the owner of any land needed for public purposes for the purchase of such property, or such portion thereof as he thinks proper, for such consideration as may be agreed upon or determined under this Act.
110	Public purpose or public use (1) The following shall constitute circumstances under which land may be expropriated for public purposes- (a) infrastructure development for public use including airports, roads, canals, dams, highways, railways, bridges, and offices; (b) public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; (c) public utilities for water, sewage, electricity, communication, irrigation and drainage; (d) water conservation by means of watershed, water catchment area, dams and reservoirs; (e) providing social services such as public parks, playgrounds, gardens, sports facilities and cemeteries; (f) agricultural stations, government or statutory corporate/parastatal research centre, land conservation including afforestation, soil erosion prevention and/or rehabilitation; (g) security and defence installations including for public order purposes; (h) settlement of squatters, farm dwellers, the poor and landless, and the internally displaced persons; and (i) providing any service which is in the public interest or would enhance or promote national resources and prosperity.
111	Conflicting claims Where conflicting claims are submitted to the Minister in respect of land to be appropriated or expropriated, the Minister shall refer the matter to the Tribunal for the necessary determination.
112	Disputes as to compensation and title. If after three months of the service and publication of the notice in terms of section 109 no claim is lodged with the Minister in respect of such property, or if the persons who may have lodged any claim and the Minister do not agree as to the amount of the compensation to be paid for the estate or interest in the property belonging to such person, or which he is by this Act enabled to sell and convey or lease, or if such person has not given satisfactory evidence in support of his claim or the amount of compensation due, if any, such a case shall be referred to the Tribunal.
113	Land to be acquired part of a greater land held (1) Where the land required to be set aside for public purposes is part of greater land held by the owner and the part remaining to the owner is less than five hundred (500) square metres, the owner may, within one month from the date of publication in the Gazette of the declaration notice, serve notice upon the Minister requiring the Minister to set aside the whole land owned by such person and upon so being served, the Minister shall set aside the whole of the land and shall amend the declaration notice accordingly. (2) Notwithstanding any such amendment under subsection (1) the notice of declaration shall have effect as from the date of its original publication.
114	Land ceasing to be required for public purposes Where land which has been declared to be required for public purposes under this Part ceases to be so required, the Minister, may, by notice in the Gazette, revoke the declaration and any lease granted under this Part shall cease to subsist and the Registrar shall, in the case of the lease, cancel its registration and the Minister may dispose of such land by sale or auction provided that the original owner shall be given first preference to purchase such land at current market value.
115	Public servitudes for public utility works Whenever the Government, a Local Authority, or a Statutory Corporation requires a public servitude over any land for the construction of public utility works or the supply of public utility services, such body will acquire the public servitude and, subject to section 116, be liable for any compensation arising from the compulsory acquisition.
116	Compensation for public servitudes (1) Compensation shall not be payable under section 115 where- (a) the land which suffers damage has been either replaced or restored; (b) movable property damaged has been either replaced or restored; or (c) the works constructed do not interfere substantially with the enjoyment of land. (2) Nothing in subsection (1) shall be deemed to preclude the payment of compensation for damage to crops on the land affected by the exercise of the servitude.
117	Deprivations of land to be compensated for Save where specifically excluded, all cases in which the implementation of this Act results in compulsory acquisition of property, the person deprived of such property shall be entitled to compensation at market value.

