

Timber Legality Risk Assessment Swaziland

Version 1.3 | June 2018



COUNTRY RISK
ASSESSMENTS



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The original document of FSC can be accessed here <https://ic.fsc.org/en/document-center>.

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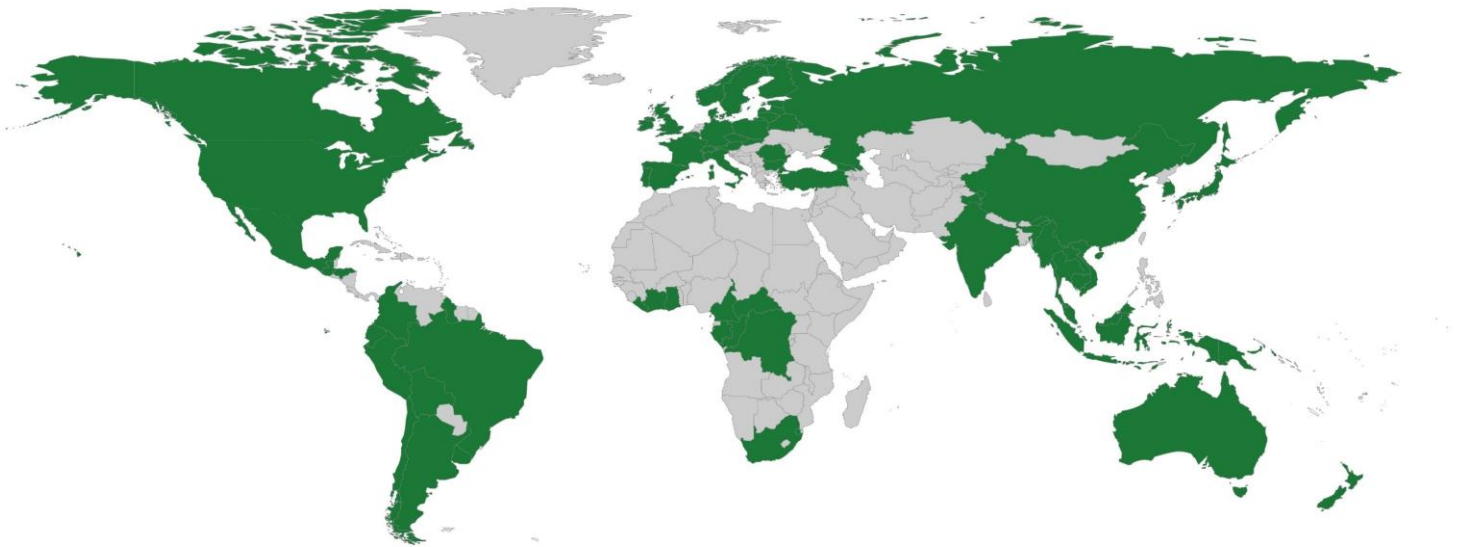
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A. Introduction

This Timber Legality Risk Assessment for Swaziland provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCon has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

In that time, NEPCon has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.



Map created by StatSik (2016). StatPlanet: Interactive Data Visualization and Mapping Software.://www.statistik.com

Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

The risk assessments are developed in collaboration with local forest legality experts and uses an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on the [NEPCon Sourcing Hub](#).

For risk assessment conducted according to the FSC-STD-40-005, ONLY entries (or information) that have been formally reviewed and approved by FSC and are marked as such can be considered conclusive and may be used by FSC candidate or certified companies in risk assessments and will meet the FSC standards without further verification.

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This risk assessment was prepared by NEPCon between 2015 and 2018 as follows:

Draft prepared by NEPCon: January 2017

FSC Stakeholder consultation: September 2017

FSC approval date: 27 June 2018

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NEPCon originally published the Timber Legality Risk Assessment for Swaziland in August 2017. Since then, amendments to the Assessment have been made. Additional risk information has also been included for most indicators, and the specification of risk has changed for a number of indicators.

B. Overview of legality risks

Timber Risk Score: 77 / 100 in 2017

This report contains an evaluation of the risk of illegality in Swaziland for five categories and 21 sub-categories of law. We found:

- **Low risk for 4 sub-categories.**
- **Specified risk for 7 sub-categories.**
- **No legal requirements for 10 sub-categories.**

The Timber Risk Score for Swaziland is 77 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, timber harvesting activities, and transport and trade.

For **Legal rights to harvest**, there is a risk that:

- Ownership and resource rights are unclear for Swazi Nation land (1.1).

For **Timber Harvesting Activities**, there is a risk that:

- Harvesting of protected species on Swazi Nation land takes place (1.9)
- Environmental legislation is violated for Swazi Nation land 1.10)
- Legislation on health and safety is violated on Swazi Nation land (1.11)
- Legislation on legal employment is violated on Swazi Nation land (1.12)

For **Trade and Transport**, there is a risk that:

- NTFPs (traditional herbs and medicines) from Swazi Nation Land are exported through informal channels that by-pass regulatory processes (1.19).

Timber source types and risks

There are three timber source types found in Swaziland. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all three of these source types and found that the risk differs depending primarily on the type of species.

Swazi Nation Land (SNL)	<i>1. Plantations</i>	Customary ownership, land leased to commercial operators. Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber products/forest/woodland. Primarily exotic species (mainly <i>Acacia mearnsii</i>).
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	<p>2. <i>Naturally regenerating forests</i></p>	<p>a. Customarily owned land leased to commercial operators. Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber. Primarily exotic species (mainly <i>Acacia mearnsii</i>).</p> <p>b. Customarily owned land managed and harvested by customary owners, sold onto the commercial market for export. Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber products/forest/woodland. Primarily exotic species (mainly <i>Acacia mearnsii</i>).</p>
	<p>3. <i>Natural forest or woodlands</i></p>	<p>Customary ownership. Indigenous species harvested for small scale and non-commercial use. No commercial source of timber</p>
<p>State or Crown Land</p>	<p><i>Protected areas</i></p>	<p>State owned. No commercial source of timber</p>
<p>Private Freehold or Title Deed Land (TDL)</p>	<p>1. <i>Plantations</i></p>	<p>Privately owned and managed for commercial purposes. No permit required. Normally exotic species harvested in rotation, but native species are sometimes used.</p>
	<p>2. <i>Natural forest or woodlands</i></p>	<p>Privately owned, not commercially harvested. No commercial source of timber</p>

This table summarises the findings of the timber legality risk assessment by source type.

Legal Category	Sub-Category	Swazi Nation Land (SNL)			State / Crown Land	Private Freehold or Title Deed Land (TDL)	
		1	2	3		1	2
Legal rights to harvest	1.1 Land tenure and management rights	Green	Green	Red	Green	Green	Green
	1.2 Concession licenses	Grey	Grey	Grey	Grey	Grey	Grey
	1.3 Management and harvesting planning	Grey	Grey	Grey	Grey	Grey	Grey
	1.4 Harvesting permits	Green	Green	Red	Green	Green	Green
Taxes and fees	1.5 Payment of royalties and harvesting fees	Grey	Grey	Grey	Grey	Grey	Grey
	1.6 Value added taxes and other sales taxes	Green	Green	Green	Green	Green	Green
	1.7 Income and profit taxes	Green	Green	Green	Green	Green	Green
Timber harvesting activities	1.8 Timber harvesting regulations	Grey	Grey	Grey	Grey	Grey	Grey
	1.9 Protected sites and species	Green	Green	Red	Green	Green	Green
	1.10 Environmental requirements	Green	Green	Red	Green	Green	Green
	1.11 Health and safety	Red	Red	Red	Green	Red	Red
	1.12 Legal employment	Red	Red	Red	Green	Red	Red
Third parties' rights	1.13 Customary rights	Grey	Grey	Grey	Grey	Grey	Grey
	1.14 Free prior and informed consent	Grey	Grey	Grey	Grey	Grey	Grey
	1.15 Indigenous/traditional peoples rights	Grey	Grey	Grey	Grey	Grey	Grey
Trade and transport	1.16 Classification of species, quantities, qualities	Grey	Grey	Grey	Grey	Grey	Grey
	1.17 Trade and transport	Grey	Grey	Grey	Green	Green	Green
	1.18 Offshore trading and transfer pricing	Grey	Grey	Grey	Grey	Grey	Grey
	1.19 Custom regulations	Green	Green	Red	Green	Green	Green
	1.20 CITES	Green	Green	Green	Green	Green	Green
	1.21 Legislation requiring due diligence/due care procedures	Grey	Grey	Grey	Grey	Grey	Grey

C. Overview of the forest sector in Swaziland

The Kingdom of Swaziland is one of the last remaining absolute monarchies in the world, currently ruled by Ngwenyama ("King") Mswati III. He is head of state and appoints the country's Prime Ministers and a number of representatives of both chambers (Senate and House of Assembly) in the country's Parliament. In terms of section 211 of the Constitution of Swaziland, all land, save privately held title-deed land, is vested in the iNgwenyama (Traditional structures) in trust for the Swazi Nation.

Essentially, Swaziland is characterized by three types of land tenure:

- **State or Crown land (CL)** (note that both terms are used interchangeably), this is land owned by the government and includes areas protected by the state. The forests and woodlands found on State or crown land are not used as a commercial source of timber, they make up national parks and reserves;
- Land held in customary tenure, or **Swazi Nation land (SNL)**. The SNL is land held in trust by the King for the Swazi nation. SNL is subdivided into two sub-groups: SNL *Senu Stricto*, SNL at independence (that is land that at the time of independence was already held in trust by the King) and SNL purchased, all free hold land purchased after independence. Commercial plantations, naturally regenerated exotic species jungles and natural forests and woodlands all occur on SNL. The extraction for commercial purposes occurs only in the plantations (either managed by customary owners themselves and sold to buyers for the export market; or managed by private commercial entities who lease the land from the customary owners) or in the naturally regenerating exotic species jungles (again, either carried by the customary owners themselves or by companies leasing the land). Naturally occurring forests and woodlands made up of indigenous species also exist on this land, but are not a source of commercial timber; and
- Land held by **private freehold tenure, or Title Deed Land (TDL)**. Sometimes referred to as individual tenure farms (ITF) or privately-owned land. Privately owned and managed plantations of exotic species are the primary source of timber from this type of land tenure. Naturally occurring forests and woodlands made up of indigenous species also exist on this land, but are not a source of commercial timber.

Estimates of the split between these ownership types differ in the sources. Dlamini (2008) claims the following distribution:

- State or Crown Land (CL) = 1%
- Swazi National Land (SNL) = 75%
- Private Freehold or Title Deed Land (TDL) = 24%

SNL distributions estimates range from 55-75 per cent, depending on the publication.

According to the United Nations Food and Agriculture Organization (FAO), Swaziland has a land area of 1,720,000 hectares and a forest area of 581,400 hectares (About 33% of the land area). The FAO Global Forest Resources Assessment 2015 states that there is no primary forest in the country, and:

- 450,000 ha of other naturally regenerated forests; and

- 135,000 ha of planted forests.

According to that report, the naturally regenerated forests are increasing and mainly it is *Dyrcrhostachys cinerea* and other woody shrubs. The planted forests are decreasing due to closure of some of the leading processing mills in the country and change of ownership. The plantations are made up of 83% coniferous species and 17% broad leaf species. The planted forest class includes “wattle forests”, which account for approximately 26% of the planted forests class. Both plantation areas and wattle forest areas are designated for production purposes. Only the 135,000 ha of planted forests (which included wattle forests and plantations) fall within the designation of “production forests”.

Timber plantations are concentrated on the Highveld whose conditions are favourable for tree growth (National Forest Research Plan 1992).

Commercial forestry and related timber processing industries form very important part of the economy of Swaziland, contributing approximately 1.3% of the GDP and about 1.4% of total exports over the past 13 years. The productivity is relatively high, about 15-20 cubic meters/ha per annum for pine plantations. Overall annual yield is approximately 1.2 million cubic meters of wood with a total value of about 650 million Euros, which is largely exported as pulp, logs and timber (FAO 2015). The Forest Sector accounts for 16-18% of Swaziland's formal work force (Dlamini 1998).

According to FAO (2004) ‘85% of the man-made forest area is in the hands of a few large-scale companies with holdings over 10,000 ha. The estates of more than 500 ha are almost exclusively in company ownership, while smaller estates are predominantly in private ownership.’

The Government of Swaziland has a policy focus of environmental management and sustainable development in the Kingdom (Sola 2011). Key legislative instruments include (Sola 2011):

- 1) The Swaziland Environment Authority Act (1992) – empowers the regulatory body to protect the environment.
- 2) The Natural Resources Act (1951) – provides for the conservation of natural resources.
- 3) The Flora Protection Act (2000) – protects the indigenous flora.
- 4) The Plant Control Act (1981) – controls the growing and movement of plants.

The National Development Strategy (NDS), launched in 1999, identifies environmental protection as a cornerstone in the national development process and the 1997 Swaziland Environment Action Plan (SEAP) significantly informed forest policy development in Swaziland, and ultimately resulted in the National Environment Policy and Environmental Management Act in 1999 and 2002, respectively (Sola 2011).

The National Forest Policy aims for efficient, profitable and sustainable management and utilization of forest resources for the benefit of the entire society, the environment and biodiversity conservation (Ministry of Agriculture and Co-operatives, 2004). The policy also stipulates the need to go beyond industrial forest and include the development of community forestry and the sustainable management of natural forests and woodlands (Ministry of Agriculture and Co-operatives, 2004).

The Swaziland Forest Policy was drafted in 2002 and covers all forest land. It covers commercial plantation forest and natural forests and woodlands and is designed to give

guidance as to current concerns relating to forest use and to ensure sustainable use of forest resources. This policy has given guidance to the forest bill which is currently being drafted. It acknowledges key threats of deforestation and loss of biodiversity, and proposes measures to reduce these threats. To date, the Forestry Bill has not yet passed into law in Swaziland.

Currently Swaziland only uses commercial exotic timber from plantation forests for all its domestic and export timber requirements (Expert consultation 2016, International Stakeholder Consultation 2017). Natural forest products are only used for local (village) use and traditional use in both Swaziland and South Africa (Expert consultation 2016, International Stakeholder Consultation 2017). This traditional use is mainly for herbs and traditional medicines.

Sola (2011) states that 'the institutional framework for implementing the policies and enforcing the legislation is fragmented as (i) different aspects of forest utilization and conservation fall under a number of actors, and (ii) there are strong divisions between Government and traditional structures'. Also important to note is that the Swazi legal system recognizes not only codified laws but also the customs and traditional structures (Sola 2011).

