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**GOVERNMENT OF THE KINGDOM OF ESWATINI**

**TECHNICAL ASSISTANCE SUPPORT IN SUSTAINABLE LAND  
ADMINISTRATION AND MANAGEMENT**

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**GUIDELINES FOR LAND ADMINISTRATION**

**COWI**

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## Acronyms

CDP	Chiefdom Development Plan
ESWADE	Eswatini Water and Agriculture Development Enterprise
EU	European Union
GIS	Geographic Information System
GOE	Government of (the Kingdom of) Eswatini
IT	Information Technology
LIMS	Land Information Management System
LIS	Land Information System
LMB	Land Management Board
MNRE	Ministry of Natural Resources and Energy
RA	Regional Administrator
SGD	Surveyor General's Department
SLAM	Sustainable Land Administration and Management
SNL	Eswatini Swazi Nation Land
TA	Technical Assistance
TDL	Title Deed Land
TOR	Terms of Reference

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# 1 Introduction

## 1.1 Purpose

These guidelines have been prepared to inform all *Liswati* about land administration and management of Eswatini Swazi Nation Land (SNL) to help chiefdoms administer and manage chiefdom landholdings.

The administration and management of land, and decisions made with regards to access, use and transfer of land are based on traditional norms and practices. These principles and norms are supposed to be common knowledge to all *Liswati*. They are not written down. Over the years this common knowledge has proven not to be so common, with different interpretations and understanding in different areas and by different people. The consequences of diminished awareness, different understandings and varying interpretations means that administration of SNL is often inconsistent, incomplete, inappropriate and prone to dispute. The uneven application of the administrative aspects of SNL law and custom result in *Liswati* not being certain what procedures and requirements are needed to occupy and use SNL.

These Guidelines are not law or rules and they do not seek to change in any material way the application of law, customs, tenure, rights and authority in or over SNL. They have been prepared to help traditional authorities and chiefdoms administer and manage the land they are responsible for overseeing, and for the information of *Liswati* about land matters.

## 1.2 The Importance of Information

The administration and management of land requires making decisions. For instance, deciding what land and to who use rights will be given, what use the land will be put to, and whether or not structures can be built. Decision-making in turn requires information. This information has three parts:

- > Land
- > Persons
- > Rights

Information about land is usually provided in the form of maps and plans that show where land is located, how it is divided, the size of the pieces, etc. Information about persons include names, ID numbers, marital status, etc and this may be available in the form of lists or registers. Rights link people to land. They are usually defined in law or custom and include how the land is held, for how long, and any conditions of holding or use.

Land information can be sourced either systematically, in a census or large-scale collection exercise, such as the SLAM project for example, or sporadically, as and when needed and known. In practical and economic terms, it is usually better to have key information, such as a description of the land, how it is used, and name of the user, collected systematically. When additional information is needed for a land management decision, it can be obtained at the time of request.

## 1.3 Landholding Maps

Landholding maps show and describe landholding units or plots that were granted or allocated in the past. The location and approximate size of each plot or piece of land is shown in relation to other plots and features on the underlying photomap.



Figure 1: Example of a landholding photomap.

The number inside each plot is unique for each chiefdom and provides an index or link to information about other information such as the land use and land user.

## 1.4 Land Records

Information in the form of records that are needed for land administration, include the following:

- > A nationally unique homestead landholdings identification number.
- > The name of the head of family or homestead.
- > The name(s) of the spouse(s) of the homestead head.
- > The year that the land was first allocated to the family by the chiefdom.
- > The location (*tinkhundla*, chiefdom), number of pieces, and total area of the landholding.
- > The land use(s).
- > Additional information, such as internal allocations to family members.
- > Identification of land lent out or rented out, the name of the person who temporarily uses the land, and the terms (length of time, any payment) and conditions (such as restrictions on use or subletting) of the lending or renting out.
- > Identification of land borrowed or rented from others and the name of the family lending/renting out and the terms and conditions.

These records can be organised in a register (see Figure 2).