118	<p>Obligation for compensation The obligation to compensate shall lie with the body conducting the expropriation.</p>
119	<p>Period for claiming compensation (1) Notwithstanding an adjudication made in terms of section 112, any person who claims to have an interest which, by reason of this Act ceases to subsist may, if not already approached by the Minister or the relevant Government agency, within 3 months from the date of publication of the declaration notice, claim compensation. (2) In assessing compensation, regard shall be had - (a) of the value of the property as certified by an odd number of valuers one of whom shall be the Government valuer, having regard to the present and replacement value; and (b) to the expenses incidental to any necessary change of residence or of place of business.</p>
120	<p>Compensation must precede expropriation Compensation shall, in all cases of compulsory acquisition, be made before conclusion of expropriation.</p>
121	<p>Application to Swazi Nation Land This Part shall apply to Swazi Nation Land but no compensation shall be payable to the person allocated the land which is subject to acquisition or expropriation but compensation may be payable in respect of any lawfully constructed improvements.</p>
MISCELLANEOUS	
122	<p>Offences (1) A person who contravenes this Act commits an offence and shall, on conviction, be liable to the punishment set out in subsection (2) where the Act does not state a specific sanction. (2) Without prejudice to the generality of subsection (1), a person who - (a) grants a title of land contrary to this Act; (b) conducts a transaction relating to land contrary to this Act; (c) carries out a transaction on Swazi Nation Land without the consent of the Chief where such consent is required; (d) save as under section 10, converts land granted for a specific purpose; (e) occupies land or aids or abets the occupation of land by another person without proper authority, commits an offence and shall on conviction be liable to a fine not exceeding E50,000 or a to imprisonment for a term not exceeding 5 years or both. (3) A transaction carried out contrary to this Act is of no effect.</p>
123	<p>Additional offences 123. (1) A person who- (a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act; (b) knowingly gives false information or makes a false statement, either orally or in writing, in connection with a call for information or in connection with an investigation into the commission of an offence under this Act; (c) knowingly gives any false evidence either orally or in writing in connection with the implementation of this Act; or (d) fraudulently procures - (i) the registration or issue of a Certificate of Title or Certificate of Allocation or any other document or instrument relating to land; (ii) the making of an entry or the endorsement of a matter on the document or instrument referred to in subparagraph (i); or (iii) the cancellation or amendment of any of the aforesaid documents or instruments or entries or endorsements; (f) fraudulently alters, adds to, erases, defaces, mutilates or destroys a document or instrument relating to land or an entry on or endorsement of the document or instrument; or (g) suppresses or conceals any material, document, fact or matter from a public officer or an officer of a local authority or an officer of any body exercising powers under this Act or assists or joins in so doing, commits an offence and is liable on conviction to a fine of E40,000 or imprisonment for a minimum term of 4 years or to both. (2) A person who, without reasonable excuse, fails to produce a document as required by a notice served on him under this Act commits an offence and is liable on conviction to a fine of E3000 or imprisonment for a term of 5 months or to both. (3) A person who fails to vacate land after the expiry of the period specified in an order to vacate land issued by the Tribunal or court having jurisdiction and served on him to vacate that land commits an offence and is liable on conviction to a fine of E15,000 or imprisonment for a minimum term of 3 years or to both. (4) A person who wrongfully obstructs or encroaches on to a public servitude and who does not within the time specified in an order of the Tribunal served on him or where he has appealed against the order, within the time specified in the order after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and is liable, on conviction to a fine of E5,000 and in the case of a continuing offence, to an additional fine of E500 for every day during which the offence shall have continued. (5) A person who wilfully and unlawfully - (a) delays; (b) obstructs; (c) hinders; (d) intimidates; or (e) assaults, a person authorised under this Act to enter and inspect any land in the lawful exercise of the power in that behalf commits an offence and is liable on conviction to a fine of E2,000 or to a term of imprisonment of one year or to both the fine and imprisonment. (6) A person who corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or herself or any other person, any gift or consideration or service as an inducement or reward for doing or omitting to do or for having done or omitted to do any act or make any official statement which it is or was his duty to do or to make or refrain from doing or making under this Act or for showing or refraining from showing favour or disfavour to any person in relation to any matter referred to in this Act commits an offence and is liable on conviction to a fine of E20,000 or to a term of imprisonment not exceeding 5 years or to both. (7) A person who corruptly gives or agrees to give or offers a gift or consideration or service as an inducement or reward for doing or forbearing to do or for having done or forborne to do an act in relation to a duty imposed upon a public officer, an officer in the employ of a local authority, or a person exercising functions under this Act commits an offence and is liable on conviction to a fine of E20,000 or to a term of imprisonment not exceeding 5 years or to both. (8) Where a court has convicted a person of an offence under this section and the</p>

	commission of the offence enabled the person to obtain or retain or regain an interest in land which he would otherwise not have been able to obtain, retain or regain, the court may, in addition to a punishment provided for by this section imposed on that person, make an order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that such person does not profit by the offence of which he has been convicted and without prejudice to the generality of this provision, the order may direct – (a) the Government, Director or Attorney General on behalf of a Chief to take such other action as the court may deem fit; (b) the Registrar or Director as the case may be to cancel an entry in the register which has been obtained by virtue of or on account of the offence; (c) a person conducting an adjudication to cancel an entry in the adjudication record which has been obtained by virtue or on account of the offence; or such person to make restitution to a person who has suffered loss by virtue of or on account of the offence, including taking all necessary action to transfer to the person any interest in land obtained, retained or regained by such offence from that person, and the order may be made subject to such conditions as the court may consider just and reasonable.