According to the experts consulted in preparation of this report, and the experiences of the author, the government takes a less onerous approach to the monitoring and enforcement of the forestry laws on SNL as the formal government relies on the customary law, and monitoring and enforcement of the customary owners to ensure compliance. According to the experts, this customary model ensures a reasonably high level of monitoring and enforcement of most requirements, but as many of the requirements are formed within the customary law itself, external verification of this claim is difficult.

Permission from the Minister of Agriculture is required to cut, remove or sell timber from forests on CL or SNL. At the time of preparing this report, most timber from Swaziland entering the international commercial market comes from commercial plantations (Expert consultation, 2016). Most of these commercial plantations are situated on TDL, with a small percentage on SNL (Expert consultation, 2016). Where these plantations are grown on SNL, they are controlled under lease agreements with the communities (Expert consultation, 2016). There are also small areas of SNL producing *Acacia mearnsii* (wattle). Current stakeholder engagement estimates this at about 70 000 hectares or 6% of total production in the country. All other timber from SNL is being retained within Swaziland for domestic, household use.

In terms of the Flora Protection Act 2000 Flora Reserves, Botanical gardens, and special habitats may be protected by the Minister, under the authority of the Swaziland Environment Authority and all plants within these protected areas would be considered protected. This same Act also has schedules of flora considered protected in Swaziland.

References

The list of sources provided in FSC-PRO-60-002a, section 3.3.3 has been reviewed for relevance in regards to the national legality risk assessment of Swaziland. The following sources have been used:

- a) Chatham House: <http://www.illegal-logging.info/>;
- b) ELDIS regional and country profiles: <http://www.eldis.org/>;
- c) Government reports and assessments of compliance with related laws and regulations

- d) Interpol: <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-LEAF>;
- e) Justice tribunal records;
- f) Public summaries of FSC forest management certification reports published at info.fsc.org (information on legal areas where non-compliances have been identified during the certification process that are likely to be common for non-certified operations);
- g) Public summaries of other 3rd party forest legality certification/verification systems;
- h) Transparency International Corruption Perceptions Index: http://www.transparency.org/policy_research/surveys_indices/cpi;
- i) World Bank Worldwide Governance Indicators: <http://data.worldbank.org/datacatalog/worldwide-governance-indicators>;
- j) Forest Legality Alliance: <http://www.forestlegality.org/>;
- k) Environmental Investigation Agency: <http://www.eia-international.org>.

In cases where other sources of information are not available, consultations with experts within the area shall be conducted. Where relevant, they have been specifically referenced under "sources of Information" for each applicable sub-category.

Further sources of information include:

- a) Swazi Legal Information Institute: <http://www.swazilii.org/>
- b) Lexadin – Legislation of Swaziland - <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweswa.htm>
- c) ILO Natlex - http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=SWZ
- d) Organisation of SA Law Libraries - http://www.osall.org.za/?page_id=396
- e) Swaziland Tax Overview - <http://www.sataguide.co.za/swaziland-taxes-overview/>
- f) Swaziland Environmental Authority - <http://www.sea.org.sz/index.asp>
- g) Swaziland National Trust Commission –
- h) <http://www.sntc.org.sz/legislation/legislation.asp>
- i) FAO Country Profile - <http://www.fao.org/countryprofiles/index/en/?iso3=SWZ>
- j) International Environmental Law Research Centre - <http://www.ielrc.org/content/e0309.pdf>
- k) The Environmental Law Alliance Worldwide (ELAW) - <https://www.elaw.org/content/swaziland-water-pollution-control-regulations>
- l) The Swaziland Forest Policy 2002.
- m) FAO, 2015. Global Forest Resources Assessment 2015 – Swaziland. <http://www.fao.org/3/a-az345e.pdf>

- n) UN FAO, 2004. Swaziland - nfp UPDATE - information as of 2004. Available: <http://www.fao.org/forestry/14894-04b1eabab01bbbc399f145620d2b4f410.pdf>, accessed 15 January 2017.
- o) Ministry of Agriculture and Co-operatives. 2004. The Forest Policy Green Paper, Government of Swaziland
www.ecs.co.sz/forest_policy/forestry_green_paper/forest_green_paper_chapter2.htm.
- p) Sola, P. 2011. Forest Law Enforcement and Governance and Trade in the Southern African Development Community. African Forest Forum, Working Paper Series, Vol. (1)9, 51 pp. Available: http://www.afforum.org/sites/default/files/English/English_2.pdf, accessed 15 January 2018.
- q) Cliff S. Dlamini, 1998. The Status of Forestry Statistics in Swaziland - Proceedings of Sub-Regional Workshop on Forestry Statistics SADC Region - Mutare, Zimbabwe, 30 November – 4 December 1998. Available: <ftp://ftp.fao.org/docrep/fao/003/X6685E/X6685E00.pdf>, accessed 24 July 2017.
- r) Hezekiel M. Mushala, Ackson M. Kanduzo, Nomcebo O. Simelane, Juliana K. Rwelamira and Nonhlanhla F. Dlamini, University of Swaziland, Kwaluseni, Swaziland, 1998. Dual tenure systems and multiple livelihoods: a comparison of communal and private land tenure in Swaziland in Land Reform - land settlement and cooperatives. Available: <http://www.fao.org/docrep/x1372T/x1372t08.htm>, accessed 24 July 2017.

Consultation with in-country experts was carried out throughout the drafting of this assessment in 2016-2017, including face to face consultation meetings held in Swaziland in late 2016. A broad range of experts were consulted, including representatives from non-government organizations, and a number of relevant Government Ministries and enterprises. Due to confidentiality issues, the experts consulted have not been named specifically in this report, but a full list of experts was provided to FSC. Feedback provided by stakeholders during the international stakeholder consultation, conducted by FSC in 2017, has also been used as a source for the relevant indicators.

Internet based research has been carried out for each indicator in English. There is a notable lack of up-to-date, credible information about the forest sector in Swaziland, so the breadth and depth of this research has been somewhat limited.

D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- The Constitution of the Kingdom of Swaziland, 2005, section 211
<http://www.swazilii.org/sz/legislation/act/2005/na>
- The Concessions Act 1904
- The Concessions Partition Act No 28 of 1907.
- The Land Control Act, 1972, section 8, 10, 12, 13, 14, 19 and 20.
- The Acquisition of Property Act, 10 of 1961, section 3
- Deeds Registry Act, 32 of 1995
- The Forest Preservation Act, section 4 and 5. <http://www.sea.org.sz/categdocs.asp?cid=3>
- The Private Forests Act 1951, sections 3 and 4.
<http://www.sea.org.sz/categdocs.asp?cid=3>
- The Control of Tree Planting Act, 7 of 1972,
- The Companies Act, 2009, sections 43, 48, 52 and 53.
<http://www.swazilii.org/sz/legislation/act/2009/5>
- The Swazi Administration Order 6/1998
- The Forest Policy, 2002

1.1.2. Legal authority

- Ministry of Agriculture, officers in the department of agriculture (forestry department)
- Land Control Board
- Deeds Registry
- Chiefs and Tindyuna

1.1.3. Legally required documents or records

- Letter of permission from the Minister of Agriculture or the land owner in the case of private ownership.

- Title Deed
- Lease Agreement
- Concession Agreement
- Letters of approval to harvest from Chiefs and Tindyuna
- For Companies, a certificate of incorporation is required.

1.1.4. Sources of information

Government sources

- Swaziland Environmental Authority (N.Y.). [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46>
- Swaziland National Trust Commission (N.Y.). [online]. Available at: <http://www.sntc.org.sz/legislation/legislation.asp>

Non-Government sources

- Cliff S. Dlamini, 1998. *The Status of Forestry Statistics in Swaziland - Proceedings of Sub-Regional Workshop on Forestry Statistics SADC Region* [online]. Mutare, Zimbabwe, 30 November – 4 December 1998. Available at: <ftp://ftp.fao.org/docrep/fao/003/X6685E/X6685E00.pdf> [accessed 24 July 2017]
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- Swazi Legal Information Institute (N.Y.). Website [online]. Available at: <http://www.swazilii.org/>
- Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available at: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.
- World Bank.org (2015). *Worldwide Governance Indicators - Swaziland 1996-2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]

1.1.5. Risk determination

Overview of legal requirements

There are three main groups of land tenure or land ownership in Swaziland:

- State or Crown Land (CL) = 1%
- Swazi National Land (SNL) = 75%
- Private Freehold or Title Deed Land (TDL) = 24%

State or crown land

Forests and woodlands occurring on state or crown land, (both terms are used interchangeably) are primarily protected areas and/or national parks. These forests are not used for commercial purposes, but are occasionally harvested, with prior ministerial permission, to make way for infrastructure projects.

Swazi Nation Land

The SNL is land held in trust by the King for the Swazi nation. Section 211(1) *Constitution of the Kingdom of Swaziland 2005* states that all land, except privately held title deed land, is vested in *iNgwenyama* - in trust for the Swazi Nation. 211(2) ensures equal access to land for domestic purposes regardless of gender and 211(3) states that a person shall not be deprived to land without due process of law, it also entitles a person deprived of land to compensation.

On SNL, traditional leadership (tribal chiefs) are empowered to control land use, ownership, and resource use. This means that customary requirements for forest use apply, and are not readily identifiable by external parties. Tribal chiefs monitor the compliance with the customary laws, and issue punishments where requirements are not complied with. Essentially, the SNL is managed as fiefdoms of the tribal chiefs, and the Monarchical government that oversees the privately held land has very limited jurisdiction over this land. This traditional leadership model is recognized in the Swaziland Constitution under *Chapter XIV Traditional Institutions* as a legitimate authority by both the Swaziland Government and the monarchy in Swaziland.

SNL is leased to single unit households from the King directly through the Chief of a Chiefdom (UN FAO 2004):

- Chiefdom (led by a Chief): A group of communities. Some 300 chiefdoms are currently estimated in Swaziland. Size varies, but usually counts up to 200-300 homesteads, grouped in different communities.
- Community: A sparsely distributed group of homesteads. The land space within the community is used for various purposes (agriculture, agroforestry, cattle grazing).
- Homestead: Estates belonging to a single male household and occupied by his wives and children.

Despite the assurance in the Constitution (s 211(2)), currently, only males can claim for land, the reason for this is not clear. Once a male has married, he can decide to remain under the father's homestead or to move out. In both cases, it is possible to claim to the Chief for new land. In the first case the land will be added to the father's household, while in the second case it will be directly leased to the new family group (UN FAO 2004).

SNL has a complex management and tenure structure which has never been defined by legislation (Mushala 1998). SNL is held by the King in trust for the nation and is allocated by chiefs to homestead heads, who under Swazi law and custom are men. Although many women are *de facto* heads of homestead, land is allocated to them through male proxies. Membership in a local community is the condition for the right to receive or to be allocated land. Land can also be acquired through inheritance.

All SNL land belongs to the community and the chiefs have the right to allocate land in their respective areas to all community members. Every chief has a responsibility to the King to ensure availability of land for cultivation to heads of all homesteads. The rights to land in the community are defined principally with respect to arable land. On the other hand, the rights to graze stock, gather fruits and hunt have traditionally been unrestricted. As a member of the community, a Swazi is entitled to the nation's resources and particularly its productive land (Mushala et al 1998).

Customary land owners may lease their land under section 211, sub-section 1 of the Constitution of the Kingdom of Swaziland (2005). There is a limited portion of plantation land that is leased in terms of this Act. These would generally have been concessions issued to allow plantation establishment on land in the mid-1900's.

SNL includes land bought from TDL landowners by a reigning monarch in trust for the Swazi Nation. Such land has been leased to private companies to attract private capital and expertise to SNL.

The Swazi Administration Order 6/1998 provides Chiefs and Tindyuna with the power to:

- a) prohibit, restrict and regulate the cutting of trees,
- b) prohibit or restrict the sale, supply, use, possession or cultivation of poisonous or noxious plants and the manufacture of noxious drugs or poisons;
- c) prohibit, restrict or regulate the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush, and the extinguishing of grass or bush fires;

- d) prohibit, restrict or regulate wasteful methods of agriculture and eradicating noxious and harmful weeds.

The king appoints *tindyuna*, or governors, to head each "*tinkhundla*", which is a political district/local council which is composed of two or three chief-taincies. Each *tinkhunda* sends two representatives to an electoral college, which selects their 55 members of Parliament from a list provided by the king. Historically, the *tinkhundla* system has been a source of antagonism and uncertainty for many chiefs, who fear that the system of representation detracted from their traditional authority,

The Forest Policy, which has not yet been enacted into binding legislation makes the following recommendations regarding SNL:

- Section 2.1.3.2: the selection of sites from SNL for timber plantation development must involve the traditional administrative structures of the country, to ensure security of tenure of the land and trees planted for the duration of the crop, and resolve conflict situations.
- Section 2.2.2.4: the user rights of wattle trees (*Acacia mearnsii*). that have spread out over communally used SNL shall be defined and agreed to on the basis of equitable access and shared benefits.
- Section 2.2.5.2: SNL communities shall develop detailed rules and regulations covering the access and user rights to forest resources in SNL as well as the responsibilities of communities and individual community members towards management of communal forest resources must be agreed to and defined by Swazi Nation communities.

Section 2.4.2.2: recommends communities retain the control over their forest resources and take measures to remain the principal recipients of the revenue and benefits obtained from forest products.

Under section 4 of the *Forest Preservation Act*, prior permission from the Minister of Environment is required to harvest timber that is growing on SNL on which, or within thirty yards of which, indigenous timber or government timber is growing. "Government timber" means any trees and bushes planted under the direction of the Minister of Environment on state or crown land or SNL and "indigenous timber" as forest trees or their saplings growing on CL or SNL, not planted by human agency.

Section 3 of The Land Acquisition Act gives the Minister (currently the Minister of Natural Resources) powers to acquire land needed for public purposes and the Act lays out requirements for such acquisition. in terms of surveying the land and ensuring fair compensation is paid for land and assets on the land. This may apply to the state acquiring forest land for public purposes

Private Freehold or Title Deed Land (TDL)

The *Private Forests Act*, 1951 makes it clear that trees on TDL are the private property of the owner and they may do as they wish with the land. Section 3(a)(i) of that act makes it an offence to cut, injure, destroy, collect, take or remove any tree, timber or forest product without the owner's permission on TDL.

The sale of TDL is conducted through usual property law transactions. Only TDL may be bought and sold. SNL and CL may not be sold, however the Minister may acquire SNL, as described above.

The only legal restriction on TDL land transactions applies to the purchase of land by foreigners or private companies with foreign shareholding. For these transactions, the *Land Control Act* (ss 8, 10 and 12) requires the transfer/ownership to be approved in writing by the Land Control Board. The Board keeps a Register of Deeds of such land transactions.