**CHIEFDOM LANDHOLDING REGISTER**

Region: \_\_\_\_\_  
 Inkhundla: \_\_\_\_\_  
 Umphakatsi: \_\_\_\_\_  
 Landholdings nr: \_\_\_\_\_

Year of allocation: \_\_\_\_\_  
 Area: \_\_\_\_\_  
 Number of parcels: \_\_\_\_\_  
 Landuse: \_\_\_\_\_  
 Date of capture: \_\_\_\_\_

#	Name of homestead head:	Gender:	ID no:	Date:
Name(s) of homestead head's spouse(s)				Date:
#	Notes (additional info., e.g. household allocations):	Date:		
#	Land lent out (name, terms & conditions):	Date:		
#	Land borrowed from (name, terms & conditions):	Date:		

(edit number: 34)

Figure 2: Chiefdom land record or register

In addition to the register, there are lists of all land allocations, indexed by the landholding number or the homestead family name.

Maps, registers, lists and guidelines are the 'land administration tools' of each chiefdom.

Sustainable Land Administration Management Project							
Nkhungwini							
List of Homestead Data Collected							
Home- stead num- ber	Name of homestead head			ID Number	Spouse name	Additional info	Edit Comments
3524	Nkonyane	Bonginkosi		M 7304236100110	1 LaMamba [Married]	1 0 0	
3525	Mabuzza	Semoen	Selamiso	M	1 Thabile Mabuzza (laMaseko) [Married]	3 0 1	[Borrowed in] Nkoninkoni Simelane: To be returned when needed Overlap with homestead id: 3586 Overlap with homestead id: 3580, homestead id: 3594
3526	Simelane	Moses	Musa	M 5604086100025	1 Nokuthula Simelane LaQwabe [Married]	1 0 0	
3527	Shabangu	Martha	Sidanda	F 3605011100115	1 Jimson Shabangu [Deceased]	1 0 0	
3528	Nyembe	Peter	Mandla	M 560521519608	0	3 0 0	
3529	Simelane	Dumisa	Mcaphuna	M	0	1 0 0	
3530	Mabuzza	Masiza		M	0	1 0 0	Overlap with homestead id: 3531
3531	Mabuzza	Tholakele	Rebecca	F 5302161100057	1 Mambamu Mhlanga [Deceased]	3 0 0	Overlap with homestead id: 3530
3532	Khumalo	Mphikwa	Samuel	M 5809076100113	1 Saraphinah Thembi Khumalo LaWilakat: [Married]	3 0 0	
3533	Masuku	George		M 56070161000320	1 Annie Lomini Masuku LaSimelane [Married]	3 0 0	Overlap with homestead id: 3581, homestead id: 3619
3534	Dlamini	Simion	Magcekeni	M	1 Jabu Dlamini laMatsebula [Married]	2 0 0	
3535	Mabuzza	Emelinah	Sesi	F 4701241100063	1 Emelinah mabuzza laMazibuko [Married]	1 0 0	
3536	Dlamini	Mthezani	Mshini	F 3002161100055	1 Marjenga Dlamini [Deceased]	4 1 0	[Lent out]: Mkhanyiseni Ndwandwe: To be returned when required
3537	Shabangu	Velibanti	Simon	M 5912126100727	1 Magret Shabangu (laHophe) [Married]	1 1 1	[Borrowed in] Mhula Mavuso: No agreement made for the fields [Lent out]: Mvula Mavuso: No agreement made for the fields
3538	Dlamini	Samson	Maziya	M 39121261000042	1 Juliet Dlamini (laMakhubu) [Married]	2 0 0	
3539	Mavuso	Jetro	Phikaphu	M 4001016111308	1 Matidiah Mavuso laShabangu [Married]	4 0 0	Overlap with homestead id: 3581, homestead id: 5339
3540	Hlophe	Johannes		M 2906156100089	1 Elise Ntombenhle Hlophe LaThwala [Married]	7 0 0	Overlap with homestead id: 3551, homestead id: 3568, homestead id: 3585, homestead id: 3602, homestead id: 3611, homestead id: 3770, homestead id: 3784
3541	Khumalo	Ntombi	Ethel	F 5204101100280	0	1 0 0	
3542	Hlophe	Jeremia	Moyomusha	M 54101061005511	1 Thembi Hlophe laThwala [Married]	1 0 0	Overlap with homestead id: 3581
3543	Nxumalo	Andrias	Dumsani	M 57011261000021	1 Albertina Nxumalo (laMotsa) [Married]	3 0 1	[Borrowed in] Mahini Dlamini: No agreement terms about borrowed fields Overlap with homestead id: 3597, homestead id: 3622
3544	Dlamini	Mazomba	David	M 5006226100099	1 Sarafina Dlamini laXaba [Married]	2 0 1	[Borrowed in] Dilika Sabanga: To be returned when required
3545	Nyembe	Albert	Mfanyana	M 3201016103021	1 Mariah Simangele Nyembe laDlamini [Deceased]	3 0 1	[Borrowed in] Elias Mageza Nyembe: No Agreement made for the duration of the years for the land
3546	Shabangu	Zephania	Mrozi	M 5007286100069	0	4 2 0	[Lent out]: Bongekile Mabuzza: No agreement made for the fields, Mazomba Dlamini Overlap with homestead id: 3576, homestead id: 3626, homestead id: 3756