124	Void transactions and titles Any transaction or dealing in land or any title acquired pursuant to any transaction or dealing carried out contrary to this Act shall be of no effect.
125	Common law remedies not affected Nothing in this Act shall take away or interfere with the right of the State or a person to recover, under common law, compensation or damage for injury caused by an offence committed under this Act.
126	Savings and transitional provisions with respect to transactions Unless the contrary is specifically provided for in this Act, any right, interest, title, power or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be valid in so far as it is consistent as if it complied with the law applicable to it immediately prior to the commencement of this Act.
127	Savings and transitional provisions with respect to rules, orders, etc. Any rule, order, regulation, direction, notice, notification, condition, permit or other administrative act made, given, issued or undertaken before the commencement of this Act under any law repealed or amended in a material particular by this Act shall, if it could have been made, given, issued or undertaken under any corresponding provision of this Act, continue in force and have the like effect as if it had been so made, given issued or, as the case may be, undertaken.
128	Transitional provisions with respect to judicial proceedings Where a case relating to land was pending before the High Court or Subordinate Court prior to the coming into effect of this Act, the case may continue to be heard by the High Court or Subordinate Court until completion and the ruling emanating therefrom shall have the same effect as if made after the coming into effect of this Act.
129	Regulations (1) The Minister responsible may, by notice published in the Gazette, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties occasioned by the coming into operation of this Act. (2) The Minister responsible may, without prejudice to the generality of subsection (1), make regulations - (a) for the procedure of allocation of land; (b) prescribing terms and condition under which a foreign enterprise for investment purposes shall be hold land; (c) defining the use purpose of land; (d) for the administration and transaction of sectional titles; (e) prescribing the terms and conditions of leases and the manner in which leases are to be executed; (f) prescribing the procedure for application for a lease; (g) prescribing the land holding ceilings; (h) for prevention of speculative dealings in land; (i) prescribing the conditions and circumstances under which the disqualification imposed upon companies and partnerships under section 8 may be waived; (j) for terms and conditions under which consents shall be granted; (k) for compensation arising from operation of this Act; (l) in relation to notices, orders and calling of information under this Act; (m) for entry and inspection, at reasonable times, of premises by the Board, Fund, Committee, Tribunal, Director, a local authority representative or other authorised persons; (p) prescribing the forms and schedules for the better carrying into effect of this Act; (q) prescribing procedures for declaration of land for public purpose and public interest; (r) for expropriation of land for public purposes and in the public interest; and (s) as the Minister considers necessary for the effective implementation of this Act.
130	Repeal The laws in the Second Schedule of this Act are hereby repealed
	FIRST SCHEDULE
	SECOND SCHEDULE
1	As per section 129 of this Act the following laws are hereby repealed- (a) Concessions Act No.3/1904; (b) Concessions Partition Act No. 28 of 1907; (c) Safeguarding of Swazi Areas Act No.39/1910; (d) Crown Lands Disposal Act No.13/1911; (e) Swazi Areas Act No.41/1916; (f) Swaziland Settlement Act No.2 of 1946; (g) Crown Lands Act No.9 of 1949; (h) Ancillary Rights Act No. 59 of 1950; (i) Natural Resources Act 71 of 1951; (j) King’s Order in Council No.4 of 1954;

	<ul style="list-style-type: none"> (k) Sub-division of Land Act No. 7 of 1957; (l) Acquisition of Property Act No.10 of 1961; (m) Rights of Way (Cancellation) Act No.16 of 1962; (n) Immovable Property (Race Discrimination) Act No.46 of 1963; (o) Crown Lands (Temporary Occupation) Act No.22 of 1964; (p) Crown Lands (Conditions) Act No. 2 of 1968; (q) Land Speculation Control Act and Regulations No. 8 of 1972; (r) Land Concession Order No.15 of 1973; and (s) Contract by Swazi Chiefs Act No. 14 of 1924.