Companies in Swaziland (including those operating forestry businesses) must have a Memorandum of Association (*Companies Act, 2009* s 43) and Articles of Association (s 48) in place. The memorandum and articles, along with payment of the prescribed fees must be submitted to the Registrar (s 52), who then registers the company, incorporates it and issues a certificate of incorporation (s 53).

Description of risk

State or Crown Land (CL)

As there is no commercial production from crown land, there are no risks associated with this source for this indicator.

Swazi National Land (SNL)

In SNL, land and resource tenure is not clarified in law and is informally defined in traditional land use as implemented by the traditional leadership in the area. This does not mean that there is necessarily a risk of illegality in relation to SNL. It means that defining what is legally required is very difficult. The legal requirements are, essentially, what the chief believes they should be at any given time. This customary law approach is enshrined in the constitution. The chiefs have the responsibility for allocating SNL to households, but have significant discretion as to who they allocate the land to, and when. In a limited number of cases, land is acquired through lease agreements with communities to lease SNL (Expert interviews conducted in Swaziland, December 2016).

The land tenure requirements associated with SNL are customary, and, based on the experience of the author, and input received from stakeholders, do not appear to carry risks significant enough to consider them specified for this indicator.

Stakeholders who provided comments on earlier drafts of this report during the international stakeholder consultation, stated that the timber volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator. As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for commercial supply chains of non-indigenous species from SNL.

Private Freehold or Title Deed Land (TDL)

More than 80 per cent of the plantations in Swaziland are certified are FSC FM certified. According to the stakeholder feedback for this risk assessment, less than 6 per cent of the

timber exported from Swaziland is sourced from SNL, so the majority of these certified plantations must occur on TDL. The acquisition of land for commercial purposes on private/TDL follows a prescribed process of the sale of title deeds. No information provided to the authors through expert or stakeholder consultation, or extensive internet based research indicates a risk in this indicator to a degree that warrants a specified risk finding.

Currently there is no publicly available evidence that indicates a risk of non-compliance with laws, inaction of regulating authorities, or fraudulent activities associated with this indicator.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliance relating to this indicator.

Transparency International Corruption Perception Index does not have figures for Swaziland for 2015 and 2016. However, figures available for the preceding 3 years indicate consistent improvement. In 2012 Swaziland scored 37, 39 in 2013, and 43 in 2014 (higher numbers indicate less perceived corruption).

Indicators from the World Bank show a drop in the Control of Corruption (from 54% in 2010 to 48% in 2015), a drop in Government Effectiveness (from 37% in 2010 to 34% in 2015), an improvement in Regulatory Quality (from 29% in 2010 to 33% in 2015) and critically an improvement in the Rule of Law (from 38% in 2010 to 47% in 2015).

These corruption perceptions relate to corruption across the entire country and while these ratings are reflective of the situation in the country, it is not a reflection of corruption within the commercial forest sector (Expert consultation, 2016).

Because there are very few new developments, the opportunities for corruption in land allocation on private land is rare, and technically very difficult (Expert consultation 2016). There is extremely limited new forest development in the country and with a high level of FSC certification in the commercial forest sector (approx. 80 per cent of commercial plantations are certified) the industry has a high level of self-regulation.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL). Threshold (1) has been met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL). Threshold (2) is met: identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.1.6. Risk designation and specification

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL).

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL).

1.1.7. Control measures and verifiers

Swazi Nation Forests:

- Obtain copies of the lease agreements
- Obtain copies of the letters of resource ownership from the Chief or Tindyuna

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

There is currently no provision for the issue of forest concession licenses in terms of Swaziland legislation.

1.2.2. Legal authority

N/A

1.2.3. Legally required documents or records

N/A

1.2.4. Sources of information

Government sources

- Swaziland Environmental Authority - <http://www.sea.org.sz/index.asp>
- Swaziland National Trust Commission - <http://www.sntc.org.sz/legislation/legislation.asp>

Non-Government sources

- ELDIS, 2017. Regional and country profiles – Swaziland. Available online at <<http://www.eldis.org/go/country-profiles&country=1207&theme=0>>, accessed 30 January 2017.
- Mongobay.com. 2011. Swaziland Forest Information and Data 2011. Available online at <<http://rainforests.mongabay.com/deforestation/2000/Swaziland.htm#13-policy>>, accessed 30 January 2017.
- Expert consultation conducted in Swaziland, December 2016.

1.2.5. Risk determination

N/A

There is currently no provision for the issue of concession licenses under Swaziland law.

1.2.6. Risk designation and specification

N/A

1.2.7. Control measures and verifiers

N/A

1.3. Management and harvesting planning

Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

There is currently no legislation covering these aspects.

The National Forest Policy, 2002 does include section on management and harvesting planning, but these are not legally binding.

1.3.2. Legal authority

N/A

1.3.3. Legally required documents or records

N/A

1.3.4. Sources of information

Government sources

- Swaziland Environmental Authority (N.Y.). [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46> [Accessed 20 March 2017]
- Swaziland National Trust Commission (N.Y.). [online]. Available at: <http://www.sntc.org.sz/legislation/legislation.asp> [Accessed 20 March 2017]

Non-Government sources

- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
- Mongobay.com (2011). *Swaziland Forest Information and Data 2011*. [online]. Available at: <http://rainforests.mongobay.com/deforestation/2000/Swaziland.htm#13-policy> [Accessed 30 January 2017]
- Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available at: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.

- World Bank.org (2015). *Worldwide Governance Indicators – Swaziland 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation conducted in Swaziland, December 2016.
- Mndzebele, A. (2001). *A presentation on Land Issues and Land Reform in Swaziland*. [online]. Paper presented at the SARPN conference on Land Reform and Poverty Alleviation in Southern Africa. Available at: <http://www.sarpn.org/EventPapers/Land/20010604Mndzebele.pdf> [Accessed 30 January 2017]
- IFAD.org (2012). *Land and Natural Resources in Swaziland*. [online]. UN-Habitat and Global Land Tool Network. Available at: <https://www.IFAD.org.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6> [Accessed 30 January 2017]
- Transparency International (2015). *People and Corruption: Africa Survey 2015 - Global Corruption Barometer*. [online]. Available at: http://files.transparency.org/content/download/1941/12775/file/2015_GCB_SubSaharanAfrica_EN.pdf [Accessed 30 January 2017]

1.3.5. Risk determination

N/A

There are no legal requirements relating to this indicator.

The Forest Policy, section 2.4.3.1, recommends that the true value and importance of non-timber forest products (NTFPs) to the national economy must be established and recognized in national planning and accounting. NTFP's include medicinal plants, fuelwood, woodcraft, edible animal, plant products, bark and other tree products, grasses, reeds, etc., which are consumed by a large majority of the population. Currently the market for these products is through informal markets and the value of these products have never been determined. For the purposes of this indicator these products are not likely to ever fall under FSC systems as consumptions is entirely local communities.

For TDL, the owner or occupier (person lawfully in control) has the right to determine how resources on their land will be used. For CL and SNL, the Forest Policy recognizes abuse of NTFP's from natural forests and woodlands, and the potential for overharvesting of NTFP's by community members for local consumption. For the purposes of this indicator, this material is very unlikely to enter FSC supply chains as it is not for commercial use.

1.3.6. Risk designation and specification

N/A

1.3.7. Control measures and verifiers

N/A

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- The Forest Preservation Act (1910). Section 3. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 20 March 2017]
- The Private Forests Act (1951). Sections 3 (a). [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 20 March 2017]

1.4.2. Legal authority

Minister of Agriculture, and officers in the department of agriculture.

1.4.3. Legally required documents or records

- Permission from the Minister of Agriculture or of a District Officer or other person designated by the Minister for harvesting government timber or Swazi Nation timber.
- Authority from the land owner for harvesting of timber on private (title-deed) land.

1.4.4. Sources of information

Government sources

- Swaziland Environmental Authority (N.Y.). [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46> [Accessed 21 March 2017]
- Swaziland National Trust Commission (N.Y.). [online]. Available at: <http://www.sntc.org.sz/legislation/legislation.asp> [Accessed 21 March 2017]

Non-Government sources

- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
- Expert consultation conducted in Swaziland, December 2016.
- IFAD.org (2012). *Land and Natural Resources in Swaziland*. [online]. UN-Habitat and Global Land Tool Network Available at: <https://www.IFAD.org.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6> [Accessed 21 March 2017]

- ILO.org (N.Y.). NATLEX – Swaziland. [online]. Available at: http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=SWZ [Accessed 21 March 2017]
- Lexadin (N.Y.). *Legislation of Swaziland*. [online]. Available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweswa.htm> [Accessed 21 March 2017]
- Mndzebele, A. (2001). *A presentation on Land Issues and Land Reform in Swaziland*. [online]. Available at: <http://www.sarpn.org/EventPapers/Land/20010604Mndzebele.pdf> [Accessed 21 March 2017]
- Mongobay.com (2011). *Swaziland Forest Information and Data 2011*. [online]. Available at: <http://rainforests.mongobay.com/deforestation/2000/Swaziland.htm#13-policy> [Accessed 30 January 2017]
- Swazi Legal Information Institute (N.Y.). Website. [online]. Available at: <http://www.swazilii.org/> [Accessed 21 March 2017]
- Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available at: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.
- World Bank.org (2015). *Worldwide Governance Indicators – Swaziland 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]

1.4.5. Risk determination

Overview of Legal Requirements

State or crown land (CL)

Forests and woodlands occurring on CL are primarily protected areas and/or national parks. These forests are not used for commercial purposes, but are occasionally harvested, with prior ministerial permission, to make way for infrastructure projects.

Swazi Nation Land (SNL)

The Swazi Administration Order 6/1998 provides Chiefs and Tindyuna with the power to:

- a) prohibit, restrict and regulate the cutting of trees,
- b) prohibit or restrict the sale, supply, use, possession or cultivation of poisonous or noxious plants and the manufacture of noxious drugs or poisons;
- c) prohibit, restrict or regulate the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush, and the extinguishing of grass or bush fires;
- d) prohibit, restrict or regulate wasteful methods of agriculture and eradicating noxious and harmful weeds.

As these powers are discretionary, the actual requirements differ by district.

Under section 4 of the Forest Preservation Act, prior permission from the Minister of Environment is required to harvest timber that is growing on SNL on which, or within thirty yards of which, indigenous timber or government timber is growing. "Government timber" means any trees and bushes planted under the direction of the Minister of Environment on state or crown land or SNL and "indigenous timber" as forest trees or their saplings growing on CL or SNL, not planted by human agency.

Private Freehold or Title Deed Land (TDL)

Prior permission for harvesting is not required on private land.

The Private Forests Act, 1951 makes it clear that trees on TDL are the private property of the owner and they may do as they wish with the land. Section 3(a)(i) of that act makes it an offence to cut, injure, destroy, collect, take or remove any tree, timber or forest product without the owner's permission on TDL.

Description of Risk

State or Crown Land (CL)

As there is no commercial production from crown land, there are no risks associated with this source for this indicator.

Swazi Nation Land

Commercial activities on the SNL are governed by the individual chiefs in each area. According to the experience of the author and the input provided by experts during consultation in 2016, the SNL is well regulated and the chiefs monitor activity on their land closely. For non-commercial activities, such as exploiting the indigenous forests and woodlands for customary purposes, anecdotal evidence collected in the preparation of this report in 2016, indicates that the requirements may be less adhered to and less enforced as the financial incentive is far lower (Expert consultation 2016).

There is no evidence available at the time of preparing this report that indicates that commercial harvesting is taking place without the permission of the chiefs, but it is unlikely that there exists documentary evidence for this.

Stakeholders who provided comments on earlier drafts of this report during the international stakeholder consultation stated that the timber volumes produced from SNL and traded commercially are small (approx. 6% of the volume from approx. 4.5% of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator.

As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for commercial supply chains of non-indigenous species from SNL.

Private freehold or title deed land

There are a small number of reports of timber theft from private land, but according to the experts interviewed, these are swiftly followed up on by law enforcement (Expert consultation, Swaziland 2016).

Sources of information checked also show no evidence of the current legislation in Swaziland being abused (For example, ELDIS 2017, Mongobay.com 2011, Expert consultation 2016. IFAD and UN-Habitat, 2012).

More than 80 per cent of the plantations in Swaziland are certified as FSC FM certified. No information provided to the authors through expert or stakeholder consultation, or extensive internet based research indicates a risk in this indicator to a degree that warrants a specified risk finding.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliance relating to this indicator.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL). Threshold (1) has been met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL). Threshold (2) is met: identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.4.6. Risk designation and specification

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL).

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL).

1.4.7. Control measures and verifiers

N/A

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

There is no legislation in place in Swaziland covering the payment of royalties and harvesting fees.

N/A

1.5.2. Legal authority

N/A

1.5.3. Legally required documents or records

N/A

1.5.4. Sources of information

- Expert consultation conducted in Swaziland, December 2016.

1.5.5. Risk determination

N/A

1.5.6. Risk designation and specification

N/A

1.5.7. Control measures and verifiers

N/A

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

- Value Added Tax Act, 2011, sections 7, 10 (1), 18, 31 and 32
<http://www.osall.org.za/docs/2011/03/Swaziland-Value-Added-Tax-Act-12-of-2011.pdf>
- Tax Laws Amendment Act, No 27 of 1997

1.6.2. Legal authority

Minister responsible for Finance

1.6.3. Legally required documents or records

VAT Registration certificate

VAT returns

1.6.4. Sources of information

Non-Government sources

- Doingbusiness.org (2016). *The World Bank.org.org Group - Doing Business – Paying taxes in Swaziland*. [online]. Available at: <http://www.doingbusiness.org/data/exploreeconomies/swaziland/paying-taxes> [Accessed 30 January 2017]
- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
- Expert consultation conducted in Swaziland, December 2016.
- IFAD.org (2012). *Land and Natural Resources in Swaziland*. [online]. UN-Habitat and Global Land Tool Network. Available at: <https://www.IFAD.org.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6> [Accessed 30 January 2017]
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- Mongobay.com (2011). *Swaziland Forest Information and Data 2011*. [online]. Available at: <http://rainforests.mongabay.com/deforestation/2000/Swaziland.htm#13-policy> [Accessed 30 January 2017]
- South African Tax Guide (2014). *Swaziland Taxes Overview*. [online]. Available at: <http://www.sataxguide.co.za/swaziland-taxes-overview/> [Accessed 30 January 2017].
- Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available online: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.
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1.6.5. Risk determination

Overview of Legal Requirements

VAT is payable on 'every taxable supply in Swaziland made by a taxable person' under the Value Added Tax Act (Section 3). "Taxable person" has the meaning ascribed in section 5 of that Act, and "taxable supply" in section 18.

