

ESWATINI LAND GOVERNANCE COUNTRY ASSESEMENT FOR NAIP

Established in 2003, the **Comprehensive Africa Agriculture Development Programme (CAADP)** is the African Union's policy framework for agricultural transformation of the continent. It aims to contribute to a significant increase in agricultural productivity in Africa's mostly agriculture-based economies. With the adoption by the AU General Assembly in June 2014 of the **Malabo Declaration on Accelerated Agricultural Growth and Transformation**, CAADP has gained renewed political momentum. At the heart of the implementation process are country-specific strategies, the **National Agriculture Investment Plans (NAIPs)**, that aim to increase investment and productivity in agriculture. This Policy Brief is the result of an in-depth country level **Land Policy and Land Governance Assessments** undertaken by NELGA experts with the objective to strengthen and mainstream **land issues in the successor (or 2nd generation) NAIP and to contribute towards achieving the Malabo targets.**

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

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

KEY POLICY MESSAGES

- **Increase the proportion of farm households with secure land rights** and ensure such productive land is recognized, used for designated activities, and protected from possible encroachment for other land uses;
- **Increase budgetary allocation to the land sector** to allow the Ministry of Natural Resources and Energy (MNRE), in collaboration with other agencies, to design and

implement programmes and initiatives including those that target improved land administration and governance, land use planning and documentation, and national and community level awareness raising campaigns against climate change impacts;

- **Boost the number of skilled, knowledgeable and professional land experts** to articulate the country's needs and execute all the existing initiatives and proposed bills and policies to achieve much needed reforms in this sector;
- **Harmonize land related policies and legislation** to ensure smooth execution of such policies and legislation and hence improve land governance. This will in turn lead to increased agricultural investment;
- **Invest in home-grown solutions and approaches to ensure there is a sustainable land administration and governance** such as the Sustainable Land Administration and Management Project implemented by the MNRE and the Chiefdom Development Plan spearheaded by the Ministry of Agriculture.

BACKGROUND

In Eswatini, like many other African countries, land is governed through diverse structures including chiefs and state authorities. More specifically, in Eswatini, most of the land is held in 'trust' by the King – who has the ultimate power to allocate or acquire land and he often performs this mandate through his local chiefs. Since Eswatini has no specific land policy and land act, the major reference document is the country's constitution.

There are two major land tenure types in the country:

- Swazi Nation Land: 60% of total arable land, administered by chiefs;
- Titled or private land is mainly used for commercial farms and contributes nearly 80% of the agricultural GDP.

In Chiefdom settings, people receive land based on swearing allegiance to the king and their chief. On urban land, parallel structures of chiefs and municipal/city councils govern, with contestation between them.

STUDY FINDINGS

Constraints on land governance and reforms

LACK OF SPECIFIC LEGISLATION GOVERNING LAND SECTOR

No land policy or land act has been passed, and the land policy is currently only in draft form. Since Eswatini became independent, therefore, no land reform has taken place.

COMPLEX DUAL GOVERNANCE STRUCTURES

The reality of land governance in Eswatini lies in the fact that the country has a dual government structure, i.e. the modern government and traditional chiefs. The two structures operate concurrently. The difficulty of operating under this kind of a government structure is that when the modern government structures try to change things, traditional structures of government realise that you are encroaching on their powers and block activities, so for example, since 1999 the land policy has been stuck.

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

LINKING LAND RIGHTS TO RATIONAL LAND USE

Despite the fact that Eswatini is a tiny country with scarce land resource, pieces of land under both Swazi Nation Land (SNL) and private lands are not fully utilised. Interviewees argued that where land titles exist, i.e. on private land, the government does not have powers to revoke the title and owners are entitled to use the land in any way they choose. Farming is voluntary, so private land owners are sometimes not living on the land and have no interest in developing it but are only using it for speculative purposes. Small-scale producers who are usually given land by chiefs are also free to use land the way they want, so sometimes such land is not put to a productive use. While the Ministry of Agriculture is available to advise farmers, not every land holder makes use of government services.