Appendix F The Swazi Nation Land Agricultural Commercialization Bill, 2016

#	Title
1	Short title and commencement
2	Application
3	Interpretation
4	<p>Designation of land for agri-business</p> <p>(1) a person is entitled to apply for designation and allocation of land for agri-business. (2) A Chiefdom shall be entitled to have a specially designated area for agri-business purposes. (3) The Surveyor General shall ensure that the land so designated is surveyed and that its boundaries are appropriately marked in terms of the land survey law.</p>
ESTABLISHMENT AND FUNCTIONS OF THE CHIEFDOM LAND-USE RIGHTS ALLOCATION COMMITTEE	
5	<p>Establishment of the Committee</p> <p>(1) There shall be established in each Chiefdom a committee to be known as the Chiefdom Land-use Rights Allocation Committee appointed by the Chief or competent authority in consultation with Bandlancane. (2) The Committee shall be composed of five (5) members in the following – (i) a Chairperson; (ii) two members of the Chief's Council (Bandlancane); (iii) two local residents. (3) The Committee shall regulate its own procedure. (4) The Committee shall hold office for a term not exceeding five (5) years and may be eligible for re-appointment for another term. (5) The Chief shall have the power to revoke an appointment in the event of serious misconduct. (6) The Committee shall report to the Chief quarterly.</p>
6	<p>Functions of the Committee</p> <p>(1) The Committee shall- (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 . (2) The Chief shall, in consultation with the Board, issue a letter of allocation granting an applicant agri-business land use rights.</p>
7	<p>Establishment of the Technical Advisory Committee</p> <p>(1) There shall be established a Technical Advisory Committee appointed by the Minister for purposes of advising the Chiefdom Land-use Rights Allocation Committee and the Minister on the technical implementation of this Act. (3) The Committee shall be composed of five (5) members in the following: (a) Director of Agriculture who shall be the Chairperson; (b) an agricultural extension officer; (c) land-use expert; (d) one agri-business entrepreneur; (e) environmental specialist. (4) The Committee shall be entitled to co-opt any member/s with relevant expertise.</p>
8	<p>Functions of the Technical Advisory Committee</p> <p>The Technical Advisory Committee shall – (a) ensure and monitor the provision of extension and technical support to farmers through the Ministry; (b) consider suitability of extension of the boundaries of the allocated land; and (c) advise on the market linkages for the agri-business products.</p>
AGRI-BUSINESS LAND-USE RIGHTS	
9	<p>Demarcation of land for agri-business</p> <p>(1) Upon being furnished with the letter of allocation, the Surveyor General shall ensure the demarcation of land designated for agri-business. (2) The demarcation of the land shall be done by a registered surveyor who shall ensure that the land is surveyed, described accordingly and the boundaries are appropriately marked in terms of the law relating to land survey. (3) The demarcation fees of the land shall be borne by the person who makes an application for registration of land-use rights; (4) A person shall not remove, obliterate or temper with any beacons established by the Surveyor General in terms of the law relating to land survey without the consent of the Surveyor General.</p>
10	<p>Applications for Agri-business Commercial Khonta Certificate</p> <p>(1) A person allocated agri-business land may apply for issuance of an Agri-business Commercial Khonta Certificate by submitting an application in the form prescribed in the First Schedule. (2) The application form shall be accompanied by – (a) a certified copy of the applicant's identity document and that of the head of the family, if he is not the head of that family, or a certificate of incorporation in the case of a body corporate; (b) proof of residence containing full particulars of the applicants' place of residence; (c) proof of payment of an application fee prescribed in the second schedule.</p>
11	<p>Consideration of applications for allocation of land-use rights</p> <p>(1) When considering applications the Chiefdom Land-use Rights Allocation Committee shall satisfy itself that- (a) the applicant is a Swazi citizen; (b) the land is available for the use proposed by the applicant; (c) the extent of the land applied for and its situation in relation to the proposed use, (d) the suitability of the land for the proposed use.</p>