Section 6 and 7 of the same Act requires anyone who has made taxable supplies valued above a certain threshold (set by the Minister of Finance), known as the registration threshold, has to be registered with the Taxation Commissioner, and possess a registration certificate.

Sections 10 and 18 of the Tax Act define who and what is liable for payment of VAT as a supplier. Essentially, all transactions are subject to VAT, unless they are specifically exempted by the First Schedule of the Act. At the time of writing, no timber transactions were listed as exempt. As such, all forest products sold commercially are sold with formal sales documentation in a format prescribed by the Minister. This makes these transactions subject to VAT, irrespective of where the timber is grown (i.e. SNL or TDL).

Note that 'the supply of land and buildings except for land and buildings used for commercial and industrial purposes' is listed as exempt from VAT in the Schedule to the act. However, this is further defined as land and building used or suitable for any commercial or industrial use *except for* land and building used only for agriculture, **forestry**, wild life or nature reserve. As such, transactions involving the sale of land used only for forestry purposes will be subject to VAT.

Section 31 defines the tax period as one month, from the first to the last day of the calendar month. While section 32 requires tax returns for each tax period to be submitted within 20 of the last day of the month in a format prescribed by the Minister.

Description of Risk

State or Crown Land (CL)

As there is no commercial production from crown land, there are no risks associated with this source for this indicator.

Swazi Nation Land

Commercial activities on the SNL are governed by the individual chiefs in each area. According to the experience of the author and the input provided by experts during consultation in 2016, the SNL is well regulated and the chiefs monitor activity on their land closely.

Timber from SNL is either harvested and sold by companies leasing the land from the communities, or by the communities themselves. Both types of transactions would be subject to VAT, and would be monitored by the central taxation agency, as are all commercial transactions in Swaziland.

For non-commercial activities, such as exploiting the indigenous forests and woodlands for customary purposes, these activities are not subject to VAT, and are therefore considered low risk.

Stakeholders who provided comments on earlier drafts of this report during the international stakeholder consultation, stated that the timber volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator.

As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for commercial supply chains of non-indigenous species from SNL.

Private freehold or title deed land

The World Bank Group "Doing Business" website for Swaziland indicates a high level of compliance with tax laws in Swaziland for 2015. Based on research and interview conducted in Swaziland in December 2016, it appears that the Finance Ministry regularly audits organizations and enforces compliance to tax laws. No public records of these audits are available. However, company records of tax assessments and audits would normally be provided to interested parties with a specific interest and respecting confidentiality of information of this nature.

More than 80 per cent of the plantations in Swaziland are certified are FSC FM certified. No information provided to the authors through expert or stakeholder consultation, or extensive internet based research indicates a risk in this indicator to a degree that warrants a specified risk finding.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliances relating to this indicator.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.6.6. Risk designation and specification

Low risk

1.6.7. Control measures and verifiers

N/A

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- The Income Tax Order 12 (1975) as amended in 2000. Sections: 6, 10, 11, 12, 13, 18, 21, 22, 33, 37, 51, 57, 58, the First and Second Schedule. [online]. Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/sz/sz015en.pdf> [Accessed 21 March 2017]

1.7.2. Legal authority

- Minister of Finance and Economic Planning

1.7.3. Legally required documents or records

- IT14 – Farmers tax return - for farming income, rent receivable and other income.
- IT13 – Companies tax return – persons employed, payments made, income received.
- Income Tax Clearance Certificates

1.7.4. Sources of information

Non-Government sources

- Doingbusiness.org (2016). *The World Bank.org.org Group - Doing Business – Paying taxes in Swaziland*. [online]. Available at: <http://www.doingbusiness.org/data/exploreeconomies/swaziland/paying-taxes>, [Accessed 30 January 2017]
- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
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- Transparency International (2015). *People and Corruption: Africa Survey 2015 - Global Corruption Barometer*. [online]. Available at: http://files.transparency.org/content/download/1941/12775/file/2015_GCB_SubSaharanAfrica_EN.pdf [Accessed 30 January 2017]
- World Bank.org (2015). *Worldwide Governance Indicators – Swaziland 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]

1.7.5. Risk determination

Overview of Legal Requirements

The Income Tax Order 12 of 1975 (as amended) sets out the income tax requirements applicable to the timber sector in Swaziland:

- Section 6 defines what is considered normal tax, in respect of income earned or accrued to or in favour of an individual,
- section 10 defines income for farming or plantation activities in the First Schedule
- Section 11 defines what may be considered as income (this can be applied to income from the forestry section)
- section 12 and 14 covers legitimate deductions that may be claimed by organizations, including the forestry sector,
- section 18 covers allowable deductions for training schemes, this would include training conducted by forestry organizations.
- Section 13 covers tax for businesses that extend outside Swaziland.
- Section 21 covers requirements for tax on non-resident shareholders
- section 22 defines what is taxable for non-resident shareholders.
- Section 33 covers when tax assessments and returns shall be made, this includes organizations operating in the forestry sector.
- Section 37 of the Order requires that companies submit income tax returns of persons employed by them where deductions are to be claimed for the employment of these persons, or monies paid to these persons.
- Section 51 requires that companies appoint “public officers” who shall reside in Swaziland and represent the organization in any tax related matters.
- Section 57 details when tax payments shall be made,
- section 58 details payment by companies of employee tax contributions.

The First Schedule details how tax shall be calculated for farming operations (including plantations), but excluding companies, while the Second Schedule details how companies shall calculate tax to be deducted from employees.

These laws apply to any company (as defined in 1.1.) operating in Swaziland, and are not differentiated depending on where the timber is grown.

Description of Risk

State or Crown Land (CL)

As there is no commercial production from crown land, there are no risks associated with this source for this indicator.

Swazi Nation Land

Commercial activities on the SNL are governed by the individual chiefs in each area. Where the SNL has been leased by private companies for their own commercial activities, those companies are subject to laws relating to corporate income tax, and are regulated by the Ministry of Taxation like all other companies.

Where the timber is being harvested by communities, then sold onto the commercial market for export, these activities are carried out by the community members who are not registered companies. As a result, these entities are not subject to corporate income tax.

For non-commercial activities, such as exploiting the indigenous forests and woodlands for customary purposes, these activities are carried out by the community members who are not registered companies. As a result, these entities are not subject to corporate income tax.

Stakeholders who provided comments on earlier drafts of this report during the international stakeholder consultation, stated that the timber volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator.

As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for commercial supply chains of non-indigenous species from SNL.

Private freehold or title deed land

The World Bank Group "Doing Business" website for Swaziland indicates a high level of compliance with tax laws in Swaziland for 2015. The Finance Ministry regularly audits organizations and enforces compliance to tax laws. There is no other information available which indicates a risk for this indicator. Based on research and interviews conducted in Swaziland in December 2016, it appears that the Finance Ministry regularly audits forest organizations and enforces compliance to tax laws. No public records of these audits are available. However, company records of tax assessments and audits would normally be provided to interested parties with a specific interest and respecting confidentiality of information of this nature.

More than 80 per cent of the plantations in Swaziland are certified are FSC FM certified. No information provided to the authors through expert or stakeholder consultation, or extensive internet based research indicates a risk in this indicator to a degree that warrants a specified risk finding.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliances relating to this indicator.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.7.6. Risk designation and specification

Low risk

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

N/A

No legislation exists covering these aspects, it is however covered in the Forest Policy 2002, but the policy is not legally binding.

1.8.2. Legal authority

N/A

1.8.3. Legally required documents or records

N/A

1.8.4. Sources of Information

Non-Government sources

- Expert consultation conducted in Swaziland, December 2016.

1.8.5. Risk determination

N/A

Under the Forest Policy all plantation forestry companies and individual growers should comply with the national criteria and indicators for sustainable forest management in Swaziland.

However, these criterion and indicators are not finalized at this time and there is no enforcement of the Policy until such time as the forests laws have been revised to synchronize laws with the policy (Expert consultation 2016).

As the binding requirements of the Forest Policy are not in place, this indicator is not applicable.

1.8.6. Risk designation and specification

N/A

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- Flora Protection Action (2000). Sections: 3, 4, 5, 6, 16, 18, including Schedules A, B, C and D. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March 2017]
- Forest Policy 2002
- Plant Control Act, 1981, section 23 and 24 - <http://faolex.fao.org/docs/texts/swa78838.doc>

1.9.2. Legal authority

- Swaziland Environmental Authority and SEA officers enforce compliance.
- Department of Forestry

1.9.3. Legally required documents or records

- Permit to Protected Flora (Schedule D)

1.9.4. Sources of Information

Government sources

- Swaziland Environmental Authority (N.Y.). [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46> [Accessed 23 March 2017]
- Swaziland National Trust Commission (N.Y.). [online]. Available at: <http://www.sntc.org.sz/legislation/legislation.asp> [Accessed 23 March 2017]
- Department of Forestry

Non-Government sources

- USAID, 2007. *Swaziland: 118/119 Biodiversity and Forest Assessment*. Available at: <http://www.encapafrika.org/documents/biofor/Swaziland2007.pdf> [Accessed 24 July 2017]
- Swazi Legal Information Institute (N.Y.). Website [online]. Available at: <http://www.swazilii.org/> [Accessed 23 March 2017]
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- Expert consultation conducted in Swaziland, December 2016.

1.9.5. Risk determination

Overview of Legal Requirements

Swaziland has taken an active role in designing a strategic action plan for protection of biological diversity. As a signatory of the Convention on Biological Diversity, Swaziland has undertaken the enforcement of its terms, including development of an Environmental Action Plan (2001).

Roughly four percent of the country is under protection, represented in four main public nature reserves – Mlawula, Hawane, Mantenga, and Malolotja. There are conservation areas on crown/state land, many used for ecotourism. Several of Swaziland’s protected areas are part of a transboundary peace park, the Lubumbo Conservancy, which extends into South Africa and Mozambique, providing a large area for the migration of big game animals like elephants.

Flora Protection Act, 2000

- Section 3(a) enables the Minister to establish areas as flora reserves and botanical gardens, and 3(b) enables the Minister to declare areas as special habitats.
- Section 4 enables the Minister to make change to the schedules in the Act. Schedule A lists Especially Protected Flora (Endangered), Schedule B lists Vulnerable Flora and Schedule C lists Rare Flora.
- Section 5 controls the removal, damage and destruction of protected species, but allows landowners who have cultivated these species and have a permit to utilize what he has grown.
- Section 6 enables the Minister to issue a permit to utilize protected species.

- Section 16 requires an assessment and mitigation were an activity would impact on indigenous flora.
- Section 19 specifies that a permit must be obtained from the Minister to sell or export indigenous flora.

The Forestry Policy requires that commercial forest companies and individual growers have to introduce and further develop forest management practices that maintain biodiversity at acceptable levels. The policy is not legally binding.

The spread of noxious weeds, particularly acacia, has proven problematic for Swaziland, and is considered a significant threat to Swaziland biodiversity and protected areas. The Plant Control Act, at sections 23 and 24 requires all land owners and occupiers to clear noxious weeds on their land.

Description of Risk

According to USAID (2007), the major threats to biodiversity and forest conservation in Swaziland can be defined in six broad categories: unawareness, drought and desertification, anthropogenic pressures, degradation and erosion of soils, invasive species, and land tenure policy. In particular, that report notes that the threats to deforestation and destruction of natural resources currently comes from threats beyond the control of the forest industry i.e. they are not linked to the commercial forestry industry, but rather to 'overharvesting of fuel wood and building materials, settlement encroachment on protected areas, and urban sprawl' (USAID 2007). Therefore, it is unlikely that this material would enter an FSC-certified supply chain.

The forestry department confirms this, with minor concerns relating to forestry companies and people growing trees on their land which are invasive species, that spread onto other lands. While this is an environmental risk, it does not affect the integrity of the controlled wood supply chain from Swaziland for this legality indicator. This problem is specifically controlled by the requirement of sections 23 and 24 of the Plant Control Act 1981. A review of all literature available does not indicate any incidents of non-compliance with sections 23 and 24 of the Plant Control Act, 1981.

Stakeholders who provided comments on the draft of this report during the international stakeholder consultation, stated that the volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator. As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for the commercial supply of acacia from SNL.

More than 80 per cent of the plantations in Swaziland are certified are FSC FM certified. No information provided to the authors through expert or stakeholder consultation, or extensive internet based research indicates a risk in this indicator to a degree that warrants a specified risk finding.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliances relating to this indicator.

As the risks described above relate only to the non-commercial activities taking place on SNL, the commercial supply chains from both SNL and TDL are deemed to be low risk for this indicator.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL). Threshold (1) has been met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL). Threshold (2) is met: identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.9.6. Risk designation and specification

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL).

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL).

1.9.7. Control measures and verifiers

For Swazi Nation land

- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed.
- Flora Protection Permits are available where protected species are being collected, felled.

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- Environmental Management Act (2002). Sections: 32, 34, 35, 41 and 42. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed at 23 March 2017]
- The Environmental Audit, Assessment and Review Regulations (2000). Sections: 3, 5, 8, 9, 16, 17, First Schedule (Regulation 6 (2)), Second Schedule (Regulations 8(1)(a) and

9(4)(a)) and Third Schedule. [online]. Available at:

<http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed at 23 March 2017]

- Natural Resources Act (1951). Sections: 17, 21 and 31. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March 2017]
- Natural Resources (Public Stream Banks) Regulations. Section 3 (contained within the Natural Resources Act above).
- Game (Amendment) Act (1991). Sections: 14, 17, 20 (to be read in conjunction with the Game (Amendment) Act (1991) below). [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Game (Amendment) Act (1991). Sections: 8, 12, 15, 21, First Schedule, Second Schedule, Third Schedule (to be read in conjunction with the Game Act above). [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Game Control Act (1947). Section 3. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Grass Fire Act (1955). Sections: 3, 4, 5, 6, 8, 9, 19, 11, 12. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Plant Control Act (1981). Sections: 3, 5, 12, 13, 14, 15, 17, 18, 19, 23, 24, 25, 26, 28, 29, 30, Third Schedule. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
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- Seeds and Plant Varieties Act (2000). Sections: 6, 23, 26. [online]. Available at: <http://faolex.fao.org/docs/pdf/swa91704.pdf> [Accessed 23 March]
- Protection of Fresh Water Fish Act (1937). Sections: 6, 8, 9, 10, 14, 15, 17. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Waste Regulations (1999). Sections: 1, 6, 10, 12, 14, 19, 24, 29. [online]. Available at: <http://www.sea.org.sz/categdocs.asp?cid=3> [Accessed 23 March]
- Water Act (2002). Sections: 34, 35, 44, 45, 46, 48, 53, 62, 81. [online]. Available at: www.ielrc.org/content/e0309.pdf [Accessed 23 March]
- Water Pollution Control Regulations (1999). Sections: 4, 5, 6, 8, 9, Schedule One, Schedule Two. [online]. Available at: <https://www.elaw.org/content/swaziland-water-pollution-control-regulations> [Accessed 23 March]
- Wild Birds Protection Act (1914). Sections: 3, 6. [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46> [Accessed 23 March]
- The Forest Policy 2002

1.10.2. Legal authority

- Swaziland Environmental Authority and SEA officers
- Department of Forestry

1.10.3. Legally required documents or records

- Environmental Compliance Certificate
- Project Compliance Reports
- Grass burning permit
- Nursery Registration
- Plant Importation Permit
- Phytosanitary Certificates (for import of plant material)
- Phytosanitary Certificates (for export of plant material)
- Waste Management License
- Water Use Permit
- Effluent Control Permit

1.10.4. Sources of information

Government sources

- Swaziland Environmental Authority (N.Y.). Website. [online]. Available at: <http://www.sea.org.sz/pages.asp?pid=46> [Accessed 23 March 2017]
- Swaziland National Trust Commission (N.Y.). Website. [online]. Available at: <http://www.sntc.org.sz/legislation/legislation.asp> [Accessed 23 March 2017]

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1.10.5. Risk determination

Overview of Legal Requirements

Crown / state land

Forests and woodlands occurring on state or crown land, (both terms are used interchangeably) are primarily protected areas and/or national parks. These forests are not used for commercial purposes, and as such are not subject to legal requirements within the scope of this indicator.