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Figure 3: Example of a homestead list

## 2 Land Law

### 2.1 Forms of law

There are three forms of land law – common law, statutory law and customary law. The common law is the basis for private or 'Title Deed Land' (TDL) tenure. The principal statutory law is The Constitution. If statutory law and common law are inconsistent, the former shall prevail. The Constitution prevails over all law – statutory, common and customary – whenever there is any inconsistency in the law.

The Constitution of the Kingdom of Eswatini provides<sup>1</sup> that:

- > All land (including any existing concessions) in Eswatini, but not privately held title-deed land, shall continue to vest in the *iNgwenyama* in trust for the Swazi Nation as is vested on the 12th April 1973.
- > A citizen, without regard to gender, shall have equal access to land for normal domestic purposes.
- > A person shall not be deprived of land without due process of law and where a person is deprived, that person shall be entitled to prompt and adequate compensation for any improvement on that land.
- > Agreements which place the ownership of land in a non-citizen or a foreign-owned company shall be of no force and effect unless that agreement was made prior to the commencement of this Constitution.
- > There shall be established a Land Management Board ... 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.

Other statutory laws that are important in the administration and management of SNL include the Swazi Administration Act, 1950, which includes the definition of the role and responsibilities of chiefs, and Swazi Land Settlement Act, 1946.

### 2.2 Land tenure

There are three main types of land tenure or forms of holding land rights. These are:

- > Privately held 'title deed land'
- > *eSwatini* Nation Land (SNL) held in trust by the *iNgwenyama* for all *emaswati*
- > Crown or state land, not being privately held or SNL. Government land may be state land or title deed land.

Access to SNL may create a right to hold land; it does not mean the right to 'own' land. The ownership of SNL vests in all *Emaswati*, held in trust by the *iNgwenyama* on their behalf.

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<sup>1</sup> Act No.1 of 2005, sections 211(1) and 212.



In effect, the land is 'owned' by the *iNgwenyama* on behalf of emaSwati communities (chiefdoms). The *iNgwenyama* has delegated the powers to administer SNL to traditional authorities / community leaders (chiefs and chief's councils).

An individual Liswati or citizen may hold rights to SNL but in effect these rights are held on behalf of a family, of which the individual is the head (of a family group or 'homestead').

A group or people, in the form of an entity such as a company, organisation, or cooperative, may also hold rights to SNL. If SNL is held by an entity, such as a cooperative, the rights are not owned by the members of the entity but by the entity, and if the entity ceases to exist, the rights shall also cease to exist and are not distributed to the members.

Rights can also be held by multiple people, related or unrelated, who are not part of an entity. In common law, these people hold the right either jointly (as if they were one person) or individually in equal shares (i.e. each person has a fraction or share). If a person holding a joint right to land dies, the right automatically passes to the surviving people. If a person holding a share dies, the share passes to the persons heirs in accordance with the laws of inheritance. In customary law, land rights can only be held jointly.

In addition to the three main types of tenure, there may exist what are known as land concessions. Land concessions are similar to leasehold title to land, although the original concessions granted by the *iNgwenyama* in the 19th and early 20th centuries may not have specified a time period. Most of these land concessions were converted to TDL. However, those that were not converted exist now only in name only, and as the Constitution directs<sup>2</sup>, they now vest in *iNgwenyama* in trust for the Nation.

## 2.3 Land authorities

### 2.3.1 Title Deed Land

The authority for TDL rests with the 'owner'. The 'owner' is the person(s) who has acquired the 'title' to hold the land for an unspecified time with the power to sell, mortgage and lease the land. The owner's title may be proved by a 'title deed' recorded (registered) in accordance with the Deeds Registry Act.