12	<p>Agri-business Commercial Khonta Certificate</p> <p>(1) <u>An Agri-business Commercial Khonta Certificate shall be registered with the Kings Office and shall be accompanied by a receipt of the prescribed execution and registration.</u></p> <p>(2) An Agri-business Commercial Khonta Certificate shall be accompanied by the letter of allocation from the Chief or competent authority which shall contain the following – (a) full names and particulars of the person allocated; (b) the extent of the land allocated, use and material conditions of allocation; (c) procedure for surrender and termination of allocation; and (d) conditions for revocation of an allocation of Agri-business Commercial Khonta certificate.</p> <p>(3) An Agri-business Commercial Khonta Certificate registered with the Kings Office shall be conclusive proof of land-use rights over Swazi Nation Land allocated in terms of this Act.</p> <p>(4) The Kings Office shall open, keep and maintain a register of Agri-business Commercial Khonta Certificates.</p>
13	<p>Limitations on the extent of land and land-use rights</p> <p>(1) The allocation of land for agri-business shall be done in consideration of the Chiefdom’s land use and development plan where it has been developed.</p> <p>(2) In allocating land for agri-business the Chiefdom Land-use Rights Allocation Committee shall ensure that the extent of the land allocated for agri-business does not encroach into a homestead and that enough land remains for each homestead for domestic use.</p> <p><u>(3) A person shall not alienate land-use rights or any part thereof by assignment, transfer, or otherwise howsoever without the consent of the Chief.</u></p>
14	<p>Consolidation of allocated land for agri-business</p> <p>(1) Persons allocated land-use rights within the same Chiefdom may, with the approval of the Chief or competent authority on the advice of the Technical Committee, consolidate their allocated land for purposes of utilising the land for large scale agri-business subject to – (a) incorporation of a company, association, cooperative society or similar body; (b) issuance of a consolidation diagram approved by the Surveyor General;</p> <p>(2) Where such approval has been granted the Chief or competent authority shall issue a Chief’s letter of allocation to the consolidation prescribed in the fourth schedule.</p> <p>(3) For purposes of this section, ‘consolidation’ means the process by which different contiguous pieces of land, sharing common boundaries, are merged together to form one piece of land.</p>
15	<p>Compliance with prescribed use</p> <p>(1) A person who has been allocated land use rights shall only utilise the land allocated for its prescribed use.</p> <p>(2) The terms and conditions of an Agri-Business Commercial Khonta Certificate issued under this Act shall be enforceable against the holder and successors in title of that holder.</p>
16	<p>Revocation of land-use rights</p> <p><u>(1) An allocation of agri-business land-use rights may be revoked by the Chiefdom Land-use Rights Allocation Committee subject to the authority of the Chief or competent authority having jurisdiction over the area for breach of terms and conditions of allocation.</u></p> <p><u>(2) Before exercising its power under subsection (1), the Chiefdom Land-use Rights Allocation Committee shall give at least three (3) months’ notice to the person affected to remedy the breach.</u></p> <p><u>(3) The notice referred to under subsection (2) shall set out clearly the nature of the breach and the consequences of failure to remedy the breach.</u></p> <p><u>(4) An allocation may be revoked upon the written application of the holder of an Agri-business Commercial Khonta Certificate.</u></p> <p><u>(5) The revocation of the agri-business land-use rights shall be evidenced by an endorsement on the Agri-business Commercial Khonta Certificate and the relevant land register at the Kings Office.</u></p>
17	<p>Devolution of land-use rights upon death of holder</p> <p>The devolution of land-use rights of a holder, upon death, shall be regulated by Swazi Law and Custom, subject to considerations of interests of third parties.</p>
	FINANCIAL INSTITUTIONS INTERESTS