Swazi Nation Land

The Swazi Administration Order 6/1998 provides Chiefs and Tindyuna with the power to:

- a) prohibit, restrict and regulate the cutting of trees,
- b) prohibit or restrict the sale, supply, use, possession or cultivation of poisonous or noxious plants and the manufacture of noxious drugs or poisons;
- c) prohibit, restrict or regulate the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush, and the extinguishing of grass or bush fires;
- d) prohibit, restrict or regulate wasteful methods of agriculture and eradicating noxious and harmful weeds.

As these powers are discretionary, the actual requirements differ by district.

Private freehold or title deed land (TDL)

Under the Environmental Management Act, 2002, *all* projects (including forestry activities) must submit a project brief to the Department of Forestry. Afforestation schemes (including plantations) and wood processing are identified in the act as Category 3 (projects likely to cause significant impacts). This means that these types of activities also require an initial environmental evaluation (s 8). This forms part of the project brief.

The Department then reviews this project brief and will make a decision about whether a full Environmental Impact Assessment, and Comprehensive Mitigation Plans are required (section 32).

Where an EIA and mitigation plan is required, it must be approved by the Forestry Department (according to the *Environmental Audit, Assessment and Review Regulations, 2000*).

Following the evaluation of the Environmental Assessment reports by the department, an Environmental Compliance Certificate is issued in accordance with s16. Where a mitigation plan has been required, the company has to submit periodic compliance reports to the department. The Environmental Compliance Certificates include an expiry date, and should be verified to be valid for the period in question.

The Natural Resources Act, 1951 makes it an offence for anyone to damage any soil or conservation works and authorizes the minister to protect streams, control storm water, prevent soil erosion and conserve water.

Section 3 of the *Natural Resources (Public Stream Banks) Regulations* set a protective buffer zone of 100 feet along public streams. "Public stream" is defined in the act as a watercourse of natural origin wherein water flows in ordinary seasons, whether or not such watercourse is dry during any period of the year, and whether or not its conformation has been changed by artificial means, and includes swamps or marshes, whether forming the source or found upon the course of or feeding such watercourse. Note that these requirements do not apply to SNL (section 2).

The Plant Control Act, 1951 contains a number of requirements relevant to the forestry sector.

- Section 2 and 5 requires that all nursery operators are registered and only registered nurseries sell plants, unless an exemption from registration has been granted by the Principal Secretary.
- Section 12 and 13 requires the destruction of plants and alien animals infected with disease or insect damage, section 13 makes it compulsory for anyone instructed to destroy plants or alien animals to comply with government notices to carry out such destruction.
- Sections 14 and 15 refers to the schedules in the Act and prohibits certain plant imports, requires permits for other plant imports and listed plants that may only be imported for personal use.
- Section 17 makes phytosanitary certificates a requirement for all imported plants.
- Section 19 prohibits the removal of plants from a natural habitat without permission from the regulating authority.
- Sections 23 through to 25 requires the reporting and control of noxious weeds and prohibits the sale of plants and seeds likely to become noxious weeds.
- Sections 26 through to 29 requires that timber which has been attacked or is infested with wood borer may not be used for building and manufacturing, it also specifies that such infestations shall be reported to the regulating authorities and that timber infested is destroyed or disinfested through approved means. While section 30 covers the reporting of locust infestations to regulating authorities.
- The First Schedule lists plants prohibited from being imported into Swaziland, the Second Schedule lists plants and plant materials requiring a permit before importation into

Swaziland. The Third Schedule lists plants and plant materials requiring a permit before importation into Swaziland, but not normally restricted. While the Fourth Schedule lists plants and living material that does not require a permit.

The Seeds and Plant Varieties Act, 2000 requires all people importing and selling seeds and plant varieties to be registered, while section 15 specifies that varieties of seeds and plant for sale shall be recorded on a prescribed government list. Sections 26 and 27 prohibits the importation or sale of seeds and plant varieties not registered on the prescribed government list.

Under the Biosafety Act, 2012 the introduction, marketing or importation of a GMO into the environment is prohibited without authorization. Part of the application process for introducing a GMO requires a risk assessment as per section 12 of the Act. Section 23 of the Act requires that operators who have introduced GMO's monitor their activities and report any adverse impacts to the competent authority. Section 29 requires that imported GMO's are correctly labelled and identified, while section 30 requires GMO products to be correctly labelled and identified.

Waste Regulations, 1999: Section 1 Prohibits the management and disposal of waste in a manner that may have an adverse effect and section 29 prohibits the disposal of waste in a manner that it becomes litter.

Schedule 3 (regulation 4) lists various types of waste from varying industries including wastes from the agricultural industry and wood processing industries.

Water Act, 2002: Section 34 reaffirms the constitutional right of water as a basic right for primary purposes, while section 35 requires that permits for other water extraction be acquired from the regulating authority.

Water Pollution Control Regulations, 1999: Section 4 prohibits the discharge of effluent which exceeds the regulatory standards into a water body, while section 5 requires an operator to monitor effluent discharges and keep records of this monitoring, with section 6 requiring that results of this monitoring be reported to regulating authority.

Section 8 requires that in the event of an accidental discharge this be reported to the Authority, the Ministry of Health and that all reasonable measures are taken to warn potentially affected people and shall take reasonable measures to mitigate any damage that may be caused to the environment or human health.

Schedule One (Regulations 2 and 3) list water quality objectives, Schedule 2 (regulations 2 and 4) lists effluent standards.

Swaziland National Forest Policy, 2002

The Forest Policy is non-binding, but requires plantation forestry companies and all other watershed users must apply methods to reduce water consumption and pollution, and establish a balanced use of water by all consumers. It also requires that commercial forest companies must develop and introduce forest management practices that minimize soil degradation, in particular the long-term residual effects of fertilizers and pesticides.

Further to this the Forest Policy also requires that, to protect biodiversity and promote recreation and tourism, plantation owners should co-operate with other landowners and users in overall watershed management. It also recommends that in principle, out grower schemes

shall not be located in protection-worthy areas or on good quality arable land, but on marginal land or on eroded land which can be rehabilitated through afforestation.

In relation to community forest projects the Forest Policy section 2.2.2.2 recommends that the spread of wattle must be controlled by proper management, and wattle trees have to be removed from ecosystems where they form a threat to biodiversity. While section 2.2.2.3 recommends that Wattle forests on Swazi Nation land must be enhanced as a major source of wood products, including fuelwood, charcoal, timber and poles, through improved management practices and distribution systems.

Description of Risk

State or Crown Land (CL)

As there is no commercial production from crown land, there are no risks associated with this source for this indicator.

Swazi National Land (SNL)

In SNL, the chiefs have the ability to impose requirements relating to the environment on the use of forest resources. As the powers are discretionary, it is not possible to externally verify compliance with these requirements.

Anecdotal information provided during the expert consultation in 2016 indicates that the governance of the SNL is strictly enforced where the activities are commercial (Expert consultation 2016).

Customary use of forests and woodlands, for example the gathering and use of non-timber forest products from indigenous species, is reportedly less regulated as the activities do not take place within the formal economy (expert consultation 2016).

Currently there is no publicly available evidence that indicates a risk of non-compliance with laws, inaction of regulating authorities, or fraudulent activities associated with this indicator

Stakeholders who provided comments on earlier drafts of this report during the international stakeholder consultation, stated that the timber volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator.

As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for commercial supply chains of non-indigenous species from SNL.

Private Freehold or Title Deed Land (TDL)

More than 80 per cent of the plantations in Swaziland are certified are FSC FM certified.

FSC Forest Management public certification reports, available from info.fsc.org, indicate there was no non-compliances relating to this indicator.

An extensive internet search did not reveal any specific issues relating to this indicator. A broader search turned up more general concerns relating to water use from exotic commercial plantations, this is a common concern across southern and eastern Africa (see for example Gush 2018, Gush 2018 and Bennet & Kruger 2015). This topic has been extensively researched, and while it is acknowledged that trees do use water, current legislation and best practice implemented by forest growers to not plant within the riparian buffer zones does mitigate this risk.

Discussion with Department of Forestry officials indicate that these practices along with the advent of FSC certification has helped reduce concerns over plantation forestry water use.

Literature review of potential risks did not reveal any reported instances of non-compliance with legislation being reported in regard to this indicator.

As the vast majority of production is certified, and no specific issues have been raised by experts, stakeholders or in the research conducted, a low risk finding for this indicator has been concluded.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL). Threshold (1) has been met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL). Threshold (2) is met: identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.10.6. Risk designation and specification

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL).

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL).

1.10.7. Control measures and verifiers

- Environmental Compliance Certificate where projects are required to complete this
- Phytosanitary Certificates (for export of plant material)
- Water Use Permit
- Effluent Control Permit
- Project Compliance monitoring and reports where this is required by the environmental authority
- Grass burning permits where there is a need to burn grassland
- Nursery registration where the organisation has a nursery
- Where waste is being disposed of outside a registered waste site a Waste Management License is required

- Where water is being extracted directly from the environment a Water Use Permit is required
- Where effluent is being discharged an Effluent Control Permit is required
- Compliance with stream buffer zone legislation

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- Occupational Safety and Health Act (2001). Sections: 9, 10, 12, 13, 14, 16, 18, 28, 29 and 32. [online]. Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/60458/51832/F775087869/SWZ60458.pdf> [Accessed 23 March 2017]
- Employment Act 1980, No. 5/1980 - http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_isn=11933',550,350

1.11.2. Legal authority

- Minister responsible for Labour matters, inspectors and officers in the department of labour.

1.11.3. Legally required documents or records

- Accident Register

1.11.4. Sources of information

Government sources

- Ministry of Commerce, Industry and Trade (N.Y.). [online]. Available at: <http://www.gov.sz>

Non-Government sources

- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
- Expert consultation conducted in Swaziland, December 2016.
- FSC (2017). *Facts and Figures July 2017* [online]. Available at: <https://ic.fsc.org/file-download.facts-figures-july-2017.a-2020.pdf> [accessed 25 July 2017]
- IFAD.org (2012). *Land and Natural Resources in Swaziland*. [online]. UN-Habitat and Global Land Tool Network. Available at:

- <https://www.IFAD.org.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6>
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 - International Trade Union Confederation (ITUC) (2015). *Main findings of the ITUC Solidarity Visit to Swaziland* [online]. Available at: <https://www.ituc-csi.org/main-findings-of-the-ituc> [accessed 25 July 2017]
 - International Trade Union Confederation (ITUC) (a) (2009). *Swaziland: the repressive side of an absolute monarchy* [online]. Available at: <https://www.ituc-csi.org/swaziland-the-repressive-side-of> [accessed 25 July 2017]
 - Mndzebele, A. (2001). *A presentation on Land Issues and Land Reform in Swaziland*. [online]. Paper presented at the SARPN conference on Land Reform and Poverty Alleviation in Southern Africa. Available at: <http://www.sarpn.org/EventPapers/Land/20010604Mndzebele.pdf> [Accessed 30 January 2017]
 - Mongobay.com (2011). *Swaziland Forest Information and Data 2011*. [online]. Available at: <http://rainforests.mongobay.com/deforestation/2000/Swaziland.htm#13-policy> [Accessed 30 January 2017]
 - Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available at: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.
 - Transparency International (2015). *People and Corruption: Africa Survey 2015 - Global Corruption Barometer*. [online]. Available at: http://files.transparency.org/content/download/1941/12775/file/2015_GCB_SubSaharanAfrica_EN.pdf [Accessed 30 January 2017]
 - U.S. Department of Labor Bureau of International Labor Affairs (2003). *Findings on the Worst Forms of Child Labor, Swaziland* [online]. p. 384, 2004 in Solidarity Centre, 2006. Justice for All – The struggle for workers rights in Swaziland. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/01/Swaziland-JFA.2006.pdf> [accessed 24 July 2017]
 - U.S. State Department (2016). *Country Reports on Human Rights Practices, Swaziland 2016* [online]. Available at:

<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265308#wrapper> [accessed 24 July 2017]

- US Department of Labor, Bureau of International Labor Affairs (2015). *Findings on the Worst Forms of Child Labor, Swaziland* [online]. Available at: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/swaziland> [accessed 25 July 2017]
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1.11.5. Risk determination

Overview of Legal Requirements

The Occupational Safety and Health Act, 2001 (OSHA) regulates health and safety in the forestry sector in Swaziland. The Minister of Labour is responsible for ensuring overall occupational safety and health (OSH) administration and enforcement. In addition, the OSHA states that OSH inspectors are appointed by a Government Agency responsible for the employment of public officers.

The OSHA Act required employers ensure safety of a work place, provide effective supervision, assess and control hazards and provide personal protective equipment and appliances, inform employees of hazards and diseases that may be associated with their work. Further to this, employers shall train and instruct employees in such a way as to mitigate the identified hazards. Section 13 of the Act requires a safety and health policy for the organization written in both English and Siswati, a one-page summary signed by the CEO shall be publicly displayed in the workplace.