### 2.3.2 Eswatini Swazi Nation Land

The allocation and management of SNL by chiefs and chief's councils is largely centred on principles of customary law and tradition that are generally known but not written down. These guidelines outline the broad principles and focus only on some administrative aspects and not customary law and traditional practice. These guidelines do not define, alter or replace customary law and practice, nor dictate to chiefdoms their responsibilities.

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<sup>2</sup> Section 211(1).

The authority to allocate landholding or use rights on SNL vests with the *iNgwenyama*. The *iNgwenyama* has delegated these powers to chiefs.

Chiefs are not empowered to delegate these powers to any other person or body, including acting chiefs, headmen or inner councils.

Where a chiefdom is without a substantive chief, land cannot be allocated in that chiefdom except by the *iNgwenyama*.

Chiefs are expected to consult with and act on the advice of their inner council when allocating, administering or managing land. Although an inner council is responsible for advising a chief on land matters, they are not empowered to allocate landholding rights. Collectively, the chief and inner council – the chiefdom in other words – are responsible for administration and management of chiefdom land.

On SNL that has been allocated to a family in the past, a family head may apportion some of that land to another family member. This can be done without the authority / approval of the chiefdom, but the chiefdom must be informed of any family subdivisions.

A family head or family may not allocate or sell any of their landholding to a person or persons who are not family members or recognised as being part of the family (see 3.4).

## 3 Access to SNL

Although every citizen has a right to access land, but this does not mean a right to any piece of land or any size in any location.

A person may request a piece of SNL for his/her and family residence and subsistence, but the right cannot be demanded.

The right to SNL is contingent on being accepted into and being a member of a community or chiefdom. Landholders must 'pay allegiance' to and respect the authority of the community's leadership to become part of a community and thus able to access and use land within that community or chiefdom.

### 3.1 Land that can be allocated

Land that a chief may allocated must:

- > Be within the recognised jurisdiction or administrative area of the chiefdom.
- > Be land that a chief has jurisdiction over<sup>3</sup>, and not a private TDL farm nor Crown or government land.
- > Not previously allocated and is currently still the landholding of another family or person(s).

A chief may not allocate land that is protected by national laws (parliamentary legislation).

A chief should be guided in the allocation of land by a chiefdom development plan and a resettlement plan where these exist.

### 3.2 Landholding Size

A chiefdom development plan or resettlement plan may guide the size of new allocations in the context of different uses and land capabilities.

### 3.3 Land Allocation by a Chief

Only a chief has authority to allocate land in a chiefdom and therefore a request for SNL would be made to the chief. In practice, however, the request is made to the chiefdom.

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<sup>3</sup> This includes land historically defined as SNL or land that was once TDL but now vests in the *iNgwenyama* in trust for the Nation. Where the land was once TDL it may still, in law, be considered as TDL, but *de facto*, it is SNL because the title belongs to the *iNgwenyama* and the land is controlled and administered by a chief.

Persons wishing to acquire SNL need to approach the chiefdom using an emissary (*lincusa*). The approach is usually made to the chiefdom headman (*indvuna*). In practice, it will take multiple approaches or visits to the chiefdom to establish and make the request.

The person wishing to acquire some land must provide to the chiefdom the following information:

- > The person's background (current place of abode, where he/she is originally from, age, marital status, number of children and dependents) and citizenship.
- > Whether or not the person has pledged allegiance (*khonta*) elsewhere or holds land or owns immovable property (e.g. a house or title deed land) elsewhere.
- > The reasons for requesting land. Is it for residential use, agriculture, or business or any combination of these? If for agriculture, what type of agriculture? If for business, what type of business (e.g. retail shop, manufacturing, office). If for residential use only, how will the person sustain themselves and their family (e.g. are they employed?) If the use is commercial agriculture or business, there should be a business plan.
- > The amount of land required, type of land, and any particular location needs (e.g. near a road or water) or whether available and suitable land has already identified (the emissary should also know this and the location of the land).

In addition to the above, further information may be requested by the chiefdom at any time during the process of requesting and allocating land.

Chiefdoms will be guided by their development plan, resettlement plan, and available land information (land administration maps and records) in deciding whether to approve the request for land.

Chiefdoms may adopt policies for the allocation of land. These policies may restrict the allocation of land. Restrictions may, for example, include that land is only available to existing community members, or land is only available in certain locations, or only small amounts are available for residential use or business use without agricultural use.