18	<p><u>(1) A person allocated land use-rights for agri-business is entitled to use the Commercial Khonta Certificate as collateral to secure a loan from a financial institution.</u></p> <p><u>(2) Where the holder of an Agri-business Khonta Certificate fails to meet his obligations under the loan agreement, the financial institution shall, in conjunction with the Chiefdom Land-use Rights Allocation Committee identify another member of the family who is willing and capable of taking over the commercial project and service the debt from the financial institution until it is fully paid.</u></p> <p><u>(3) Where there is no family member available to run the business, the financial institution, the Chiefdom Allocation Committee and the family shall identify a person within the sigodzi of that Chiefdom who is willing and capable of continuing with the commercial project or any other agri-business project and service the loan from the financial institution until it is fully paid.</u></p> <p><u>(4) If no person within the same community is identified, then the financial institution, Chiefdom Land-use Rights Allocation Committee and the family shall identify a person from another sigodzi within the Chiefdom who is willing and capable of continuing with the commercial project or any other project and service the loan from the financial institution until it is fully paid.</u></p> <p><u>(5) Where all of the above is not possible, the financial institution, the Chiefdom Land –use rights Allocation Committee and the family shall identify a citizen from any Chiefdom who is willing and capable of continuing with the commercial project or any other project and service the loan from the financial institution until it is fully paid.</u></p> <p><u>(6) Where a suitable candidate has been identified, that candidate shall for all intents and purposes be considered as the rightful holder of the land-use rights allocated to the previous holder.</u></p>
	ESTABLISHMENT OF THE AGRI-BUSINESS LAND-USE RIGHTS APPEALS TRIBUNAL

19	<p>Establishment of the Agri-business Land-use Rights Appeals Tribunal</p> <p>(1) There is established a Tribunal to be known as the Agri-business Land-use Rights Appeals Tribunal appointed by the iNgcwiyama.</p> <p>(2) The Tribunal shall consist of seven (7) members.</p> <p>(3) The Tribunal shall be composed of – (a) a Chairperson, (b) a Secretary, and (c) five other members.</p> <p>(4) The Appeals Tribunal may be paid such allowances as may be determined by the Minister in consultation with the Minister of Finance.</p>
20	<p>Appeals</p> <p>(1) A person who is aggrieved by a decision of the Chiefdom Land-use Rights Allocation Committee may appeal against the decision to the Tribunal.</p> <p>(2) An appeal under subsection (1) shall be made within thirty (30) days after the report of the findings has been brought to the attention of the person against whom it is made.</p> <p>(3) A decision on an appeal shall be made, in writing, as soon as practicable after the completion of the proceedings.</p> <p>(4) The decision of the Tribunal shall include the findings of fact and opinion of the Tribunal.</p> <p>(5) A decision of the Tribunal shall be final.</p> <p>(6) In deciding an appeal, the Tribunal may make an order- (a) affirming or varying the decision, ruling, determination or direction of the Chiefdom Land-use Rights Allocation Committee , as the case may be; (b) remitting the decision, ruling, determination or direction for reconsideration by the Chiefdom Land-use Rights Allocation Committee in accordance with the directions or recommendations of the Tribunal.</p>
GENERAL	
21	<p>Monitoring and evaluation</p> <p>The Minister shall, within three months after the end of every financial year, table a report to Parliament on the implementation and enforcement of this Act.</p>
22	<p>Regulations</p> <p>The Minister may make Regulations to give effect to the objects of this Act and for- (a) the organization and administration of the Committee and the Appeals Tribunal; (c) the procedure for application, designation, demarcation and allocation of agri-business land-use rights and the terms and conditions under which Agri-business Commercial Khonta Certificates may be issued; (d) the procedure to be observed in the issuance of an Agri-business Commercial Khonta Certificates; (e) the fees to be paid for any matter or thing done under this Act; (f) the forms to be used for any document or purposes; and (g) any other matter incidental to the carrying into effect of the provisions of this Act.</p>
23	<p>Offences</p> <p>(1) A person who – (a) without justification or lawful excuse, wilfully obstructs or hinders any other person acting in the exercise of the functions of that other person under this Act; or (b) divulges, without lawful justification, any confidential information which that person has obtained in the course of any duty conferred by this Act; or (c) contravenes any provisions of this Act, commits an offence and shall on conviction, be liable to a fine not exceeding five thousand Emalangeni or to imprisonment not exceeding six (6) months, or both.</p>