The OSHA includes the following duties and obligations:

- Duty to ensure the health and safety of employees: An employer or an occupier has a duty to "ensure the safety and health of all employees during employment by securing safe and healthy working conditions in that employer's or occupier's workplace." (Occupational Safety and Health Act (OHS) S 9(1))
- Duty to protect the health and safety of people other than their own employees: An employer is obliged to conduct his or her "activities in such a manner that persons other than the employees are not exposed to hazards or dangers arising from that employer's activities." (S 9(9))
- The Minister is empowered to promulgate regulation on the medical examination of employees at a workplace. In addition, section 100 of the Employment Act (1980) makes provision for the medical examination of young persons. (OHS S 41 (g))
- The OSHA obliges an employer to ensure that there exists a systematic way of identifying, evaluating and controlling hazards at the workplace and such systematic ways are functional at all times. OHSAS 9(3).
- Duty to provide personal protective equipment: An employer has a duty to "provide free of charge adequate and appropriate personal protective appliances, equipment and clothing to an employee who is performing activities or processes which expose such an employee to wet, dusty or noisy conditions, extreme heat or extreme cold, or other

poisonous, corrosive or injurious substance or material liable to affect the employee's safety and health or cause undue damage to the employee's clothing." OHS Act S 9(4)

- Duty to ensure the usage of personal protective equipment: An employee shall, where any means, appliance, equipment or other safety device for securing safety and health is provided by the employer under the provisions of this Act for use and protection of an employee or property in any process, properly use same in accordance with the instructions given by the employer." OHS Act S 11(2)
- Arrangements for first-aid: An employer has a duty to "provide at each place of employment (a) adequate first aid facilities for the treatment of accidents; (b) one or more suitably stocked first aid boxes in charge of a responsible person which shall be readily available during working hours." This does not apply to the employment of a domestic employee by any employer.
- Employers are required to prepare a written policy concerning or relating the protection of the safety and health of his or her employees at work. OHS Act S 13(1)
- An employer is obliged to "as far as reasonably practicable ensure by effective supervision that work is performed in a safe manner and without risks to health or exposure to danger." OHS Act S 9(2))
- An employer has a duty to "ensure that an employee receives the necessary training and instruction to perform the employee's work in such a way as to avoid any danger, or risk to danger, loss of health or injury." OHS Act No. 9 of 2001). (S 9(6)
- Duty to take reasonable steps to protect their own safety and health: "No person, including employer or employee or any other person, shall do anything that endangers or is likely to endanger the safety, health or welfare of that persons or any other person." OHS Act S 8(1)
- Duty to take reasonable steps to protect the safety and health of others: "No person, including employer or employee or any other person, shall do anything that endangers or is likely to endanger the safety, health or welfare of that persons or any other person." OHS Act S 8(1)
- Work-related accidents: All accidents whether minor or major related to employment to a workplace must be recorded by the employer. OHS Act S 28(2)
- Employers' duty to notify OSH authorities of work related death and/or injuries to health – OHS Act S 28(1), S 32(1)

Employment Act 1980S 150(1)

- Sanitary installations: An employer has an obligation to "ensure that every workroom in which persons are employed by him is kept in a clean and sanitary condition."
- Restrictions / obligations: This does not apply to the employment of a domestic employee by any employer. (S 149(1))
- Drinking water: An employer is required to "ensure that there is an adequate supply of wholesome drinking water for his employees at their place work." This does not apply to the employment of a domestic employee by any employer. (S 149(2)(a))

The Workers Compensation Act, 1983 requires that if in any employment personal injury is caused to a workman by accident and that accident is an employment accident his employer

shall be liable to pay compensation in accordance with this Act. The act also requires each employer to keep an accident book in the prescribed format at the workplace.

The *Regulation Of Wages (Forestry And Forest Industry) Order*, (revised annually) covers basic minimum wages, provision of rations, hours of work, overtime, standby allowances, various types of leave, provision of written job details, protective clothing requirements and general health requirements, first aid and medical aid, pension funds and housing provision.

Description of Risk

- The current assessment and research shows no forestry sector specific evidence of non-compliance in regards to these legal requirements.
- Discussions with officials from the Department of Labour and other experts consulted during the December 2016 consultation revealed that there are high levels of monitoring of private companies, and high levels of compliance seen in this monitoring. The records of this monitoring are not publically available.
- There is no evidence that the Department of Labour conducts similar evaluations of SNL, although the legal requirements are also applicable there.
- The U.S. State Department's 2005 Country Reports on Human Rights Practices noted, "the Labor Commissioner's office conducted few safety inspections because of staffing deficiencies and an alleged desire not to 'scare off foreign investors.' Workers had no legal statutory rights to remove themselves from dangerous work places without jeopardizing their continued employment; nor did any collective bargaining agreements address the matter."
- The US State Dept 2016 Report states "the constitution calls on parliament to enact laws to protect a worker's right to satisfactory, safe, and healthy employment conditions, but parliament did not enact any such laws during the year."
- In addition, that report states labor laws applied to the informal sector but were seldom enforced. Most workers were in the informal sector, but credible data were not available. Workers in the informal sector, particularly foreign migrant workers, children, and women, risked facing hazardous and exploitative conditions. Credible data on workplace fatalities and accidents were not available.
- Per the Occupational Safety and Health Act of 2001, workers may remove themselves from situations that endanger their health or safety without jeopardy to their employment. Authorities did not effectively protect employees in this situation (US State Department 2016).
- A 2017 report from UNICEF states "In 2014–2015, for example, the United States cancelled Swaziland's membership as part of its African Growth and Opportunity Act (AGOA), a free trade bloc that enabled Swazi factories to more cheaply export their goods to the United States. Some cite that the cancellation was due to the Swazi state's failure to meet eligibility criteria in the area of human rights in terms of workers' rights to assemble, protest and work in safe environments."

Stakeholders who provided comments on the draft of this report during the international stakeholder consultation, stated that the volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land

(SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.'

Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator. As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low, a low risk has been found for the commercial supply of acacia from SNL.

As all work on Swazi Nation land is informal and family based, there is evidence that a number of the health and safety laws would not be complied with or enforced. While some of the formal legal requirements (for example personal protective equipment) would not be applicable due to the small sizes of the operations, many of the requirements would still apply. Reports tend to focus on other agricultural commodities as being linked to risks in this area.

The Timber cultivation on SNL, carried out by communities themselves would not be subject to the formal employment law requirements as the employment situation as are informal and familial. For timber grown on SNL leased to private companies, the extraction would be done within more formal; employment situations, which are evaluated below as low risk.

Given the scale and impact, it is recommended that the risk for this indicator is considered low for the commercially produced timber from SNL.

Private Freehold or Title Deed Land (TDL)

Regarding the privately owned plantations, the risk consideration is more complex. There are no specific reports of issues relating to OHS for the forestry sector. Information from the enforcement agency indicates that the risks are controlled. There are reports indicating risks in general in Swaziland relating to this indicator, but no forestry specific information can be found.

As of July 2017, 89 per cent of the plantations in Swaziland were FSC FM certified, via four certificates. While the scale and impact may be considered low for both TDL and SNL, we consider it prudent to conclude specified risk for this indicator, given the volume of reports indicating issues in this indicator in Swaziland generally.

Risk Conclusion

Low risk for Crown Land.

Specified risk for all other sources.

1.11.6. Risk designation and specification

Low risk for Crown Land.

Specified risk for all other sources.

1.11.7. Control measures and verifiers

- Hazards have been assessed and risks communicated to employees.
- Incidents and accidents are reported correctly to regulating authorities.

- Health and Safety Representatives are appointed.
- There is a Health and Safety Committee and evidence of meetings.
- There are risk assessments available
- There are records of training and induction available
- Accident Register is kept up to date.
- There is evidence that the inspector has been notified of any accident resulting in a loss of more than 3 days.

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- The Employment Act (1980). Sections: 21, 23, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 40, 41, 43, 46, 47, 48, 49, 50, 51, 53, 55, 56, 57, 58, 61, 62, 67, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 144, 145, 149, 150, 151, 152 and the Second Schedule. [online]. Available at: <http://www.osall.org.za/docs/2011/03/Swaziland-Employment-Act-of-1980.pdf> [Accessed 23 March 2017]
- Workers Compensation Act (1983). Sections: 4, 5, 13, 15, 17, 18, 19, 22, 24, 25, 29, 35 and 38. [online]. Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/27203/96682/F749496332/SWZ27203.pdf> [Accessed 23 March]
- The Wages Act (1964). Sections: 10, 15 and 18. [online]. Available at: <http://www.ilo.org/dyn/travail/docs/2174/Wages%20Act%201964.pdf> [Accessed 23 March 2017]
- Industrial Relations Act (2000). Sections: 16, 18, 19, 30 and 40. [online]. Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/97396/115555/F1042164654/SWZ97396.pdf> [Accessed 23 March 2017]
- The Swaziland Nation Provident Fund Order (1974)
- Registration of Contributing Employers Regulations (1975)
- Swaziland National Provident Fund Statutory Contributions Regulations (1998)
- Swaziland National Provident Fund (Benefit) Regulations
- The Swaziland National Provident Fund (General) Regulations (1986)
- Regulation of Wages (Forestry & Forest Industry) Order (Revised annually).

- Employment (Amendment) Regulations (1987): Legal Notice No. 44.
- Wages (Amendment) Act (1981): No. 10.
- Wages (Amendment) Act (1969): No. 3.

1.12.2. Legal authority

- Minister responsible for labour, through the Labour Commissioner in terms of the Employment Act and Workers Compensation Act.
- Deputy Prime minister in term of the Wages Age 1964.

1.12.3. Legally required documents or records

- Second Schedule of the Employment Act (1980) – Written Particulars of Employment
- Wages Register
- Record of Employment
- Accident Register / Book

1.12.4. Sources of information

Government sources

- Swaziland National Provident Fund (N.Y.). [online]. Available at: <http://www.snpf.co.sz/index.php/legislations>

Non-Government sources

- Solidarity Centre (2006). *Justice for All – The struggle for workers rights in Swaziland* [online]. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/01/Swaziland-JFA.2006.pdf> [accessed 24 July 2017]
- International Trade Union Confederation (ITUC) (a) (2009). *Swaziland: the repressive side of an absolute monarchy* [online]. Available at: <https://www.ituc-csi.org/swaziland-the-repressive-side-of> [accessed 25 July 2017]
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1.12.5. Risk determination

Overview of Legal Requirements

The Employment Act, 1980 is the key legislative instrument governing employment law in Swaziland.

Employment contract

- The act sets out the minimum requirements for an employment contract.

Discrimination and women

- The labor law prohibits discrimination in employment and occupation based on race, gender, language, HIV-positive status or other communicable diseases, religion, political views, or social status (s 29), but the law is silent on discrimination in employment and occupation based on disability, age, and sexual orientation or gender identity. Section 96 prohibits the discrimination, in terms of pay, based on sex.
- Section 101 governs the employment of women, and restricts their working hours. It stipulates that women cannot work between 10 p.m. and 6 a.m. without permission of the Labor Commissioner; and that women cannot work underground in mines.
- Swaziland has ratified ILO Convention No. 111 on Discrimination (Employment and Occupation) and Convention No. 100 on Equal Remuneration.

Dismissal:

- Section 35: no employment shall be terminated unfairly, this includes, being a member of an organization, being an employee's representative, filing a complaint against the employer for discrimination.
- The Industrial Relations Act, 2000 regulates the court proceedings around unfair dismissal.

Wages

- Section 46-48 and 55 govern the payment of wages. Section 151 requires every employer to keep a wages register and a record of each employee.
- The Wages Act, 1964 requires that employers meet minimum wages and conditions of employment as prescribed in a Wage Regulation Order. There is no national minimum wage. The Ministry of Labor and Social Security sets wage scales for each industry via the Wage Regulation Order. There was a legally mandated sliding scale of minimum wages depending on the type of work performed. All workers in the formal sector, including migrant workers, are covered by the wage laws. Approximately 63 percent of the population lived below the poverty line. In 2016 the minimum monthly wage was 768 emalangeni (\$52) for a semiskilled worker in the forestry industry, and 1,060 emalangeni (\$71) for a skilled worker in the forestry industry.
- The Regulation Of Wages (Forestry And Forest Industry) Order, (revised annually) covers basic minimum wages, provision of rations, hours of work, overtime, standby allowances, various types of leave, provision of written job details, protective clothing requirements and general health requirements, first aid and medical aid, pension funds and housing provision.
- Section 18 requires that the employer of any employees to whom a wages regulation order applies shall keep in English such records as are necessary to show whether or not

the provisions of this Act are being complied with in respect of those employees and the records shall be retained by the employer for two years.

- The Regulation Of Wages (Forestry And Forest Industry) Order, (revised annually) covers basic minimum wages, provision of rations, hours of work, overtime, standby allowances, various types of leave, provision of written job details, protective clothing requirements and general health requirements, first aid and medical aid, pension funds and housing provision.

Social security

- Section 67 requires employer of more than five people to registered and contribute towards the National Provident Fund. The Swaziland National Provident Fund (Provident Fund) was founded in 1974 to provide benefits to workers who were either entering retirement or incapacitated while working.

Child labour

- In 2002, Swaziland ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and Convention No. 182 on the Worst Forms of Child Labor. Swaziland also ratified the UN Convention on the Rights of the Child in 1995, and signed the African Charter on the Rights and Welfare of the Child in 1995, but has not yet ratified it. Swaziland has ratified ILO Convention No. 29 on Forced Labor and Convention No. 105 on the Abolition of Forced Labor.
- Section 97 and 98 of the Employment Act prohibits child employees, and sets the minimum employment age as 15 years and stipulates working conditions.
- S 97(1) and (2)) states that no persons shall employ any child in any industrial undertaking other than an industrial undertaking in which only members of his [or her] immediate family are employed; a technical school under the supervision of a teacher or person authorised by the Minister responsible for Education; an industrial undertaking which is not being conducted for commercial profit and where the work is essentially of an educative character approved as such by the Labour Commissioner in writing." In addition, "no person shall employ any child in any undertaking during school hours; between the hours of 6:00 p.m of one day and 7:00 a.m of the following day; for more than six hours in any day; for more than 33 hours in one week; for more than four hours continuously, without an interval of at least one-hour for a meal or rest."
- The law makes exceptions for workplaces employing only family members, and for educational settings.¹ Swazi law has no minimum age for employment in non-industrial sectors, but bars children from working at night or during school hours and limits children's overall work hours to 6 per day and 33 per week. ² The Employment Act also generally prohibits "young persons," (defined as those 15 to 18 years old), from working at night or from working in dangerous, unhealthy, or morally injurious undertakings.
- The Ministry of Labor, the Office of the Deputy Prime Minister through the Department of Social Welfare, and the RSPS are responsible for enforcement of laws relating to child labor.