Chiefdoms may also include conditions in any allocation of land. These conditions may include, for example, that land must be developed within a certain period of time, or the land must be put immediately into intended use and remain continuously in that use. Where an allottee fails to abide by any conditions, chiefdoms may impose a fine or may repossess the land.

After reviewing a request for land, a chiefdom may summon the person to a site meeting. The purpose of the site meeting is to identify, with community elders and neighbours, the land to be allocated.

Before an allocation is confirmed, a tribute must be paid by the person to the chiefdom. Traditionally this tribute is the delivery of a cow to the chief.

The final step in allocation is a ceremony held on the land (*kubopha lifindvo*) at which community elders are usually present together with members of neighbouring homesteads to witness the formalities of the allocation and the identification of the land boundaries.

After the formalities are complete, the chiefdom will update the land records to include the new allottee's landholding on the map and details in the register.

The allottee may inspect the landholding map and register but is not given a certificate of any sort nor a copy of the map or register.

### 3.4 Family allocation of land

Custom allows for families who have been allocated land in the past to subdivide their land and allocate pieces or plots to family members.

Only a recognised family head may subdivide and allocate family land to family members. Recognised means the person is known to the chiefdom as being the head of the family homestead.

Where a homestead does not have a recognised family head, such as when the former head dies, and family elders have not yet identified and agreed who will become the next head, the family land cannot be subdivided, allocated and distributed to family members.

A homestead head cannot allocate family land to persons who are not family members.

If a homestead head wishes to allocate part of the family land to someone who is not a family member, even though the person is a community member, the process and requirements of allocation by the chiefdom, as described in 3.3, must be followed.

It is expected that a subdivision and allocation of family land to family members is done only after consultation with all family elders.

Permission of the chiefdom is not usually required for family allocations. However, the chiefdom must be informed of the subdivision otherwise the new homestead may not be recognised and recorded by the chiefdom as a separate homestead.

## 4 Inheritance of Land

Customary law about inheritance of SNL is well established. When a homestead family head dies, the surviving family members automatically retain the rights to use and occupation of the land. Furthermore:

- > The land does not return to the chiefdom.
- > The land does not automatically pass to one family member or automatically divided between family members.
- > No family member, including widows or children, may be evicted or deprived of their use rights.

The former, deceased head of the family will usually remain recorded as the homestead head until family elders inform the chiefdom the name of the person who inherit the role of family head. The chiefdom may verify this and/or may announce to the wider community at the next community meeting the name of the person who is now the homestead head.

The process of identifying which family member becomes the next homestead head is not considered here.

In the interim period before the death of the former and the identification of the next homestead head, tradition holds that the spouse of the deceased becomes the custodian of the land, or if the deceased has no spouse, the most senior family member becomes the custodian of the land.

A custodian of family land may not allocate any land to any family member or other person, but may, in consultation with family members, lend out or borrow in land.

## 5 Absentee Landholders

A homestead that is no longer occupied – no one or no family member residing at the homestead – but the land is still used by family members, is known as *tindzala*.

In these cases, the land is not abandoned; the land is used but the family resides elsewhere. However, *tindzala* land should remain in use by the family, or used by others with permission (e.g. lent out), otherwise the land, if not used, may be considered as abandoned.

Family homestead land used by others, with the permission of the family, shall still be regarded as held by the originally allocated family.

Where a family relocates away from the community – to a nearby urban centre for example – but they continue to use the land or have given permission for others to use the land, the family head should inform the chieftdom.

## 6 Abandoned Land

Land left unoccupied and unused for a long period may be considered as abandoned. This period is not prescribed; however, if land is left unoccupied and unused for more than 5 years it may be thought as abandoned. This includes *tindzala* that is unoccupied and unused for a long period.

Land that is unused but left 'fallow' (to regenerate or recover soil nutrients) and has been used in the recent past will not be thought as abandoned.

When it comes to the attention of chieftom that land may have been abandoned they may, after making any enquiries of neighbouring homesteads and others, declare the land as abandoned.

The chieftom will usually announce at a community meeting that land may have been abandoned.

If after a period of time that, in the opinion of the chieftom, is sufficient for enquiries to be made and persons to be informed, the abandoned land may be returned to the chieftom and may then be available for (re)allocation.



