1. **Introduction**

Swaziland is a small monarchy located in Southern Africa. Due to overgrazing, soil erosion and degradation issues relating to land have arisen. Forests are put under the threat of being destroyed due to deforestation. Water pollution and air pollution are also two main problems as they negatively affect the cultivation of soil. Contamination by untreated sewage is considered the most life-threatening problem is Swaziland, as there is only 44% of the Swazis having access to clean water and thus more than half of the population drink from unsafe sewages.

Lastly, there is a dual system consisting of the Title Deed Land (TDL) and the Swazi Nation Land (SNL). Those people who reside on the SNL (which is under the King’s ownership), can be evicted by the chiefs without notice, nor do they receive compensation for their land. Seventy percent of Swazis live on land owned by the royal family (SNL) and ran by the chiefs (who are appointed by the King), and anyone who joins a political party or acts in a way against the monarchy is exiled from those pieces of land. Therefore, the right to property when it comes to land is not very strong. In fact, as stated in section 19 (1) of the Swazi constitution, “a person has the right to own property either alone or in association with others”, however in practice this has not yet come to be enforced due to the fact the constitution is so recent, it has not yet come into force in many areas of the country.

1. **Overview of Important Land Legislation and Regulations**

According to the State Department’s Office of Investment Affairs in Swaziland, there is a distinction on whether there is enough protection of your property depending on whether the land is titled property or whether it can be considered Swazi Nation Land.

The majority of the land in Swaziland is that of the SNL. That means that it is owned by the King and overseen by the Chiefs who are appointed on behalf of the King. The Constitution in Swaziland protects ownership rights, however if you live on land associated with SNL, you have no property right over that area, and therefore you can be evicted by the King or Chiefs if it is deemed necessary. Over 60% of the land does not have a clear title and therefore, chiefs are the ones who keep record on their own on who owns what part of land.

TDL are found in urban areas. Less people can afford to live there and pay to own their land and that is why most people live in SNL. Despite that, when TDL allow people to have property rights on them and the Swaziland Government recognises and implements the security interests of the owners, in comparison to their approach with SNL. Therefore, SNL or land that is held by customary tenure is administered by the chiefs’ courts, whereas TDL or land that is held by freehold tenure is regulated by the Deeds Registry.

As stated earlier, section 19 of the Swaziland’s constitution regards the protection from deprivation of property: it states in (2) “A person shall not be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied – “the conditions being “necessary for public use”, “in the interest of defence, public safety, public order, public morality or public health”. On the other hand, section 211 (3) safeguards persons who are deprived of land: “…that person shall be entitled to prompt and adequate compensation for any improvement on that land or loss consequent upon that deprivation unless otherwise provided by law.”

These two complementary sections of the constitution are implemented on a national level by the “Land Management Board”, composed of four members appointed by the iNgwenyama (king). As shown earlier, the implementation of the constitution in Swaziland is nonetheless problematic: the Bill of Rights (Chapter II of the Swazi constitution) has been of general failure to be implemented by all organs of the government, and even though the most problematic fundamental rights happen to be freedom of assembly and association and freedom of expression, freedom of property has not been flawless either.

1. **Land Transfer, Allocation, and Lease**

There is one office, called the Deeds Registry Office which is responsible for the registration and transfer of all deeds, for leases, for mortgage bonds, servitudes as well as other real rights in land. According to the Deeds Registry Act 1968, the only requirement is that the real rights in title deed land pass only for registration of that specific deed that is going to be transferred through the Deeds Registry Office. Similarly, in order the transfer of deed to be completed, an attorney needs to be present, a transfer of duty receipt, and a receipt of payment which shall prove the identification of the persons involved in the transaction. Then, the Registrar examines all deeds lodged with the registry and if everything is alright, they shall transfer the deed/ real property. The above-mentioned procedure happens in case of TDL.

The complexity of the SNL led to The Swaziland Urban Development Project (SUDP) which introduced the 99-year lease on SNL in Mhobodleni, if not, people would not have any right and security while leaving or using those pieces of land. Freehold title was granted to people of which their families or themselves would live on that piece of land for more than 99 years.

It can be stated that the traditional land tenure system offers a long-term leasehold right to individuals, however it is not very clear whether this right can be defended legally. There are cases that prove that despite having this long-term lease, the King can use and sometimes even abuse his authority as he enjoys immunity.

1. **Land tenure classifications**

Since 1900s, there is duality of two different systems of ownership in Swaziland: The SNL or customary tenure, and the TDL or freehold tenure.

The SNL is the land held by the King in trust for the nation and covers about 60% of the rural and peri- urban land of the country. The King appoints a Chief who is accountable to him, and the Chief is responsible to allocate the pieces of land to individuals. Then, the individuals or corporations have a right to use that piece of land, but not the ownership of it, and they can pass it on to their children. The allocation of the land is not permanent, as the Chief may reallocate the land and take it back from individuals, where he deems it necessary. Therefore, SNL land tenure cannot be relied upon for raising capital.

Moving on, TDL or otherwise called Individual Tenure Farm (ITF) covers around 40% of the country and it can be exclusively owned by individuals and corporations. The King may also be the owner of those pieces of land according to the Order 45/1973. Despite, the fact that individuals register their land in the Land Registry Office and acquire ownership (according to the Deeds Registry Act 1968), in case the land is needed for national development, the State can withdraw their title in land and compensate in return.

Art 211 (1), of the Constitution of Swaziland merely states that all land in Swaziland, including TDL, vests on the King in trust for the Swazi Nation, and does not include any provisions on private land. Thus, there is no real security with TDL ownership, although private individuals and corporations can acquire it. Norms regarding private land should be adopted, in order individuals to feel secure in purchasing TDL in Swaziland.