Forced labour

- Swaziland law and the new constitution prohibit forced or bonded labor, including by children. The Employment Act includes requirements relating to forced labour. The law

prohibits most forms of forced or compulsory labor, but it also exempts “communal services” from the definition of forced labor, referencing services that benefit the community and are uncompensated. This allows the king and chiefs to require residents to perform such services in their communities, and customarily chiefs may penalize those who do not participate. The government did not effectively enforce the applicable law.

Freedom of association and right to strike

- Swaziland ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective bargaining. However, according to the Solidarity Centre, the country’s constitution, laws, and practice fall far short of compliance with ILO principles on freedom of association.
- The law provides that workers, except for those in essential services, have the right to form and join independent unions, conduct legal strikes, and bargain collectively. These rights were not uniformly applied, however, since provisions of other laws restrict freedom of assembly and association (US State Dept. 2016).
- According to the Solidarity Centre, the 2000 IRA theoretically protects the right to strike. However, a number of legal and practical impediments make it very difficult to execute a strike legally. The 2000 IRA effectively hinders the right to strike by requiring a strike application process that lasts approximately 74 days and by imposing additional barriers, including requirements for a secret-ballot vote of the workers and for exhaustion of all other avenues of negotiation.
- The constitution and law provide for the right to organize and bargain collectively, subject to various legal restrictions (extracted from US State Dept. 2016).
- The law gives employers discretion as to whether to recognize a labor organization as a collective employee representative if less than 50 percent of the employees are members of the organization.
- If an employer agrees to recognize the organization as the workers’ representative, the law grants the employer the ability to set conditions for such recognition.
- The law provides for the registration of collective agreements by the Industrial Court. The court is empowered to refuse registration if an agreement conflicts with the Industrial Relations Act (IRA) or any other law, provides terms and conditions of employment less favorable to employees than those provided by any law, discriminates against any person, or requires membership or non-membership in an organization as a condition for employment.
- The law also provides for the establishment of a conciliation, mediation, and arbitration commission for dispute resolution. It confers on the commissioner of labor the power to “intervene” in labor disputes before they are reported to the commission if there is reason to believe a dispute could have serious consequences for the employers, workers, or the economy if not resolved promptly.

Description of risk

According to the Solidarity Centre, there are numerous reports of infringements of the legal requirements related to employment in Swaziland. These are far reaching and systemic. Not in the least, the very legal foundations upon which the labour laws are built, including the constitution and judiciary are fractured and weak, the ability of workers to enforce their

rights is extremely limited. For example, all labor-related dispute resolution relies on a court with only two sitting judges, the backlog has been a serious obstacle to workers' ability to enforce their rights in a timely and financially viable manner (Solidarity Centre 2006).

The Ministry of Labor and Social Security is responsible for enforcement of labor laws but faces significant resource challenges, including a lack of motor vehicles and inability to hire additional staff. There were only an estimated 20 labor inspectors serving the entire country, and while the labor commissioner's office conducted inspections in the formal sector, it did not have the resources to conduct inspections in the informal sector. The government also undertook an initial review of the status of labor brokers in response to growing complaints that their lack of regulation facilitated the exploitation of workers (US State Dept 2016).

Of the available sources, only one discussed the forestry sector in detail. The 2009 report from ITUC *Swaziland: the repressive side of an absolute monarchy*, discusses alleged "hostile management" at the pulp mill in Bhunya. According to that report:

- In the years leading up to 2009, the unionized workforce reduced from 1,400 to 420;
- the number of non-unionized contract workers working in the mill and the forests that supply it grew to 1,800
- According to Archie Sayed, union secretary at the plant, "we are a major contributor to the trade unions in the country, the political progressiveness ... we support change and we believe it's long overdue. When it comes to protest actions, we are always first on the bus."
- Workers at the plant are relatively well paid compared to many Swazis and many, particular contract workers, live in compounds far from home.

Discrimination

- Workers and NGO representatives interviewed for the Solidarity Centre's 2006 report, indicate that some employers do not respect the Employment Act provisions and that enforcement of this act by the courts is not consistent. As of the end of 2005, no prosecutions had been reported under the discrimination provisions of the Employment Act. This could be due to the actual prevalence of discrimination, or could reflect a popular perception that a claimant cannot receive justice on that issue through the court system.
- According to the US State Dept (2016), disabled persons faced discrimination in hiring and access to work areas. Openly LGBTI persons were subject to discrimination in employment and social censure. Migrant workers enjoy the same legal protections, wages, and working conditions as citizens but still faced discrimination in employment due to societal prejudice against foreigners.

Social security

- According to the Solidarity Centre, "poor enforcement of regulations governing the national retirement program also allows for violations of worker rights."

Child labour

- According to the Solidarity Centre, Violations of child labor laws are not widespread in the formal sector; factory owners usually hire workers who are 18 and older. However, the use of child labor has been reported in the commercial agricultural sector on cotton and

sugar cane plantations in eastern Swaziland. Child labor is also employed in the informal economy, especially in rural subsistence agriculture, herding, household domestic work, gardening, hawking, and transportation. Although it is difficult to find reliable statistics on the number of children working in Swaziland, UNICEF estimated that in 2000, some 11.3 percent of Swazi children ages 5 to 14 were working (cited in U.S. Department of Labor Bureau of International Labor Affairs, 2003).

- According to the US State Dept. (2016), "The government did not effectively enforce laws combating child labor due to a lack of baseline information regarding the scope of the problem and a lack of dedicated resources for identifying and punishing violators." Furthermore, and specific to the agricultural sector "in the informal sector, children continued to be employed, particularly in agricultural pursuits. In agriculture children picked cotton, harvested sugarcane, and herded livestock."
- According to the US Dept of Labour, "in 2015, Swaziland made efforts to eliminate the worst forms of child labor, but was also complicit in the use of forced child labor." The report states that Swaziland is receiving an assessment of no advancement because the Minister of Education and Training closed schools for 7 days and forced more than 30,000 children and adults to carry out national duties, including weeding the King's fields. In addition, local chiefs forced children to engage in agricultural work throughout the year. Penalties for refusing to perform this work included evicting families from their village, confiscating livestock, and withholding family wages. Children in Swaziland are also engaged in child labor, including in domestic work and herding cattle. Significant gaps in laws remain, including the lack of a compulsory education age, and social programs do not adequately address child labor in domestic work and livestock herding. The following commodities/activities are specifically mentioned for a high risk of using child labour, forestry is absent: Growing corn, picking cotton, harvesting sugarcane and herding cattle and other livestock.

Women

- *According to the* Solidarity Centre, Gender discrimination includes constraints on the hours and locations of work for women, the advertising of certain positions for women or men only, and sexual harassment in the workplace. In addition, However, despite the law's requirement for equal pay for equal work, average work rates for men by skill category usually exceed those of women.
- According to the US State Department (2016), gender-based discrimination in employment and occupation occurred. While women have constitutional rights to equal treatment and may take jobs without the permission of a male relative, and the law requires equal pay for equal work, there were few measures in effect protecting women from discrimination in hiring, particularly in the private sector. Despite the law, the average wage rates for men by skill category usually exceeded those of women.

Forced labour

- According to the US State Dept (2016), "the government did not effectively enforce the applicable law." Further, the report states "Forced or compulsory labor practices reportedly occurred. Victims of forced labor included women and children in domestic servitude, agricultural labor, herding livestock, portering, and market vending. Chiefs

continued to coerce children and adults--through threats and intimidation--to work for the king."

- According to the Solidarity Centre, while Swaziland law and the new constitution prohibit forced or bonded labor, including by children, and the government generally enforces most aspects of this prohibition effectively, with a couple of notable exceptions. Forced overtime is widespread in factories, especially in the garment industry. Further, the government supports a program of traditional tribute labor—involving the performance of tasks for chiefs without receiving compensation—that includes penalties for non-participation. Abusive overtime demands under threat of dismissal are widespread and systematic in Swaziland.
- In a case that triggered the current rule of law crisis, the Court of Appeals rejected the 1998 Administrative Order that legalizes forced tribute labor, determining that the king has no power to issue such decrees. However, the government has refused to abide by this ruling. In fact, the new constitution, while prohibiting forced labor, provides an exception for "any labour (e) reasonably required as part of reasonable and normal parental, cultural, communal or other civic obligations, unless it is repugnant to the general principles of humanity,"¹⁹ seemingly exempting tribute labor from the prohibition (Solidarity Centre 2006).

Freedom of association, right to strike etc.

- According to the US State Dept. (2016), The government did not effectively enforce laws pertaining to union organization. Freedom of association and the right to collective bargaining were not consistently respected. The government perceived some unions to be political opposition and therefore restricted their rights. In certain cases, workers who attempted to exercise the rights to organize and bargain collectively faced difficulties or risks due to a harsh legal environment imposed by provisions in the labor and security laws. HMCS staff continued to be denied the right to collective bargaining. While the government controlled no worker organizations, it may prohibit trade unions and other worker organizations from engaging in certain activities when those activities are deemed "political."
- In addition, the logistical requirements to register a legal strike made striking difficult. Government interference in union affairs has been a problem under examination by the International Labor Organization (ILO), particularly concerning public-service unions. At issue was continued government action to disrupt or repress trade unions' lawful and peaceful activities (US State Dept. 2016).
- According to the ITUC (2009), "employers' interference with workers' councils has contributed to the failure of some trade unions to negotiate collective agreements. Furthermore, there are reports that some employers dictate which decisions are taken in the workers' councils. Collective bargaining is permitted by the law and there is no information that reports of abuses of concluded collective agreements. The law prohibits anti-union discrimination; however, private companies, especially foreign companies of the garment sector, continued to discriminate against unionists. Although the law provides for reinstatement and for fines against employers in the event of unfair dismissal, no such accusations were officially made."
- In addition, "the police have made excessive use of violence to repress strikes. The authorities have arrested unionists and their leaders and used torture methods, including

virtual drowning, to obtain information. In previous years, union leaders were ordered to surrender their travel documents after attending meetings abroad. It has been reported several times that the police and the Conciliation, Mediation and Arbitration Commission facilitate employers, especially foreign garment firms' management, in resisting workers' demands and therefore sustain the inhumane conditions of work and the low wages." (ITUC 2009).

- A 2017 report from UNICEF states "In 2014–2015, for example, the United States cancelled Swaziland's membership as part of its African Growth and Opportunity Act (AGOA), a free trade bloc that enabled Swazi factories to more cheaply export their goods to the United States. Some cite that the cancellation was due to the Swazi state's failure to meet eligibility criteria in the area of human rights in terms of workers' rights to assemble, protest and work in safe environments."
- The same UNICEF report states "overall, workers are largely curtailed in joining unions and freely assembling in protest. They are sometimes harassed or imprisoned."
- Regarding ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective bargaining, which Swaziland has ratified, the Solidarity Centre states that the country's constitution, laws, and practice fall far short of compliance with ILO principles on freedom of association.
- Workers' rights to form and join unions, conduct legal strikes, and bargain collectively are not uniformly applied, however, since provisions of other laws restrict freedom of assembly and association (US State Dept. 2016).
- According to the Solidarity Centre, the 2000 IRA theoretically protects the right to strike. However, a number of legal and practical impediments make it very difficult to execute a strike legally. The 2000 IRA effectively hinders the right to strike by requiring a strike application process that lasts approximately 74 days and by imposing additional barriers, including requirements for a secret-ballot vote of the workers and for exhaustion of all other avenues of negotiation.

Right to Strike

- According to the Solidarity Centre, the country's constitution, laws, and practice fall far short of compliance with ILO principles on freedom of association.
- The law provides that workers, except for those in essential services, have the right to form and join independent unions, conduct legal strikes, and bargain collectively. These rights were not uniformly applied, however, since provisions of other laws restrict freedom of assembly and association (US State Dept. 2016).
- According to the Solidarity Centre, the 2000 IRA theoretically protects the right to strike. However, a number of legal and practical impediments make it very difficult to execute a strike legally. The 2000 IRA effectively hinders the right to strike by requiring a strike application process that lasts approximately 74 days and by imposing additional barriers, including requirements for a secret-ballot vote of the workers and for exhaustion of all other avenues of negotiation.

As all work on Swazi Nation land is informal and family base, there is significant risk that a number of the labour laws would not be complied with or enforced. While many of the formal

legal requirements (for example social security, work contracting etc.) would not be applicable due to the small sizes of the operations, some of the more fundamental requirements relating to child and forced labour are considered high risk. Reports tend to focus on other agricultural commodities as being linked to risks in this area.

Stakeholders who provided comments on the draft of this report during the international stakeholder consultation, stated that the volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL, the risk should be classified as low for this indicator. As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low.

Based on the experience of the author and input from experts in the preparation of this report, The SNL timber not sourced from FM certified plantations is still destined for FSC certified supply chains as CW. As such, buyers play a large role in the production and harvesting to ensure the CW standards are met.

Regarding the privately owned plantations, the risk consideration is more complex. While concerns were raised in the ITUC report about a specific pulp mill, and the managements attitude towards labor unions, it is not clear that there is any infringement of the legal requirements. As ownership of that mill has also changed hands, this information is now out of date.

According to the report, the management were using ostensibly legal avenues to circumvent the labour requirements (hiring of contractors), but were compliant with other requirements relating to wages and working hours. There have been a number of reports on the dire situation for workers in Swaziland, but none (apart from the 2009 ITUC Report) mention the forestry sector. As close attention has been paid to other sectors, in particular the garment sector, this would indicate the issues are not as prevalent in the forestry sector.

According to experts consulted in the preparation of this report, and experience of the author in the southern African context, there is also a strong push from unions against contractors (outsourcing) simply due to the fact that this weakens Unionization – it is more difficult to get members from 20 contractors than from 1 single big employer – this needs to be considered when considering comments by Unions in relation to the use of contractors 0 this only applies in South Africa and Swaziland where unions are losing members due to high fees and a lack of perceived benefits from union membership, Reportedly, workers do not want to join unions because of high fees and a perception that they get nothing back from unions. Unions blame this on organizations and contractors. In addition, as of July 2017, 89 per cent of the plantations in Swaziland were FSC FM certified, and four certificates.

While the scale and impact may be considered low for both TDL and SNL, we consider it prudent to conclude specified risk for this indicator, given the volume of reports indicating issues in this indicator in Swaziland generally.

Risk conclusion

Low risk for and Crown or State Land.

Specified risk for all other sources.

1.12.6. Risk designation and specification

Low risk for and Crown or State Land.

Specified risk for all other sources.

1.12.7. Control measures and verifiers

- All workers are employed according to the regulation and required contracts are in place
- Persons involved in harvesting activities shall be covered by obligatory insurances.
- Persons involved in harvesting activities shall hold required certificates of competence for the function they carry out.
- At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in hazardous work.
- Stakeholders shall confirm that forced or compulsory labour is not involved in harvesting activities.