## 7 Land Renunciation

Families may renounce their landholding rights and return the land to the chiefdom. This process is also known as *kubuyisela umhlaba endlunkhulu*.

An intention to return the whole or any part of a landholding to the chiefdom should be communicated to the chiefdom by the homestead head. Only the recognised head of the homestead may renounce a landholding right on behalf of the family, and only after consultation with family members.

The chiefdom will usually announce at a community meeting that a family are renouncing their allocation and returning all or part of their land to the chiefdom.

## 8 Land Repossession by the Chiefdom

A chiefdom may seek to repossess any land allocated in the past and return that land to the chiefdom where:

- > The land is abandoned.
- > Without approval from chiefdom, the allottee family:
  - > Does not adhere to conditions of use or development that were attached to the allocation.
  - > Uses the land or homestead contrary to the law or uses the land in such a way that erodes or destroys the land or the land of a neighbouring homestead.
- > The allottee is expelled from the chiefdom for serious misconduct.

In all these cases, the allottee is usually given an opportunity to be heard and to explain their actions and a reasonable time to respond or correct any wrongdoings.

## 9 Land Lending and Borrowing

The lending out or renting of land by a homestead family to other community members is usually allowed except if the chiefdom has expressly disallowed or restricted it.

Generally, a person or family borrowing or renting in land should be from the same chiefdom as the person or family who are lending or renting out the land.

Where a family wishes to lend or rent out land to persons who are not from the chiefdom, or where 'outsiders' wish to borrow or rent land within the chiefdom, then they should first obtain the consent of the chiefdom leadership.

A family lending or renting out land should inform the chiefdom. This helps to ensure that at the end of the lending or rental term, the land is returned to the family. The term – number of years and any rent payable – and any conditions of use, should be included in the information provided to the chiefdom. The chiefdom will usually write this information into the landholding register. This may be helpful in case there is a dispute.

## 10 Land Redistribution

Land redistribution may be either systematic or sporadic. A systemic redistribution means a consolidation or merging of all landholdings in an area – the whole chiefdom or part of a chiefdom – followed by a scheme of redistribution according to a planned layout. The methods and outcome are like resettlement.

The motivation for land redistribution or resettlement may come from a chiefdom development planning process or from the leadership or members of a chiefdom. The purpose may be to improve land use and agricultural productivity, or other good reasons.

Where a scheme of land resettlement is proposed, the chiefdom will usually consult with chiefdom members, in one or more community meetings. These meetings also provide the opportunity for support or concerns to be expressed.

The design of a scheme of resettlement usually considers:

- > The chiefdom development plan.
- > Landholding maps.
- > Soils and land capability maps.

Specialist advice, such as provided by the Ministry of Agriculture, is usually sought.

The design of resettlement scheme may decrease or increase the size of some landholdings. This may be necessary for the optimum layout of landholdings taking in to consideration land capability and soil fertility, but the intent is usually to maintain as much as possible the original allocation areas.

A scheme of resettlement should, where possible, maintain existing arrangements for lending or renting of land.

# 11 Land Use Planning and Development Control

## 11.1 Land Use Planning

Guidelines on land use planning are provided by the Ministry of Agriculture, and the principles and procedures are not covered here.

## 11.2 Development Planning

Guidelines on the principles and preparation of Chiefdom Development Plans (CDPs) are provided by the Eswatini Water and Agriculture Development Enterprise (ESWADE) and are not covered here.

## 11.3 Development Control

The control of development in a chiefdom is, according to law and customary practice, within the powers of the chief. Therefore, chiefdoms may restrict or allow certain developments in certain areas of the chiefdom. Usually, chiefdoms are guided by a chiefdom development plan (CDP) on where and what sort of land development is to be encouraged or discouraged and permitted or restricted.

Development in this context means:

- > Change of land use, from agricultural to residential or residential to industrial or commercial, for example.
- > Construction of residential, agricultural or commercial buildings or structures.

Control means that the chiefdom has the power to permit or restrict certain developments.

Development control is usually achieved in one or both of two ways:

- > Through conditions attached to an allocation of land
- > By requiring prior approval before development commences

A chiefdom when allocating land may attach to the allocation certain conditions, such as a residential building may be constructed for a homestead and that the land is only used for agriculture. Then, if at any time in the future, these conditions are ignored by the allottee, the chiefdom may take corrective action or impose a sanction.