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

INCREASING PRESSURE ON LAND FROM EXPANDING URBANISATION AND POPULATION

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

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

LAND AND WATER SCARCITY, DROUGHT AND CLIMATE CHANGE

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

AGRICULTURAL TRADE AND INVESTMENT

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

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

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

POOR POLICY SYNCHRONISATION

Coordination among interrelated sectors based on existing consistencies while finding ways to mitigate inconsistencies in land-related policies and how they speak to investments in agriculture in Eswatini is crucial. This brief highlights the consistency in land policies and other land-based policies related to agriculture investments, which is fundamental because even though the over-arching policy of the national government is to eradicate poverty and increase agriculture productivity, poor policy synchronisation can impede the achievement of well-intentioned national goals. Consistencies in policies are an important ingredient for effectively transforming and improving land administration and management in the country.

Linkages between Malabo Declaration and land governance

The African Union has recognised the need to mainstream key themes such as land policy and governance into the National Agriculture Investment Plans (NAIPs) as part of its strategy to ensure countries fully implement CAADP at the country level. The need to improve land governance is central to Eswatini's National Agriculture Investment Plan (NAIP) of 2015.

Significant evidence suggests that the current NAIP is geared towards addressing Malabo Declaration. Eswatini government acted swiftly to implement most of the Malabo Declarations, with the 2017 implementation of the EU funded project, Sustainable Land Administration and Management.

THE FOCUS ON SUSTAINABLE LAND ADMINISTRATION AND MANAGEMENT PROJECT

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

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

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

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

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

ACTIONS FOR STRENGTHENING GOOD LAND GOVERNANCE IN ESWATINI

There are number of promising actions that once fully taken by the government of Eswatini, will allow the country to reach its NAIP goals and milestone.

Implementing chiefdom development plans: The government has been implementing chiefdom development plans, which identify the priorities for the optimal use of land through agriculture and tourism for subsistence and commercial gain. The EU is a key funder of the plans, which include sustainable land use and cultivation of high value crops including horticulture to ensure food security and incomes for households. Already a number of Chiefdoms development plans have been officially launched, for example in Mvembili Inkhundla and Ntondozi chiefdom.

Investing in developing land legislation: including the Swazi National Land Commercialisation Bill, establishing more inclusive and effective farmers' cooperatives, encouraging land reform by leveraging existing regional and global initiatives, and ensuring meaningful and inclusive public policy engagement.

POLICY RECOMMENDATIONS

The report recommends that as part of the government's commitment to its own national priorities and those of regional bodies such as the African Union, it must ensure a strong political will and readiness to (i) change, (ii) dedicate resources, (iii) design actionable plans, and/or (iv) integrate assessment into regular planning cycles, (v) coordinate across all government levels and sectors, and (vi) establish a process for ongoing learning/monitoring.

It further recommends that the Eswatini government aligns its traditional land management by chiefs, and land management by government through the Land Management Board (LMB), while maintaining the dual structure for land management.

This brief further provides specific policy recommendations for action by the Eswatini government and other stakeholders in land sector and for consideration by development partners:

- **Ensure that draft policies on land and agriculture can harmonize and rationalize institutional arrangements for land governance.** Provisions and statements are needed to bind institutions to collaborate from the design, implementation, and monitoring of policies;
- **Further investments in agriculture in Eswatini are** pegged not only on land governance, but on the country's capacity to invest in water harvesting and dam building necessary for agriculture due to unreliable rainfall seasons. A well thought and integrated land use plan needs to take account of water availability and usage and allocate land for dam construction;
- **Ongoing reforms in the land, agriculture and investment sectors need to prioritize the need to legitimate land owners** including enabling women to have access to use, control, own, purchase and dispose land as their men counterparts, and also as central workforce agricultural sector;
- **Invest in national and local technocrats'** who are trying to develop programmes that increase land tenure security, increase investment in productive land to boost agricultural investment and encourage chiefs to accept such programmes;
- **International agencies and other development partners including the AU and GIZ therefore need to support well-articulated domestic solutions** to the land question in Eswatini to generate buy-in from traditional chiefs, and ensure acceptability, and sustainable and effective implementation of such solutions. The recently implemented Sustainable Land Administration and Management Project by the MNRE through the European Funding can be an example on how domestically thought projects can be up-scaled an effort to improve land governance without fragmenting the local land governance system.

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For more information and full references, please consult the Final Report on SLGA Website