THIRD PARTIES' RIGHTS

1.13 Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.

1.13.1. Applicable laws and regulations

Not applicable. There are no laws covering customary rights in Swaziland. Only Title deed (privately owned) land can be purchased for private development.

For use of Swazi Nation land by community members, The Forest Policy, Section 2.2.5.2 recommends detailed rules and regulations covering the access and user rights to forest resources as well as the responsibilities of communities and their individual members towards management of communal forest resources must be agreed to and defined. As the Forest Policy has not been enshrined in legislation, there are not legal requirements in place, relevant to this indicator.

1.13.2. Legal authority

N/A

1.13.3. Legally required documents or records

N/A

1.13.4. Sources of information

N/A

1.13.5. Risk determination

N/A

1.13.6. Risk designation and specification

N/A

1.13.7. Control measures and verifiers

N/A

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

Not applicable. There are no laws covering Free Prior Informed Consent in Swaziland.

1.14.2. Legal authority

N/A

1.14.3. Legally required documents or records

N/A

1.14.4. Sources of information

N/A

1.14.5. Risk determination

N/A

1.14.6. Risk designation and specification

N/A

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.

1.15.1. Applicable laws and regulations

Not applicable. There are no "indigenous people" as defined in UNDRIP recognized in Swaziland, therefore this indicator does not apply.

1.15.2. Legal authority

N/A

1.15.3. Legally required documents or records

N/A

1.15.4. Sources of information

N/A

1.15.5. Risk determination

N/A

1.15.6. Risk designation and specification

N/A

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

Not applicable. The Swaziland Forest Policy 2002 includes recommendations for requirements covering this indicator, but has not been enshrined in law. Therefore, this indicator is currently not applicable.

1.16.2. Legal authority

N/A

1.16.3. Legally required documents or records

N/A

1.16.4. Sources of information

N/A

1.16.5. Risk determination

N/A

1.16.6. Risk designation and specification

N/A

1.16.7. Control measures and verifiers

N/A

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Private Forest Act: section 3(a)(i)

1.17.2. Legal authority

N/A

1.17.3. Legally required documents or records

- Permission from the owner of the timber.

1.17.4. Sources of information

Non-Government sources

- FSC (2017). *Facts and Figures July 2017* [online]. Available at: <https://ic.fsc.org/file-download.facts-figures-july-2017.a-2020.pdf> [accessed 25 July 2017]
- Expert consultation conducted in Swaziland, December 2016.

1.17.5. Risk determination

Overview of Legal Requirements

Currently the only legal requirement in terms of the Private Forest Act, section 3(a)(i) is that the transporter of timber has permission from the owner to transport the timber from TDL.

There are no requirements relating to the transportation of timber from SNL or CL.

Description of Risk

- There are no available sources (including experts consulted) that have indicated there are any instances of illegal transportation without the owner's permission.
- As the only trade and transport is of commercial plantation species, and the legal threshold is very low (only owner permission is required), we have evaluated the risk as low.
- As of July 2017, 89 per cent of the plantations in Swaziland were FSC FM certified, and four certificates. There is no available information that would justify a finding of specified risk for the remaining 11 per cent of plantations.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL) and Crown or State Land (CL).

Not applicable for Swazi Nation Land (SNL).

1.17.6. Risk designation and specification

Low risk

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

N/A

There are no formal transfer pricing regulations in Swaziland. However anti-avoidance legislation empowers the commissioner of taxes to adjust the liability of the taxpayer where the commissioner is of the opinion that a transaction, operation or scheme has not been entered into or carried out by persons dealing at arm's length with the aim of avoiding, reducing or postponing tax liability.

1.18.2. Legal authority

N/A

1.18.3. Legally required documents or records

N/A

1.18.4. Sources of information

N/A

1.18.5. Risk determination

N/A

1.18.6. Risk designation and specification

N/A

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- Customs and Excise Act (1971). Sections: 5, 9, 11, 13, 37, 38, 40, 41, 43, 44, 46, 65, 66, 67, 69, 70, 72, 101 and 102.

1.19.2. Legal authority

- Minister responsible for Finance, Commissioner of Taxes and officers in the department.

1.19.3. Legally required documents or records

- Proof of declaration of goods for import or export
- Proof of payment of import and export duties.

1.19.4. Sources of information

Non-Government sources

- World Trade Organisation WTO (2015). *Trade Policy Review – Report by the Secretariat – South African Customs Union – Annex 5: Swaziland* [online]. Available at: https://www.wto.org/english/tratop_e/tpr_e/s324-04_e.pdf [accessed 25 July 2017]
- World Bank (2014). *Doing Business 2015* [online]. Available at: <http://www.doingbusiness.org/data/exploreconomies/swaziland?topic=trading-across-borders> [accessed 25 July 2017]
- Expert consultation conducted in Swaziland, December 2016.

1.19.5. Risk determination

Overview of Legal Requirements

The main Act applicable is the Customs and Excise Act. Section 4 covers requirements that any vehicle entering or leaving Swaziland shall stop for a customs official, while section 9 defines when goods are deemed to be imported into Swaziland and section 11 defines what is meant by goods being imported or exported overland from Swaziland by road and rail. Section 13 and 37 requires that people entering or leaving Swaziland declare fully any and all goods they have in their possession that they are taking out or bringing into Swaziland.

Section 38 and 40 of the Act requires that goods are declared in a prescribed format and that all duties applicable to these goods are paid within seven days. It further requires that evidence as the value of goods is provided to the Customs Department. Section 43 covers requirements of joint liability for declaration and payment of duties between any party involved in the import or export of goods. Section 46 covers the different types of duty that may be applicable and the methods of payment of these duties. While section 66 covers the calculation of customs duty based on the transaction value which is defined in section 67 and section 69 defines the calculation of excise duties and section 70 defines the calculation of sales duties. Section 72 defines the calculation of goods to be exported from Swaziland.

Section 101 requires that businesses keep such records as may be prescribed by the Minister and section 102 requires that records be kept and produced when required.

In order to operate in Swaziland, all businesses must be registered and licensed by the Ministry of Commerce, Industry and Trade (MCIT) under the Trading Licences Order No. 20 of 1975 and the Trading Licences Amendment Act No. 9 of 2011 (the latter enables applications for trading licences to be advertised within three working days instead of 21 days).

Any individual or company engaged in importing and/or exporting goods requires a trading licence. In addition, any person wishing to engage in importing, exporting or transiting certain controlled agricultural products ("scheduled agricultural products") must register with, and obtain a permit from, the National Agricultural Marketing Board under the NAMBOARD Act No.

13 of 1985 (Section 3.1.3). For customs clearance purposes, importers (and exporters) must register with the Swaziland Revenue Authority (SRA), established in 2011.

Customs clearance is mostly done through customs agents, who must be licensed by the SRA; although some companies rely on their own import-export units. Documentation required for custom clearance includes: the import declaration using the single administrative document (SAD 500) and supporting documents such as the bill of lading, invoice, road manifest and packaging list. In some instances, certificates of origin, import permits, and SPS certificates may also be required

Exporters are required to register with the Swaziland Revenue Authority (SRA). For customs clearance purposes, exporters must submit an export declaration (form SAD500) and supporting documents, including the exchange control form F178 (provided by the exporter's bank indicating the value of the goods to be exported), invoice, road manifest, permits and certificates of origin.

Customs declarations are made through the ASYCUDA++ system. Most exporters use customs clearance agents or freight forwarders who take care of the export logistics in South Africa, which include the deposit of a security bond covering goods in transit to Durban.

As in the case of imports, most exports from Swaziland are transshipped through the port of Durban (where they arrive by road). Export consignments may be inspected by Customs, in particular if there is a duty/tax refund or a discharge of security to be claimed after the goods are exported. Following document processing and inspection of the goods, the transport unit is sealed by Customs and cleared for export.

Description of Risk

- Currently the only forest products formally exported are from TDL. Customs and excise duties are enforced as this is a source of government revenue (Expert consultation 2016).
- The World Bank Group Doing Business Report 2015 indicates that in Swaziland customs clearance and inspection for imports takes three days. Overall, import procedures take on average 23 days and represent a cost of US\$2,245 per container.
- Some of the frequent complaints voiced by the private sector regarding cross-border trade are: delays in service delivery, insufficient staff at the border, the duplication of documentation, the lack of a database to evaluate goods, and the lack of a fully automated declaration system linking Swaziland's borders. This does raise concern about the credibility of the monitoring and enforcement of the laws.
- As of July 2017, 89 per cent of the plantations in Swaziland were FSC FM certified, and four certificates. There is no available information that would justify a finding of specified risk for the remaining 11 per cent of plantations
- There are anecdotal reports of illicit trade of NTFPs from Swazi Nation land (and reference to this in the Forest Policy), particularly herbs for medicinal purposes.

Stakeholders who provided comments on the draft of this report during the international stakeholder consultation, stated that the volumes produced from SNL and traded commercially are small (approx. 6 per cent of the volume from approx. 4.5 per cent of the forest area). Stakeholders stated that 'the laws and principals in the Swaziland National land (SNL) are implemented, and managed by the community under the supervision of the local traditional leadership. The legal authorities are involved in the day to day operation of the area and

enforcement is strict.' Stakeholders recommended that, based on an evaluation of the potential scale and impact of the risks for the commercial supply from SNL. As there is no information that indicates a risk for this source, and the scale and impact of the potential risk is low.

Risk Conclusion

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL). Threshold (1) has been met: Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL). Threshold (2) is met: identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.19.6. Risk designation and specification

Low risk for Private Freehold or Title Deed Land (TDL); Crown or State Land; and non-indigenous species (e.g. wattle, pine and eucalyptus) from Swazi Nation Land (SNL).

Specified risk for indigenous species (no commercial source) from Swazi Nation Land (SNL).

1.19.7. Control measures and verifiers

- Products shall be correctly classified (type, custom code, species, quantities, qualities, etc.).
- All required import and exports permits shall be in place.

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Swaziland is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It acceded on 26 February 1997, with entry into force taking place on 27 May 1997.
- According to the most recent biennial report, the drafting of the CITES-relevant legislation was in progress in 2013. [online] Available at: <https://cites.org/sites/default/files/reports/12-13Swaziland.pdf>). In the interim, trade of CITES species is dealt with under the Game Act.

1.20.2. Legal authority

- Kingdom of Swaziland's Big Game Parks
- Directorate of Public Prosecutions
- Department of Customs and Excise
- Royal Swaziland Police

1.20.3. Legally required documents or records

- CITES Export Permit

1.20.4. Sources of information

Non-Government sources

- Groves, M., Rutherford, C. (2015). *CITES and Timber - A guide to CITES-listed tree species* [online]. Key Royal Botanic Gardens. Available at: https://www.kew.org/data/CITES_User_Guides/CITES-and-Timber.pdf [accessed 25 July 2017]
- ELDIS.org (2017). *Regional and country profiles – Swaziland*. [online]. Available at: <http://www.ELDIS.org.org/go/country-profiles&country=1207&theme=0> [Accessed 30 January 2017]
- Mongobay.com (2011). *Swaziland Forest Information and Data 2011*. [online]. Available at: <http://rainforests.mongabay.com/deforestation/2000/Swaziland.htm#13-policy> [Accessed 30 January 2017]
- Transparency International (2014). *Corruption Perception Index 2014 - Swaziland*. [online]. Available at: <http://www.transparency.org/country#SWZ> and http://www.theglobaleconomy.com/Swaziland/transparency_corruption/ [Accessed 30 January 2017]. Note, Swaziland has not been included in the annual CPI reporting for 2015 and 2016.
- World Bank.org (2015). *Worldwide Governance Indicators – Swaziland 1996–2015*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#reports> [Accessed 11 January 2017]
- Expert consultation conducted in Swaziland, December 2016.
- Mndzebele, A. (2001). *A presentation on Land Issues and Land Reform in Swaziland*. [online]. Paper presented at the SARPN conference on Land Reform and Poverty Alleviation in Southern Africa. Available at: <http://www.sarpn.org/EventPapers/Land/20010604Mndzebele.pdf> [Accessed 30 January 2017]
- IFAD.org (2012). *Land and Natural Resources in Swaziland*. [online]. UN-Habitat and Global Land Tool Network. Available at: <https://www.IFAD.org.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6> [Accessed 30 January 2017]
- Transparency International (2015). *People and Corruption: Africa Survey 2015 - Global Corruption Barometer*. [online]. Available at: http://files.transparency.org/content/download/1941/12775/file/2015_GCB_SubSaharanAfrica_EN.pdf [Accessed 30 January 2017]

1.20.5. Risk determination

Overview of Legal Requirements

While CITES is considered in Swaziland legislation, currently it does not affect the timber industry in Swaziland.

There are not CITES listed tree species growing in Swaziland.

Description of Risk

The risk of contravention in relation to CITES is low as there are no indigenous timber species traded, and no flora or fauna species other than commercial exotic species are harvested from forests (Groves and Rutherford 2015).

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

N/A

1.21. Legislation requiring due diligence/ due care procedures

Legislation covering due diligence/ due care procedures, including e.g. due diligence/ due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

N/A

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

N/A

1.21.5. Risk determination

N/A

1.21.6. Risk designation and specification

N/A

1.21.7. Control measures and verifiers

N/A

Annex I. Timber source types

The table **Timber Source Types in Swaziland** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- a) **Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- b) **Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- c) **Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- d) **Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- e) **Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- f) **License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

Land tenure type	Forest type	Ownership and/or management type	Description
Swazi National Land (SNL)	Plantations	Customary ownership, land leased to commercial operators	Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber products/forest/woodland. Primarily exotic species (mainly <i>Acacia mearnsii</i>).
	Naturally regenerating forest	Customary ownership, land leased to commercial operators	Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber products/forest/woodland. Primarily exotic species (mainly <i>Acacia mearnsii</i>).
		Customary ownership, managed and harvested by customary owners, sold onto the commercial market for export.	Permission from Minister of Agriculture and the Local Tribal Authority is required to harvest/clear, sell, and purchase timber products/forest/woodland. Primarily exotic species (mainly <i>Acacia mearnsii</i>).
	Natural forest or woodlands	Customary ownership	Indigenous species harvested for small scale and non-commercial use. No commercial source of timber
State or Crown Land	Protected areas	State owned.	No commercial source of timber

Private Freehold or Title Deed Land (TDL)	Plantations	Privately owned and managed for commercial purposes	No permit required. Normally exotic species harvested in rotation, but native species are sometimes used.
	Natural forest or woodlands	Privately owned, not commercially harvested.	No commercial source of timber



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About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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