The second way is that any and all development in a chiefdom must first be reviewed and approved before commencing.

Where a development proposal is submitted by a homestead head to the chiefdom for review and approval, the submission should try and include the following:

- > Details of the intended change, such as converting a residential building to commercial use. The type of commercial use, for example, a general groceries shop or a garage, should also be mentioned.
- > Whether the development will continue to be used by the allottee or whether the intent is to rent out.
- > Details of the scope and size of the development; for instance, a copy of a business plan for a commercial operation or drawing plans for construction.

If a proposed development is of a large scale, the chiefdom may wish to consult with chiefdom members at a community meeting to gauge their support.

In reviewing a proposed development, a chiefdom may be guided by a current chiefdom development plan or other policies or strategies in place for promoting or controlling development.

If an unauthorised development comes to the attention of the chiefdom, the chiefdom may act to:

- > Reverse the development, by directing that an unapproved structure is demolished, or land reverts to its former use, for example.
- > Direct that the homestead head submit a development request for retroactive approval.

In both the above cases, a chiefdom, in addition to directing compliance with development control, may impose an appropriate fine or sanction on the homestead or allottee.

The inner council may impose a fine on any homestead or homestead member who develops land where that change, or development requires prior approval without having first sought approval. This fine may be imposed whether the development is subsequently approved or rejected.

Chiefdoms are encouraged to act when an unauthorised development becomes known to them. By not acting, the unauthorised development becomes gradually more difficult and problematic to reverse. Acceptance of the fact, over time, becomes acceptance of the act.

## 12 Community Land

A chiefdom may set aside land for collective use by chiefdom community members. These community lands should be clearly identified on the chiefdom landholding maps.

Permitted uses of community lands may include:

- > Grazing for livestock
- > Forest and woodland
- > Wetlands
- > Gardens
- > Recreational areas
- > Other uses that a chiefdom may determine.

A chiefdom may restrict or vary the uses from time to time or time of the year.

Chiefdom members should not use or abuse community land, which may erode or destroy the land or vegetation or disadvantage or restrict others use of the land.

## 13 Land Disputes

There is an established custom for resolving disputes about land access and rights. The custom derives from principles of 'harmony' and 'good neighbourliness'. Land disputes, should they arise, should be reconciled by the parties to the dispute without outside intervention. However, increasing pressures over land are leading to more and more intractable land disputes.

Traditionally, if a dispute between family members or between homesteads cannot be reconciled and resolved by the people involved, then it is referred to the chiefdom and the chief. The role of the chiefdom is to hear both sides of the dispute and to impose a resolution. This is called 'adjudication' or judging or deciding. The hearing of the dispute and the decision is made by the 'chief's court'. The chief may or may not be involved in hearing the matter, but a final decision is ratified or made by the chief. A chief may be more involved in any appeal against the decision of the chief's court.

Increasingly, however, the dispute may be taken by one party to the police and then the magistrate's court, usually when criminal damage or violence is involved. The reason for and resolution of the dispute involving SNL is not the jurisdiction of the magistrates or high court; it is for the chiefdom and traditional authorities.

Where disputants (persons in dispute about land) are unable to resolve their dispute themselves, and one or both disputants refer the matter to the chiefdom for resolution, then before the chief's court is convened the disputants should be directed, if they haven't done so already, to try and resolve their dispute by mediation.

Mediation is a dispute resolution tool that involves the use of a neutral third person. This person – a mediator – helps disputants to identify the root causes of the dispute and seek mutually acceptable solutions.

In every (SLAM pilot area) *inkhundla* there will be up to four trained mediators. The names and contact details for these mediators should be known to each chiefdom.

Mediators will use guidelines that help to ensure a successful outcome and that land dispute mediation is consistently applied in all areas. The guidelines on land dispute mediation are not include here.

If disputants have not already tried to use a mediator, then before the dispute is subject to adjudication, the chiefdom should direct the disputants to try and resolve their problem using a mediator.

If, after attempting mediation, the dispute remains unresolved, a chief's court may be convened to hear and decide the case according to customary rules. The chief's court may request the mediator's notes for assisting with their decision. However, some of the mediator's discussions with disputants may be confidential, and the mediator will not reveal the contents of these.

A disputant may appeal the judgement of a chief's court. This appeal may be submitted directly to the chief if the chief was not part of the initial hearing. The chief shall then review the case and if necessary call both disputants to re-state their cases. Otherwise, the appeal is referred to the office of the Regional Administrator (RA).



An appeal is also permissible against a chief’s judgement. This appeal will also be to the office of the RA. The RA or the *Ndabazabantu* if directed or delegated by the RA will review the case in accordance with customary dispute resolution rules. This review is a form of mediation; the RA should not pass judgement but help the disputants to resolve their dispute. If the RA is unsuccessful, the appeal to the outcome decided by the chief is referred to *Ludzidzini*.

Dispute typology and forms and process of resolution is shown in Figure 4.

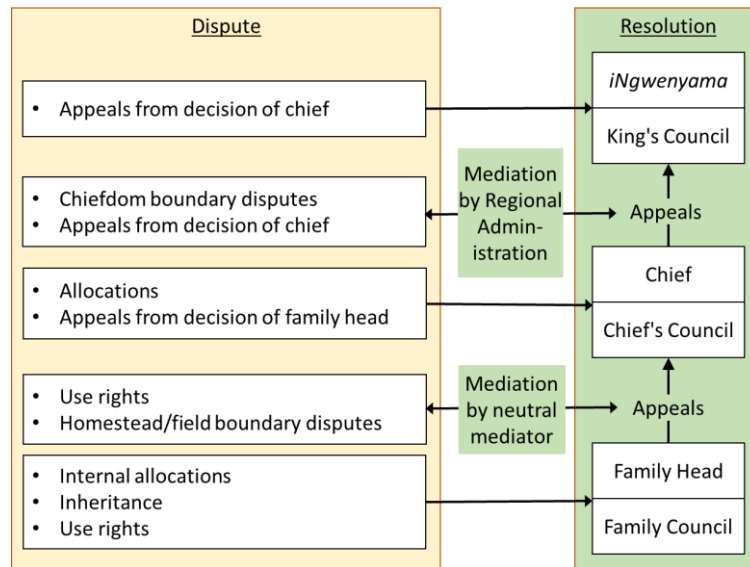


Figure 4: SNL dispute mediation process

## Appendix A Definitions

Meanings of abbreviations and definition of terms used in this guide are:

Allottee	Person or family to who land has been allotted or allocated.
Chiefdom	An area governed or controlled by a chief. The chief, chief’s councils, headman, runner and elders.
Community	Families and persons recognising the authority of a chief and residing within a chiefdom.
Community leadership	Chief and chief’s councils.
Conditions, of land allocation	The restrictions on permitted land uses or the express meaning of permitted uses. For example, not use for residential purposes or to use only for agricultural purposes.
Courts	A national or civil court.
Development, land	A material development that changes the use or character of the land such as building construction.
Higher authorities	The <i>iNgunyama</i> and councils to the <i>iNgunyama</i> .
Homestead head	A senior member of a family who a family recognises as the homestead head and where this has been communicated to and appears in the records of the <i>umphakatsi</i> .
Inner council	<i>Bandlancane</i> – a chief’s community council.
Landholder	Person or persons, usually a family group, who have rights to hold and use SNL.
Land administration	The land tenure rules, process and procedures that determine, record and disseminate information about rights, value and use of land. These rules include the landholding rights of families, and the procedures include the allocation of land.
Land administration area	The area of within which <i>umphakatsi</i> has land administration responsibility. A land administration area may or may not be the same as a chiefdom area.
Land management	The planning processes and use of land as a resource.
Land parcel	A piece of land, sometimes known as a plot.
Land tenure	Land tenure is an institution, that is, rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. (FAO, 1985)
Law, common	Law established by decision made by judicial courts.
Law, customary	Law established by traditional common practice since time immemorial.

Law, statutory	Law that is enacted by Parliament and has received royal assent.
Reasonable time	Means in the case of requests for meetings or supply or information, 30 (thirty) days, and in the case of actions, 90 (ninety) days or 180 (one hundred and eighty) days depending on the consequential severity of inaction.
Eswatini Swazi Nation Land	Land held in trust by the <i>Ngwenyama</i> on behalf of the Eswatini Swazi Nation and administered by traditional authorities according to customary law.
Traditional authorities	The <i>iNgwenyama</i> , advisory councils to the <i>iNgwenyama</i> , chiefs and chief’s councils.
<i>Umphakatsi</i>	The area or chiefdom under traditional authority. Also refers to a chief’s homestead.